

INFORMATION FOR WITNESSES



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

DEFENCE RECOVERY OF SENSITIVE PERSONAL RECORDS

This leaflet explains why the accused person's solicitor is seeking to obtain all or part of your medical, social work or other personal records during a criminal case and how this information may be used.

For more information contact our Victim Information and Advice (VIA) service by telephone on 0300 020 3000 and ask to speak to the VIA officer dealing with your case.

Why is the accused's solicitor seeking to obtain my records?

Sometimes the accused's solicitor will ask the court to allow them to obtain your records because they believe that they contain information that will help the accused's case.

Which records is the accused's solicitor seeking to obtain?

The records which most often need to be obtained in criminal cases are medical, social work, education, psychiatric, psychological and counselling records. You will be told by the prosecutor which records are being sought.

Who will decide if the accused's solicitor can obtain my records?

When the accused's solicitor applies to obtain your records, the Court will decide if that is appropriate. The Court will hold a hearing at which you, the accused's solicitor and the prosecutor will be able to tell the Court why they think the records should or should not be obtained.

What if I don't want the accused's solicitor to obtain my records?

You have the right to tell the Court that you do not want the accused's solicitor to see your records and the Court will take this into account when making its decision.

How do I tell the Court that I do not want the accused's solicitor to obtain my records?

When you receive a letter from the prosecutor telling you that the accused's solicitor has applied to obtain your records, or if you receive a copy of an application seeking to obtain your records, you can speak to a solicitor who can give you legal advice. You should not need to pay for that legal advice because you should be entitled to 'Legal Aid'.

The solicitor may be able to go to Court for you to tell the Court that you do not want the accused's solicitor to obtain your records.

You can find a solicitor on the Law Society of Scotland website at www.lawscot.org.uk/find-a-solicitor.

If you have a support or advocacy worker you may wish to contact them to discuss the application and what to do next. They will be able to advise you on the best course of action and may be able to recommend a solicitor.

What will happen if the Court refuses the application?

If the Court refuses the application the accused can appeal that decision. If there is no appeal or if the Appeal Court also refuses the application then your records will not be obtained by the accused's solicitor.

What will happen if the Court grants the application?

If the Court grants the application you and/or the prosecutor can appeal that decision. Your solicitor will advise you whether it is appropriate to lodge an appeal. The prosecutor will decide separately if it is appropriate to appeal.

If there is no appeal or if the Appeal Court grants the application then an independent solicitor will assess your records to establish which parts are relevant to the case. The accused's solicitor should only receive the parts of the records which are relevant to the case.

Will the records be in court when I give evidence?

If the prosecutor or the accused's lawyer need to ask you about the information in your records then the material parts of the records, which have been determined to be relevant to the case, will be in court when you give evidence.

What if there are things in my records that I don't want spoken about in court?

You should tell the prosecutor if there are things in your records which you do not want to be spoken about in Court.

The accused's solicitor can only ask you questions that are relevant to the case so if the information is not relevant the prosecutor can ask the court to prevent that information from being mentioned in Court.

However, if the information is relevant to the case it will not be possible to prevent the accused's solicitor from asking you about it.

[Read the full COPFS policy on recovering sensitive personal records.](#)

CONTACT US

You can contact our Enquiry Point by telephone on 0300 020 3000.

Calls can be made through RNID Typetalk. Please prefix our telephone number with 18001.

Deaf sign language users should text on 07825 280346, specifying if you would prefer your reply by sms, text or email.

