

## **FACT SHEET: NON-DISCLOSURE OF DOCUMENTS IN MENTAL HEALTH TRIBUNAL PROCEEDINGS**

**Reference: Jones, *Mental Health Act Manual*, 28th ed.**

### **1. Overview**

Social workers may sometimes need to request that a document **not be disclosed** to a patient involved in a Mental Health Tribunal.

The governing legal framework is Rule 14 of the Tribunal Procedure (First-tier Tribunal) Rules 2008, which permits the Tribunal to withhold material only in exceptional circumstances where disclosure would cause serious harm or breach confidentiality.

### **2. When Non-Disclosure May Be Justified**

A request may be appropriate where disclosure would:

- Create a **serious risk of harm** to the patient.
- Create a **serious risk of harm** to staff, family members, or third parties.
- Reveal **third-party confidential information** that cannot safely be shared.
- Undermine **public interest** considerations, such as safeguarding or security.

Non-disclosure under Rule 14 is considered exceptional, and the Tribunal must justify it as necessary and proportionate.

### **3. Legal Tests Applied by the Tribunal**

The Tribunal must balance:

#### **A. Necessity**

Is withholding the document strictly necessary to prevent harm or protect confidentiality?

### **B. Proportionality**

Could the risk be managed by redacting information or providing a summary (“gist”) instead of full non-disclosure?

### **C. Fairness (Article 6 ECHR)**

Would withholding the material unfairly prevent the patient from understanding or responding to the case against them?

### **D. Privacy (Article 8 ECHR)**

Does the material include privacy-protected information belonging to others? The Tribunal must balance this against fairness requirements.

## **4. What Social Workers Must Do When Making a Non-Disclosure Request**

### **4.1. Submit a Written Rule 14 Request**

The written application must clearly:

- Identify the **specific document** to be withheld.
- Explain the **specific risk of harm** or confidentiality breach expected if disclosed.
- Show why the risk **cannot be managed** by partial disclosure or redaction.
- Indicate whether disclosure to the patient’s **representative only** would still pose risks.

### **4.2. Mark the Document Clearly**

Label it as: **“NON-DISCLOSURE APPLICATION – RULE 14”**

The document should be submitted **separately** from the main patient bundle.

### **4.3. Provide a “Gist” Where Possible**

The Tribunal expects the patient to be given a general summary of the issue unless even this would create a serious risk.

### **4.4. Prepare for Tribunal Scrutiny**

Social workers may be asked:

- Why redaction or summarising was not sufficient
- Whether the information involves third-party confidentiality
- To explain the clinical or safeguarding risk
- Whether disclosure to the legal representative (under a confidentiality undertaking) is safe

## 5. What the Tribunal Can Do

The Tribunal may:

- **Accept** the non-disclosure request.
- **Permit partial disclosure** (e.g., redactions).
- Require the social worker to provide a **gist/summary**.
- Allow disclosure **only to the representative** under strict confidentiality.
- **Reject** the application if fairness outweighs the risk.

The Tribunal must record its reasons and show how it balanced harm versus fairness.

## 6. Key Principles

The following general principles are generally accepted as applying:

- Non-disclosure must be **exceptional** and strictly justified.
- Tribunals must ensure the patient knows the **substance of the case** wherever possible.
- A **proportionate response** (e.g., redaction) must always be considered first.
- The Tribunal must ensure compliance with **Articles 6 and 8 ECHR**.
- The Tribunal must minimise procedural unfairness by requiring a **gist**, if safe.

## 7. Practical Advice for Social Work Teams

- **Consult the Responsible Clinician early** if considering non-disclosure.
- Document clearly the **risk reasoning** in clinical notes.
- Avoid overusing Rule 14; the Tribunal expects it to be rare.
- Ensure requests are **evidence-based**, not merely intuitive.
- **Warn** the person making the statement that despite them requesting non-disclosure, the Tribunal may still disclose their statement if it does not fall within the reasons that it could remain withheld
- If unsure, **seek legal advice** from the Mental Health Act Office before submitting the application.

## Appendix: Case Law and Tribunal Rule References

Topic	Authority / Citation	Notes
<b>Tribunal power to withhold documents</b>	<b>Rule 14, Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008</b>	Governs non-disclosure applications; allows withholding if disclosure risks serious harm or breaches confidentiality.
<b>Fair hearing and limits of non-disclosure</b>	<b>R (B) v MHRT [2002] EWHC 1553 (Admin)</b>	Non-disclosure must be <i>exceptional</i> and strictly justified.
<b>Public interest in risk information</b>	<b>W v Egdell [1990] Ch 359</b>	Authorises withholding and controlled disclosure when necessary to protect public safety.
<b>Proportionality and procedural fairness (Article 6)</b>	<b>R (Lee-Hirons) v Secretary of State for Justice [2016] UKSC 46</b>	Patient must know the essence of the case; non-disclosure cannot render the hearing unfair.
<b>Balancing Article 8 privacy rights</b>	<b>R (S) v Plymouth City Council [2002] EWCA Civ 388</b>	Confidential third-party information may justify withholding.
<b>Disclosure and confidentiality principles</b>	<b>W v Egdell</b> and ECHR case law referenced in Jones (Articles 6 & 8)	Confirms that non-disclosure requires necessity and proportionality analysis.
<b>Judicial review of non-disclosure decisions</b>	<b>Case law summarised in Jones including R (B), R (Lee-Hirons), W v Egdell</b>	Courts ensure Tribunals give adequate reasons and maintain fairness.
<b>Statutory background</b>	<b>Mental Health Act 1983 (e.g., ss. 66, 68, 72, 78) as</b>	Provides underlying framework for Tribunal

	referenced in Jones' commentary on non-disclosure	jurisdiction and patient rights.
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