


PUBLIC GUARDIAN PRACTICE NOTE		
SUBJECT: DEPUTIES and ATTORNEYS		No: 01/2010 December 2010
Title:	Release of Visit Reports	

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1. Summary

- 1.1 This practice note details when a copy of a Court of Protection Visitor's report may be released, and to whom it may be released. Regulations allow the Public Guardian discretion to release a copy of a visit report to parties interviewed by the Visitor in the course of preparing the report. A visit report may be made available to parties included in a Public Guardian application to Court, or supplied to the Police or a Local Authority in an investigation. Personal information contained within a visit report may be released following a Data Protection Act subject access request.
- 1.2 The Court of Protection can order reports by a Visitor to assist its decision making. Reports produced for the Court can only be released with the permission of the Court.
- 1.3 Reports produced by the former Lord Chancellor's Visitors prior to the Introduction of the Mental Capacity Act 2005 on 1 October 2007 are records of the Court of Protection, and can only be released with the permission of the Court.

2. Court of Protection Visitors

- 2.1 Court of Protection Visitors are statutory roles, created by Section 61 of the Mental Capacity Act 2005. There are two types of Visitors: Special Visitors and General Visitors. Special Visitors are medically qualified, with experience

of mental incapacity, whilst General Visitors are not required to be medically qualified, but usually have experience of mental incapacity.

- 2.2 The panel of Visitors is administered by the Office of the Public Guardian (OPG). Visitors are mainly engaged on contracts for service, although a small number of general visitors are employed directly by the OPG. They carry out visits throughout England and Wales.
- 2.3 Court of Protection Visitors can visit people who have a Deputy appointed by the Court of Protection; Deputies; Donors and Attorneys under registered Lasting or Enduring Powers of Attorney. They supply independent reports to the Public Guardian to assist him in his role of supervising Deputies and investigating concerns about the actions of a Deputy or Attorney, and to the Court of Protection to assist it in its decision making.

3. Release of a report by the Public Guardian

- 3.1 The Public Guardian may commission a report by a Court of Protection Visitor as part of his supervision of Deputies, or investigations into concerns about the actions of a Deputy or Attorney. Regulation 44 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations allows the Public Guardian, if he considers it appropriate to do so, to release a Visitor's report to any person interviewed in the course of preparing a report, and invite him/her to comment on it. This could include the Deputy, client, donor, attorney or any third party interviewed by the visitor such as a relative or carer.
- 3.2 Requests for a copy of a visit report should be made in writing to the OPG. The request will be dealt with by a senior manager within the OPG who has delegated authority to release reports by the Public Guardian. Release of the report is discretionary, and may be refused. For example, if the report contains: information about a third party that may breach their data protection rights; or information that was disclosed in confidence to the Visitor by a third party; or information that may be harmful to anyone named in the report. The OPG operates a whistle blowing policy that protects the identity of people making allegations of abuse, which in part enables the Public Guardian to perform his statutory duty to investigate such allegations fully. A visit report may therefore sometimes be released with parts "redacted", i.e. with parts removed.
- 3.3 **Release of reports to other Court of Protection Visitors**
Reports prepared for the Public Guardian since October 2007 may be released to a Visitor subsequently asked to visit in the same case as part of the Public Guardian's supervisory or investigatory duties.
- 3.4 **Release of reports to the Police**
Reports prepared for the Public Guardian since October 2007 may be released to the Police if they are investigating whether a crime has taken place.
- 3.5 **Release of reports to Local Authorities**
The OPG has a protocol governing working arrangements with Local Authorities in their role as lead agencies for safeguarding vulnerable adults.

Information from a visit report may be shared with a Local Authority where the OPG deems it necessary to safeguard a vulnerable adult, to prevent or respond to abuse, to safeguard other vulnerable adults or deal with a perpetrator of abuse.

4. Reports in Public Guardian Court applications

- 4.1 Visit reports prepared for the Public Guardian may be used as evidence in applications to the Court of Protection. In that case, a copy of the report is served by the applicant on the parties to the application, unless a judge orders otherwise.

5. Release of a report under the Data Protection Act

- 5.1 The Data Protection Act (Section 7) gives individuals the right to request personal information that is held by either public or private organisations. This may be:
- Information about themselves (known as a subject access request)
 - Information about the person the individual is acting for under a registered Enduring Power of Attorney or Lasting Power of Attorney, or Court of Protection Deputyship.
- 5.2 There is information on how to make a Data Protection Act subject access request on the OPG website at www.publicguardian.gov.uk. A fee is payable. If a visit report is released following a Data Protection Act request, then information that does not relate to the data subject and the names of some third parties will be redacted in accordance with the principles of the Data Protection Act.

6. Court of Protection reports

- 6.1 Visitors' reports prepared for the Court are provided to parties to the proceedings under rule 117 of the Court rules, unless the Court orders otherwise. Parties to the proceedings are defined as the applicant, the respondent and anyone joined as a party, and to others that the Court may direct.
- 6.2 Under Rule 17 of the Court Rules, an application may be made to the Court for a copy of a report (or other records of the Court) by someone who is not a party to proceedings. The Court may provide documents on an edited basis.
- 6.3 An application should be made on form COP9 and no fee is payable. Further details of how to make an application to the Court of Protection can be found on Her Majesty's Court Service website at www.hmcourts-service.gov.uk. The Court Enquiry Service can be contacted on 0300 456 4600.

7. Reports made before 1 October 2007

- 7.1 All reports made by the former Lord Chancellor's Visitors before implementation of the Mental Capacity Act on 1 October 2007 are records of the Court of Protection, and can only be released with the permission of the Court. An application to the Court can be made as detailed above.



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