

1989 No. 503

RIGHTS OF THE SUBJECT

The Access to Personal Files (Housing) Regulations
1989

Made - - - - 15th March 1989

Coming into force 1st April 1989

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred upon them by section 3(1), (2), (3) and (6) of the Access to Personal Files Act 1987^(a), and of all other powers enabling them in that behalf, and after consultation with such authorities and bodies representing authorities as they think appropriate, hereby make the following Regulations, a draft of which has been laid before and approved by a resolution of each House of Parliament:—

Citation, commencement and application

1.—(1) These Regulations may be cited as the Access to Personal Files (Housing) Regulations 1989 and shall come into force on 1st April 1989.

(2) These Regulations apply to England and Wales.

Interpretation

2. In these Regulations:—

“the Act” means the Access to Personal Files Act 1987;

“appropriate health professional” means—

(a) the medical practitioner or dental practitioner who is currently or was most recently responsible for the clinical care of the tenant or the member of his family who is the subject of the relevant information in connection with the matters on which information is sought; or

(b) where there is more than one such practitioner, the practitioner who is the most suitable to advise on the matters on which information is sought; or

(c) where there is no practitioner available falling within sub-paragraph (a) or (b), a health professional who has the necessary experience and qualifications to advise on the matters on which information is sought;

“authority” means a “Housing Act local authority”;

“care” includes examination, investigation and diagnosis;

“dental practitioner” and “medical practitioner” mean, respectively, a person registered under the Dentists Act 1984^(b) and the Medical Act 1983^(c);

“health authority” has the same meaning as in section 128(1) of the National Health Service Act 1977^(d);

^(a) 1987 c.37; paragraph 2(2) of Schedule 1 was amended by paragraph 80 of Schedule 17 to the Housing Act 1988 (c.50).

^(b) 1984 c.24.

^(c) 1983 c.54.

^(d) 1977 c.49; this definition was amended by paragraph 11 of Schedule 3 to the Health and Social Security Act 1984 (c.48).

“health professional” means any person listed in the Schedule to these Regulations;
“inaccurate information” means relevant information which is inaccurate;
“relevant information” means, in relation to any tenant, accessible personal information held by the authority to which the tenant has addressed a requirement under these Regulations;

“tenant” means:—

- (a) the tenant of a dwelling whose immediate landlord is an authority;
- (b) the former tenant of a dwelling where at any time the immediate landlord was an authority;
- (c) an individual who is in the process of applying for, or who has applied for, a tenancy of a dwelling from an authority.

An authority’s duties as to access

3.—(1) Subject to the following provisions of these Regulations, where a tenant requires an authority in writing to inform him whether that authority holds relevant information of which he is, or under the Act is treated as, the subject, that authority shall within 40 days of receiving that requirement, or within 40 days of the giving of the consent referred to in regulation 4(1)(a)—

- (a) inform the tenant in writing whether the authority holds such information, and
- (b) if so, then unless the authority otherwise gives the tenant access to such information within that period and the tenant informs the authority that he does not want a copy of it, comply with regulation 5.

(2) The authority’s duties under sub-paragraphs (a) and (b) of paragraph (1) arise only where—

- (a) the tenant has paid any fee charged by the authority in accordance with paragraph (4), and
- (b) the tenant has supplied information reasonably required to establish his identity (or the identity of any relevant member of his family) and to locate the information sought,

and, where sub-paragraphs (a) and (b) of this paragraph are not satisfied at the time of the written requirement referred to in paragraph (1), the time limit referred to in that paragraph runs from the date on which they are satisfied.

(3) The authority’s duties under paragraph (1) apply to any relevant information held by the authority at the date of the written requirement, but the authority may supply information taking account of any correction or erasure made between that time and the time when the information is supplied if that correction or erasure would have been made regardless of the receipt of the requirement.

(4) The authority may charge a fee not exceeding £10 to a tenant making a requirement under paragraph (1) and no separate fee shall be charged for giving access to that information under sub-paragraph (b) of paragraph (1).

