



**RACGP**  
Royal Australian College  
of General Practitioners

# Privacy and managing health information in general practice

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# About this resource

## About this resource

General practice has a responsibility to protect the privacy of patient health information and be compliant with relevant legislation.

This resource provides an overview of the legislative framework that regulates the way personal information is handled – the Privacy Act 1988, the 13 Australian Privacy Principles (APPs), and other relevant health records legislation within the general practice setting.

The appropriate management of health information in general practice goes beyond just privacy considerations and this resource also provides best practice guidance on:

- patient consent
- patient rights
- management and security of medical records
- information used in medical research.

The content of this resource is intended as a general guide only. The Royal Australian College of General Practitioners (RACGP) recommends you seek appropriate legal or professional advice to support your practice meeting its privacy requirements.

### ★ Australian Privacy Principles

The APPs provide a universal framework and focus on transparency in the following five areas:

- APPs 1, 2: **management** of personal information
- APPs 3–5: **collection** of personal information
- APPs 6–9: **use** of personal information
- APPs 10, 11: **integrity and security** of personal information
- APPs 12, 13: **access to and correction** of personal information.<sup>1</sup>

**Australian Privacy Principles — a summary for APP entities**  
from 12 March 2014

Australian Government  
Office of the Australian Information Commissioner

**APP 1 — Open and transparent management of personal information**  
Ensures that APP entities manage personal information in an open and transparent way. This includes having a clearly expressed and up to date APP privacy policy.

**APP 2 — Anonymity and pseudonymity**  
Requires APP entities to give individuals the option of not identifying themselves, or of using a pseudonym. Limited exceptions apply.

**APP 3 — Collection of solicited personal information**  
Outlines when an APP entity can collect personal information that is solicited. It applies higher standards to the collection of 'sensitive' information.

**APP 4 — Dealing with unsolicited personal information**  
Outlines how APP entities must deal with unsolicited personal information.

**APP 5 — Notification of the collection of personal information**  
Outlines when and in what circumstances an APP entity that collects personal information must notify an individual of certain matters.

**APP 6 — Use or disclosure of personal information**  
Outlines the circumstances in which an APP entity may use or disclose personal information that it holds.

**APP 7 — Direct marketing**  
An organisation may only use or disclose personal information for direct marketing purposes if certain conditions are met.

**APP 8 — Cross-border disclosure of personal information**  
Outlines the steps an APP entity must take to protect personal information before it is disclosed overseas.

**APP 9 — Adoption, use or disclosure of government related identifiers**  
Outlines the limited circumstances when an organisation may adopt a government related identifier of an individual as its own identifier, or use or disclose a government related identifier of an individual.

**APP 10 — Quality of personal information**  
An APP entity must take reasonable steps to ensure the personal information it collects is accurate, up to date and complete. An entity must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.

**APP 11 — Security of personal information**  
An APP entity must take reasonable steps to protect personal information it holds from misuse, interference and loss, and from unauthorised access, modification or disclosure. An entity has obligations to destroy or de-identify personal information in certain circumstances.

**APP 12 — Access to personal information**  
Outlines an APP entity's obligations when an individual requests to be given access to personal information held about them by the entity. This includes a requirement to provide access unless a specific exception applies.

**APP 13 — Correction of personal information**  
Outlines an APP entity's obligations in relation to correcting the personal information it holds about individuals.

**For private sector organisations, Australian Government and Norfolk Island agencies covered by the Privacy Act 1988**

[www.oaic.gov.au](http://www.oaic.gov.au)

[https://www.racgp.org.au/FSDEDEV/media/documents/Running\\_a\\_practice/Protecting\\_practice\\_information/Australian-Privacy-Principles.pdf](https://www.racgp.org.au/FSDEDEV/media/documents/Running_a_practice/Protecting_practice_information/Australian-Privacy-Principles.pdf)

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1. Australian Government, Office of the Australian Information Commissioner. *Australian Privacy Principles quick reference. 2014* (<http://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-quick-reference>) [Accessed 7 November 2022].
2. National Health and Medical Research Council, Australian Research Council, Australian Vice-Chancellors' Committee. *National statement on ethical conduct in human research (2007) (updated 2018). 2018* (<http://www.nhmrc.gov.au/about-us/publications/national-statement-ethical-conduct-human-research-2007-updated-2018>) [Accessed 16 January 2023].
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# Useful resources

## Useful resources

### Useful resources

- The Office of the Australian Information Commissioner (OAIC) APPs quick reference guide is available at [www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-quick-reference](http://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-quick-reference) (<https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-quick-reference>)
- All RACGP privacy resources are available at [www.racgp.org.au/running-a-practice/security/managing-practice-information](http://www.racgp.org.au/running-a-practice/security/managing-practice-information) (<https://www.racgp.org.au/running-a-practice/security/managing-practice-information>)
- RACGP privacy policy template available at [www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates](http://www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates) (<https://www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates>)

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# Glossary

## Glossary

### ! Common privacy terms used when managing health information<sup>2-4</sup>

- The **Australian Privacy Commissioner** is the national regulator of privacy, conferred by the Privacy Act 1988 (Privacy Act) and other laws. The Australian Privacy Commissioner holds position within the OAIC. Their primary focus is on privacy, freedom of information and government information policy.
- **Confidentiality** refers to a set of obligations imposed through law or ethics. For example, a patient discloses confidential information to their general practitioner (GP) on the understanding the information will only be used within the practitioner–patient relationship. The National Health and Medical Research Council (NHMRC) defines ‘confidentiality’ as ‘the obligation of people not to use private information – whether private because of its content or the context of its communication – for any purpose other than that for which it was given to them’.<sup>2</sup>
- **De-identified health information** refers to health information that is ‘no longer about an identifiable individual or an individual who is reasonably identifiable’.<sup>3</sup> Care should be taken to ensure re-identification does not occur. If health information is de-identified, it falls outside of the privacy legislation.
- **Health information** includes information or opinions about the health or disability of an individual and a patient’s wishes about future healthcare. It also includes information collected during the provision of a health service (and therefore includes personal details such as names and addresses).<sup>3</sup> Health information is regarded as one of the most sensitive types of personal information. For this reason, the Privacy Act provides extra protection for the way health information is handled.
- **Personal information** is defined by the Privacy Act as ‘information or opinion about an identified individual, or an individual who is reasonably identifiable’.<sup>3</sup> Personal information includes an individual’s:
  - name and address
  - signature
  - contact details
  - birth date
  - medical records
  - bank account details.

