



## Individual's Access to Protected Health Information (PHI)

### Policy # 3.2

## Rights to Access Protected Health Information

Original Effective  
Date: 6/21/2016

Revised Date:

**Purpose:** Establish written policies and procedures regarding the rights of Individuals to access, inspect and/or obtain copies of their PHI in a timely manner.

**Policy:** Travis County Covered Components process Individual requests for access to PHI maintained in a designated record set in accordance with the procedures outlined below.

#### Procedures:

##### Request Submission

1. Workforce Members of the Covered Component direct Individuals to make requests for access, inspection, or copies of PHI to the Privacy Officer via submission of a Request to Access Health Records Form (Form 6) or an email to [privacy@traviscountytexas.gov](mailto:privacy@traviscountytexas.gov).
2. Upon receipt of a request, the Privacy Officer informs the Individual of such receipt, and logs the request in order to track it and issue a timely response.
3. The Privacy Officer contacts the Covered Component in which the Individual's PHI is thought to reside.
4. Workforce members at the Covered Component access the Individual's PHI and securely transmit it to the Privacy Officer. In the event that the Individual's PHI is not maintained in a designated record set by Travis County, then the Covered Component makes the Privacy Officer aware of this fact, and the Privacy Officer closes the request upon issuing a response to the requesting Individual.
  - a. When Travis County has knowledge of where the PHI is maintained, the Privacy Officer's response will include information about where the Individual may direct his or her request.
5. Determining Access in Whole, or in Part. The Privacy Officer, in consultation with the departmental Privacy Liaison and the Legal Counsel, as needed, review the request for PHI and the PHI, as necessary. Requests are granted to the extent that they are not otherwise disallowed. The allowed reasons for denying access to an Individual include, but are not limited to, those set forth in the table below.

**Table 1: Bases for denials.**

| Basis   | Description or criteria  |
|---|--|
| PHI is specifically excepted from rights of access under HIPAA  | <ul style="list-style-type: none"> <li>• Psychotherapy Notes</li> <li>• Information compiled to use, or anticipated to be used in a civil, criminal, or administrative action or proceeding.</li> </ul>  |
| Access to PHI is likely to endanger the life or physical safety of the Individual or another person; or access would jeopardize the health, safety, security, or rehabilitation of an Individual inmate or another person | <p>The covered component is</p> <ul style="list-style-type: none"> <li>○ all or part of a correctional institution <b>or</b></li> <li>○ a Business Associate covered entity acting on behalf of a correctional institution <b>and either</b> <ul style="list-style-type: none"> <li>• the health, safety, security, custody or rehabilitation of the Individual or of other inmates would be jeopardized, <b>or</b></li> <li>• The safety of any officer, employee or other person at a correctional facility, or responsible for transporting an inmate would be jeopardized</li> </ul> </li> </ul> |
| PHI was created or obtained in the course of research and such research is still in progress  | <ul style="list-style-type: none"> <li>• The PHI was created or obtained by a covered health care provider conducting research</li> <li>• The Individual agreed to the denial of access during the research phase, and</li> <li>• The health care provider has informed the Individual that the right of access will be reinstated upon completion of the research</li> </ul>  |
| PHI was confidentially obtained   | <ul style="list-style-type: none"> <li>• The PHI was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be likely to reveal the source of the information</li> </ul>  |

6. Notification of the Response. The Privacy Officer sends a written notification to the requesting Individual, in plain language. The notice must include the following information:
  - a. Whether or not access is granted to the whole designated record set, or only part of it.
  - b. The format in which Travis County will provide access as discussed in Procedure 7 of this policy,
  - c. Whether any fees apply to the requested access as discussed in Procedure 8 of this policy, and
  - d. If access is denied:
    - i. the basis of the denial
    - ii. a statement that the denial is reviewable and instructions on how an Individual can request a review, if applicable
    - iii. a description of how the Individual may complain to Travis County about our privacy policies , or to the Secretary of the U.S. Department of Health and Human Services
  - e. The Privacy Officer's name, phone number, and email

#### Providing Access

7. Covered Components provide the Individual, or the person designated by the Individual, with access to the requested PHI within 30 days of the request.
  - a. If the Covered Component cannot fulfill the request for access within 30 days, the Covered Component may ask the Privacy Officer for an extension.
  - b. The Privacy Officer may approve one thirty (30) day extension.
  - c. Upon the granting of an extension, the Privacy Officer (or Department, if deemed more appropriate) sends the Individual a written statement containing the reasons for the delay and the date by which Travis County expects to respond to the request.
  - NOTE: Before providing PHI to the person designated by the Individual, workforce members must verify the identity of the person requesting PHI (see the procedure entitled: "Verification of Individuals or Entities Requesting Use or Disclosure of PHI") and use reasonable safeguards to protect the information that is being used or disclosed, such as ensuring that the third party recipient's contact information is correctly entered prior to transmission.
8. The Privacy Officer, or Covered Component as mutually agreed upon, provides access to the PHI in the format requested by the Individual, if that format is readily available. If the requested format is not readily available, Travis County provides the PHI in a readable hard copy, or in another form agreed to by Travis County and the Individual.

- When providing PHI to an Individual, in any form, Workforce Members ensure that reasonable safeguards are in place to protect the PHI. For example, before sending an email to an Individual, Workforce Members must ask the Individual whether he or she would like to receive the email in an encrypted format and advise the Individual of the risk associated with an unencrypted email.
- Workforce Members do not provide copies of records on external media storage devices provided by the Individual such as USB (“flash” or “thumb”) drives or CD’s. Plugging such devices into County equipment risk introduction of viruses and other malicious software onto the County’s computer network. In such cases, the County may offer an alternative such as the provision of that type of media or other means.

NOTE: A summary or explanation of the requested PHI will be provided in lieu of access only when the Individual agrees to the summary or explanation, and pays any related fees in advance.

9. Fees Imposed for Providing Access. The Privacy Officer determines if there are any cost-based fees associated with the access. Unless the actual costs associated with labor, copying, supplies, electronic media, postage, retrieval from storage, or preparation of summary information represents a high cost to the County, Travis County tries to provide copies of PHI at no cost. Otherwise, the County charges a flat, cost- based fee not to exceed \$6.50.

#### Review of Denial of Access

10. When Travis County denies an Individual’s request for access on the ground that a licensed health care professional in a Travis County covered component has determined, in the exercise of his or her professional judgement, that--
  - granting access to the PHI to the Individual or to a personal representative of the Individual is likely to endanger the life or physical safety of the Individual or another person
  - the PHI references another person (other than a health care provider) and the access requested will likely cause substantial harm to that other person

the Individual may request a review of denial by submitting a written request to the Privacy Officer or Privacy Liaison.

11. The Privacy Officer or Privacy Liaison will forward the request for review to a qualified licensed health care professional (“Reviewing Official”) within the Covered Component. A qualified licensed health care professional is one that:
  - Did not participate in the original denial of access.
  - Is a workforce member of the Covered Component.

12. The Reviewing Official will determine, within 10 business days, whether to deny access based on the criteria set forth in Procedure 11 above. The Reviewing Official will report his or her decision to the Privacy Officer.
13. The Privacy Officer will inform the Individual of the Reviewing Official's determination.
  - a. If the Reviewing Official determines that the Individual should be granted access, then the Covered Component is notified and will provide access as described in Procedures and 8.
14. Documentation. The Privacy Officer will appropriately document the resolution of the request and, where applicable, the delivery of the PHI.