Surrey Health Informatics Service
Sussex Health Informatics Service

Records Management Explained

NHS Legal and professional obligations

A guide to Records Management

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Introduction

Records Management Explained is based on *Records Management: NHS Code of Practice* that was published in March 2006 by the Department of Health.

This booklet is the second in a set of three and contains the range of legal and professional obligations that limit, prohibit or set conditions in respect of the management, use and disclosure of information and, similarly, a range of statutes that permit or require information to be used or disclosed.

Where necessary, organisations should obtain professional legal advice on the application of these provisions.

All NHS records
are public records under
the Public Records Act 1958

Records Management Explained has been produced as a set of three easy to read booklets conveying the key messages in the *Records Management: NHS Code of Practice:*

What NHS staff need to know

NHS Legal and professional obligations

NHS Records retention schedule

Professional Codes of Conduct

All the NHS professions have their own codes of conduct setting out the standards of ethical behaviour owed by members of each profession.

These standards typically include:

- respecting patients' decisions about their care and treatment;
- obtaining consent for treatment or for disclosure of patient personal information;
- protecting patient personal information by maintaining confidentiality;
- ensuring continuity of care through good record-keeping practice.

Professional Codes of Conduct	
The General Medical Council	Good Medical Practice (2006) sets out the principles and values on which good practice is founded
The British Medical Association	Information on Ethical Practice
The Nursing and Midwifery Council	◗ The NMC code of professional conduct: standards for conduct, performance and ethics. ◗ Guidelines for records and record keeping 01.05 ◗ Midwives Rules and Standards (Standards 05.04)
The Chartered Society of Physiotherapy	Rules of Professional Conduct
General Social Care Council	Codes of Practice for Social Care Workers and Employers

The key legal and professional obligations

Abortion Regulations 1991	◗ Medical Practitioners must issue and hold certificates of opinion ◗ Termination practitioner must notify Chief Medical Officer within seven days of termination ◗ Certificates must be retained by the practitioner for at least three years.
RM consideration	Retain certificates in a secure area for at least 3 years. Destroy in confidential way once no longer required.
Access to Health Records Act 1990	◗ Applies to records of deceased patients created since 1st November 1991 ◗ Medical Professional may need to screen and authorise the notes before release ◗ Allows access to: - Deceased's personal representatives to carry out their duties; - Anyone who has a claim resulting from the death. ◗ No general right of access – and limited by: - Deceased's wishes to restrict; - Disclosure which would cause serious harm; - If identifies third party; ◗ Time limits and fees apply.
RM considerations	Processes must be in place to where and how the records of deceased persons are stored. Records must be stored appropriately and organisations must have processes and procedures in place to enable retrieval within time scales
Access to Medical Reports Act 1988	◗ Allows individuals to see medical reports written about them for employment or insurance purposes by a doctor in normal doctor/patient capacity ◗ This right can be exercise before or after report is sent ◗ The chief medical officer of the employer/insurer is the applicant and will send a request for a report to the doctor ◗ The request must be accompanied by a written and signed patient consent ◗ Patient may view report before supplied or within six months from supply

Access to Medical Reports Act 1988	◗ Access prohibited or limited if: - GP considers that it may cause serious harm; - Report discloses third party information, where third party not consented to disclosure. ◗ Patient can withdraw consent to the reports preparation and supply at any time ◗ If the patient disagrees with the content of the report, he/she can: - Refuse to allow supply; - Ask the doctor to correct agreed inaccuracies; - Have a note added addressing the points of disagreement.
RM considerations	Reports must remain accessible to the patient for at least six months after supply to employer or insurer after which consider whether retention is necessary – if so, should be accessible in case of a subject access request. It may be easier to hold the report as part of health record.
Administrative Law	All NHS bodies must be aware of the extent and limitation of their powers and act 'intra vires'. Where disclosure of information is limited by function, statutory gateways may provide for disclosure. However, unless the law requires disclosure or sets aside common law obligations then these obligations must be satisfied prior to disclosure, e.g. explicit patient consent.
RM considerations	Staff should be trained regarding: legal framework covering disclosure and be provided with procedures for obtaining explicit consent and advice if unsure.
Blood Safety and Quality Regulations 2005 (amended by the Blood Safety and Quality (Amendment) Regulations 2005 and the Blood Safety and Quality (Amendment) (No.2) Regulations 2005)	Retention periods for data relating to human blood/components now part of UK law: ◗ Donors, establishment activity and testing of donated blood – minimum of 15 years; ◗ Blood establishment/hospital banks retain for full traceability – at least 30 years from point of receipt of the blood/component; ◗ Requirement for maintaining confidentiality and security – not be disclosed to third parties unless: - Complying with a court order; - Assisting an inspector appointed by Secretary of State; - Enabling tracing of donors/recipients.

