

Garda Request for Medical Records

The Medisec team is often contacted by members who have received Garda requests for records. You must always remember and apply the basic principles of patient confidentiality and this guide sets out the essential points to bear in mind.

As a doctor, you have a duty not to disclose confidential or personal information, unless you have your patient's consent or the disclosure is permitted by law. In general, a patient's consent is required to release confidential medical information to the Gardaí. There are, however, certain limited circumstances where the public interest in disclosing information outweighs the patient's interest in preserving confidentiality, or the disclosure is required by law.

Medical Council Guidelines

The Medical Council's *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* (available on the Medical Council website) provides helpful principles-based guidance on the duty of confidentiality and disclosure of identifiable patient information.

Paragraph 5.2 states that confidentiality "*is essential to maintaining patients' trust and enabling patients to speak honestly and fully about their lives and symptoms*".

In summary, paragraph 29 and paragraph 31 provide that:

- Confidentiality is central to the relationship of trust between a patient and doctor.
- Sharing of patient information is sometimes appropriate in limited circumstances.
- Before deciding to disclose information, be clear about the purpose of the disclosure and have either the patient's consent or another legal basis which permits disclosure.
- When disclosing information as required by law or in the public interest, inform patients of the disclosure, unless this would cause them serious harm, or would undermine the purpose of the disclosure.

The Ethical Guide also includes an obligation to follow the Children's First Guidelines. Paragraph 26 states: "*You must be aware of and comply with the national guidelines and legislation for the protection of children, which state that the welfare of the child is of paramount importance. If you believe or have reasonable grounds for suspecting that a child is being harmed, has been harmed, or is at risk of harm through sexual, physical, emotional abuse or neglect, you must report this to the appropriate authorities and / or the relevant agency without delay. You should inform the child's parents or guardians of your intention to report your concerns taking into account that this may endanger you or the patient....*" Please also see our factsheet on *Protecting Vulnerable Children: Children First* (available on our website).

Data Protection and Freedom of Information Legislation

The basic principles of Data Protection/Freedom of Information legislation require you to protect the medical records of your patient securely and to only release sensitive personal data with the explicit consent of the patient or in certain other limited circumstances such as disclosure:

- where there is no capacity and it is in the patient's interest to disclose the information
- where it is required by law court order, statute
- in relation to a vulnerable person or child protection concerns
- in the public interest.

It is important to be aware that these exemptions do not place an obligation on doctors to make the disclosure, but rather permit the disclosure to the Gardaí when requested and if justified.

The Information Commissioner guidance confirms “*discretion to release personal information to a third party only in exceptional circumstances where, on balance, he or she is of the opinion that the public interest in disclosure outweighs the right to privacy of the individual concerned.*”

What action should you take when a Garda seeks patient information?

Just because the Gardaí turn up to your clinic or the hospital and ask for some patient identifiable information does not mean they are entitled to receive same without patient consent.

Our advice is to inform the Gardaí that you will process a request under GDPR and ask them to make a written request pursuant to section 41 (b) of the Data Protection Act 2018.

Section 41 (b) allows for the processing of data other than for a purpose for which it was collected for the purposes of “*preventing, detecting, investigating or prosecuting criminal offences*”. The legislation is very clear that the processing of the data for another purpose without consent must be necessary and proportionate.

As above, the Act does not place an obligation on you to disclose such information to the Gardaí, it merely allows for the disclosure. This means that disclosure of the information without third party consent is ultimately a matter for your discretion.

A discussion with the Gardaí may assist you in reaching a decision on what is necessary and proportionate. You need to consider whether the Gardaí require the records to assist in the prosecution of a crime. Only information which is essential to the Garda investigation should be disclosed. It is advisable to review any records being disclosed prior to release to ensure that only relevant extracts are disclosed. If you have any concerns in this regard and are unclear on the nature and validity of a request, feel free to contact Medisec for advice.

It is open to the Gardaí to seek a Court Order or Warrant to obtain information or records. If the Gardaí obtain a Court Order for the release of the details, you would be required to release same.

You should also always bear in mind that the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 makes it an offence to withhold information from Gardaí in relation to specified offences against a child or vulnerable person.

Garda request for a medical report

Occasionally, the Gardaí request a medical report, rather than patient records. The request for a medical report is a different matter and will not fall under the DPA or GDPR.

You can prepare a report to assist the Gardaí with their investigations, provided you have the consent of the patient to do so. Your report should be addressed to the requesting Garda. It should state at the outset that the report is based on information provided by the patient and with the patient’s consent. The report should be purely factual. You could be summoned to Court to give evidence in relation your report and you could be cross-examined on it so you must be able to stand over its contents.

Sometimes, the Gardai request a medical report for the Coroner, acting as the Coroner's agent. If this is the case, the request should specify in writing that it is being requested in the capacity as agent of the Coroner. Please see our factsheets: *Coroners' Inquests* and *Guide to writing Coroners' Reports* should be consulted and please feel free to contact Medisec for guidance.

"The contents of this publication are indicative of current developments and contain guidance on general medico legal queries. It does not constitute and should not be relied upon as definitive legal, clinical or other advice and if you have any specific queries, please contact Medisec for advice".