

**BERKSHIRE RECORD OFFICE
WEST LONDON MENTAL HEALTH NHS TRUST
Protocol for access to information in the historic records of Broadmoor
Hospital**

Scope

Broadmoor Hospital and the Berkshire Record Office have agreed to make information from the historic records of the Hospital available for public research. This protocol outlines the basis on which information will be made available, and how the public can access the records. It also sets out how members of the public can proceed if they are unhappy with an access decision.

What information will be made available

Clinical and non-clinical records of Broadmoor Hospital (formerly Broadmoor Criminal Lunatic Asylum) are to be preserved for research by the BRO, in accordance with the Public Records Act 1958. All inactive patient records will be held by Broadmoor Hospital for a minimum period of 30 years.

Access will be provided on the basis of the Freedom of Information Act 2000 (FOIA) and the Department of Health's *Guidance for Access to Health Records Requests* (2010). This will have the following effects:

- Access will be provided to all information within records that would have been open under the old '100 year rule'. This means that any non-patient record with an end date more than 100 years from the current date, or records of a patient who died more than 100 years ago, will be available for research. Record is defined as the physical entity, such as book, paper or file. The only exception to this will be for records of discharged patients whose date of death is unknown. In these cases, patient records will be opened for research after a defined period has elapsed since the patient's birth date: this will be 160 years after birth date for Victorian and Edwardian patients.
- Access will be provided to information from all other records less than 100 years old providing that one of the exemptions in the FOIA does not apply. Sometimes it may not be possible to provide access to the physical record in which case information from the record may be made available in another format.

Records that are exempt from access will be indicated as such with a closure note in the Berkshire Record Office catalogue of Broadmoor Hospital records.

**BERKSHIRE RECORD OFFICE
WEST LONDON MENTAL HEALTH NHS TRUST
Protocol for access to information in the historic records of Broadmoor
Hospital**

Exemptions to access

The following FOIA exemptions to access may be applied to Broadmoor records:

- Section 31 exemption: if access is likely to compromise security at the Hospital
- Section 38 exemption: if access is likely to endanger the physical or mental health or safety of any individual. Likely factors will include the nature of the patients' offence and the level of detail sought
- Section 40 exemption: if access relates to personal data covered by the Data Protection Act 1998, where the subject is still alive
- Section 41 exemption: if disclosure of information provided in confidence (such as medical or clinical information) would constitute an actionable breach of confidence
- Section 44 exemption: if access would infringe a subject's human rights, such as the right to privacy. The statutory bar in this case is provided by the Human Rights Act 1998, and the European Convention on Human Rights.

Further guidance on these exemptions is provided on the Information Commissioner's website.

Most of these exemptions are subject to a public interest test as defined in the FOIA section 2. As the holding body of the Broadmoor records, it will be for the Berkshire Record Office to receive and process enquiries for access, and to contact Broadmoor Hospital for an opinion on whether the public interest favours disclosure or non-disclosure. The Hospital will supply details of the relevant contact to the Berkshire Record Office.

Where an exemption is subject to a public interest test this will be applied by the Hospital. The Hospital will apply the test in a way that is consistent with the guidance published by the Information Commissioner. The Hospital will inform the Record Office of its decision, which will be passed on to the enquirer. Whilst every endeavour will be made by the hospital to make a decision quickly, this is not always possible given the pressures on a busy health records department. If a delay of more than 2 weeks is anticipated the hospital will inform the BRO and provide an estimated response date. The BRO will inform the enquirer of the delay and the reasons for it.

If an exemption exists, the Hospital may still offer discretionary access to information to bona fide relatives, medical researchers or historians. This is likely to be by the provision of summary information. Such information would be provided outside the terms of the FOIA and would be chargeable at the Record Office's research fee rate. Berkshire Record Office can only allow this privileged access if the Hospital gives its permission, and may ask for evidence to prove the researcher's status before considering the request.

**BERKSHIRE RECORD OFFICE
WEST LONDON MENTAL HEALTH NHS TRUST
Protocol for access to information in the historic records of Broadmoor
Hospital**

How access will be provided

All enquiries for access should be directed to the Berkshire Record Office. Any request for access received by the Hospital should be forwarded to the Record Office by the Hospital contact, with comments on the application of any public interest test.

Access to all open records will be provided through the public research room at the Berkshire Record Office provided that to do so would not cause damage to the original item. If the item is at risk of damage access may be given through the provision of information or copies.

Request for access to exempt records will be considered under the terms of the FOIA. Enquirers will be asked to submit a written request to the Record Office detailing which records they would like to access. The Record Office will acknowledge requests under its service guarantees and a full response will be given within 30 working days as required by the (Freedom of Information (Time for Compliance with Request) Regulations 2004.

If access has been granted to records that would normally be exempt, the Record Office will ensure that enquirers only have access to the specific information requested. This may mean that it is not possible to grant access to the physical record itself but that access may be given through the provision of information or copies.

The Record Office can undertake research in accessible records on behalf of enquirers. This will be chargeable at the Record Office's research fee rate, details of which are provided on the Record Office website.

The Record Office will provide the Hospital with summary information about the enquiries it receives.

Obtaining copies of documents

The Berkshire Record Office will provide copies of documents from the Broadmoor archive in line with its normal practice and charges. This means that documents cannot be copied if it would harm them to do so, and that enquirers will be obliged to sign a copyright declaration agreeing that copies are supplied for private research only.

All Broadmoor records remain crown copyright and may not be published without the prior written consent of both the Record Office and the Hospital.

**BERKSHIRE RECORD OFFICE
WEST LONDON MENTAL HEALTH NHS TRUST
Protocol for access to information in the historic records of Broadmoor
Hospital**

Complaints

Complaints about access to the Broadmoor archive will be dealt with as part of Reading Borough Council's complaints procedure. Reading Borough Council is the managing public authority for the Berkshire Record Office. In the first instance enquirers are directed to complain to their contact officer at the Record Office.

If at the end of Reading Borough Council's complaints procedure an enquirer is still unsatisfied they may complain to the Information Commissioner, by telephoning 0303 123 1113.

Review of protocol

This protocol will come into effect on 1 April 2016.

Signed
West London Mental Health Trust

Date

Signed
Berkshire Record Office

Date

Original version approved: 1 April 2008
Revised version approved: 8 December 2010
Second revision approved: 27 March 2013