Personal information might be held in any media. A general practice might record personal information on paper and in electronic records, X-rays, computed tomography (CT) scans, videos, photographs and audio recordings. Personal information might be collected by a GP directly from the patient or a third party in the course of providing a healthcare service.



- Generally, the term ‘use and disclosure’ refers to whether third parties are involved. Neither ‘use’ nor ‘disclosure’ are easily defined terms.
- A practice ‘discloses’ health information if it makes it accessible to persons, agencies or companies ‘outside the entity and releases the subsequent handling of the personal information from its effective control’.<sup>3</sup> A GP may disclose health information if they discuss a patient’s conditions with other practitioners.

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1. Australian Government, Office of the Australian Information Commissioner. Australian Privacy Principles quick reference. 2014 (<http://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-quick-reference>) [Accessed 7 November 2022].
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*Privacy law*

## Privacy law

Information management in general practice has various privacy implications. This module aims to provide awareness of the common privacy laws that relate to general practice.

### Topics in this module:

- [The Privacy Act \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-law/the-privacy-act\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-law/the-privacy-act)
- [Health records legislation \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-law/health-records-legislation\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-law/health-records-legislation)
- [Doctor-patient confidentiality \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-law/doctor-patient-confidentiality-7\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-law/doctor-patient-confidentiality-7)

# The Privacy Act

## The Privacy Act

The Privacy Act (The Act) regulates how most personal information is managed. It includes all 13 APPs.

The Act applies to private sector organisations, as well as most government agencies unless an exception applies. General practice is subject to stringent privacy obligations by virtue of handling health information.

Currently, the maximum civil penalty for serious or repeated interferences with privacy' is \$2.22 million and is set to increase.<sup>5</sup>

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# Health records legislation

## Health records legislation

Victoria, New South Wales, and the Australian Capital Territory have their own legislation regulating the handling of health information, as detailed in their various sets of principles. Such principles operate concurrently with the Privacy Act and are broadly consistent with the APPs. Their respective definitions of personal information and health information are also similar.

However, the state and territory legislation might impose additional requirements in certain situations (eg refer to module on [Sale or closure of a practice \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-general-practic/sale-or-closure-of-a-practice\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-general-practic/sale-or-closure-of-a-practice) ) and care should be taken to ensure compliance with both sets of laws where necessary.

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# Doctor–patient confidentiality

## Doctor–patient confidentiality

The Medical Board of Australia, in its [Good medical practice: A code of conduct for doctors in Australia](http://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx) (<http://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx>), states ‘a good doctor–patient partnership requires high standards of professional conduct’.<sup>6</sup> Among other principles, this involves ‘protecting patients’ privacy and right to confidentiality, unless release of information is required by law or by public-interest considerations’.<sup>6</sup>

According to this code of conduct, ‘patients have a right to expect that doctors and their staff will hold information about them in confidence, unless release of information is required by law or public interest considerations’.<sup>6</sup>

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# *Patient consent*

## Patient consent

Patients have the ethical and legal right to make informed decisions about their health. Informed consent is the basis for many Privacy Act exceptions, permitting collection, use and disclosure.

To minimise the risk of legal issues, GPs must obtain a patient’s informed consent. It might be reasonable to consider an attending and willing patient as consenting, however, it is recommended to obtain the patient’s express consent (eg by a signed form or as a note on the patient record in your clinical information system).

The requirement to obtain informed consent applies to any research being conducted by a practice using identified patient data.<sup>2</sup>

### Topics in this module

- [Informed consent \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/informed-consent\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/informed-consent)
- [Inferred or express consent \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/inferred-or-express-consent\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/inferred-or-express-consent)
- [Withheld consent \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/withheld-consent\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/withheld-consent)
- [Competence, capacity and maturity to provide consent \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/competence-capacity-and-maturity-to-provide-consent\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/competence-capacity-and-maturity-to-provide-consent)

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# Informed consent

## Informed consent

To provide informed consent, patients must have:

- sufficient information about their own healthcare
- the ability to make appropriate decisions.

The information a patient requires to provide informed consent depends on the situation. For example, this might include details on how their information will be used, who will have access to their information, and any potential benefits or risks related to providing information, referrals or treatment options. Patients should be informed if it is likely their information will be sent outside of Australia and if so, to where.

GPs are responsible for determining if a patient is capable of giving informed consent (refer to module on [Competence, capacity and maturity to provide consent \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/competence-capacity-and-maturity-to-provide-consent\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/patient-consent/competence-capacity-and-maturity-to-provide-consent)).

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# Inferred or express consent

## Inferred or express consent

Verbal or written consent might be:

- express – when a patient signs or clearly expresses their agreement
- inferred (or ‘implied’) – where the circumstances imply the patient has consented.

Express consent should be sought wherever practical and/or where significant clinical risk is possible (eg before a procedure or surgery). A signed form is an example of express consent, but an informed and well-documented discussion with a patient might equally comply with this requirement.

Inferred consent should only be used when express consent cannot be obtained. GPs must not overestimate the scope of inferred consent. For example, it is reasonable to infer a patient’s consent to their records being collected and used during repeat consultations. However, this consent would not necessarily extend to the disclosure of that information to third parties; for example, sharing health summaries within referral letters to other medical professionals.

