Corporate Health, Safety & Wellbeing Service

Corporate Confidentiality Policy
(Medical Information)

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1. Introduction

1.1 This Policy is directed by legislation and relates to the possession of employee medical data such as Occupational Health reports. Each Department will need procedures in place to ensure they comply with this Policy.

1.2 Compliance with this Policy is of key importance to ensure compliance with the Data Protection Act 1998, the Access to Medical Reports Act 1988 and relevant General Medical Council and Faculty of Occupational Health Medicine practice guidance. Such systems are in place to ensure that employee confidentiality and the release of medical information is effectively controlled.

1.3 This Policy aims to protect the City and County of Swansea against uncontrolled release of medical information.

2. Policy Statement

2.1 This document is intended to be a framework, with Service Units supplementing it by having in place their own procedures and guidelines, which reflect the principles of this policy and the individual needs of their Service Units.

2.2 All Directorates and Services within the Authority must be able to demonstrate compliance with this policy via audit.
2.3 The Authority is committed to ensuring that confidential medical information is effectively stored and protected against improper disclosure at all times, and that it is only released to individuals who are entitled to receive it with the informed consent of the employee.

2.4 The policy will enable employees to have confidence that medical information relating to them will be processed and stored in a confidential manner.

2.5 Managers will keep confidential clinical information they receive and process securely at all times, and ensure appropriate informed consent is obtained prior to passing any medical information they hold onto a third party.

2.6 Non-medical personnel within the Occupational Health and Wellbeing Unit understand their responsibility to keep clinical information confidential and have signed an agreement to that effect.

2.7 Serious and deliberate violation of this policy will be viewed as gross misconduct under the Disciplinary Policy of the City & County of Swansea.

2.8 Managers may choose to delegate their duties but can not delegate their responsibilities.

3. Scope

3.1 This policy applies to all employees, volunteers, agency staff, trade union representatives, ex-employees and elected members who are all required to comply.

3.2 This policy applies to all individuals who may have access to, gain knowledge of or be entrusted with confidential medical information.

3.3 Safeguards will be required to ensure the protection of information in manual and automated (e.g. electronic) systems. In particular it is possible for the recipient of an electronic mail message to have arranged for messages to be forwarded to another person in their absence. This can occur even if the properties of the message have been set to ‘confidential’ and must be taken into consideration when deciding upon the most appropriate method of communication in individual cases.

3.4 In exempt/special circumstances confidential clinical information may have to be released without the consent of the individual concerned. Any such disclosure will be in accordance with the law and any guidance issued by the relevant professional body, and in accordance with the Units Release of Medical Information protocol authorised by the Corporate Health, Safety and Wellbeing Manager.

3.5 Employees will understand that when submitting a GP fit note to their manager they are consenting to the manager passing this information to the Payroll Team for processing.
4. **Definitions**

4.1 **Confidential medical information**

All medical records, including information obtained during Occupational Health consultations, health surveillance test results, medical reports and the reasons given for attendance at a medical centre will be regarded as confidential medical information. The definition includes information that is ‘personal in confidence’ or ‘management in confidence’ that forms part of the clinical record (e.g. the diagnosis given on a GP Fit note or correspondence from managers). The definition includes, but is not restricted to, ‘sensitive personal data’ as defined in the Data Protection Act 1998.

Information must be treated as confidential regardless of the manner in which it is received, permanently recorded (if at all) or transmitted.

4.2 **Corporate Health, Safety & Wellbeing Manager**

The person with direct professional and managerial responsibility for the Occupational Health and Wellbeing Unit where confidential clinical information is most frequently created, processed, used and stored.

4.3 **Legal terms**

Data controller, data, data subject, health record and health professional have the same meaning as in the Data Protection Act 1998.

5. **Responsibilities**

5.1 **Councillors**

5.1.1 To ensure that confidential medical information they are party to is effectively stored and protected against improper disclosure at all times and that it is only released to individuals who are entitled to receive it. For example, when handling information in relation to appeals, investigations, etc.

