

Your right to access documents before your Tribunal hearing

At your Mental Health Tribunal hearing, the Tribunal wants you to have your say. You have the right to read documents that are connected (or relevant) to your hearing at least 48 hours before the hearing. This is so that you can prepare for your hearing. These documents include:

- the report about you that your treating team must prepare and
- documents on the current volume of your clinical file that your mental health service (the service) keeps.

You only have to read these documents if you want to. If the treating team doesn't give you the documents 48 hours before the hearing and you feel you haven't had enough time to prepare, you should tell the Tribunal at your hearing.

Not all documents on your clinical file will be connected (or relevant) to your hearing so there may be some documents that the service removes from the clinical file before you read it. If this happens, the Tribunal won't read these documents either. You can read the *Overview and Frequently Asked Questions* under the hearing '*What does 'in connection with the proceeding?' mean*' to find out more.

Application to deny access to documents

Usually, you can read all the documents that the service gives the Tribunal to read. However, sometimes your doctor may ask the Tribunal not to let you see a document or documents if they think that letting you see the documents may cause serious harm to you or another person. This is called an '*application to deny access to documents*.'

If your doctor makes an application to deny access to documents, you are not allowed to look at those documents until the Tribunal makes its decision. However, you can still read other documents that are relevant to your hearing.

The Tribunal will then hold a short hearing before the main hearing. This is called a *preliminary hearing*. You cannot come to the preliminary hearing but your lawyer (if you have one) can. At the hearing, the Tribunal will decide whether giving you the documents may cause you or someone else serious harm.

What is serious harm?

Serious harm has to be important, considerable or significant. The Tribunal might look at whether giving you the documents could cause serious harm to your treatment

or recovery. It may also consider whether giving you the documents could harm your relationship with your family or carers. You can read '*What does serious harm mean?*' in the Overview and FAQs document if you want to know more.

The Tribunal's decision about access to documents

If the Tribunal decides that letting you see the documents may cause serious harm, it will say yes to (or grant) the application. This means you *cannot* read the documents. If it decides that giving you the documents will not cause serious harm, it will say no to (or refuse) the application. This means that you *can* read the documents.

Other rights to access documents and to get advice from a lawyer

You also have the right to request copies of documents about your mental health under the Freedom of Information Act. These are separate from your rights under the Mental Health Act.

If you have any questions about your rights to access documents, you may wish to get legal advice.

Contact **Victoria Legal Aid** on **1300 792 387** to see what help they can give you. Victoria Legal Aid lawyers also regularly visit hospitals and some community mental health clinics.

The **Mental Health Legal Centre** can also provide legal advice and services. Their contact number is **9629 4422** and **1800 555 887** for country callers.