GPs should also be wary of taking silence or a lack of objection as an indicator of consent; if there is any doubt, GPs should obtain express consent.

It is recommended consent conversations are thoroughly documented, within a patient’s medical record. Problems might arise if a patient does not understand the potential uses of their health information. Where GPs must establish implied consent, comprehensive consultation notes are essential. These notes should include the information provided, the nature of the discussion and the patient’s response.

### Consent in group practices

- In group practices that allocate GPs to see patients based on availability, a patient’s health information will be disclosed to and used by whichever GP sees the patient.
- New patients must be made aware of this rolling or rotating use of GPs. Patients should be made aware of the consulting GP when booking their appointment. It is reasonable to infer consent to the use and disclosure of the patient’s health information in this context if the patient does not otherwise object to seeing the allocated GP.

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# Withheld consent

## Withheld consent

GPs should be careful when treating patients who refuse to provide certain health information or withhold consent for healthcare.

When providing procedures or care that has a possibility of risk associated with it, this must be clearly explained along with the challenges of not providing the necessary health information or consent.

In these circumstances, it is recommended GPs make detailed notes to document the discussion, the patient's decision, and the resulting outcome. In some cases, this outcome might conflict with the GP's duty of care and therefore comprehensive consultation notes are valuable.

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# Competence, capacity and maturity to provide consent

## Competence, capacity and maturity to provide consent

Some patients might not be competent to provide adequate consent.

Various states and territories have a framework for obtaining substitute consent on behalf of patients who are incompetent due to age, illness or disability. In these situations, GPs are advised to seek further advice. Age-related consent is dealt with at the state and territory level. As a rule, if a young person is mature enough to understand what will happen to their information, they will have capacity to consent.

New South Wales, South Australia and the Australian Capital Territory have laws specifying the age of when a young person can provide valid consent:

<b>SA</b>	the age is 16 years or over
<b>NSW</b>	the age is 14 years or over
<b>ACT</b>	requires a parent or guardian to consent for a young person under the age of 18 years, unless the health practitioner assesses the child to have sufficient maturity and adequate understanding
<b>VIC</b>	consideration should be given to the <i>Medical Treatment Planning and Decisions Act 2016</i> and specifically to the concept of decision-making capacity.

The Act does not stipulate age; its guidelines assume people over the age of 15 years have the 'capacity' to give informed consent.<sup>3</sup> GPs must assess the capacity and maturity of each young person to understand and make informed decisions on a case-by-case basis.

In unclear cases, GPs can request corroborating consent from a parent or guardian.

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# ***Information management for patients***

## Information management for patients

### Topics in this section:

- [Collection of health information \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/collection-of-health-information\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/collection-of-health-information)
- [Notification \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/notification\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/notification)

# Collection of health information

## Collection of health information

Patients should be notified about how their information might be used or disclosed and what rights of access they will have.

### ✔ Key points: Collection of health information

- Your practice should not collect health information unless the patient consents and the information is required for the delivery of healthcare.
- Your practice must collect personal information in an ethical and fair manner (without being intrusive or using methods of intimidation).
- Consent is not required where:
  - the health information is collected in accordance with the policy and framework established by 'competent health or medical bodies'<sup>2</sup>
  - it is unreasonable to seek it and the collection is necessary to 'lessen or prevent a serious threat to life, health or safety' of an individual or the public<sup>2</sup>
  - other exceptions also apply.
- Unsolicited information (received without asking) must be destroyed, unless your practice would typically and ethically collect that information.

## Receiving health information from third parties

While GPs obtain most health information directly from the patient (and should do so wherever possible), they also receive information from third parties; including guardians or other health professionals involved in the patient's care.

Where personal information is received without the GP asking for it, GPs need to consider whether they would have usually collected that information. If not, the information should be destroyed or de-identified.

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# Notification

## Notification

### Notification requirements for collecting personal information

APP 5 requires GPs to ensure patients are aware of the collection and potential use and disclosure of their health information.

It is not necessary to notify patients during every consultation, as it is clear information is being collected. Similarly, it is not necessary to notify patients if their health information will need to be disclosed when referring to a specialist.

There will be times when the collection of health information is not obvious to the patient. For example, in some practices with complex corporate structures, the organisation ultimately collecting and holding the information might not be obvious. It is recommended practices ensure their patient privacy forms are updated to reflect this situation.

Where necessary, as appropriate, when there is a significant change to the way the practice works or the needs of the patient change, your practice should obtain renewed consent.

The notification requirements referred to in [APP 5 \(https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-5-app-5-notification-of-the-collection-of-personal-information\)](https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-5-app-5-notification-of-the-collection-of-personal-information) have administrative implications for incorporated practices and practices using cloud computing (refer to module on [Information transferred overseas \(https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-guidelines/chapter-5-app-5-notification-of-the-collection-of-personal-information\)](https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-guidelines/chapter-5-app-5-notification-of-the-collection-of-personal-information)).

#### ✔ Notification obligations

- When collecting health information, GPs must take steps to notify the patient.
- Notified information must include the practice's details, the purpose for which the information was collected, who the health information can be disclosed to, and whether it will be disclosed to an overseas recipient (and if so, where).
- If your practice is using cloud computing, ensure you have updated your consent forms and notified patients.



## Privacy notices

Your practice should consider whether a standard privacy notice addressing [APP 5 \(https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-5-app-5-notification-of-the-collection-of-personal-information\)](https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-5-app-5-notification-of-the-collection-of-personal-information) would be an appropriate method of notifying patients.

A privacy notice might include information about:

- sharing of information across a multidisciplinary medical team
- use and disclosure of de-identified data for medical research
- the use of patient information for GP professional development purposes or for quality improvement activities
- how information is used for referrals to other specialists.

