

ACCESS TO SENSITIVE RECORDS:



YOUR RIGHTS



WHY AM I RECEIVING THIS LEAFLET?

An application has been made to the Court to access sensitive records relating to you. The application has been made by lawyers acting on behalf of an accused person. You have a right to be given notice of this application and to be legally represented at the hearing where a decision will be made on the application.



WHAT ARE SENSITIVE RECORDS?

Sensitive records are medical records or other sensitive documents such as educational or social work records. Such records are normally confidential and in most circumstances anyone who wishes to access these records needs the permission of the court to do so.



WHAT INFORMATION IS BEING SOUGHT FROM MY RECORDS?

This may vary from case to case, the specific information which is being asked for by the person making the application is set out in a document called the "Specification of Documents", which you should have been given a copy of. If you are any doubt about which documents, or information are being sought you should take legal advice.



WHAT IS THE PROCEDURE FOR OBTAINING THE INFORMATION FROM RECORDS?

An application seeking recovery of records (sometimes known as a "petition for commission and diligence") has been lodged with the Court. It sets out the reasons why it is said that the records should be recovered, and a separate document details the records which are being asked for. It will be unusual for a judge to grant an order for recovery of a person's complete medical or social work records. Instead, the judge is likely to limit the scope of the documents to which access is to be granted by reference to certain dates or events.

If the judge grants the application, s/he will appoint an independent lawyer (known as a "Commissioner") who will supervise the recovery of the information. S/he will obtain the records, extract the relevant information and send it to the judge. The legal representative of the person who made the application will then have access to that information.



WHY ARE MY RECORDS BEING SOUGHT?

Generally, records should only be sought where they are likely to be of material assistance to the preparation or presentation of an accused's defence. What this means in practice is an accused person must show how the records are relevant to the charges which he faces and his defence to them. The particular reasons why the recovery of your records is sought should be set out in the application (sometimes referred to as the "petition").



HOW WILL THE PROSECUTOR RESPOND TO AN APPLICATION TO OBTAIN MY RECORDS?

The prosecutor will carefully consider the application to obtain your records and will decide whether they should object to it. Whatever the prosecutor decides to do, you can object to your records being obtained. The

prosecutor will contact you to find out your views and will ask whether you intend to instruct a solicitor to object on your behalf.



CAN I OBJECT TO THE GRANTING OF AN ORDER FOR RECOVERY OF MY RECORDS?

Yes. The final decision on whether any application is granted is for the judge, but you are entitled to make representations before that decision is made. The judge may grant or refuse the application, but s/he may also decide to grant it but place limits on the type and range of documents that can be accessed.



WHAT DO I DO IF I WANT TO OBJECT TO ACCESS TO MY RECORDS BEING GRANTED?

The legal paperwork sent to you will contain the date of the court hearing which will be held to decide whether the application is to be granted. You can appear at that hearing or instruct a lawyer to appear on your behalf. We would suggest that the first step is to take legal advice on your options including instructing a lawyer to appear on your behalf at the hearing.



WHAT IF I DO NOT OBJECT?

Whether you object or not, the judge will still have to decide whether there are proper reasons to grant the application. It is not unknown for the Court to refuse an application even when there is no objection from the person whose records are sought but you cannot assume that it will.



CAN I INSTRUCT A LAWYER TO APPEAR AT THE HEARING?

Yes. While you can appear and represent yourself, it will almost always be better to be represented

at the hearing by a lawyer. Legal aid is likely to be available to cover the cost of legal representation at the hearing and the accused and the prosecutor will be represented by a lawyer. The legal issues which arise can be quite complex and it may be easier for a lawyer to explain the sensitive nature of the information which is being sought and what the impact on you of granting access to it might be.



WILL I BE ENTITLED TO LEGAL AID?

Almost certainly. Legal aid will be made available where legal representation is required to allow you to participate effectively in the proceedings. Given the importance of what is at stake and the complexities of the proceedings, it is likely to be granted in your case, but a lawyer will be able to quickly confirm your eligibility for legal aid by making an application to the Scottish Legal Aid Board.



WILL I QUALIFY FINANCIALLY FOR LEGAL AID?

Yes. If you require legal aid to effectively participate in the proceedings, then it will be granted without any assessment of your financial position. This means that you will not need to pay any money towards legal costs; the Scottish Legal Aid Board will pay your solicitor for you.



DOES THIS MEAN I WILL HAVE A LAWYER TO REPRESENT ME AT THE TRIAL?

No. The proceedings to recover sensitive records are not part of the trial. Legal representation is available only for the hearing to decide whether an order should be made for recovery of your records.



WHERE CAN I GET ADVICE?

Rape Crisis Scotland and the Scottish Women's Rights Centre can put you in touch with solicitors who have been trained to represent you in these types of cases.

Rape Crisis Scotland can be contacted on 0141 331 4180 (office hours) 08088 01 03 02 (6pm-midnight) or email info@rapecrisisscotland.org.uk

The Scottish Women's Rights Centre can be contacted on their helpline on 08088 010 789

Details of solicitors across Scotland are also available on the Law Society of Scotland's website: www.lawscot.org.uk

Rape Crisis Scotland runs an advocacy project providing support and advocacy throughout the criminal justice process. They can put you in touch with your local advocacy worker if this would be helpful.

