



Police and Court Access to Medical Records FAQs

Practice Management

There have been a few cases of practices refusing to release copies of medical records to the police conducting criminal investigations until they pay £50 for access. The £50 price tag comes from confusing police requests with the DPA, but the real confusion is the **law** around police access to records.

Police access covers a few sub-types:

A: Police suspect Smith of murder and want access to Smith's records

They could ask for consent from the patient or seek a court order. If there was a risk of a serious crime you are permitted to breach confidentiality. The GP would want to know why they wanted access and what they were looking for.

B: Police suspect Smith of littering and want access to Smith's records

Definitely NO

C: Police suspect Smith of assaulting Jones and Jones gives consent to police access to his records to build the prosecution case

So if Jones gives consent for police to see Jones records then that is OK

D: Police suspect Smith of assaulting Jones and Smith gives consent to defence access to his records to build the defence case

That is OK

E: Judge issues court Order or warrant forcing disclosure to police of Smith's notes

You have to comply or end up in prison yourself

F: Other scenarios. "Access" usually means "a full copy" so there is a cost to all of these scenarios outside of the legal and professional considerations.

Copy face cost, opinion or report cost more

There is an obvious continuum between A and B and the doctor must decide when the "public interest" is sufficiently strong to allow breaching confidence. Having established public interest is it then reasonable to charge the police for the costs of producing the copies?

YES but many would not charge

Public interest need not be shown for C as Jones has consented, but should the practice charge for copies? Might the answer be "yes" for minor offences but "no" where the public interest test would otherwise put the case in category A even without Jones's consent?

YES

Category D would attract a fee for the costs, presumably? If so then does this dictate that category C must always pay costs, as otherwise we would be giving preferential treatment to the prosecution?

YES

Would all requests A-D need to be redacted of third party references?

YES

What about category E?

NO

If a judge orders full disclosure of notes must the doctor comply with the letter (or risk being held in contempt) and that any redaction would be seen as a breach of the Order?

YES

Précis of the Act

Data Protection Act 1998 supersedes Access to Health Records Act.

Data Protection Act protects data which GP holds.

It allows patient or his representative to see his record (e.g. solicitor) and that is when a fee is payable.

The Coroner may request the records and this must be complied with.

No other party has any rights outside the Act (including the police).

The police do not represent the patient.

No data may be released unless the patient has given written and informed consent.

Doctor should speak to patient (face to face) to ensure that the patient knows what he is doing.

If in custody, doctor should speak to the patient's representative.

Third party information and child protection issues must be expunged.

Records must not leave the premises unless a court order is produced.

If a Data Protection waiver form is produced the doctor must remove third party and child protection information. A waiver only removes the protection of the data subject from the Act.

The police can attend the surgery and discuss the records.

The doctor must comply with the Act because a breach is regarded by the GMC as very serious. Remember that the patient can sue the doctor for release of records if the Act has not been complied with.

If a murder is involved and the patient is still free, then there might be a special case.

The Road Traffic Act, Section 172, imposes a duty on **ALL** citizens to provide to the police on request, any information that might identify a driver who is alleged to have committed certain traffic offences. This relates only to the driver's identity and cannot be used to require a doctor to disclose medical information.

A fee of £10 is payable if the records have not been amended within 40 days.

LMC March 2016



The Humberside Group of Local Medical Committees Ltd

Albion House
Albion Lane
Willerby
Hull
HU10 6TS

01482 655111
humberside.lmcgroup@nhs.net
www.humbersidelmc.org.uk

Registered in England & Wales. Registered No. 8624868. The Humberside Group of Local Medical Committees Limited does not provide legal or financial advice and thereby excludes all liability howsoever arising in circumstances where any individual, person or entity has suffered any loss or damage arising from the use of information provided by The Humberside Group of Local Medical Committees Limited in circumstances where professional legal or financial advice ought reasonably to have been obtained. The Humberside Group of Local Medical Committees Limited provides representation, guidance and support to GPs and practices. The Humberside Group of Local Medical Committees Limited strongly advises individuals or practices to obtain independent legal/financial advice.

@HumbersideLMC. Follow us for news and updates.