In some situations, a practice might need to provide additional patient health information to third parties such as insurers and this should be included in your privacy notice. This helps practices meet the requirement to take reasonable steps to notify individuals on how their information is used<sup>8</sup> and helps manage patient expectations, promote trust and support further uses of health information for secondary purposes. (refer to section on [Use and disclosure of health information \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information)).

When used appropriately, privacy notices can support patients to understand how their health information is used and disclosed.

### Useful RACGP resource

- Your practice can customise the RACGP patient privacy pamphlet, which is available to download at [www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates](http://www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates) (<https://www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates>).

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# ***Use and disclosure of health information***

## Use and disclosure of health information

When dealing with health information, your practice must decide if the intended use or disclosure is for a primary purpose (for collection) or a secondary purpose (directly related).

Health information is usually collected for providing healthcare services (the primary purpose). Your practice can use or disclose health information for the primary purpose.

If the patient consents, or would reasonably expect the use or disclosure, your practice can choose to use health information for another 'secondary' purpose. If a patient's health information is de-identified, you and your practice need to decide whether it is appropriate to release this data at the request of an external organisation. The [Guiding principles for managing requests for the secondary use of de-identified general practice data \(https://www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data\)](https://www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data) provides decision-making support and a checklist.

If a patient's understanding and expectations are not clear, express consent should be obtained.

A practice relying on 'reasonable expectations' must consider these from the perspective of a patient with no specific medical knowledge. The patient's age, cultural background and medical history should also be considered. Whether the intended use or disclosure was notified to the patient is also important.

### Topics in this module:

- [Use for primary and secondary purposes \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information/use-for-primary-and-secondary-purposes\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information/use-for-primary-and-secondary-purposes)
- [Use or disclosure in the practice setting \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/use-or-disclosure-in-the-practice-setting\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/use-or-disclosure-in-the-practice-setting)
- [Use for business practices \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information/use-for-business-practices\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information/use-for-business-practices)
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- [Limiting disclosure \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information/limiting-disclosure\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information/limiting-disclosure)
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- [Information transferred overseas \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information/information-transferred-overseas\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-patients/use-and-disclosure-of-health-information/information-transferred-overseas)
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# Use for primary and secondary purposes

## Use for primary and secondary purposes

### ✔ Use for primary and secondary purposes

- A GP's primary purpose for collecting health information is to provide healthcare services.
- Your practice might use and disclose health information for that 'primary' purpose.
- To decide whether it is appropriate to release de-identified healthcare data at the request of an external organisation, refer to [Guiding principles for managing requests for the secondary use of de-identified general practice data \(https://www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data\)](https://www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data). This provides decision-making support and a checklist.
- Health information might be used or disclosed for another 'secondary' purpose where:
  - the patient consents
  - the patient would expect a use or disclosure related to their healthcare
  - it is unreasonable to seek consent when the collection of information is necessary to lessen or prevent a serious threat to life, health or safety of an individual or the public
  - the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of another individual who is a genetic relative of the individual
  - the patient is physically or legally incapable of giving consent and the health information is disclosed to a responsible person (which might include parents, adult siblings, spouses, adult relatives, guardians or attorneys granted power concerning health decisions) for compassionate reasons or to allow appropriate care or treatment of the patient.
- A practice might use or disclose health information as required or authorised by or under law.
- Practices are responsible for information disclosed overseas.

### Useful RACGP resource

- The Guiding principles for managing requests for the secondary use of de-identified general practice data (<https://www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data>) provides decision-making support and a checklist to assist your practice to decide whether it is appropriate to release de-identified healthcare data at the request of an external organisation.

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# Use for business practices

## Use for business practices

It is reasonable for your practice to use health information for a secondary purpose relating to the general practice business.

For more information, refer to the module on [Information management for general practice business information](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-general-practice) (<https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-general-practice>), and specifically the section on [The business of general practice](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-general-practice/the-business-of-general-practice) (<https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-for-general-practice/the-business-of-general-practice>).

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# Use or disclosure in the practice setting

## Use or disclosure in the practice setting

In the practice setting, patients will generally expect their information to be used for a wide variety of activities that are directly related to the healthcare services they receive.

These might include:

- providing information about treatments
- being treated by a person other than their treating GP, such as a specialist or during admission to hospital
- internal assessment practices, such as to assess the feasibility of particular treatments
- management, funding, complaint handling, planning, evaluation and accreditation activities
- disclosure to experts or lawyers (for legal opinions), insurers or medical defence organisations to report adverse incidents or for the defence of legal proceedings
- disclosure to clinical supervisors.<sup>7</sup> Some practices might use or disclose health information for medical research, quality assessment or clinical audit activities. As these are not always expected by patients, practices should limit their use or disclosure except where consent is obtained. In any event, consent is often a key component to health research using human participants ethical approval (for more information, refer to the [Health research \(http://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-and-information-security/health-research\)](http://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-and-information-security/health-research) section).

### Case study: Primary purposes vs multidisciplinary care

Laura has been seeing her treating GP for many years. She suffered a stroke and now experiences stroke complications, some of which are likely to be permanent.

Laura's healthcare now requires a coordinated effort between her treating healthcare professionals, including her neurologist, rehabilitation team and practice nurse.

In her distressed state, Laura might not expect her GP to organise this multidisciplinary team. Accordingly, her GP organises a consultation with Laura to discuss the benefits of multidisciplinary care, so that she can make an informed decision to allow disclosure of her health information to other health practitioners. Laura's treating GP carefully notes the conversation and Laura's express consent.

Laura's GP has recognised that the primary purpose for using Laura's health information is for the GP to treat and manage her stroke symptoms. Laura would expect this use as part of her regular healthcare. However, it is unclear whether Laura would expect her health information to be disclosed to other health practitioners. This disclosure by Laura's GP might be considered a

secondary purpose. Under the Privacy Act, the disclosure of the information necessary to treat and manage Laura's stroke recovery is ordinarily prohibited, unless an exception applies; in this case, the two most applicable exceptions are consent and reasonable expectations.