RM considerations	Organisations must provide full traceability of whole blood and blood components. **The record should:** ◗ Identifies each single blood donation and each single blood unit and component thereof; ◗ Enables full traceability to the donor, transfusion and recipient. **The record must identify:** ◗ Each unique donation; ◗ Type of blood component; ◗ The location at which donation was received; ◗ To whom that donation was given.
Directive 2002/98/EC of the European Parliament and of the Council of 27 Jan 03	Sets standards and quality/safety for blood collection/testing of human blood/components, processing, storage and distribution.
Commission Directive 2005/61/EC of 30 Sep 05	Sets out data which should be retained for 30 years complying with the traceability requirements as follows: Data to be retained by blood establishments ◗ Blood establishment identification; ◗ Blood donor identification; ◗ Blood unit identification; ◗ Individual blood component identification; ◗ Date of collection (year/month/day); and ◗ Facilities to which blood units or blood components are distributed, or subsequent disposal. Data to be retained by hospital blood banks ◗ Blood component supplier identification; ◗ Issued blood component identification; ◗ Transfused recipient identification; ◗ For blood units not transfused, confirmation of subsequent disposal; ◗ Date of transfusion or disposal (year/month/day); and ◗ Lot number of the component, if relevant.

Census (Confidentiality) Act 1991	The act makes it a criminal offence to unlawfully disclose personal census information **Defences to a charge:** ◗ Believed to be acting with lawful authority, or ◗ Believed the information was not personal census information **Penalties:** Magistrates Court – up to 6 months imprisonment and/or fine; or Crown Court – 2 years max imprisonment and/or fine.
RM considerations	Staff to be instructed in lawful use to ensure unlawful disclosure does not occur
Civil Evidence Act 1995	Provides for the use of documents/records as admissible evidence in civil proceedings – includes electronic patient records. Documents that form part of a record are also admissible. Trusts must supply a signed certificate of authentication.
RM considerations	The organisation must ensure quality and reliability of electronic records and verify the computer was not misused and operating properly at the time of supply.
The Common Law Duty of Confidentiality	◗ Derived from case law, changes over time. ◗ Information given with the expectation of confidentiality, then consent to disclosure is required. ◗ Disclosure is lawful where the patient has consented, where it is in the public interest or there is a legal duty/court order. ◗ Seek patient consent to disclose outside of the care team, where impossible may be able to rely on the public interest and for court orders, representations may be made to limit information. ◗ Legal action can be taken against the organisation and/or individual responsible for any breach. ◗ Record all disclosures.
RM considerations	◗ Everyone should be aware of their confidentiality responsibilities. ◗ Access restricted on a need to know basis. ◗ Requests for access should be audited periodically. ◗ Health Records transported off site should be in security envelopes and approved carriers should be used where necessary.

Confidentiality: NHS Code of Practice	◗ Provides guidance on protecting confidential information i.e. informing patients of information uses, giving patients options for information sharing and circumstances where disclosures may be made.
Disclosure after a patient's death	No clear legal obligations of confidentiality that apply to the deceased. Nevertheless the Department of Health and the General Medical Council agree there is an ethical obligation to the relatives of the deceased in requiring that confidentiality obligations continue to apply. However, disclosures may be necessary: ◗ to assist a coroner or other similar officer in connection with an inquest or fatal accident inquiry; ◗ as part of national confidential enquiries; ◗ on death certificates.
The Computer Misuse Act 1990	Relevant to electronic records – creates three offences: ◗ unauthorised access; ◗ access with intent to commit an offence; ◗ unauthorised modification. Access defined as altering, erasing, copying, moving, using, and outputting.
RM considerations	◗ All staff members should be aware of and comply with security measures to protect health records ◗ Organisations should have policies and procedures to facilitate compliance ◗ Disciplinary measures for failure to comply.
The Congenital Disabilities (Civil Liability) Act 1976	Where a child is born disabled due to negligent treatment of the mother during pregnancy, the child can bring civil action for damages. It is a separate right to that of the mother. Limitation period only begins once child has reached 18 and resulted in damage. Period may be extended where not all the facts are known.
RM considerations	Ensure children's records (in particular those born with a disability) are not prematurely destroyed.

