

Information for witnesses

Police or Prosecution Recovery of Sensitive Personal Records



We are the ***Victim Information Advice Service*** known as ***VIA*** for short.



Our job is to give advice and support to people who have had a crime happen to them or who may know something about a crime that has happened.



This leaflet explains why the police or ***prosecutor*** might need to see all or some of your ***personal records*** during a criminal case and how this information might be used.



A ***prosecutor*** is a solicitor who tries to prove in court that the accused is guilty of committing a crime



Personal records are the private information that is kept about you by people like doctors or social workers.



When will the police or prosecutor get access to my records?



In some cases, the police may need to see your records before they send a report to the prosecutor.

However, this doesn't happen often and will only happen if they cannot find enough evidence first.



Which records might the police or the prosecutor want to see?



The records which are most often used by solicitors in criminal cases are medical (doctor or hospital records) social work, education (school or college records) psychiatric or psychological records (to do with your mental health) and counselling records.



You will be told which of your personal records are needed by the police or prosecutor for the criminal case.



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



The prosecutor will need to see your records if they think that they contain information that supports what the **accused** has said about the case.



An **accused** person is someone who has to go to court because it is believed they have committed a crime.



The prosecutor will also need to see your records to check whether they contain information that supports what you, the victim has said about the case.



Do the police or the prosecutor need to see these records in every case?



No, personal records are only used in some cases. Police officers and prosecutors know that records contain private information and will only be looked at if necessary.



How do the police or the prosecutor decide which records they need to see?



The police or the prosecutor will only use your personal records if there is important information in certain records that is needed for the court case.



If it is possible to only look at part of your records, then the police and the prosecutor will do that. However, in some cases, they might have to look at the whole record.



What if I do not want the accused's solicitor to see my personal records?



The police or the prosecutor will speak to you and tell you why they would like to see your records and then they will ask your permission if its okay to see them.



You will be given time to think about this and you can get legal advice and support to help you make your decision.



If you decide to allow your records to be seen, then you will be asked to sign a document giving them your permission.



You do not have to allow the police or the prosecutor to see your records and you do not have to sign the document.



If you do not allow the police or the prosecutor to see your records, then it might mean that part or all of your Court case cannot go any further and that may be the end of your case.



In some cases the police or the prosecutor may ask the Court for permission to see your records even though you have said that you don't want them to.



If this happens, you have the right to tell the Court that you do not want the police or the prosecutor to see your records and the Court will think about this when making its decision.



You can speak to a solicitor who will give you advice on what to do. You should not need to pay for that advice because you should be entitled to **Legal Aid**.



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 look at the records and tell you what information has to be given to the accused's solicitor 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 solicitor all **material** information which the prosecutor knows about.



Material information is any bits of information in your personal records that might help the accused's case or which the prosecutor can

use to show the accused is guilty of the crime he has been accused of.



How are my records protected?



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



Solicitors have to follow strict legal rules about what can be done with your records. If they use the information in any way that breaks these rules, then they might be sent to prison.



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 but if there is material information in them, the accused must be allowed to see that material information.



An accused person must have a solicitor to represent them if their case is about a sexual offence or domestic abuse.



If the accused has to see the material information - the prosecutor will only let them see the material information and no other part of your records.



The prosecutor will supervise the accused when they view the information and they will not be to make any copies of your records.



Will I be asked about my records?



Before you come to Court, the police or the prosecutor may ask you questions about the information in your records.



They will do this to make sure you understand your view about the information in your records.



The judge in charge of the trial will decide whether or not you need to speak in court during the case.



Will the records be in court when I give evidence?



Yes, your records will be in Court. If the prosecutor or the accused's solicitor need to ask you about the information in the records, then the material parts of the records will be there when you speak in court.



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 that you do not want spoken about in court.



It might be that these parts of your records are not needed to be spoken about during the court case. The judge will decide what information needs to be spoken about and what does not.



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 Court is asked to look again at their decision on a case)



When the appeal is finished the records will be sent back to the organisation which provided them.

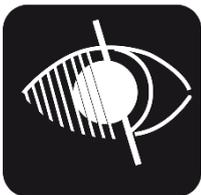


You can read our full policy on recovering sensitive personal records on our website at www.copfs.gov.uk

Contacting the VIA



You can telephone our Enquiry Point on:
0300 020 3000



If you use RNID Typetalk. Please add 188001 to
the start of our telephone number.



If you are deaf, you can text us on 07825 280346
and let us know if you would prefer your reply by
SMS, text message or email.