It was therefore wise for Laura's GP to seek Laura's consent. Additionally, by discussing the care plan and the scope of involvement of the multidisciplinary team, Laura's GP has managed her reasonable expectations regarding the use of her health information by the members of her team. This will allow greater flexibility in treating Laura and it is now reasonable to not require Laura's consent to each exchange.

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# Use for training and education purposes

## Use for training and education purposes

Patients are often unaware their health information might be used for training and education purposes.

Without consent, it might be unreasonable for GPs to expect patients to permit their health information to be used. However, this expectation might be influenced by the nature of the training activity. For example, filming a family therapy session is highly likely to require express consent. In contrast, GPs are more likely to rely on implied consent for activities more closely linked to the provision of healthcare services, such as reflective discussion with peers or for training registrars.

Ideally, information should be de-identified before it is used for training, quality assurance or audit exercises. GPs should consider whether to include consent for training and education purposes on their patient registration forms to avoid this becoming an issue.

Your practice is encouraged to include information about these activities and clinical audits in your practice policy on privacy and managing health information. If a practice intends to use de-identified information, it is still important to notify patients of this in your privacy policy.

### Useful RACGP resource

- Privacy policy template available at [www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates](http://www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates) (<https://www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates>)

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# Limiting disclosure

## Limiting disclosure

Where health information must be disclosed to a third party, your practice must consider what information is relevant for the proposed purpose. Patients will expect that only the necessary parts of their health information will be disclosed.

For example, a referring GP might not be justified in forwarding a complete copy of a patient's medical record to another practitioner if that information does not relate to the referral.

Prior to disclosing any health information, your practice should carefully examine its authority for disclosure and seek advice where necessary (refer to section on [Subpoenas and disclosure required by law \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/subpoenas-and-disclosure-required-by-law\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/subpoenas-and-disclosure-required-by-law)).

For further information, refer to the RACGP's resources on managing the use of your practice data, available at [www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data \(https://www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data\)](https://www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data).

### Case study: Limiting disclosure

Laura has commenced her stroke rehabilitation. Her treatment is being led by her GP, who is coordinating a multidisciplinary healthcare team consisting of a neurologist, rehabilitation team and practice nurse. Laura visits her neurologist on a regular basis. The consultation recommendations are provided to Laura's GP, who then passes them on to the other healthcare professionals.

Laura discloses to her neurologist that she has been having difficulty controlling her emotions, including experiencing depression. Her GP is advised and discusses Laura's depression with her and prescribes medication as appropriate.

When Laura visits her treating physiotherapist, he talks to Laura about her depression. Laura is surprised and embarrassed by this. She did not expect her physiotherapist to receive information disclosed to her neurologist.

It is reasonable to expect that Laura consented to her GP disclosing those aspects of her health relevant to each treating team member. However, Laura's GP did not consider that she was unlikely to consent to unrelated disclosures, such as in this instance where her physiotherapist

has been made aware of her depression. This might be an unauthorised disclosure under the Privacy Act, irrespective of whether the physiotherapist acquired the information from her medical record or whether it was disclosed by another team member.

In assessing what aspects of Laura's medical record should be disclosed, Laura's GP should have:

- managed the information provided to each team member and maintained strict confidentiality in discussing Laura's condition
- managed what information was collected in her general file and what was stored separately
- discussed with Laura how (and with whom) her information would be shared.

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# Subpoenas and disclosure required by law

## Subpoenas and disclosure required by law

In certain circumstances, GPs are required to disclose health information regarding communicable diseases, child abuse or for mandatory reporting purposes.

GPs might also receive requests for medical files as part of legal proceedings. These requests may occur where a patient is suing the GP or another organisation (such as an insurer) and the medical records are relevant, and appropriate legal advice should be sought where necessary.

What information is considered necessary is assessed on a case-by-case basis. If a GP deems it inappropriate to provide a patient's complete health record despite a subpoena, they might have to justify this decision to the court. GPs and their practice should consult their own medical indemnity provider when considering responses to legal requests for medical information.

GPs might charge reasonable administration fees to produce these documents. The Australian Medical Association establishes a schedule of professional fees for this.<sup>9</sup>

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# Information transferred overseas

## Information transferred overseas

It is important to consider the privacy implications of transferring health information outside Australia, as some countries have inadequate privacy standards. Once this personal information is disclosed in an unregulated way, it is very difficult to regain control over it.

The need for protection extends to the use of overseas data storage as well as the processing of patient information, such as using transcription and reporting services.

It is recommended to seek patient consent before transferring health information outside Australia (noting that alerting patients to this possibility is a requirement of privacy policies; refer to the module on [Privacy policies \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/privacy-policies\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/privacy-policies)).

However, consent is not strictly necessary in circumstances where reasonable steps have been taken to ensure the overseas recipient does not breach the privacy of that individual, or where the practice believes the overseas recipient is subject to a privacy scheme or law protecting the information in a manner similar to Australia.

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# Patient access to medical records

## Patient access to medical records

### ✔ Patient access to medical records

- Patients may access all their personal information held by your practice, subject to a few exceptions.
- Your practice must respond to requests for access within a reasonable period (generally 30 days).
- It is essential to verify the identity of the requesting person.
- Practices are not required to provide access if they reasonably believe:
  - it would unreasonably impact the privacy of another person
  - it might threaten the life, health or safety of another person or the public
  - other exceptions to providing access might also apply.
- Refusal to grant access must be communicated in writing with reasons and the process for lodging a complaint.

## Scope of access

The scope of a patient's access rights is broad and includes all of a patient's personal information. A patient's medical record contains all information created by their treating GP(s) or received from other practitioners, and usually exists in both electronic and hard copy documents. Therefore, these requests will involve information held on the practice's administrative system as well as in the medical record.