5.2 **Chief Executive**

5.2.1 To ensure that confidential medical information is effectively stored and protected against improper disclosure at all times and that it is only released to individuals who are entitled to receive it. For example, when handling information in relation to appeals, investigations, etc.

5.3 **Executive Board**
5.3.1 The Executive Board will be collectively responsible for strategic health, safety and wellbeing planning and for periodic review of health and safety performance.

5.3.2 Ensure a corporate procedure is in place for the transmission and storage of confidential, sensitive personal data and medical information.

5.3.3 To monitor and audit compliance of this policy across the Authority and take action to address any failings

5.4 Directors/Chief Officers

5.4.1 Ensure Heads of Service deliver their responsibilities under this policy and report any failings or barriers that may affect compliance to Executive Board.

5.4.2 To ensure that confidential medical information processed within their Service area and which they are party to is effectively stored and protected against improper disclosure at all times, and that it is only released to individuals who are entitled to receive it, for example, when handling information in relation to appeals, investigations, etc.

5.5 Heads of Service

5.5.1 Ensure that suitable and sufficient arrangements, funds and resources are in place to manage confidential medical data within their Service Unit.

5.5.2 Ensure that adequate monitoring systems are in place to evaluate the effectiveness of local arrangements to minimise the risks related to a breach of this Policy, and report any deficiencies to Executive Board.

5.5.3 Ensure that there is effective consultation, and communication between management, trade unions and staff to address risks of non-compliance, and raise awareness of this policy e.g. SMT, Team Briefs.

5.6 Managers and Human Resources Operations

5.6.1 Managers are responsible for ensuring that suitable and sufficient arrangements are in place to implement and monitor the practical application of this policy within their sphere of responsibility, and bring this policy to the attention of their employees.

5.6.2 Any Occupational Health medical information concerning an employee will be sent to the manager indicated on the Occupational Health and Wellbeing Medical Referral form and the relevant Human Resources Officer. This information, whether on e-mail or in a report from an Occupational Health Advisor, is not to be shared with anyone. Managers can discuss operational management issues with the employee’s supervisor without disclosing medical information they have become party to.
5.6.3 Managers that receive electronic or hard copy confidential medical information from any source e.g. GP fit note, either themselves or their team, must ensure it is effectively stored and protected against improper disclosure at all times, and that it is only released to individuals who are entitled to receive it.

5.6.4 Managers should report any improper disclosure of medical information that comes to their attention to their Head of Service.

5.6.5 Managers who have employees required to process medical information should ensure the employee understands their responsibilities under this policy and sign a confidentiality agreement which will be held by the manager. A template agreement is available from the Occupational Health and Wellbeing Unit.

5.7 Employee

5.7.1 Employees will comply with the provisions of all City & County of Swansea health, safety and wellbeing policies.

5.7.2 Employees are to ensure that should they become party to confidential medical information they are not entitled to receive, they contact their manager and pass the information to the Occupational Health and Wellbeing Unit, ensuring that any duplicates are destroyed.

5.7.3 Employees who are tasked with processing medical information will ensure that confidential medical information is effectively stored and protected against improper disclosure at all times, and that it is only released to individuals who are entitled to receive it.

5.7.4 Employees who are tasked with processing medical information will sign a confidentiality agreement as required by their manager.

5.8 Corporate Health, Safety & Wellbeing Manager

5.8.1 Will ensure the provision of advice and guidance via the Corporate Health, Safety and Wellbeing Service to those identified as having responsibilities under this policy.

5.8.2 To bring to the attention of the relevant Head of Service any known serious or uncontrolled breaches of the policy.

5.8.3 Ensure that arrangements have been made for confidential medical information to be kept securely at all times within the Occupational Health and Wellbeing Unit.

