

Disclosing information to the Police

Is the request for information an "emergency":

- to save the life of an individual (or another person), and
- is it impossible, or not feasible, to get consent from the data subject for disclosure

No

Is the request for information a legal obligation?

That is, made under the provisions of:

- Prevention of Terrorism Act (1989) and Terrorism Act (2000)
- The Road Traffic Act (1988)
- The Female Genital Mutilation Act (2003)

No

Is the request for information made by a court order?

Yes

CLoC: Public Interest
Art 6: Vital Interests
Art 9: Vital Interests

- Disclosure is *voluntary* but permissible under "Vital Interests" (matters of life and death)
- Decide whether you *need* to disclose confidential medical (clinical) information
- **Disclose only the minimum and relevant information to satisfy the request**
- This is likely to be an *urgent* request (and likely to be made verbally)

Yes

CLoC: Legal obligation
Art 6: Legal Obligation
Art 9: Public Interest

- Disclosure is *mandatory*
- Decide whether you *need* to disclose confidential medical (clinical) information (unlikely for road traffic act)
- **Disclose only the minimum and relevant information to satisfy the request**
- You do not need to seek consent from the patient first
- This *might* be an urgent request (and might be made verbally)
- Article 9(2)(g) Public interest – **Sch 1 Part 2** justification will vary

Yes

CLoC: Legal obligation
Art 6: Legal Obligation
Art 9: Public Interest

GDPR Exemption Sch2Pt1Para5(2)

- Disclosure is *mandatory and under Sch2 Part 1 Para 5(2) of the DPA*
- You *must* disclose what the court requires
- You *do not* need to seek consent from the patient first
- You *do not* need to redact the information to remove third party information **If** that information is necessary and relevant. But see below....
- This is an exemption from the DPA 2018- **Schedule 2 Part 1 Paragraph 5(2)** But **not** the data minimisation principle - Article 5(1)(c)
- **In theory, you should disclose only the minimum and relevant information to satisfy the request. But arguing about that might anger the courts...**
- This will be a *written* order

No

All other requests for information are permissible – that is, we are under no obligation to disclose the information (the police can always seek a court order for the information if we refuse to disclose)

Any such request must be made in writing using the standard form titled:

"Request to external organisation for the disclosure of personal data to the Police Under **Schedule 2 Part 1 Paragraph 2** of the Data Protection Act 2018"

Any request must be for the prevention or detection of crime and/or the prosecution or apprehension of offenders
AND

The information requested is needed for that/those purpose(s) and a failure to provide that information will be likely to prejudice those matters

Is the request for information that is not *sensitive* data?

For example:

- demographic data only
- confirmation that the data subject is registered at the surgery
- confirmation that the data subject attended the surgery on a given date/time

In other words, *no confidential medical (clinical) information*.

Yes

Art 6: Official Authority

GDPR Exemption Sch2Pt1Para2

- Disclosure is *voluntary* but permissible – *we decide whether disclosure is justified*
 - **Disclose only the minimum and relevant information to satisfy the request**
- You need to inform the patient of the intended disclosure and respect any right to object

UNLESS

The police have indicated that the individual(s) whose personal data is sought should not be informed of the request as to do so would be likely to **prejudice** the investigation

No

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If the request for information *includes confidential medical information*, then the Common Law of Confidentiality must be respected.

That means either:

You have the explicit consent of the patient to disclose
or

There is a substantial and overwhelming public interest in disclosing the information without the explicit consent of the patient

Yes

CLoC: *Explicit Consent*
Art 6: *Official Authority*
Art 9: *Public Interest*

or

CLoC: *Public Interest*
Art 6: *Official Authority*
Art 9: *Public Interest*

GDPR *Exemption Sch2Pt1Para2*

GDPR *Sch1Pt2Para10*
or
GDPR *Sch1Pt2Para18*

Be mindful of the validity of any consent form provided by the police.

Such forms are often used in relation to allegations of serious assault where victims are sometimes asked by the police to sign a consent form authorising disclosure.