### ❗ Identifying records containing other patient data

Your practice must be able to identify those records containing another patient's personal information or have the capacity to search relevant medical records where necessary. This commonly occurs in the family setting.

## Managing access

Some states require access requests to be made in writing. Where there is no requirement for requests to be in writing it is considered best practice to ask patients to put their request in writing. This provides clarity on the information being sought as some requests might involve collating a significant amount of information. A written request also provides a record of the request.

Where a patient is provided with access to their medical record, it might be appropriate for their usual treating GP to be available to clarify its contents and to discuss any concerns with the patient.

Alternatively, it might be appropriate to refer the patient to the original author of a record (such as when health information is received from a specialist).

In some cases, GPs might discharge their obligation to provide access to health information by arranging for the patient to obtain the information from an intermediary, such as a referring doctor. For example, this might be the preferred option for a pathologist who has had no direct contact with the patient. However, in all cases the intermediary must be mutually agreed on.

Some states only allow the use of intermediaries where there is a serious threat to the life or health of the requesting patient.

## Type of access

**ⓘ It is advised that practices do not release the original paper file**

Requests will usually be for access to a patient's entire medical record. However, requests for specific information might be received by email, telephone or in person.

A practice might not be comfortable in providing entire medical records. However, merely being uncomfortable or asserting proprietary rights is not a valid ground for refusal. The privacy laws require access as requested, where reasonable and practical, or in a mutually agreed way.

It is recommended practices consider these exemptions carefully in response to a request for a full medical record. Although the obligation is to provide the information in the manner requested by the patient, in the general practice setting it might be unreasonable to hand over an entire medical record. In this instance:

- it is advised that practices do not release the original paper file
- practices are entitled to make this assessment and should consider acceptable alternatives
- in providing alternatives, the needs of the practice and the patient should be considered and might include:
  - an up-to-date summary containing all relevant material
  - provide access to a patient's medical files in a room at the practice.

## Refusing access

It is recommended your practice is familiar with the reasons it might refuse to provide access.

Your practice should consider the risk of distress to other patients. For example, practices might consider refusing access when:

- it would lead to significant distress or self-harm or harm to another person<sup>4</sup>
- there is health information of another patient within the medical record

- the requesting patient's information was disclosed by another patient in confidence
- there is a possibility of domestic abuse or child abuse.

If a GP is considering refusing access, they should obtain professional legal advice.

## Access fees

Your practice can charge a fee for providing a patient access to their personal information, but not for merely requesting access. You should therefore only consider imposing fees (if at all) after the request is made.

### Case study: Medical record access through an intermediary

Mary has requested her medical file. In assessing her request, the practice manager notes Mary had moved away from the practice. Satisfying the request would mean sending a copy of the medical record by courier. The practice determines the costs of doing so would be quite high.

In addition, Mary's treating GP does not want to send the full medical record. She is concerned Mary would not understand some of the information and the inevitable internet searching that would follow to clarify unknown medical terms would only cause further stress.

In consultations with the GP, the practice manager determines it would not be reasonable or practical to send the medical file to Mary. However, they contact Mary to inquire whether sending the record to a closer GP would assist her. Mary agrees and is able to discuss the contents of the record with her local GP in an informed environment.

A practice might request fees to cover the cost of:

- administration for file searching, collating, etc
- copying or printing records
- postage or courier delivery
- facilitating access with intermediaries.

Your practice might want to consider the patient's individual circumstances and their capacity to pay prior to determining and/or waiving access fees.

Practices might consider alternatively aligning a patient's access request with a consultation.

### Create a policy: Patient record access

It is recommended your practice develops and implements a policy covering patient record access. This policy should outline:

- how and to who requests for access should be made
- the process for identity verification



- how access will be granted
- recommended response times
- whether access fees will apply and in what circumstances (if any) these charges will be waived.

This information might be incorporated into your practice's privacy policy (refer to section on [Privacy policies \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/privacy-policies\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/privacy-policies)).

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# Privacy policies

## Privacy policies

### Create a policy: Patient privacy

- Your practice must have a current and patient-focused privacy policy outlining how health information is managed in your practice.
- Your practice's privacy policy must be available free of charge and easily accessible to your patients in an appropriate form.
- Privacy policies must reflect your practice's procedures and address all prescribed requirements.
- A privacy policy must explain:
  - how personal information is collected, used and disclosed within the practice
  - how a patient may access and correct their information
  - how privacy complaints can be made and how the complaint will be dealt with
  - whether information is likely to be disclosed overseas and, if so, where.

### Create a policy: External privacy

- Your practice should maintain a transparent privacy policy that is freely available both in print and online. For example, display a printed copy at the practice reception desk or in waiting areas, or publish an electronic copy on the practice website.
- The privacy policy content will vary across practices depending on the processes, structure and the record-keeping system in place.
- This privacy policy will enable your practice to better manage patient enquiries or complaints concerning their health information.
- The RACGP has developed a privacy policy template. It is important to adapt this template to ensure its relevance to your practice. The template is available at [www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates](http://www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates) (<https://www.racgp.org.au/running-a-practice/practice-resources/practice-tools/general-practice-policy-and-procedure-templates>)

### Create a policy: Internal privacy procedures

It is strongly recommended for your practice to have internal privacy procedures in place and documented.

These procedures should include information about:

- the collection of health information, ensuring it is done in a discreet manner protecting the information from unauthorised access
- obtaining a patient’s consent to the use or disclosure of health information by practice employees (including doctors, locums, registrars and other authorised healthcare service providers)
- obtaining a patient’s consent to the use or disclosure of health information for medical research, quality assurance and improvement (where relevant)
- providing patients with access to their health information
- de-identifying health information
- ensuring health information is appropriately disclosed where authorised
- classifying health information, to ensure disclosure is limited to those who are authorised
- ensuring protection against unauthorised access across each medium the practice uses (eg hard copy and electronic records)
- ensuring protection against data loss
- retention of patient medical records to comply with health record law requirements (refer to the section on [Retention and destruction of medical records \(https://www.racgp.org.au/racgp-articles/retention-and-destruction-of-medical-records\)](https://www.racgp.org.au/racgp-articles/retention-and-destruction-of-medical-records))
- information about privacy and confidentiality training. All staff handling health information must be aware of and comply with the practice’s internal procedures
- details of who will be responsible for overseeing the implementation and operation of the privacy policy and to be the point of contact for privacy concerns.