5.8.4 Personally authorise any disclosure of medical information processed by the Occupational Health & Wellbeing Unit and Corporate Health & Safety Team. Following receipt of written consent from the individual concerned to release the information, or in accordance with a court order. This includes, but is not restricted to, all electronic messages, emails and letters between the Occupational Health and Wellbeing Unit and the Manager/Human Resources.
5.8.5 Ensure that personnel who are not health professionals within the Corporate Health, Safety and Wellbeing Service understand their responsibility to keep all medical information confidential and sign an agreement to that effect. Arrangements for ensuring that these agreements are made and recorded will be included in induction training programmes.

5.8.6 Where an employee refuses to give consent for the Occupational Health medical report to be sent to the relevant Manager and Human Resources Officer, then any information in relation to risks identified or any adjustments recommended will still be forwarded to the manager and Human Resources Officer, but no medical information will be released.

5.9 **Medical Professionals** *(including contractors)*

5.9.1 Will comply with guidelines concerning confidentiality, which have been issued by the body or bodies responsible for ensuring standards of ethics and practice within their profession. Provide employees with information about the arrangements for maintaining medical confidentiality and protecting sensitive personal data from inappropriate disclosure. Obtain consent from employees for release of any reports or information to their employer.

6. **Legislation**

6.1 **Health & Safety at Work etc. Act 1974**
In order to ensure the health and safety of employees and others it may be necessary to obtain employee consent for limited release of confidential information to relevant parties. Where consent to release confidential information cannot be obtained then general advice will be given, sufficient to ensure health and safety.

6.2 **Data Protection Act 1998**
Individuals or their representatives, authorised in writing, may apply for access to their occupational health records.

Applications made in this way will be regarded as being under the provisions of the Data Protection Act 1998 and the person responsible for providing access will be familiar with the provisions of that Act. Once the ‘data controller’ or their representative is sure the applicant is entitled to see the record, they must give access within certain time limits.

If the information that the data subject is entitled to have is unintelligible to a layperson, an explanation of the relevant terms must be provided.

Subject to the above, it is policy to disclose those parts of the record that pre-date the Act, even if this is not a statutory requirement.
Requests for disclosure in connection with litigation must be accompanied by an appropriate written consent or court order. The Corporate Health, Safety and Wellbeing Manager will examine the request prior to disclosure to ensure that the material is covered by the consent form or court order.

Particular care will be taken to avoid inappropriate disclosure of material that may be legally privileged, for example, copies of medical legal reports that have been filed in the medical records.

6.3 **Access to Health Records Act 1990**
The entitlements under this Act, as they relate to health records of living individuals, have been repealed and replaced by the Data Protection Act 1998. Applications may continue to be made for the release of information that relates to individuals who have died.

6.4 **Access to Medical Reports Act 1988**
Where the Occupational Health Doctor or Nurse requests a report from an employee’s General Practitioner or a Specialist, the Provisions of the Access to Medical Reports Act 1988 apply. The person requesting the report will be familiar with the provisions of the Act.

The employee’s rights under the Act will be explained to him/her and an appropriate consent form signed (e.g. consent.doc)

6.5 **Equality Act 2010**
Confidential clinical information may be held which indicates that an individual may be classed as disabled under the Act.

Management will need to know what “reasonable allowances or adjustments” might be necessary but any disclosure of confidential information requires informed consent.

### 7. Review and Monitoring

7.1 The requirements of this policy will be monitored by way of a risk-prioritised process of auditing. All Service Units within the Authority must be able to demonstrate compliance with this policy.

7.2 The training and responsibilities of individuals will be monitored by the Authority through its management and appraisal processes.

7.3 Where necessary the Authority will take appropriate action to ensure that this policy is upheld.

7.4 This policy will be reviewed by the Corporate Health, Safety & Wellbeing Manager every 3 years or if:

- New legislation is published or existing legislation is updated.
- New guidance is published or existing guidance is updated.
- Research, monitoring or auditing suggests that a review may be required.
- Incident investigation suggests that a review may be required.
8. Reference


Nursing & Midwifery Council
*Code of Professional Conduct, May 2008*


Royal College of Nursing guidance on Confidentiality for Occupational Health Nurses