As the ICO has put it, "*statements are often signed in the immediate aftermath and shock of the crime, and, we are told, victims can often be unclear as to what they are consenting to and why.*"

If in doubt, and if appropriate, contact the patient directly and ensure that they understand what they are consenting to.

- Disclosure is *voluntary* but permissible – *we decide whether disclosure is justified*
- **Disclose only the minimum and relevant information to satisfy the request**

You need to inform the patient of the intended disclosure and seek and record their *explicit consent* (unless already provided in writing with the application)

UNLESS

The police have indicated that the individual(s) whose personal data is sought should not be informed of the request as to do so would be likely to **prejudice** the investigation

OR

Consent from the individual *cannot* be given: for example, a missing person

AND

There would be a *substantial public interest* in disclosing the information to the police without their consent

That is:

- if failure to do so may expose others to a risk of death or serious harm, and/or
- doing so is necessary for the prevention, detection or prosecution of serious crime, especially crimes against the person (e.g. murder, manslaughter, rape, kidnapping, and child abuse or neglect causing significant harm)
- safeguarding of children and of individuals at risk

Schedule 1 Part 2 paragraph 10 DPA 2018 provides an exemption for the processing of special category data which is:

- necessary for the purposes of the prevention or detection of an unlawful act; and
- **must be carried out without the consent of the data subject so as not to prejudice those purposes;** and
- is necessary for reasons of substantial public interest

This permits the use of Article 9(2)(g) as a lawful basis for processing.

Schedule 1 Part 2 paragraph 18 DPA 2018 provides an exemption for the processing of special category data in the absence of consent for the purpose of safeguarding individuals at risk.

This is applicable when relying upon "vital interests" is unlikely to be appropriate and justifiable (such as in the early stages of a missing person enquiry).

This permits the use of Article 9(2)(g) as a lawful basis for processing.

You must balance the potential harm to the patient and to the overall trust between patients and doctors caused by releasing the information, against the benefit that disclosure might bring to an individual or society.

Do not rely on CLoC public interest without consulting your Caldicott Guardian first.

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SCHEDULE 2

EXEMPTIONS ETC FROM THE GDPR

PART 1

ADAPTATIONS AND RESTRICTIONS BASED ON ARTICLES 6(3) AND 23(1)

Crime and taxation: general

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(1) The listed GDPR provisions and Article 34(1) and (4) of the GDPR (communication of personal data breach to the data subject) do not apply to personal data processed for any of the following purposes—

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders, or
- (c) the assessment or collection of a tax or duty or an imposition of a similar nature,

to the extent that the application of those provisions would be likely to prejudice any of the matters mentioned in paragraphs (a) to (c).

GDPR provisions to be adapted or restricted: “the listed GDPR provisions”

1 In this Part of this Schedule, “the listed GDPR provisions” means—

(a) the following provisions of the GDPR (the rights and obligations in which may be restricted by virtue of Article 23(1) of the GDPR)—

- (i) Article 13(1) to (3) (personal data collected from data subject: information to be provided);
- (ii) Article 14(1) to (4) (personal data collected other than from data subject: information to be provided);
- (iii) Article 15(1) to (3) (confirmation of processing, access to data and safeguards for third country transfers);
- (iv) Article 16 (right to rectification);
- (v) Article 17(1) and (2) (right to erasure);
- (vi) Article 18(1) (restriction of processing);
- (vii) Article 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing);
- (viii) Article 20(1) and (2) (right to data portability);
- (ix) Article 21(1) (objections to processing);
- (x) Article 5 (general principles) so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned in sub-paragraphs (i) to (ix); and

(b) the following provisions of the GDPR (the application of which may be adapted by virtue of Article 6(3) of the GDPR)—

- (i) Article 5(1)(a) (lawful, fair and transparent processing), other than the lawfulness requirements set out in Article 6;
- (ii) Article 5(1)(b) (purpose limitation).

But Article 5(1)(c) Data Minimisation is NOT restricted