Faculty of Forensic & Legal Medicine

Forensic Records

Frequently Asked Questions for all healthcare professionals

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Introduction

Forensic Records are, by their very nature and the circumstances to which they relate, susceptible to misunderstandings and confusion.

When queries arise, it is 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).

This document addresses 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 *forensic.medicine@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:
ico.org.uk/for-organisations/guide-to-data-protection/

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

Ideally for medico-legal purposes, records should be kept indefinitely. However, this is not practical and must be considered alongside the DPA which specifies that records should be kept no longer than necessary. The GMC makes reference to schedules of minimum retention periods for different types of medical records in its guidance Confidentiality: good practice in handling patient information (2017) at endnote 53. This includes reference to the following: The Records Management Code of Practice for Health and Social Care (Information Governance Alliance, 2016); Records Management: NHS Code of Practice (Scotland) (Scottish Government, 2008); Welsh Health Circular (2000) 71: For The Record (The National Assembly for Wales, 2000) and Good Management, Good Records (Department of Health, Social Services and Public Safety, 2005). The GMC also emphasise that you should also consider any legal requirement of specialty-specific guidance that affects the period for which you should keep records, emphasising that you should not keep records for longer than necessary. See: *www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp*

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 legal authority that overrides consent (for example under some provisions in anti-terrorist legislation);
- It is not practicable or contrary to the purpose to seek consent and disclosure can be justified in the public interest, if failure to do so may expose others to a risk of death or serious harm. The benefits to an individual or to society of the disclosure must outweigh both the patient's and the public interest in keeping the information confidential.

Patient consent has been refused and disclosure can be justified in the public interest if failure to do so may expose others to a risk of death or serious harm. The benefits to an individual or to society of the disclosure must outweigh both the patient's and the public interest in keeping the information confidential. For detailed advice see the GMC publication: *Confidentiality, 2017*

For more specific GMC advice relating to gunshot and knife wounds see:
Confidentiality: reporting gunshot and knife wounds

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:
www.nmc.org.uk/code – paragraph 5.

Guidance from the HCPC can be found in their publication:
Confidentiality – guidance for registrants
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 provides authoritative guidance 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 my notes?

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 essential information to enable the safe care of the person in custody may 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.

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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 in:
Guidance for Access to Health Records Requests, Feb 2010

The GMC gives helpful advice on this area in:
Confidentiality, 2017 – note particularly page 56 of the guidance, which provides a clear account of the DPA, which regulates the processing of personal data about living individuals in the UK.

The Information Commissioner's Office guidance on subject access requests deals with health records – see pages 48-52 at: *ico.org.uk/for-organisations/guide-to-data-protection/*

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, as described above).

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 *Photography in Custody and SARCS (PICS) Working Group Guidelines on Photography*

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.

15. Where should I store records and case conference information related to safeguarding of children?

The General Medical Council offers particular advice in their guidance Protecting children and young people: the responsibilities of all doctors.
See: *www.gmc-uk.org/guidance/ethical_guidance/13257.asp*

In paragraph 58 the GMC states: 'You should store information or records from other organisations, such as minutes from child protection conferences, with the child's or young person's medical record, or make sure that this information will be available to clinicians who may take over the care of the child or young person. If you provide care for several family members, you should include information about family relationships in their medical records, or links between the records of a child or young person and their parents, siblings or other people they have close contact with.'

This advice can raise further concerns over access to records and to whom sensitive information can be disclosed. The GMC go on to clarify that: 'Patients, including children and young people, have a legal right to see their own medical records unless this would be likely to cause serious harm to their physical or mental health or to that of someone else. A parent may see their child's medical records if the child or young person gives their consent, or does not have the capacity to give consent, and it does not go against the child's best interests.'

The advice provided by the GMC is in line with other guidance such as that offered by the RCGP and NSPCC in their Safeguarding Children and Young People: *The RCGP/NSPCC Safeguarding Children Toolkit for General Practice*

The guidance provides a Specimen Child Safeguarding Policy for General Practice with information in relation to all aspects of child protection, including guidance on record keeping.

The guidance makes clear that case conference reports for any child now or formerly subject to a child protection plan must not be kept separate or isolated from handwritten or digital clinical records – and these should be transferred with the complete patient record if the child changes GPs. It states that case conference records must never be destroyed (e.g. by deleting electronic records or shredding hard copies) and advises that any welfare concerns should be passed on even if the child is not subject to a protection plan.

More specifically the guidance recommends:

- All reports should be scanned onto the relevant child's records;
- Reports should be vetted to remove any third party information, especially if external agencies request these medical records;
- Reports/correspondence should be seen and summarised by a GP;
- All contacts with any parties regarding any safeguarding children issues should be recorded on the patient's medical records and any necessary action taken immediately.

The guidance is very clear that careful record retention and filing is essential for safe child protection processes as this facilitates effective communication among agencies and healthcare professionals.

Revised by Dr John SF Holden
on behalf of the of the Faculty of Forensic & Legal Medicine

Send any feedback and comments to forensic.medicine@fflm.ac.uk