Information exempt from access

4.—(1) The authority’s duty under regulation 3(1)(b) does not arise where—

- (a) subject to paragraph (3), the information sought would itself or with other available information identify another individual (other than a member of the tenant’s family) who has not consented to the disclosure, including an individual who has provided that information;
- (b) the information sought would—
 - (i) in the opinion of an appropriate health professional expressed in response to a notification under regulation 6(2), or
 - (ii) in any case to which regulation 6 does not apply, in the opinion of the authority,

if supplied, be likely to cause serious harm to the physical or mental health of the tenant or of any other person;

- (c) the information sought is information held by the authority for the purposes

of prevention or detection of crime, or apprehension or prosecution of offenders, and disclosure of it would prejudice those matters;

- (d) the information sought is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;

and where any part of the information falls within one or more of sub-paragraphs (a) to (d) the authority's duty arises in relation to the part that does not.

(2) Where the information sought falls within sub-paragraph (a) of paragraph (1), but is not as described in paragraph (3), the authority shall—

- (a) within the period referred to in regulation 3(1), supply so much of the information sought as can be supplied without disclosing the identity of the other individual;
- (b) within 14 days of its duties arising under regulation 3(1), inform that other individual in writing that the relevant information contains information which would identify him and ask him whether he consents to that information being disclosed to the tenant.

(3) Information falling within sub-paragraph (a) of paragraph (1) is not exempt from disclosure on the ground that it identifies an individual where the individual identified is—

- (a) one who is or was a health professional and who provided the information in his capacity as a health professional having been involved with the care of the person the subject of the information; or
- (b) one who acted in the course of his employment by the authority in connection with its functions as a landlord or who for reward provided services on behalf of the authority in performance of the authority's duties as a landlord.

(4) Where the information sought falls within sub-paragraph (b) of paragraph (1), the authority shall supply so much of the information sought as can, in the opinion of the appropriate health professional, or, as the case may be, the authority, be supplied without causing serious harm.

Copies of information

5.—(1) This regulation applies where an authority has informed a tenant in accordance with regulation 3(1)(a) that it holds relevant information, unless the authority has given the tenant access to the relevant information by means other than supplying him with a copy of it and the tenant has informed the authority that he does not want a copy of the relevant information.

(2) Where this regulation applies, the authority shall either—

- (a) supply a copy of the relevant information free of charge; or
- (b) notify the tenant that its duty under regulation 3(1)(b) does not arise because of the provisions of one or more of sub-paragraphs (a) to (d) in regulation 4(1), specifying the relevant sub-paragraph;

and, where its duty arises as to part only of the information, shall comply with paragraph (a) of this paragraph as to that part and with paragraph (b) as to the remainder.

(3) Where a copy of information is supplied to the tenant in terms which cannot easily be understood without explanation, the information shall be accompanied by a written explanation of those terms.

Information as to an individual's health

6.—(1) This regulation applies where the relevant information held relates to the physical or mental health of an individual and the authority believes it was provided by or on behalf of a health professional.

(2) Where this regulation applies the authority shall, within 14 days of its duties arising under regulation 3(1), inform in writing the body which appears to it to be the relevant health authority, or, if there is no such body, the person who appears to it to be the appropriate health professional that this regulation applies in relation to relevant information and that it or he should give the view of an appropriate health professional as to whether regulation 4(1)(b)(i) applies in whole or part to that information.

(3) The relevant health authority or appropriate health professional shall notify the authority of the view of the appropriate health professional within the 40 day period referred to in regulation 3(1).

(4) In this regulation "relevant health authority" means the health authority which employed, or retained the services of, the health professional whom the authority believes to have supplied the information to the authority in the course of his employment.

Correction and erasure of information

7.—(1) A tenant wishing an authority—

- (a) to correct or erase inaccurate information of which he is, or under the Act is treated as, the subject; or
- (b) to correct relevant information which consists of an expression of opinion about the tenant or a member of his family which is based on inaccurate information or which implies the existence of facts which are incorrect or misleading;

may by notice in writing require the authority to do so, and that requirement shall be accompanied by—

- (i) sufficient information to enable the authority to identify the information and the record in which it is held; and
- (ii) a statement of the correct information; and
- (iii) any written evidence on which the tenant relies as supporting his view that the information is, or is based on or implies the existence of facts which are, incorrect or misleading.

(2) Unless the authority forms the view described in paragraph (4), it shall on receipt of such a requirement to correct or erase inaccurate information correct or erase the information as required by the tenant's notice, and shall as soon as reasonably practicable send a copy of the revised information to the tenant free of charge.

