

INFORMATION FOR WITNESSES



CROWN OFFICE
& PROCURATOR
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

POLICE OR PROSECUTION RECOVERY OF SENSITIVE PERSONAL RECORDS

This leaflet explains why the police or the prosecutor may need 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.

When will the police or the prosecutor obtain my records?

In some cases, the police may need to obtain your records before they send a report to the prosecutor. However, this will be rare and will only happen if the police cannot find sufficient evidence without obtaining the records.

In most cases, the police will report the case to the prosecutor who will decide if your records are needed.

Which records might the police or the prosecutor need to obtain?

The records which most often need to be obtained in criminal cases are medical, social work, education, psychiatric, psychological and counselling records.

Before your records are obtained you will be told by a police officer or member of COPFS staff which records need to be obtained in your case.

Why do the police or the prosecutor need to see my records?

The prosecutor will need to see your records if they believe that they contain information that supports what you have said about the offence or if they believe that they contain information

that supports what the accused has said about the offence.

Do the police or the prosecutor obtain these records in every case?

No, records are only recovered in some cases; it depends on the evidence in each case.

Police officers and prosecutors know that records contain private information and that is why records will only be obtained if this is necessary for the proper investigation and prosecution of your case.

How do the police or the prosecutor decide which records to obtain?

The police or the prosecutor will carefully consider the evidence in your case. Only where there is evidence that indicates that there may be important information in a particular set of records will the police or the prosecutor seek to obtain them.

If it is possible to obtain only parts of your records, rather than the full records, the police and prosecutor will do so. However, there may be occasions when the full records have to be obtained.

What if I don't want the police or the prosecutor to see my records?

Before obtaining your records the police or the prosecutor will explain the reasons why they are seeking the records and ask you to consent to this. You will be given time to consider the request and are allowed to seek independent advice and support in considering the request. The police or the prosecutor will ask you to sign a document giving them permission to get your records. You do not have to allow the police or prosecutor to obtain your records and you do not have to sign the document.

If you do not allow the police or prosecutor to obtain your records, the prosecutor will need to consider what impact this has on the case and it could mean that all or part of the case cannot go any further and may not go to court.

In some cases the police or the prosecutor may ask the court for permission to get your records even though you have said that you don't want them to do this. If this happens you will have the chance to tell the court that you do not want them to get your records. If criminal proceedings are live you will be able to get 'Legal Aid' to pay for a solicitor to go to court for you. You can find a solicitor on the Law Society of Scotland website at www.lawscot.org.uk/find-a-solicitor.

Will I be told what is in my records?

The prosecutor will examine the records to decide what information must be given to the accused's lawyer. The prosecutor will tell you what information has to be given to the accused's lawyer but will not be able to speak to you about any other parts of the records.

Will anyone else see my records?

In every criminal case the prosecutor must give the accused's lawyer all material information which the prosecutor knows about. Material information is anything that: supports the accused's case; undermines the prosecutor's case; or which the prosecutor will use as evidence at the trial. If your records contain material information then this has to be given to the accused's lawyer or the case cannot go to court.

How are my records protected?

The prosecutor will only give the parts of your records which contain material information to the accused's lawyer and not to the accused.

Lawyers have to follow strict legal rules about what can be done with information that they receive from the prosecutor. Using the information in a way that breaks those rules is a criminal offence and could mean that the person is prosecuted and goes to prison if they are convicted.

In a small number of cases the accused may not have a solicitor. The prosecutor will not give the accused a copy of your records. However, if there is information in the records which is material, the prosecutor must allow the accused to see that information. The prosecutor will: only allow the accused to see the material information; will supervise the accused when they view the information; and will not allow them to make any copies of your records. Accused persons must have a solicitor if the case involves a sexual offence or an offence involving domestic abuse.

Will I be asked questions about my records?

The police or the prosecutor may ask you questions about the information in your records before you come to court. They will do this to make sure that they understand your view about the information in the records, which will help them decide what action to take in your case.

You may be asked questions about the information in your records when you come to court to give evidence. The judge at the trial will decide whether you can be asked any questions about the information in your records.

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 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?

If there are things in your records, which you do not want to be spoken about in court, then you should tell the prosecutor.

It might be that these parts of the records are not material and they might not need to be given to the accused's lawyer or might not need to be spoken about in court. The prosecutor cannot say for certain that this information will not be given to the accused's lawyer or be spoken about in court. The Judge will decide.

What happens to the records after the trial?

After the trial is over, the records may need to be kept by the prosecutor for a time in case there is an appeal. When the appeal is finished the records will be sent back to the organisation which provided them to the police or the prosecutor.

You can read the full COPFS policy on recovering sensitive personal records on our website at www.copfs.gov.uk.

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.