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# Correction of health information

## Correction of health information

### Correction of health information

- Your practice should correct health information it holds about patients if:
  - your practice deems that information is inaccurate, out of date, incomplete, irrelevant or misleading
  - a patient requests it to do so.
- It is important to verify the requesting person's identity.
- Correction requests must be actioned within a reasonable period.
- Refusals must be communicated in writing with reasons and the process for lodging a complaint.
- Your practice must notify affected third parties of the corrected information.

## Notification to third parties

In the event of corrections, your practice must notify any third parties to whom the affected health information has been disclosed. It is recommended to keep detailed records of any disclosures.

## Policy on correction

### Create a policy: Correction of health information

It is recommended for your practice to implement procedures regulating the management of requests for health information correction. These might be incorporated into the practice's privacy policy.

- The rights concerning correction differ to those for access.
- Policies should instead outline a practical approach to addressing the requests rather than having patients request correction via a particular procedure or using a form.

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***Information management for  
general practice business  
information***

## Information management for general practice business information

### Topics in this section:

- [The business of general practice \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-relating-to-general-practic/the-business-of-general-practice\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-relating-to-general-practic/the-business-of-general-practice)
- [Sale or closure of a practice \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-relating-to-general-practic/sale-or-closure-of-a-practice\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-relating-to-general-practic/sale-or-closure-of-a-practice)
- [Medical records \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-relating-to-general-practic/medical-records\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-relating-to-general-practic/medical-records)
- [Marketing \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-relating-to-general-practic/marketing\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/information-management-relating-to-general-practic/marketing)



# The business of general practice

## The business of general practice

### ✓ The business of general practice

- Consent for the use of health information for internal business practices is assumed.
- Patients should be informed if your practice rotates GPs.
- Consent should be obtained before collecting and disclosing health information between related bodies corporate or service trusts.

## The use of health information for business purposes

Patients can expect their personal information to be used for the following secondary purposes without specific consent being provided:

- 'normal internal business practice, such as auditing and business planning'<sup>4</sup>
- billing or debt recovery (confidentiality should be maintained).

This expectation also extends to practice staff having access to patient health information for these same purposes.

Practices should seek advice confirming this before disclosure to any third-party service provider involved for these purposes.

## Group practices

In group practices that allocate GPs to patients based on availability, a patient's health information will be disclosed to and used by whichever GP sees the patient.

New patients should be informed of this rolling or rotating use of GPs. Patients should also be notified of the consulting GP when booking their appointment. In this situation, consent can be inferred to the use and disclosure of the patient's health information if the patient does not otherwise object to seeing the allocated GP.

This principle extends to new GPs employed into existing practices or partnerships.

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# Sale or closure of a practice

## Sale or closure of a practice

### Privacy considerations

A practice's patient list is a valuable asset, and it is unlikely a practice would be sold without it.

The Privacy Act is not clear on the sale or transfer of medical records. Medical records would be transferred as part of a sale by a sole practitioner or as part of the transfer of an unincorporated practice to a new owner.

Where possible, a long settlement period is recommended for business or asset sales involving the transfer of medical records. This will allow consent to be obtained from a patient (either express or inferred) through consent forms or communication of the transfer of records, either in the practice or provided to the patient.

Before and during any settlement period, vendors must ensure patients records are kept secure. Access to any medical records should only occur as required by the sale or transfer of the business and should be restricted to only those people involved in the sale who require access. Providing de-identified documents might be appropriate.<sup>10</sup>

When selling a practice, GPs should be aware medical records might need to be retained for insurance or other medico-legal purposes. It is important the sale agreement and patient consent permit this.

If the sale is of shares in an incorporated general practice, there is no transfer of personal information (it is retained within the company) and privacy concerns will not apply to the transfer itself.

### Deceased GPs

If a practice closes due to a GP's death, the practice staff (or the executor in the case of a sole practitioner) should take reasonable steps to notify patients and organise the transfer of their medical records to another GP.

### Health record legislation

There are additional requirements for the transfer or closure of a general practice under current health records legislation.

For example, legislation in Victoria and the ACT require practices to publish a notice in a local newspaper stating the practice is closing or being sold, detailing how the practice plans to deal with the medical records.

Legal advice should be obtained if required.

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# Medical records

## Medical records

### ✔ Medical records

- Your practice must ensure the health information it collects, uses or discloses is relevant, accurate, up-to-date and complete.
- Your practice must ensure health information that is no longer practically or legally needed is destroyed or de-identified.
- Medical records are usually owned by the practice, not the patient.

## Maintaining accurate and complete medical records

It is important medical records are accurate, up-to-date, comprehensive and legible. GPs must take reasonable steps to ensure the health information and consultation notes they hold are well organised. Medical records should always be sufficiently detailed and accessible to allow another GP to continue management of the patient. Your practice should use a follow-up system (subject to patient consent) to ensure patients are regularly seen and medical records are maintained accurately with current information.

## Ownership

Patients own the information in their medical record but do not own the medical record itself. Ownership might vary as follows:

- Sole practitioners retain full ownership over their medical records.
- Contract and employee GPs are likely to be creating medical records for their principal or employer and unlikely to own these themselves.
- GPs operating in a partnership might have a claim to a shared partnership interest over some, or all, of the medical records.
- GPs who own an incorporated practice own its assets and this usually includes the medical records. In the absence of any agreement specifying otherwise, multiple owners own the medical records jointly.