(3) Unless the authority forms the view described in paragraph (4), it shall on receipt of a requirement to correct an expression of opinion referred to in paragraph (1)(b)—

- (a) clearly mark any document on which that expression of opinion appears that the authority accepts that the opinion was based on inaccurate information or, as the case may be, implies the existence of facts which are incorrect or misleading, and
- (b) as soon as is reasonably practicable send to the tenant a copy of the document so marked free of charge.

(4) Where the authority forms the view that the relevant information is not inaccurate information, or is not an opinion based on facts which are incorrect or misleading or does not imply the existence of incorrect or misleading facts in the manner described by the tenant, it shall—

- (a) place a written note recording the tenant's view with the information which it has decided not to correct or erase, and
- (b) send a copy of the note referred to in sub-paragraph (a) to the tenant together with a copy of the information to which it relates, and
- (c) send a notice, accompanying the copies referred to in (b), to the tenant stating that the information is not inaccurate information or is not an opinion based on facts which are incorrect or misleading or does not imply the existence of incorrect or misleading facts in the manner described by the tenant, and giving its reasons,

and it shall make no charge for supplying the copies referred to in sub-paragraph (b) or for supplying the notice referred to in sub-paragraph (c).

(5) Where the authority forms the view that part only of the relevant information is, or is an opinion based on facts which are, incorrect or misleading, or implies the existence of incorrect or misleading facts in the manner described in the tenant's notice, it shall comply with paragraph (2) or (3), as appropriate as to that part and with paragraph (4) as to the remainder.

Review

8.—(1) Where the tenant is, or under the Act is treated as, the subject of relevant information held by an authority and where he or a member of his family is aggrieved by any decision of that authority concerning his access to, or correction or erasure of,

that information, the tenant may within 28 days of his being notified of the decision require that decision to be reviewed or reconsidered by the authority.

(2) The authority shall make such arrangements for the review of the decision as it thinks appropriate to ensure that the decision is either—

- (a) reviewed by members of that authority who took no part in making the decision to be reviewed, or
 - (b) reconsidered by a meeting of the full authority,
- and the tenant may make oral or written representations.

13th March 1989

Nicholas Ridley
Secretary of State for
the Environment

15th March 1989

Peter Walker
Secretary of State for
Wales

SCHEDULE
HEALTH PROFESSIONALS

Regulation 2

<i>Description</i>	<i>Statutory derivation (where applicable)</i>
Registered medical practitioner.	Medical Act 1983(a), section 55.
Registered dentist.	Dentists Act 1984(b), section 53(1).
Registered optician.	Opticians Act 1958(c), section 30(1).
Registered pharmaceutical chemist.	Pharmacy Act 1954(d), section 24(1).
Registered nurse, midwife or health visitor.	Nurses, Midwives and Health Visitors Act 1979(e), section 10.
Registered chiropodist, dietitian, occupational therapist, orthoptist or physiotherapist (subject to the Note below).	Professions Supplementary to Medicine Act 1960(f), section 1(2).
Clinical psychologist, child psychotherapist or speech therapist.	
Art therapist or music therapist employed by a health authority.	
Scientist employed by such an authority as a head of department.	

Note: This category shall be construed as not including any person belonging to a profession specified in the first column which, by virtue of an Order under section 10 of the Professions Supplementary to Medicine Act 1960, is for the time being treated as if it were not mentioned in section 1(2) of that Act and as including any person belonging to a profession not specified therein which is for the time being treated by virtue of such an Order as if it were mentioned therein.

(a) 1983 c.54.

(b) 1984 c.24.

(c) 1958 c.32.

(d) 1954 c.61.

(e) 1979 c.36.

(f) 1960 c.66; section 1(2) was amended by S.I. 1966/990 and by 1986/630.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a tenant of a Housing Act local authority to have access to certain information relating to him or to a member of his family and held by the authority.

The tenant is required to apply in writing, and to pay any fee (not exceeding £10) demanded (regulation 3). The authority must, within the time specified, tell him whether it holds accessible information. Unless any such information is exempt from disclosure (regulations 4 and 6), the authority must give him access to it and, in the circumstances specified in the Regulations, supply him with copies (regulation 5).

Provision is made for inaccurate information, or expressions of opinion based or apparently based on inaccurate information, to be corrected or erased (regulation 7). Provision is also made for decisions made by the authority concerning access to information or its correction or erasure to be reviewed by members of the authority or reconsidered by a meeting of the full authority (regulation 8).

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