



## **Information Update: New legal advice regarding medical note requests received from the police / 29 June 2017**

The BMA professional fees committee has received new legal advice regarding medical note requests received from the police, which are detailed below.

There is clear guidance regarding the obligations that GPs have with respect to copying and/or release of the GP record. For your reference, these circumstances are:

- If the police do not have a court order or warrant they may request voluntary disclosure of a patient's health records under section 29 of the Data Protection Act 1998.
- However, while health professionals have the power to disclose the records to the police where section 29 applies, there is no obligation to do so.
- In such cases health professionals remain bound by the long-established common law duty of confidentiality and may only disclose information where the patient has given consent, or there is an overriding public interest. They may also be required to defend their decision to disclose before the GMC which is a statutory tribunal.
- Disclosures in the public interest based on common law are made where disclosure is essential to prevent a serious threat to public health, national security, the life of the individual or a third party, or to prevent or detect serious crime. This includes crimes such as murder, manslaughter, rape, treason, kidnapping and abuse of children or other vulnerable people. Serious harm to the security of the state or to public order and serious fraud will also fall into this category.

Your practice is entitled to a fee for producing the notes for the police.

There is no set fee for producing these notes, as they are not considered a subject access request that you may receive from a patient. Therefore the practice is able to set its own fee.

In order for you to proceed with the police request, please find attached a pro forma that we recommend you complete and send to the police authority. We recommend that you obtain each of the following:

1. Provide written patient consent to release of their records OR provide written confirmation as to the nature of the serious crime allegedly committed by the patient and an explanation as to why the patient's records, or other information requested,

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are considered necessary for the specific purpose you are pursuing. You will require one of these in order to fulfil your responsibilities as the Caldicott Guardian.

2. Confirmation in writing that the fee of £xx will be paid within 28 days of the police receiving the record. This fee is due to the disproportionate effort placed on an already overburdened GP practice to provide these notes which recognises the need to support the police in their investigation of a crime, where appropriate to do so.

3. Written confirmation from a senior police officer – ranked Superintendent or above – that he or she considers that the crime being investigated is a serious crime in line with the examples provided above.

Once you are in receipt of both of these at the practice, and have checked the appropriateness of release of the records, you should respond to the police authority as soon as possible.

Alternatively, should it be appropriate for the police to view the record (based on their answer to requirement 1 above), then there is the option for them to view the record in the practice in the presence of a practice staff member. In this situation there is no fee chargeable.

There is no set fee for providing records in this manner. Therefore it is the responsibility of individual practices to set their own fee for this work. When completing the attached pro forma you must enter the fee you choose to charge.

It is vital that the police agree in writing to pay the fee, otherwise you will not be able to claim for the service. If the police authority do not agree to pay the GP can decide whether they would like to provide the service free of charge, or not at all.

Please note that if the police authorities have a court order or warrant for disclosure of the records, you may be required to comply with the request even where a fee has not been paid or agreed. This will depend on a number of factors, including the terms of the court order or warrant.

GPs should, in all cases where there is no patient consent, consider whether the benefits to an individual or to society of disclosing the records outweigh both the public and the patient's interest in keeping the information confidential before agreeing to disclose the records.

If you have any further queries about this please contact  
[info.professionalfees@bma.org.uk](mailto:info.professionalfees@bma.org.uk).

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**Derby and Derbyshire Local Medical Committee**

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