



# Forensic Records

## Frequently Asked Questions for all healthcare professionals

Dec 2019 Review date Dec 2022 – check [www.fflm.ac.uk](http://www.fflm.ac.uk) for latest update

The medico-legal guidelines and recommendations published by the Faculty are for general information only. Appropriate specific advice should be sought from your medical defence organisation or professional association. The Faculty 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 Faculty has not been sought from any of the medical defence organisations.

## 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 General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA), 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).

There is useful information about GDPR on the Information Commissioner's Office website, see [Guide to the General Data Protection Regulation \(GDPR\)](#)

This document addresses frequently asked questions by doctors and other healthcare professionals (HCPs), in relation to forensic records, and it provides 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](mailto: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 DPA.

See: [About the DPA 2018](#).

Please also see questions 12 and 14.

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

The GDPR and the DPA specify that records should be kept no longer than necessary and the GMC emphasises that you should also consider any legal requirement of specialty-specific guidance which affects the period for which you should keep records, whilst also noting that you should not keep records for longer than necessary.

For medico-legal purposes, records should be kept for at least the duration of the period during which there is a right to appeal against conviction or sentence (see Box 1).

### Retention requirements for records in criminal cases

Retention Period (years)	Type of Offence or Length of Sentence
20	Homicide; Riot; Official Secrets Act; Treason; Other Offences against the State; Schedule 1 offenders; Kidnapping and all cases in which a sentence of life imprisonment has been imposed
10	Other criminal cases tried on indictment
1	All cases tried summarily
1	All other criminal cases

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. The following resources are applicable in the four countries:

England: [Records Management Code of Practice for Health and Social Care 2016](#)

Northern Ireland: [Records disposal schedules](#)

Scotland: [NHS Code Of Practice \(Scotland\) Version 2.1 January 2012](#)

Wales: [Standard 20: Records Management](#)

### Cases which have not yet reached court

Doctors and HCPs should consider the nature of the offence, where no time limit to its prosecution may apply. Therefore it may be sensible to seek legal advice before disposing of any forensic medical records.

### 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 GDPR and the DPA – for example stored by a reputable company with a proper confidentiality agreement and GDPR compliance.

### 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 justified in the public interest because failure to disclose may expose others to a risk of death or serious harm and it is not practicable, or contrary to the purpose, to seek consent. 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: [www.nmc.org.uk/code](http://www.nmc.org.uk/code)

See paragraph 5.

Guidance from the HCPC: *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). Under GDPR a data controller is the person who determines the purposes and means of processing personal data. 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 this 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 and complies with GPDR.

Any sharing of information should be restricted to what is reasonably necessary, and the other healthcare 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. See links in question 5.



**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? May I charge a fee?**

Yes; this is a subject access request (SAR) and the individual has a right to access their personal data. You cannot (usually) charge a fee. The Information Commissioner's Office (ICO) guidance on GDPR addresses access to health records. See *Right of access*

As a data subject, a detainee has the usual rights available under the DPA and GDPR, 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.

**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 and the GDPR require you to provide detainees with a 'privacy notice'. Therefore, you must be sure you have the detainee's informed consent in order to provide a statement.

**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; see Question 5, above).

You should make clear, in writing why you considered it appropriate to share information without consent. Please note at the time of writing the GMC is reviewing its guidance on Consent. The current guidance is here: *Consent: patients and doctors making decisions together*

**12. Should doctors and other HCPs 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, for example checking with the Data Controller and/or the Caldicott Guardian in the organisation.

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

The same principles apply, in relation to secure storage; 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 to clarify the arrangements and your obligations, 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 its guidance Protecting children and young people: the responsibilities of all doctors.

See: [www.gmc-uk.org/guidance/ethical\\_guidance/13257.asp](http://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 goes 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.'

You should confirm any procedures and responsibilities with your employing organisation's safeguarding lead. Please also see: *Safeguarding Children and Young People: Roles and Competencies for Healthcare Staff*



N.B In England and Wales you/your employing organisation must comply with the (or any other) direction from the Chair of the *Independent Inquiry Into Child Sexual Abuse*

Recently, NHS England and NHS Improvement have incorporated this direction into the *Corporate Records Retention and Disposal Schedule*.

## 16. What information should I include in my notes?

This will depend on local and national requirements. In the context of forensic medical records (which are frequently disclosed to others not involved in healthcare) you should consider whether the information for which you ask and therefore record is necessary in the context in which you are seeing the patient. This reflects the dual role of the forensic clinician.

In terms of record standards useful information can be found here:

- Royal College of Physicians  
*Generic medical record keeping standards*
- Academy of Medical Royal Colleges and Health and Social Care Information Centre  
*Standards for the clinical structure and content of patient records*
- *The Professional Record Standards Body*