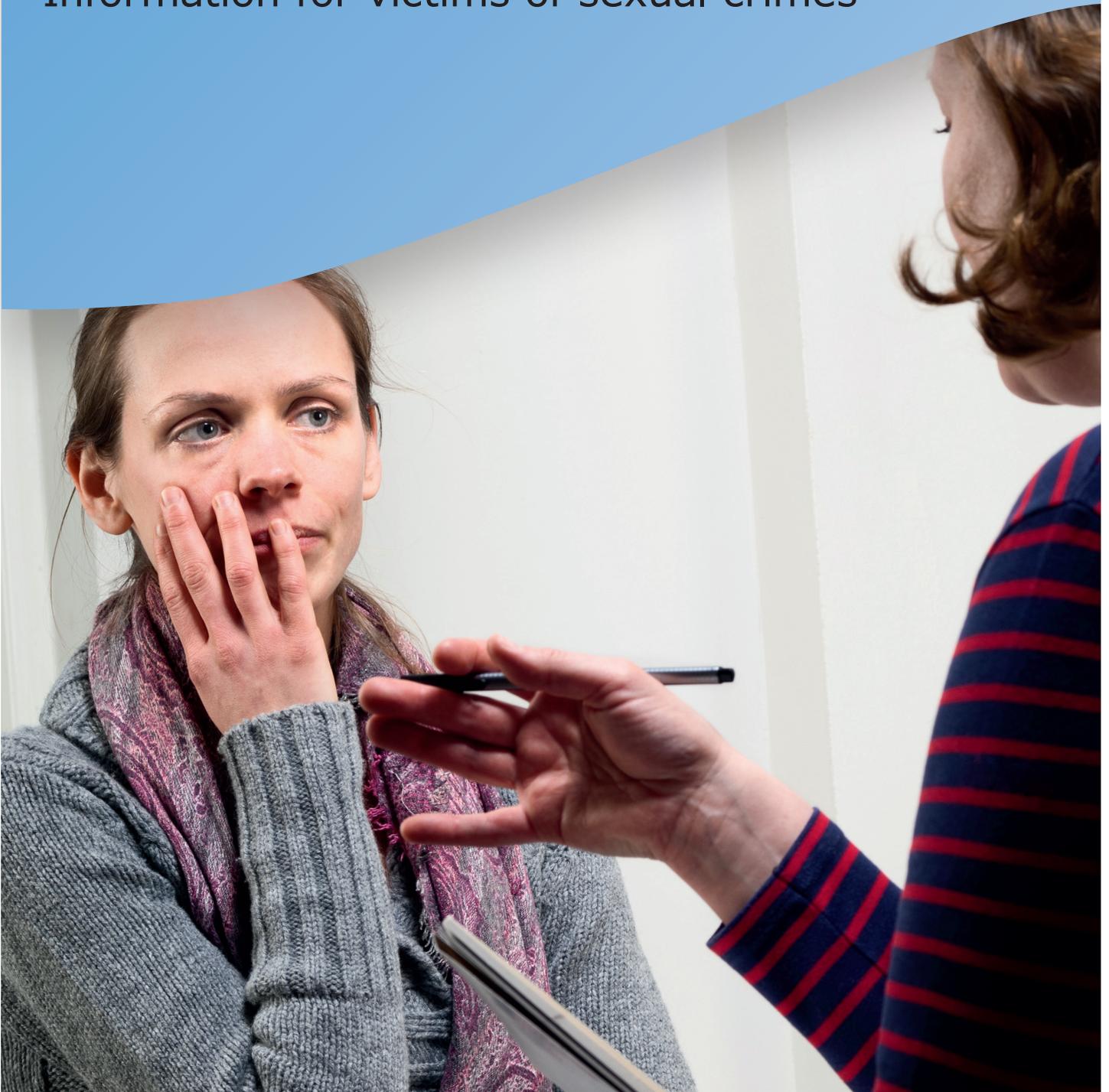




INVESTORS
IN PEOPLE

Sensitive and Personal Records

Information for victims of sexual crimes



COPFS Policy on Obtaining Sensitive and Personal Records for use in Criminal Prosecutions

This leaflet explains why the Crown Office and Procurator Fiscal Service (the prosecutor) may need to obtain your sensitive and personal records, held by bodies such as the NHS, and how this information may be used.

It also tells you why the prosecutor may be required to disclose information contained in these records to the defence lawyer who represents the accused.

What records might the prosecutor need to obtain?

Any records relating to your education, medical, psychiatric or psychological treatment, residential care, social work involvement or any other records held by a public authority about you which are relevant to the criminal case where you might be a witness.

Why does the prosecutor need to see them?

The prosecutor needs to see these records as they may be able to help the case against the accused and you may be called as a witness in the court case.

These records often contain information which may be relevant to the evidence to be investigated by the prosecutor and defence, and referred to in any criminal trial. The defence will often ask the court for permission to recover these records and these requests are often granted.