The Consumer Protection Act (CPA) 1987	Allows persons who have suffered damage/injury to themselves/private property to make a compensation claim against the manufacturer/supplier of a product without the need to prove manufacturer/supplier was negligent. General limitations under the Limitations Act 1980: **Action must be taken:** (a) within 3 years of the incident or (b) 3 years from the date of knowledge that the incident had caused the injury/damage. **When a person dies:** (a) three years from the date of death or (b) three years from when the personal representative realised that the incident was liable for the death. Damages for defective products cannot be brought after the expiration of 10 years from the date of supply/manufacture as in s.4. CPA 1987. Section 33 gives the court discretion to disapply the limitations in personal injury claims if it would prejudice legal proceedings.
RM considerations	Claimant has three years to begin legal action although may be extended to 10 years. NHS liable as a supplier and should ensure appropriate records are accurate to ensure claims can be defended.
The Control of Substances Hazardous to Health Regulations (COSHH) 2002	The COSHH regulations specify 8 measures that employers must follow to prevent or limit employees' exposure to hazardous substances: (1) assess the risks (2) decide what precautions are needed (3) prevent or adequately control exposure (4) ensure that controls are used and maintained (5) monitor the exposure (6) carry out appropriate health surveillance (7) prepare plans and procedures to deal with accidents (8) ensure that employees are properly informed, trained and supervised
RM considerations	Retain record of ◗ risk assessments ◗ control measures ◗ exposure monitoring ◗ health surveillance Check retention schedule

The Copyright, Designs and Patents Act 1990	Protects intellectual property. Requires permission of the owner before use – includes storage/display on the NHS net/internet etc. Permission must be sought for material belonging to any third parties.
RM considerations	Corporate web pages should be checked for any infringement – any doubt, check with legal advisers.
The Crime and Disorder Act 1998	Police/Local Authorities can apply for an anti-social behaviour order against an individual aged 10 years and over. The Anti-Social Behaviour Act (2003) amends the 1998 Act to include a SHA, a NHS Trust and PCT. Used where individuals cause harassment, alarm or distress to persons not of the same household as himself. Section 115 of this Act permits disclosure of personal information (not a compulsion to disclose) and decisions made should take account of the Common Law Duty of Confidence and the Data Protection Act 1998. Disclosure outcome should be weighed against the public interest in provision of a confidential health service.
RM considerations	Requests for disclosure under this Act must be referred to the Caldicott Guardian and possibly legal advisors.
The Data Protection Act (DPA) 1998	The Act regulates the processing of personal data, held manually and on computer. Applies to health records and records of employees in all departments (eg finance, human resources, occupational health) Relates to processing of personal data of living individuals from which they can be identified. It includes name, address, age, race, religion, gender and physical, mental or sexual health. Processing includes holding, obtaining,recording, using (closure, transfer or disposal), disclosure and sharing. The act contains 3 key strands: 1. Notification to the Information Commissioner (ultimate responsibility of Chief Executive/GP but can be delegated); 2. Compliance with the eight data protection principles. 3. Observing the rights of the data subject.

