



GUIDANCE FOR ENTERING INFORMATION ONTO E-PORTFOLIOS

The Academy has worked alongside the Royal College of Paediatrics and Child Health to produce key guidance on how to correctly enter information onto e-Portfolios. This paper will set out the purpose of the guidance, background information and the key issues arising. It will provide clarification on the legal position for Royal Colleges, third party action and will outline best practice for trainees on how to record reflective comments. It should be noted that reflection is a process that does not only involve writing notes in e portfolios, but can also be undertaken as part of a dialogue with trainers during other work based assessments. A written record of reflection may take place either contemporaneously or, if a significant event has taken place, after full investigation has taken place.

PURPOSE

The purpose of this document is to provide guidance to trainees on recording reflective notes, although it is important to note that a request could be made to access any personal data on e-Portfolios. It will also provide clarification on the current legal position for Royal Colleges.

This guidance is based on trainee records only. However, there is the potential for a similar request to be made for a qualified doctor's own personal development and appraisal record if the record contains personal data about another data subject. Although Colleges would not be the data controller in this case, this guidance may lead to further development and discussions by organisations who are the data controllers of doctor's developmental records.

BACKGROUND

Concerns regarding legal requests to release information held on e-Portfolios without the data subject's consent, have been raised by several Royal Colleges and brought to the attention of the Joint Academy Training Forum (JATF). The issue was further raised at the Academy Council meeting.

It is recognised that courts are entitled to demand the information that they require and Royal Colleges continue to support transparency and openness in recording information in e-Portfolios. However, it has been agreed that what is required is Academy guidance to Royal Colleges outlining the legal position and advice to trainees and other doctors, on how they should record reflective comments on e-Portfolios.

KEY ISSUES

Concerns have been raised by trainees on how they should write reflective notes on e-Portfolios to avoid a circumstance under which they may have to release their reflective notes held on e-Portfolios to a third party. Trainees suggest they are receiving conflicting and confusing advice filtering down from different sources. Trainees are encouraged to write openly and honestly to aid their learning and meet GMC requirements for training. However, they are advised to fully anonymise reflective notes for patient confidentiality reasons.

Additionally, Colleges require further guidance on the legal position. The circumstances under which a College may be asked or ordered to release information held on e-Portfolios to a third party are rare, but Colleges should be equipped to deal with these requests if they arise. As the existence of e-Portfolios gains more awareness in the public domain, these requests may become more frequent.

It is noted that Royal Colleges have an important role to play in ensuring that all trainees are fully aware of the requirements to complete their e-Portfolios and that guidance and clarity on how they should write their reflection notes is given.

Following a recent case, where a doctor consented to releasing their reflective notes which were then used as evidence against them, Health Education England has written a letter to all deaneries, trainees and educators (please see link at the bottom of the document to Appendix 1) to offer guidance. It emphasised the importance of good, honest and open reflective writing. It further noted that the General Medical Council make it clear in Good Medical Practice that reflection is the key to effective continuing professional development, and is a skill that must be developed and practised by all doctors (http://www.gmc-uk.org/education/continuing_professional_development/26744.asp).

The letter outlines clearly that it is important that doctors in training 'be mindful that their reflections are carefully written and focus on the learning gained from such events', however, 'in order to comply with Information Governance, there must be no patient identifiable information contained within written reflections.

LEGAL POSITION

The circumstances under which a College would be required to disclose information held on e-Portfolios to a third party have been clarified in 'Legal Guidance on Disclosure of Information on e-Portfolios to Third Parties' (please see link at the bottom of the document to Appendix 2).

The key advice is that trainees should fully anonymise their reflective notes as, in case a College receives a request for information.

'Legal Guidance on Disclosure of Information on e-Portfolios to Third Parties';

1. Doctors are advised to anonymise patients as far as possible in their self-reflective logs. This is an educational and not a medical tool and therefore there is no reason to include patient identifiable or personal data relating to a third party. Data that may be considered personal data could be their initials combined with their religion and unique characteristic of their health condition. Doctors should be advised that they should avoid referring to names (by referring to patient instead as X), dates of births (they can instead refer to the patient's approximate age if necessary), addresses, or any unique condition or circumstance of that patient which may allow someone to identify the patient when used in conjunction with other information they have access to. There may be the occasional case when the identity of the patient is recognisable by the unique set of circumstances but the possibility of identification should be reduced as much as possible.

2. If a Subject Access Request is made and if it is established that the information within the log is a patient's personal data, it can be argued that a doctor's self-reflective log is exempt from disclosure under s7(4) of the Data Protection Act 1998. However, this may be challenged if an exemption could be potentially applied.

