



Forensic Records

Frequently Asked Questions for all healthcare professionals

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Introduction

Records are defined as follows:

- i. The International Standard Organization, (ISO), defines a record in ISO15489-1: 2016 as: *'Information created, received and maintained as evidence and as an asset to an organisation or person, in pursuance of legal obligations or in the transaction of business.'* See: [ISO 15489-1:2016 - Information and documentation - Records management Part 1: Concepts and principles](#).
- ii. The Data Protection Act 2018, (DPA) section 205, states: a 'health record' means a record which:
 - a) consists of data concerning health, and
 - b) has been made by or on behalf of a health professional in connection with the diagnosis, care or treatment of the individual to whom the data relates; See: [Data Protection Act 2018](#)

There is information about UK GDPR on the Information Commissioner's Office website, see [UK GDPR guidance and resources](#).

Forensic records, whether electronic or paper notes, are, by their very nature and the circumstances to which they relate, are susceptible to misunderstandings and confusion, for example, who may have access to them and the justification for sharing information.

When queries arise, it is important to remember that forensic records contain sensitive personal information, and will be subject to the same provisions and considerations as other such clinical or medical records. They will therefore be subject to the common law of confidentiality, the General Data Protection Regulation (UK 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).

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, following significant changes to published guidance, or in response to further 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?

You may need to be registered, but you should seek advice from your employer, indemnity provider, about how you

'process personal data' and whether you need to register with the Information Commissioner and comply with the DPA. See: [The Data Protection Act](#).

Please also see questions 12 and 14.

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

The UK GDPR and the DPA specify that records should be kept no longer than necessary and the General Medical Council, (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.

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 - professional standards - GMC](#). The following resources are applicable in the four countries:

England: [Records Management Code of Practice - NHS Transformation Directorate](#)

Northern Ireland: [Records disposal schedules | Department of Health](#)

Scotland: [ANNEX D - 'THE MANAGEMENT, RETENTION AND DISPOSAL OF PERSONAL HEALTH RECORDS - Scottish Government Records Management: NHS Code of Practice \(Scotland\) Version 2.0 - gov.scot](#)

Wales: [Managing health and social care records: code of practice 2022 | GOV.WALES](#)

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). It is advisable to keep records for at least ten years to comply with various ethical and legal timescales.

Retention requirements for records in criminal cases

Retention periods (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



Therefore it is sensible to seek legal advice, e.g. from the instructing solicitor, before disposing of any forensic medical records.

In Appendix II of the *Records Management Code of Practice - NHS Transformation Directorate*, the retention schedule states in England, in sexual assault referral centres, (SARCs), the retention period listed is 30 years, or 10 years after death, (if known). There is no time limit on when a prosecution for a serious sexual assault may begin and SARC records have been required more than 30 years, after the patient attended; thus, great caution is essential when considering destruction of any records. For example, a child may have been seen in a SARC, due to a concern, but no disclosure was made until decades later.

3. When I retire, what do I do with my records/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 UK GDPR and the DPA, for example stored by a reputable company with a proper confidentiality agreement and UK GDPR compliance.

4. Should I leave instructions in my will as what to do with my records/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 records/notes – do I have to provide them?

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

- There is patient consent for this disclosure;
- There is legal authority which overrides consent (for example under some provisions in anti-terrorist legislation) or a Court order
- 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 of the request for disclosure, 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. 'Serious Harm' is not defined, but please see:
 - Schedule 2 of the *Data Protection Act 2018*
 - *Sharing information with the police - NHS Transformation Directorate*
 - *Confidentiality: good practice in handling patient information - professional standards - GMC*
- The threshold for sharing information may be lower when the request relates to a child, i.e. under the age of 18 years. See link above and also GMC guidance *0-18 years - professional standards - GMC*, paragraphs 47 – 50.

- For more specific GMC advice relating to gunshot and knife wounds see: *Confidentiality: reporting gunshot and knife wounds - professional standards - GMC*

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: *The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates - The Nursing and Midwifery Council*

Guidance from the HCPC: *Confidentiality*

6. I have just examined a detainee to document the injuries and the police officers has asked for the 'body diagrams/maps' – do I have to provide them?

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

7. Do I own my records/notes?

Legislation (mainly the DPA) does not refer to 'ownership' of notes, but rather who has control of and processes them (and hence responsibility for them). Under UK 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 records/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).

Electronic health record systems are used in police custody, e.g. SystemOne, but medical notes are not part of the custody record.

Some police forces have requested 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 - professional standards - GMC* states:

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



Refer to [PACE Code C 2023 - GOV.UK](#) Section 9, Care and treatment of detained persons, and in particular to part C Documentation, with particular attention to these paragraphs:

'9.16 If a healthcare professional does not record their clinical findings in the custody record, the record must show where they are recorded. See Note 9G. However, information which is necessary to custody staff to ensure the effective ongoing care and well being of the detainee must be recorded openly in the custody record, see paragraph 3.8 and Annex G, paragraph 7.