RM considerations	Ensure personal data is processed fairly and lawfully: ◗ abide by the eight principles; ◗ inform individuals how their data will be processed and obtain some form of consent; ◗ comply with the requirements of Schedule 2 and 3; ◗ abide by all other relevant laws; ◗ ensure notifications are kept up to date; ◗ only capture relevant information; ◗ only those that need to know should have access to information; ◗ follow all the relevant procedures and processes described in the IG Toolkit; ◗ ensure information is accurate and kept up-to-date; ◗ appraise records so that they are not kept longer than necessary and retain according to the RM NHS Code; ◗ ensure disposal arrangements for destruction/ archiving are in place and procedures to prevent unnecessary copying; comply with the rights of the individual; ◗ ensure storage conditions provide environmentally safe protection and protected by effective information security management; ◗ be aware that the common law duty of confidence applies to health data and where health information is to be disclosed to someone outside the care team, consent is necessary; ◗ ensure, where transfers of data are made outside the European Economic Area (EEA), that contracts include terms that cover data protection or obtain explicit consent. **Rights of the Individual:** Access to health records – written request with details of requirements and on receipt of appropriate fee within 40 days (ministerial promise says 21 days). If not in permanent form no charge if entries made within 40 days preceding request or £10 if no entries made during those 40 days. Exemptions – third party information or information harmful to individual. Ensure document structures are set up in a ways that enables retrieval in a timely manner.

The Data Protection (Processing of Sensitive Personal Data) Order 2000	Amends the DPA and allows sensitive personal data to be processed ◗ for the detection and for prevention of crime; ◗ for the protection of the public against malpractice, incompetence, mismanagement; ◗ to publicise the facts, to provide confidential counselling; ◗ to undertake research that does not support measures or decisions for any individual which does not cause substantial damage or distress; ◗ for the purpose of administering defined insurance business or occupational schemes; under the Registration of Political Parties Act 1998 for legitimate political business which does not cause substantial damage or distress; necessary for the functions of a constable by any rule of law.
Directive 2001/83/EC of the European Parliament and of the Council of 6 Nov 01 on the Community Code Relating to Medicinal Products for Human Use	◗ Rules governing the production, distribution and use of medicinal products. ◗ Trial investigator has duty to retain patient identification codes for at least 15 years following the trial. ◗ The healthcare organisation at which trial was carried out must retain patients' health record for 30 years. ◗ The sponsor of trial must retain all other documentation pertinent to trial as long as product is authorised. ◗ The sponsor or successor must retain final report of products no longer authorised for 5 years.
The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005	Adoption Agencies should keep records on adopted children for at least 100 years and place limits on information that can be disclosed.
The Electronic Communications Act 2000	◗ Provides legal admissibility for digital signatures; ◗ registration of cryptography services providers who may employ Public Key Infrastructure (PKI) technology; ◗ repeal of and amendments to legislation that limits electronic communication and storage of information.

RM considerations	Ensure information held and transferred in accordance with the Act to ensure confidentiality and accessed only on a need to know basis. Retain and protect cryptographic keys as evidential value over lifetime of record.
The Environmental Information Regulations (EIR) 2004	The EIR 2004 came into force at the same time as the FOIA 2000, update and extend previous rights to environmental information. Any request for information held by/on behalf of a public authority is initially treated as a FOIA request. However, section 39 of the FOIA exempts environmental information from being dealt with under FOIA and provides for it to be dealt with under the EIR 2004. There may be cases where information is exempt under FOIA but has to be released under these regulations. (Where there is a conflict between EU regulation and UK legislation, the EU law takes precedence.) The key differences between EIR and the FOIA are: ◗ A wider range of organisations are covered by the EIR, including some private organisations. ◗ The EIR relates to environmental information only. ◗ Requests for information do not have to be in writing under the EIR; they can be verbal. ◗ All exemptions for refusing an EIR request are subject to a public interest test. Personal information of the applicant continues to be dealt with under data protection.
RM considerations	With FOIA - All NHS organisations need a robust RM programme. EIR requests need **not** to be in writing.
The Freedom of Information Act (FOIA) 2000	**Features:** general right of access to recorded information held by public authorities; duty to maintain a publication scheme approved by the Information Commissioner. Lord Chancellor issued Code of Practice on records management although compliance is not obligatory. Confers two rights: ◗ right to be informed if public body holds certain information; ◗ right to obtain a copy of that information. Provides exemptions to those rights, some absolute and some subject to the public interest test. Requests must be in writing, state name and address and describe the information required. Applicant can request information in permanent form, to inspect the record or a summary.