3. If request for disclosure is made in the context of litigation, you could request that a Court Order is made as it contains personal data belonging to a third party. However, this will incur costs and it is likely to only delay the inevitable. In addition, if the self-reflective note is discussed elsewhere, such as in the SI report, disclosure of the self-reflective log may not reveal anything that was not already known.

Legislation

The Data Protection Act regulates the processing of personal and sensitive data of a living individual. Under the Act there may be certain circumstances where colleges are asked to disclose information to a third party without the consent of the data subject. These are:

1. Under section 35A of the Medical Act 1983, the GMC may ask for the release information held on e-Portfolios in a case of fitness to practice
2. A court order or coroner's request to release information
3. The Police may request that information is released from e-Portfolios for crime prevention purposes
4. A patient subject access request, if the patient is identifiable

GUIDANCE NOTE FOR TRAINEES AND TRAINERS: ADVICE ON USING E-PORTFOLIOS

RCPCH has further drafted the 'Guidance Note for Trainees and Trainers: Advice on using e-Portfolios' (please see link at the bottom of the document to Appendix 3) to send to trainees and trainers. This clarifies the exceptional circumstances under which a third party may be able to access their e-Portfolios record without consent and to provide guidance to trainees and trainers on how to enter information on e-Portfolios whilst retaining the educational value.

The guidance notes that under the legislative requirements, there may be certain circumstances where we are asked to disclose information to a third party without the consent of the data subject because a Data Protection exemption applies.

In all of these circumstances, access is not an automatic right. Each request will be judged on an individual basis, taking into account the validity of the request and any other further exemptions that may apply under section 7 of the Data Protection Act (more information on section 7 can be found on the ICO website: <https://ico.org.uk/for-organisations/guide-to-data-protection/exemptions/>).

Advice on using e-Portfolios

1. Keep reflective notes, as fully anonymised as possible. Other practitioners, patients, parents and staff should not be named or be readily identifiable from the information you provide. For example, instead of referring to patient Jane Smith, refer to them as patient X. Never include the patient ID number or name. Avoid including date of birth (if necessary refer to the patient's approximate age), addresses or any unique condition or circumstance of that patient which may allow someone to identify them when used in conjunction with other information they have access to. Occasionally it will be unavoidable as the condition of a particular patient will be unique, but try and minimise the patient identifiable information that you provide.
2. Word the reflective notes in terms of:
 - a. Brief Description: what are you reflecting on? Outline the circumstance in general terms. Ensure that you anonymise data. You can describe a situation without including identifiable data. For example use 'patient x' or 'Dr S' instead of names or patient numbers.
 - a. Feelings: what were your reactions or feelings to the event in general? Try not to be judgemental, both to yourself and others, particularly when your reactions and feelings are still raw.
 - b. Evaluation: what was the outcome? What was good and could have been done differently about the event?
 - c. Analysis: what have you learnt? What steps will you now take on the basis of what you have learnt? – This is the most important section and will allow the other sections to be brief, generic and unidentifiable. This section will demonstrate both the learning outcome and reflection.
 - d. Take advice from a senior, experienced colleague when writing reflection about cases that may be contentious or result in an investigation

Most importantly, e-Portfolios is an educational tool and not a medical record. It is important that trainees and trainers continue to participate openly and meaningfully with the appraisal process by continuing to use e-Portfolios for genuine and detailed reflection that adds value to learning. However, this should be done without including patient identifiable or personal data. In the event you are referred to the GMC (a rare event, but more likely than a criminal prosecution), they will want to see evidence of reflection. Good reflective learning will support you.

Over emotional reflections, written in the heat of the moment should be avoided, as should criticism of others or discussion of personal differences.

If you are unfortunate enough to be involved in an incident with a serious outcome, it is helpful to set out the narrative on paper immediately so that the events are recorded while still fresh in your mind, but formally documented reflection is probably better done after some consideration.

THIRD PARTY REQUESTS

Procedures for Handling Third Party Requests to Access Data on e-Portfolios;

RCPCH has produced the 'Procedures for Handling Third Party Requests to Access Data on e-Portfolios' (please see link at the bottom of the document to Appendix 4) which is a draft of internal guidance for Colleges on how to handle any third party request to access information held on e-Portfolios. This is based on existing RCPCH Subject Access Procedures, Information Commissioners Office guidance for handling Subject Access Requests and regulatory requirements under the Data Protection Act and the GMC.

APPENDIX 1 <https://drive.google.com/open?id=0B4PSsyzA9BOoNnZPSHM3b0ZNREU>

APPENDIX 2 <https://drive.google.com/open?id=0B4PSsyzA9BOoMFZ00EtNMG1YbWM>

APPENDIX 3 <https://drive.google.com/open?id=0B4PSsyzA9BOobGV6R2pJZGxISFE>

APPENDIX 4 <https://drive.google.com/open?id=0B4PSsyzA9BOoVUxaeFlIRTBkODA>