

Information for witnesses

Defence 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 ***solicitor*** representing the ***accused*** person might want to see all or some of your ***personal records*** during a criminal case and how this information might be used.



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



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



Why does the accused's solicitor want to see my records?



When a person is accused of a crime, they will get a **solicitor** (sometimes known as a lawyer) who is a person trained in the law and will speak on their behalf in court.



Sometimes the accused's solicitor will ask the court to be allowed to see your personal records.



This is because they think they might contain information that is important in the accused's case.



Which records is the accused's solicitor wanting 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 (to do with your mental health) and counselling records.



You will be told which records the accused's solicitor has asked to see.



Who will decide if the accused's solicitor can get access to my records?



When the accused's solicitor asks to see your records, the Court will hold a meeting (called a **hearing**) where it is decided if it is okay for them to see your personal records or not.



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



You have the right to tell the Court that you do not want the accused's solicitor to see your records and the Court will think about this when making its decision.



How do I tell the Court that I do not want the accused's solicitor to see my records?



You will receive a letter telling you that the accused's solicitor has asked to see your records, or you will get a copy of the application the accused's solicitor has made to the Court to look at your records.



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**.



Your solicitor may be able to go to Court on your behalf to tell the Court that you do not want the accused's solicitor to see your records.



If you have a support or advocacy worker, you may wish to speak to them about the application and what to do next. They will be able to advise you on the best thing to do and support you in getting a solicitor.



You can find a solicitor on the Law Society of Scotland website at:

www.lawscot.org.uk/find-a-solicitor



What will happen if the Court does not let the accused's solicitor see my records?



If the Court refuses the accused solicitor's application to see your personal records, then they can ***appeal*** that decision. An ***appeal*** is when the Court is asked to look again at a decision.



If there is no appeal or the Appeal Court still refuses the application, then the accused's solicitor will not be allowed to see your personal records.



What will happen if the Court allows the accused's solicitor to see my personal records ?



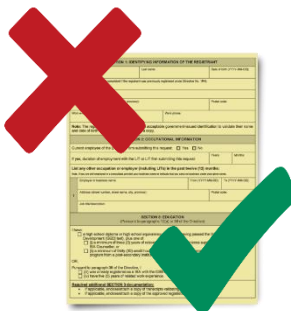
If the Court allows the accused solicitor's application to see your personal records, then you can ***appeal*** that decision.



Your solicitor will help you decide if making an appeal is the best thing to do.



If you decide not to appeal the decision, then the ***prosecutor*** might decide to still ask the Court for an appeal.



If there is no appeal or the Appeal Court allows the accused's solicitor to see your personal records, then an ***independent solicitor*** will decide which parts of the records are important for the case and which are not.



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



An **independent solicitor** makes sure that your solicitor and the accused solicitor are both treated the same.



Will the records be in court when I give evidence?

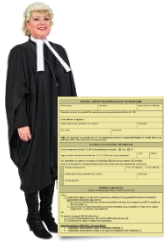
Yes, your records will be in Court.



If the accused's solicitor or prosecutor needs to ask you questions about the information in your records, then the **material** parts of the records will be in court during the case.



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.



If your records contain **material** information, then this has to be given to the accused's solicitor or the case cannot go to 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.



The accused's solicitor can only ask you questions in court that are useful to the case, so if any information is not useful to the case the prosecutor can ask the court to stop it being talked about.



If the information is useful to the case, then it will not be possible to stop it being talked about.

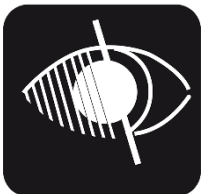


You can read our full policy on recovering sensitive personal records on our website at www.copfs.gov.uk

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.