The Freedom of Information Act (FOIA) 2000	An organisation can charge for informing whether it holds the information and communicating it to the applicant including putting it in a specified format, photocopying/printing (no more than 10p per page) and postage/transmission costs. Organisations currently are not permitted to take account of employee time required to carry out the work or charge for putting information into another format if they already have that duty under the Disability Discrimination At 1995. If requests exceed a set limit for the NHS, requests can be refused. Compliance: 20th working day starting with the day after receipt of the request. Need not comply with vexatious requests and repeated requests unless a reasonable period has elapsed.
RM considerations	Should carry out a records audit and review of retention schedule. All employees should be aware of how an FOIA request should be progressed and requirement to respond quickly. Should consider maintaining a log of requests and make frequently requested information available in the publication scheme.
The Gender Recognition (GR) Act 2004	GR Act gives legal right for transsexuals to live in their acquired gender. Issue of a full GR Certificate issued by the GR Panel provides legal recognition of the transsexual personal acquired gender. It is an offence to disclose information relating to an application 'protected information' if acquired in a professional capacity unless an exemption applies. Some exemptions are: person has consented; person cannot be identified from the information; prevention of crime; court order.
RM considerations	Applicants for GR Certifcate are required to supply evidence from a medical practitioner to support application. If application successful a new health record must be created so 'protected information' is not disclosed.
The Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland (No. 2) Order 2005	It is not an offence to disclose the 'protected information' referred to in the Gender Recognition Act 2004 if disclosure is made for medical purposes to a health professional and the person making the disclosure reasonably believes that the individual has given consent or cannot give consent.

The Health and Safety at Work Act 1974	The Act imposes duties on employers to look after the health and safety of their employees and responsibilities on employees to comply with the measurements put in place for their health and safety. **Six regulations covering health and safety at work:** (1) Management Of Health and Safety at Work 1999 (what organisations must do to comply – Code of Practice available – Code has special legal status which Courts will take compliance into account). (2) Workplace (Health Safety and Welfare) 1992. (3) Display Screen Equipment 1992. (4) Provision and Use of Work Equipment 1992. (5) Manual Handling 1992. (6) Personal Protective Equipment 1992. Carry out a risk assessment; provide employees with information and training where necessary.
RM considerations	Retain records of equipment maintenance and training for appropriate periods for legal reasons.
The Health and Social Care Act 2001	Section 60 enables regulations to be made that require or allow patient information to be shared for: medical purposes or improved patient care and for public interest purposes. The processing is still subject to the DPA but confidentiality requirements are set aside. Those requiring access must make an application to The Patient Information Advisory Committee (PIAG) when consent is impossible to obtain. Applications must show it will improve patient care, is in the public interest or why unable to gain consent or use anonymised information.
RM considerations	Procedures should be put in place to give information under Section 60 to anyone requesting patient identifiable information of the need to consult PIAG for purposes other than direct care where they do not have explicit consent.
The Human Fertilisation and Embryology Act 1990, as Amended by the Human Fertilisation and Embryology (Disclosure of Information) Act 1992	Act is fully retrospective. Prohibits disclosure by current and former members and employees of HFEA of: ◗ any information contained in Authority's register ◗ any information obtained with the expectation that it would be held in confidence The HFEA (Disclosure of Donor Information) Regulations 2001 (S1 1511) sets out what can be provided to persons who have reached 18 who may have been born as a result of treatment under the Act. Government reviewing Act and considering confidentiality and compatibility with FOIA and DPA.

RM considerations	Ensure information only available to those permitted access. Paper records - this information is likely to be included in past medical history (particularly hospital records.)
The Human Rights Act 1998	The Act incorporates European Convention on Human Rights into UK law. Article 8 'The right to respect for private and family life' is the most relevant to the health and social care setting. Article 8 is not an absolute right. The Act gives four qualified rights; these can be set aside by the state. Interference must be lawful. (1) The right to respect for private life: (a) obligations to meet subject access requests, denial could be interpreted as a breach; (b) if an individual consents to treatment but not given sufficient information to make a fully informed decision, could be interpreted as a breach; (c) reflects common law duty of confidentiality, inappropriately disclosure, patient could take legal action. (2) The right to respect for family life: (a) relatives wanting to be involved in ill relatives care, weigh against patients right to confidentiality; (b) child or incompetent adult patient, failure to keep family informed could be seen as interference with this right and actionable; A competent child's right to decline to share information with family outweighs the right of the family; (c) ultimately right of individual to keep information confidential outweighs rights of the family; (d) where work impinges on an employees' family life could possibly be construed as interference with this right. (3) The right to respect for one's home (4) The right to respect for correspondence: (a) Workplace monitoring – inform employees they have no reasonable expectation of privacy; (b) Follow the Information Commissioner's advice; (c) Inform employees of policies on emails, telephone, internet use; (d) Take consistent decisions where breaches are discovered.
RM considerations	If organisations comply with the provisions of the common law duty of confidence and the Data Protection Act 1998 they will meet the requirements of Article 8.

