



# Forensic Records

## Frequently Asked Questions for all Healthcare Professionals

The medico-legal guidelines and recommendations published by the FFLM are for general information only. Appropriate specific advice should be sought from your medical defence organisation or professional association. The FFLM has one or more senior representatives of the MDOs on its Board, but for the avoidance of doubt, endorsement of the medico-legal guidelines or recommendations published by the FFLM has not been sought from any of the medical defence organisations.

### Introduction

Issues relating to Forensic Records are common causes of potential misunderstandings and confusion. This is not surprising given the circumstances that usually surround the making of such records.

When queries arise, it is usually helpful to remember that they contain sensitive personal information, and will be subject to the same provisions and considerations as other such records. They will therefore be subject to the common law of confidentiality, the Data Protection Act 1998, and the current guidance issued by the General Medical Council (GMC), the Nursing and Midwifery Council (NMC) and the Health and Care Professions Council (HCPC).

The rest of this document deals with frequently asked questions in relation to Forensic Records, together with a number of links to sources of further information and guidance.

This document will be updated from time to time in response to further frequently asked questions, as they become apparent. Please report any broken links to [info@fflm.ac.uk](mailto:info@fflm.ac.uk).

#### 1. Do I need to be registered with the Information Commissioner?

Yes, if you “process personal data”, you must notify the Information Commissioner and comply with the Data Protection Act 1998 (DPA).

Further details can be found at <http://goo.gl/bQukXE>

#### 2. How long do I need to keep my notes?

The DPA specifies that records should be kept no longer than necessary. Ideally for medico-legal purposes, records should be kept indefinitely. A reasonable compromise is to follow current NHS guidance – “Records Management: NHS code of practice”, which can be found at

<http://goo.gl/tpYdHF>

#### 3. When I retire, what do I do with my notes?

The fact of retirement should make no difference to the principles above. Records still need to be retained for the appropriate period. This does not mean you have to retain them personally, as long as they are retained/processed in accordance with the DPA – for example stored by a reputable organisation with a proper confidentiality agreement.

#### 4. Should I leave instructions in my will as to what to do with my notes?

Yes, this would be a sensible precaution, unless you have already made appropriate provisions.

#### 5. The police officer from CID has asked for my notes – do I have to provide them?

Confidential information (including access to the records) should only be disclosed if:

- There is patient consent
- There is some other form of authority that overrides consent (for example under some provisions in anti-terrorist legislation)
- Disclosure can be justified in the public interest

The GMC provides detailed advice at <http://goo.gl/ngKWfC>

There is more specific advice relating to gunshot and knife wounds at <http://goo.gl/Pvj7zk>

The same legal principles apply to everyone, and practitioners registered with the NMC and the HCPC must follow the guidance of their own regulator.

Guidance from the **NMC** can be found at <http://goo.gl/z2kGc> - paragraphs 5 and 6.

Guidance from the **HCPC** can be found at <http://goo.gl/DQCYb3> - see particularly page 8

**6. I have just examined a detainee to document the injuries and the police officer has asked for the “body maps”- do I have to provide them?**

Please see question 5 – the same principles of confidentiality will apply.

**7. Do I own my notes?**

Legislation (mainly the DPA) does not refer to “ownership” of notes, but rather who has control of them (and hence responsibility for them). The GMC talks about a doctor’s duties and responsibilities in respect of medical records and confidential information. The question of “ownership” is therefore unhelpful in the management of records, and is best avoided.

**8. How should I store them?**

Notes should be stored securely. This should be interpreted broadly, so applies to the physical storage of records as well as electronic security. Material stored on electronic devices (especially portable devices) should be password-protected and properly encrypted, and of course electronic records should be backed up regularly (and backups encrypted and stored securely – preferably away from the main site).

Some police forces have requested that forensic practitioners put their clinical records on the police computer system. Whilst limited information to enable the safe care of the person in custody should be entered onto the system, the remainder of the information must be kept in line with the above principles, and in accordance with GMC Guidance. In particular paragraph 20 of Good Medical Practice (2013) states:

*“You must keep records that contain personal information about patients, colleagues or others securely, and in line with any data protection requirements.”*

The increasing use of data sharing provisions in electronic medical records means that if you use such software for forensic records purposes, you must ensure that data sharing provisions are set appropriately.

However, it would be sensible to ensure this is the case with those organisations to which you provide services. If the patient objects to particular information being shared, you should respect this unless disclosure is justified in the public interest.

Any sharing of information should be restricted to what is reasonably necessary, and the other health professionals should be reminded of their own professional obligations to maintain confidentiality. Full, unfettered access to the records would not normally be necessary or appropriate.

The same legal principles apply to everyone, and practitioners registered with the NMC and the HCPC must follow the guidance of their own regulator.

Guidance from the **NMC** can be found at <http://goo.gl/z2kGc> - paragraphs 5 and 6.

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**9. A detainee has asked for a copy of his notes. I saw him 3 months ago in police custody – do I have to provide them? Can I charge a fee?**

As a data subject, a detainee has the usual rights available under the DPA, including the right to be provided with a copy of his records. A helpful summary can be found at <http://goo.gl/nR5mdY>

The GMC gives helpful advice on this area at <http://goo.gl/h8oSD9> - note particularly paragraphs 33 – 35 of the guidance.

The Information Commissioner's Office guidance on subject access requests deals with health records - see pages 48-52 at: <http://goo.gl/ZrvN4K>

**10. I have been asked for a statement regarding my examination of a detainee in police custody. I am not sure the detainee understood that a statement would be required. What should I do?**

It is very important to ensure the detainee has given proper consent at the outset. If you are not sure that there is proper consent, you should ask for consent to be provided, or check that the detainee is happy for you to proceed.

**11. How much information should I give the police regarding a detainee?**

The information should be no more than is reasonably necessary, and this will vary on a case-by-case basis. Information should be shared only with consent, or where there is other justification for disclosure (e.g. because it is in the public interest).

**12. Should doctors working for private companies have some written assurance regarding the storage of their notes and duration etc.?**

Yes, you should take reasonable steps to be satisfied that there are adequate and proper arrangements in place.

**13. I have been taking photographs of injuries – how should I process and store these?**

See FFLM's *Guidance for best practice for the management of intimate images that may become evidence in court (Guidelines)*

<http://fflm.ac.uk/librarydetail/4000099>

These should be stored and processed in accordance with the DPA and the principles outlined above. A good professional framework to electronic formats, file types, etc., can be found at <http://goo.gl/ZLjDvY> - section 6.3 contains useful guidance about approved electronic file types for digital images.

**14. I work in a SARC which is an NHS facility and all the notes are kept there. Do I have any responsibility for these notes?**

You may need to make further inquiries, but the likelihood is that the records will be stored in accordance with NHS and DOH guidance and principles, and the organisation will have its own Data Controller who will have overall responsibility for the records, and a Caldicott Guardian, who will also have responsibilities in respect of confidentiality. If this is so, then it is reasonable for you to rely on the safeguards that will be in place.

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