It also prevents unnecessary delays to the case if records are obtained at an early stage by the prosecutor. Prosecutors will be able to properly respond to defence requests to recover the records. They will also be able to ask at the trial about evidence from the records which is helpful to the victim.

Why are my records relevant to the case?

Sometimes there is information in the records which is helpful to support what the victim has told the police has happened to them. For example if someone has visited the doctor after an incident, the medical records could be important. If someone has disclosed abuse to care or education staff then the records kept by these bodies will be important. It is not possible to list here all the situations which might arise. If you don't know why your records might be important in your case then please ask the case investigator.

Does the prosecutor always obtain these records?

No. Our policy is not to recover records in every case. Each case is decided on its own circumstances. We are very aware

of the sensitivity of the information in these records and our policy is to ensure, as far as possible, that your right to privacy is respected, and properly balanced with the public interest in prosecuting crime. The public interest means that the Procurator Fiscal takes into account the wider interests of the community and not just those of the accused and the victim.

We will only recover the records **where this is necessary for the proper investigation and prosecution of the case**. Clear guidance is given to prosecutors that they must give careful consideration to the need for obtaining records, throughout the investigation of a case.

How does the prosecutor decide which records to obtain?

When a case is reported by the police, the prosecutor will carefully consider the evidence contained in the report. Only where there is evidence to suggest that there may be relevant information contained in your records will the prosecutor consider whether it is necessary to obtain records. This may happen at any stage in the investigation of a case.

Will anyone else see the records?

The prosecutor has a duty in every criminal case to disclose to the defence all important information of which the prosecutor is aware, whether that information supports the victim's account of what happened or the accused's account of what happened.

The records will be examined thoroughly by the prosecutor, and only after very careful consideration, will any information be disclosed to the defence. The fact that the records are obtained does not mean that they will be given to the defence. It may be that only some parts of the records have important information and need to be disclosed. The other parts will not be disclosed.

The prosecutor will not disclose information which is not relevant to the criminal case. If the defence want disclosure of any parts of the records the prosecutor has decided not to give them, they will need to apply to the court for the information. The judge will decide whether the additional information needs to be disclosed. Any records will only be given by the prosecutor to a lawyer and not to the accused.

How are my records protected?

Anyone who is in possession of disclosed information from sensitive personal records has to follow strict legal rules about what can be done with that information. It is only to be used for the proper preparation and presentation of the accused's case in court and any appeals following from the court case. Anyone who breaks that rule commits a criminal offence and could go to prison.

Will the records be in court at the trial?

If the prosecutor or the defence wish to refer to information contained in the records at the trial then the records will be produced in court.

Will I be asked questions about my records?

If the prosecutor or the defence wish to refer to information in the records then you may be asked questions about them at the trial. Questions will only be allowed if they are important to the case. The judge at the trial will decide whether you can be asked any questions about the records.

What if I don't want the records recovered?

You will always be asked your opinion on whether the prosecutor should obtain your records. The Case Investigator will discuss with you what records the prosecutor wants to view. They will explain why they think it is necessary to obtain the records and how the prosecutor will recover them.

You will be given a chance to consider this information and asked whether you agree that the records can be obtained. If you do not want these records to be recovered, the prosecutor may still have to obtain the records if there is reason to believe that the records contain information which is relevant to the case.

If you do not agree then the prosecutor will only obtain the records as a last resort, and only after approval has been given by a senior independent lawyer.

What if there are some things that I don't want referred to in Court?

If you know that there are things in your records which you do not want to be spoken about in court, then you should tell the prosecutor. It might be that these parts of the records are not relevant to the case and they might not need to be disclosed to the defence or referred to in court. The prosecutor cannot, however, guarantee that this information will not be disclosed or referred to in court. The judge at the trial will decide whether the information is relevant.

Will I be told what is in the records?

The prosecutor will only obtain records that are relevant to the case under investigation. If the prosecutor finds something in the records which may be relevant to the case then you may be interviewed about that. The prosecutor will not be able to speak to you about any parts of the records which are not relevant to the case.

What happens to the records after the trial?

After the trial is over, the records may need to be kept for a time in case there is an appeal after the case has finished. As soon as all proceedings are over, the records will be returned to the bodies who provided them.

What if I have other questions?

If you have any further questions or you would like someone to explain things in more detail to you, please contact our Victim Information and Advice Service on 0844 561 3000 (or 01389 739557 from a landline) and ask to speak to the VIA Officer dealing with your case.

The full policy can be viewed at the following web address:

<http://www.copfs.gov.uk/Publications/2011/05/Policy-obtaining-and-disclosing-sensitive-personal-records-investigation-and-prosecution-Sexual-Crim>

If you do not have access to the internet, the Procurator Fiscal will give you a copy. If you have any difficulty in reading or understanding the policy then please contact the Procurator Fiscal's Office who will make every effort to assist you.