9.17 Subject to the requirements of Section 4, the custody record shall include:

- a record of all medication a detainee has in their possession on arrival at the police station;
- a note of any such medication they claim to need but do not have with them.'

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 UK GDPR, or is required by law.

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 records/ notes. I saw him 3 months ago, in police custody; do I have to provide them? May I charge them a fee?

Yes, you do have to provide them, unless this would cause 'serious harm' to the physical or mental health of any individual. This is a subject access request (SAR) and the individual has a right to access their personal data. And 'no', you cannot (usually) charge a fee. The Information Commissioner's Office (ICO) guidance on UK GDPR addresses access to health records. See [Subject access requests \(also known as SARs or right of access\) | ICO](#) and [Health data | ICO](#) which includes numerous relevant links to DPA and UK GDPR.

As a data subject, a detainee has the usual rights available under the DPA and UK GDPR, including the right to be provided with a copy of his records. However, as noted above, one does not have to comply with the SAR, if in the view of

a medical professional it would cause serious harm. There is more information on the ICO website: [Health data | ICO](#)

The GMC gives guidance on this in: [Confidentiality: good practice in handling patient information - professional standards - GMC](#) and note particularly the Legal Annex of the guidance, which provides details of the relevant legislation.

In relation to custody records, various people have a right to view or rights of access, see paragraphs 2.4, 2.4A and 2.5 of [PACE Code C 2023 - GOV.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 UK GDPR requires you to provide detainees with a 'privacy notice'. This can be done verbally; further information is available from the iCO, here: [The right to be informed | ICO](#). Therefore, you must be sure you have provided the detainee with sufficient information for them to provide properly 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 and Question 8.

You should make clear, in writing why you considered it appropriate to share information without consent. The current guidance is here: [Decision making and consent - professional standards - GMC](#)

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 [PICS Working Group Guidelines on Photography - FFLM](#)



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

You may need to make further inquiries to clarify the arrangements and your obligations. The likelihood is that the records will be stored in accordance with NHS and DHSC guidance and principles, and the organisation will have its own Data Controller who will have overall responsibility for the records, a Data Protection Officer, who will have responsibility for ensuring compliance with UK GDPR standards, and a Caldicott Guardian, who will also have responsibilities in respect of confidentiality. If this is so, then it is likely that appropriate safeguards will be in place.

15. What should I do about records/notes relating to children? Where should I store records and case conference information related to safeguarding of children?

You should be aware of and confirm any procedures and responsibilities with your employing organisation's safeguarding lead. See also: [Safeguarding Children and Young People: Roles and Competencies for Healthcare Staff | Royal College of Nursing](#)

The threshold in relation to sharing information relating to children will often be lower, due to the responsibility to safeguard children who are or may be at risk. See: [Confidentiality and sharing information - professional standards - GMC](#) and [0-18 years - professional standards - GMC](#). The GMC offers particular advice in its guidance: [Confidentiality and sharing information - professional standards - GMC](#)

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.'

Requirements during the time of the the Independent Inquiry Into Child Sexual Abuse, (IICSA)

In England and Wales you/your employing organisation were required to comply with the 2015, (or any other) direction from the then Chair of the Independent Inquiry into Child Sexual Abuse. The Inquiry has concluded its work and published its final report in October 2022, see [The Report of the Independent Inquiry into Child Sexual Abuse | IICSA](#) [Independent Inquiry into Child Sexual Abuse](#)

Information about current requirements and responsibilities, with regard to records can be found here: [Letter to NHS CEOs | IICSA Independent Inquiry into Child Sexual Abuse](#)

[2022 11 16 End Of IICSA Moratorium Permanent Secretary | IICSA Independent Inquiry into Child Sexual Abuse](#)

16. What information should I include in my records/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 record is necessary, in the circumstances in which you see the patient. This reflects the dual role of the forensic clinician.

However, whilst it may be appropriate to check an NHS / electronic healthcare record, should access be available, doctors and HCPs must consider carefully:

- Do they have consent to do so, and
- The confidentiality of information which is then noted in the record they create.

Record Keeping Standards

In terms of record-keeping standards, information can be found here:

- Royal College of Physicians: [Generic medical record keeping standards | RCP London](#)
- [PRSB Standards - PRSB](#)

Training

It is essential that clinicians who are creating and accessing patient records and sharing Information are aware of and comply with their obligations around data security and relevant legislation. Most employers, for example the NHS require staff to undertake annual training in Information Governance or Data Security. As an example, E-learning for Health provides modules: [Data Security Awareness - elearning for healthcare](#).

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