The Limitation Act 1980	The Act sets out the law on the time limits within which actions for personal injuries, or arising from death, may be brought. The limitation period for bringing such actions is three years. This period runs from when it is first realised that a person has suffered a significant injury that may be attributable to the negligence of a third party or from 10 years after the application of a product that is found to be defective (see Consumer Protection Act). The Congenital Disabilities (Civil Liability Act) 1976 enables a child born disabled to bring a civil action for damages in respect of that disability. Runs from the child attaining the age of 18 and may be extended where not all facts known. A person of 'unsound mind' whilst under the disability in question can bring an action through his 'next friend' without any time limit – after death, time limit runs against his personal representative. In the case of the limitation period for other claims (not actions) e.g. claim by a mentally disordered patient that has been falsely imprisoned, is 6 years from the date when the patient ceases to be under a disability or dies.
RM considerations	Claimant generally has 3 years to begin legal action after injury, lapse between injury and knowledge of it is without limitation. Important to ensure accurate records are retained appropriately. Ensure records can be located and supplied if requested and closed records are stored in accordance with The National Archives guidance.
The NHS Trusts and Primary Care Trusts (Sexually Transmitted Diseases) Directions 2000	The NHS (Venereal Diseases) Regulations 1974 (S1 1974/29) imposes obligations of confidentiality relating to sexually transmitted disease information. In 1991 the same obligations were imposed on trustees and employees of an NHS Trust. Information may only be disclosed to a medical practitioner or employee under their direction in connection with the treatment, prevention of the spread thereof.
RM considerations	Ensure information only available to those permitted access and take care with paper records as information on this treatment might be included within past medical history (particularly hospital records)
The Police and Criminal Evidence (PACE) Act 1984	Section 69 states that a computer generated statement within a document is not admissible as evidence in criminal legal proceedings unless: there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer and at all times the computer was operating properly or, if not, that any malfunction or non operation did not affect the document/accuracy.

The Police and Criminal Evidence (PACE) Act 1984	Before documents are admissible it will be necessary to call authoritative evidence of the proper function and operation of the computer. A certificate signed by a person in a responsible position relating to the operation of the computer will be required stating the computer system was operating correctly at the time the evidence was obtained.
RM considerations	When information is requested from a computer system those responsible should be aware they will need to provide such a statement.
The Privacy and Electronic Communications (EC Directive) Regulations 2003	These regulations revoke the Telecommunications Regulations 1999 and deal with processing of personal information and privacy in the electronic communications sector. Regulations set out: when direct marketing may be carried out, duties to protect security of the network, limitations on storage, restrictions on processing traffic and location data. Enforced by the Information Commissioner
Public Health (Control of Diseases) Act 1984 and Public Health (Infectious Diseases) Regulations 1988	Doctors in England and Wales have a statutory duty to notify a Proper Officer of the local authority if they are aware or have suspicions that a patient is suffering from a notifiable disease. The following must be supplied: name, age and sex and the patients domicile, the condition, the onset of such condition and if a hospital, the admission date, address from whence he/she came and whether contracted in hospital.
RM considerations	Ensure copies of the notification certificate or counterfoils from a notification book are held securely and retained for the minimum period
The Public Interest Disclosure Act 1998	Allows a worker to breach confidentiality towards his employer for the purpose of whistle-blowing. Permissible where the following has occurred or is likely to occur: ◗ a criminal activity/breach of civil law; ◗ miscarriage of justice; ◗ health and safety are compromised; ◗ environmental damage; ◗ evidence indicating the afore mentioned is likely to be deliberately concealed. Applicable within or outside the UK as long as UK or other jurisdiction prohibits it.

