

Garda Requests for Dental 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.

In general, a patient's consent is required to release confidential dental 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. On occasion, the Gardaí act on behalf of a coroner requesting information or a report and all such requests should be received in writing.

Dental Council Guidelines

The Dental Council's Code of Practice: *Professional Behaviour and Ethical Conduct* ('the Code of Practice') (available on the Dental Council website) provides helpful principles-based guidance on the duty of confidentiality and disclosure of identifiable patient information.

Paragraph 10.1 states:

"Disclosing (sharing) information about a patient's attendance or any other aspect of their care should only happen with the patient's consent, except in the following circumstances:

- *when disclosure is required by law;*
- *when it is directed by a court of law, tribunal or other body established by an Act of the Oireachtas;*
- *when it is necessary to protect the interest of the patient; or*
- *in exceptional circumstances, when it is necessary to protect the public interest."*

As dentists are mandated persons under the Children First Act 2015, paragraph 11.1 also states that dentists are:

"legally obliged to report instances where there are reasonable grounds to believe that a child was harmed, is being harmed, or is at risk of being harmed. You must report such instances to Tusla, the Child and Family Agency".

Please also see our factsheet on *Child Safeguarding in Dental Practice* (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 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 dentists to make the disclosure, but rather permit the disclosure to the Gardaí when requested and if justified.

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

If the Gardaí turn up to your practice and ask for patient identifiable information it does not necessarily mean they are entitled to receive same without patient consent. You should consider for example whether there is a significant risk of serious harm or death in the first instance to decide whether to breach confidentiality. If you have any concerns in this regard, please feel free to contact Medisec for advice.

If the matter is not critical or time is not of the essence, 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 report

Occasionally, the Gardaí request a dental report, rather than patient records. The request for a report is a different matter and will not fall under the Data Protection Act 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 Gardaí request a 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.

“The contents of this publication are indicative of current developments and contain guidance on general dento-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”.