



Data Protection and Disclosure of Information to the Police

Practice Management

Requests from Police for Confidential Patient Information

Police requests for the disclosure of confidential patient information are not uncommon. Patient consent for such disclosure should be obtained. If patient consent is not possible then it is essential to establish the reasons behind the request. The questions to be asked should include:

- what is the crime and is it sufficiently serious for the public interest to prevail?
- what risks are there to the patient or to others that might be reduced or avoided by information disclosure?
- would the task of preventing or detecting the crime be seriously prejudiced by refusing access to the medical record?
- is the information sought available from another source?

In the event that it is not possible to obtain consent and there is insufficient evidence to suggest that a public interest disclosure is justified then it is acceptable to say no. The police may then seek a court order, which takes the onus for making the decision away from the GP.

Disclosure of Confidential Patient Data

GPs have legal and professional obligations to protect confidential patient data which persist after the death of the patient.

- Personal medical records should only be accessed within a practice on a “need to know” basis.
- Identifiable patient data must generally not be used or disclosed for purposes other than healthcare without the individual’s explicit consent.

The legal and ethical principles of confidentiality and disclosure should only be breached if:

- there is a legal obligation to do so
- it is a matter of life and death
- it is essential to prevent serious mental or physical harm
- it is overwhelmingly in the public interest.

GMC guidance on confidentiality and disclosures in the public interest advises:

“You should inform patients that a disclosure will be made, wherever it is practicable to do so. You must document in the patient’s record any steps you have taken to seek or obtain consent and your reasons for disclosing information without consent.”

In some cases disclosure of confidential patient data without consent is essential, for example to protect a child from further abuse or to pursue the prosecution of a serious crime without prejudicing the legal process. Disclosures without consent must always be proportionate and limited to the minimum relevant data necessary to serve a legal purpose. Data must only be disclosed to a person or organisation with the legal authority to pursue that legal purpose and with a similar obligation with regard to confidentiality.

The reasons for disclosure without consent must always be documented clearly.

Ensuring that patients understand how their confidential information may be shared is critical. They should be informed that data may need to be disclosed in order to provide care and treatment and to manage NHS service provision. The patient should be informed of the name of the practice data controller who can provide further information and also of their right to object under the Data Protection Act.

The Information Commissioner has advised that the use of face to face information and practice posters plus a standard information leaflet may all help meet the fair processing requirements of the Data Protection Act in informing patients of potential uses of their data.

It is impossible to ensure that all patients are fully informed of how their data will be processed and to acquire their legally valid explicit consent to essential data processing. For this reason, implied consent is usually considered adequate, provided a reasonable attempt has been made to inform the patient properly.

Section 251 of the NHS Act 2006 permits the Secretary of State to introduce regulations “requiring or regulating the processing of prescribed patient information for medical purposes as he considers necessary or expedient”. The purpose is to ensure that identifiable and confidential patient information needed to support essential NHS activity may be used without the consent of patients.

Whenever PCTs require data from contractors, the minimum necessary information should be determined and the disclosure should be limited accordingly. This data should be anonymised, or failing that pseudoanonymised, where this is sufficient to serve the purpose. Where identifiable data is necessary, consent should be obtained if possible. Data required for research purposes should be handled in a similar fashion.

In case of doubt about legitimate disclosures and the need for consent always seek the advice of the LMC and/or your defence organisation before disclosure.

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