The Public Interest Disclosure Act 1998	A qualifying disclosure must only be made in good faith to: ◗ employer or person with legal responsibility for conduct complained of; ◗ worker employed by the Crown or Minister of the Crown; ◗ for obtaining legal advice; ◗ person prescribed by the Secretary of State. If employer responsible for the conduct of the complaint allows a worker to disclose to another provided: in good faith and not personal gain with belief the allegation being true and the worker believes he would suffer detriment if disclosing to his employer, has previously complained but no action taken or evidence could be destroyed or concealed. All subject to test of reasonableness.
RM considerations	Staff should be aware of correct procedures to follow if circumstances arise that require them to breach confidentiality, and policy guidance available on this issue of Public Interest Disclosure.
The Public Records Act 1958	All NHS Records are public records – sets out broad responsibilities and provides for guidance and supervision by the Keeper of Public Records. Records selected for archiving should be transferred to the National Archives or Place of Deposit under the care of a professionally qualified archivist. Maximum retention period is usually 30 years prior to transfer (NHS bodies need to consult with the National Archives if wanting to keep longer). Information can be obtained from Head of Archive Inspection, The National Archives, Kew, Richmond, Surrey TW9 4DU. enquiry@nationalarchives.gov.uk
RM considerations	The FOIA 2000 has repealed Section 5 of this Act regarding: access to public records.
The High-activity Sealed Radioactive Sources and Orphan Sources Regulations	Applies to organisations that use or dispose of radioactive material or waste e.g. radiography and radiotherapy. Those who use/dispose must obtain a certification of registration from the Environment Agency. Those who dispose must obtain a certificate of authorisation.
RM considerations	Records must be retained as specified by the Environment Agency. Once retention period has expired file records with appropriate repository.

The Re-use of Public Sector Information Regulations 2005	Covers Health information. There is no automatic right to re-use. Information exempt under FOIA will also be exempt under the Regulations. Health bodies are required to publish terms of licences for re-use, compile asset registers, publish details of re-use licences and review every three years, give reasons for refusal, give contact details for complaints, be consistent with requests, respond within 20 working days.
RM considerations	Work closely with FOIA staff because of the need for an information audit, re-use conditions can be contained in the Publication Scheme, ensuring access issues handled before granting re-use.
The Sexual Offences (Amendment) Act 1976 Subsection 4(1) as Amended by the Criminal Justice Act 1988	Prohibits the release of any information that would identify any rape victim during the victim's life.

Relevant standards and guidelines

BSI BIP 0008	British Standard relating to 'Legal Admissibility and Evidential Weight of Information Stored Electronically'.
BSI PD 5000	BSI Code enables organisations to demonstrate the authenticity of their electronic documents: ◗ Information Stored Electronically ◗ Electronic Communication and email Policy ◗ Identity, Signature and Copyright ◗ Using Certification Authorities ◗ Using Trusted Third Party Archives.
BS 4743	Covers the storage, transportation and maintenance of different types of media for use in data processing and information storage.
BS 5454:2000	Recommendations for storage of archival documents
BS ISO/IEC 17799:2005 BS ISO/IEC 27001:2005 BS7799-2:2005	Standard for the management of information security. Part 1: Information Security Management Part 2: Information Security Management Systems.
ISO 15489	International Records Management standard Best practice guidance in records management.
ISO 19005	Document Management Standard for archiving electronically for long-term preservation.
The NHS Information Governance Toolkit	The IG Toolkit return is required from all NHS organisations and provides guidance and best practice on all facets of information governance. See www.igt.connectingforhealth.nhs.uk

Where to go for guidance

Keeper of Public Records - National Archives
www.nationalarchives.gov.uk

Department of Constitutional Affairs
www.dca.gov.uk

The Health Archives and Records Group
www.archives.org.uk

Institute of Health Record and Information Management (IHRIM)
www.ihrim.co.uk

Records Management Society of Great Britain
www.rms-gb.org.uk

The National Archives, Kew, Richmond, Surrey TW9 4DU.
enquiry@nationalarchives.gov.uk

Information on professional codes of practice can be obtained from the following organisations:

The General Medical Council
www.gmc-uk.org

British Medical Association
www.bma.org.uk

The Nursing and Midwifery Council
www.nmc-uk.org

The Chartered Society of Physiotherapy
www.csp.org.uk

General Social Care Council
www.gscc.org.uk

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