It is recommended the ownership of medical records is clarified and documented before GPs commence at a new practice. This will assist in preventing future disagreements when a departing GP intends to take records with them. It is recommended that advice is sought before entering into an agreement.

Despite the above, GPs are required under the Medical Board of Australia's [Good medical practice: A code of conduct for doctors in Australia \(http://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx\)](http://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx) to promptly facilitate the transfer of health information when requested by a patient.<sup>5</sup>

## Retention and destruction of medical records

Your practice should retain health information as required and in accordance with the applicable laws.

The Privacy Act requires health information to be destroyed or permanently de-identified once it is no longer needed for any authorised use or disclosure.

However, the ACT, NSW and Victoria require medical records to be retained until a young person turns 25, and for adults, for seven years from the date of the provision of the last health service. This overrides the Privacy Act.

Under some state and territory legislation, the destruction of any medical record is prevented when the record is likely to be involved in legal proceedings. It is recommended to seek advice on the current limitation periods that apply to your practice.

GPs must appropriately destroy or permanently de-identify health information following the expiry of these periods.

### ✔ Retention and destruction of records

- General practices should keep health records for the length of time specified in state or territory legislation.
- Once this time has expired, the APPs require you to appropriately destroy or permanently de-identify health information.
- APP 11 requires that reasonable steps are taken to destroy or de-identify personal information that is no longer needed. The reasonable steps will be dependent on whether the personal information is held in paper or electronic format.

## De-identification

Your practice might choose to permanently de-identify health information rather than destroy it. Care should be taken to ensure there is no prospect of the patient being identified from the remaining information.

The de-identification of health information is more than simply removing the patient's name. Any identifying information contained in the medical record must be deleted or destroyed to ensure confidentiality.

Whenever the information is in the form of individual data sets, there is a risk the data set could be linked to a particular individual based on details of age, postcode and medical condition. The more information included in the data set, the greater the risk of re-identification.

Even where data is combined, care is needed to ensure the number of people in each 'cohort' or subgroup is sufficient to ensure the privacy of the individuals is not breached. For example, the relevant NHMRC guidelines specify a minimum of five sets of individual's data in each cohort.<sup>11</sup>

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# Marketing

## Marketing

### ✔ Marketing

- Health information must not be used or disclosed for direct marketing without patient consent.
- Your practice must obtain patient consent to any services with commercial aspects, such as vaccinations.
- Sending unsolicited commercial communications to your patients is generally prohibited.

## Prohibitions on direct marketing

General practices might not ordinarily consider themselves as engaging in marketing activities. However, any promotion of a practice's services, even scheduled reminders or as part of recommended clinical practice, might be considered direct marketing and therefore have privacy considerations.

Direct marketing in a clinical setting refers to any marketing technique where a practice is promoting goods and services directly to patients. Practices should note some daily clinical initiatives might inadvertently breach these laws. For example, letters that use or disclose personal information to promote and advise patients about flu vaccination services could be considered direct marketing.

In contrast, the Australian Privacy Commissioner considers that letters relating to ongoing care are less likely to breach privacy laws, especially if the letters simply inform the patient of scheduled assessments and do not specifically promote any services.

To avoid inadvertently breaching these laws, practices should obtain patient consent by:

- requesting consent (via opt-in or opt-out mechanisms) on patient registration sheets and recording this consent in the management software
- asking for consent as patients present to the practice
- undertaking a directed consent campaign.



### **❗ Refusal requests for marketing**

Practices must have adequate procedures in place to ensure marketing messages are not sent to patients who have expressed their refusal.

## The Spam Act and Do Not Call Register

It is important practices are aware of the applicable prohibitions (and their exceptions) when sending electronic (email or text messages) or telephone communications. The Privacy Act defers to the operation of the *Spam Act 2003* and the *Do Not Call Register Act 2006*.

Generally, these Acts prohibit practices from sending unsolicited communications (by email, text message or telephone call) with the aim of selling goods or services. Practices sending solicited communications must ensure they meet any requirements first; for example, providing an unsubscribe function for mobile text message reminders.

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# ***Privacy and information security***

# Privacy and information security

## Topics in this section:

- [Healthcare identifiers \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-and-information-security/healthcare-identifiers\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-and-information-security/healthcare-identifiers)
- [Health research \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-and-information-security/health-research\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/privacy-and-information-security/health-research)

### Privacy and information security

- Your practice must protect personal information it holds from:
  - misuse, interference and loss
  - unauthorised access, modification or disclosure.
- Cross-border disclosures (ie disclosing information to an overseas recipient or using cloud computing companies) must first undergo a thorough risk assessment to ensure no privacy breaches will occur.
- As previously discussed, it is essential for your practice to:
  - conduct in-depth risk assessments
  - ensure safe electronic transfer of information
  - safely communicate via electronic mediums with patients
  - securely de-identify and destroy patient data
  - have an effective and updated security policy.
- Practices should refer to the [RACGP Information security in general practice resource \(http://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/information-security-in-general-practice\)](http://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/information-security-in-general-practice) for guidance and further information on information and cyber security.

### Case study: International consultation

Dr Murray, a GP, has been approached by a patient with an abscess on his leg. During the consultation, Dr Murray remembers a seminar, led by a professor from Canada, that discussed very similar wounds.

Dr Murray considers it appropriate to refer the wounds to the professor and takes several photographs of the abscess on his patient's leg. These photographs were later emailed to Canada along with significant extracts of the patient's notes (including some personal information).

Inadvertently, Dr Murray is likely to have breached the cross-border disclosure laws. Dr Murray could have managed the situation better if he:

- sent the photographs in a de-identified form
- sought the patient's informed consent to the disclosure
- investigated the privacy laws that apply in Canada
- sought the professor's assurance that the photographs would be examined in strict confidence, before sending them, and that they would be destroyed afterwards.

#### Create a policy: Clear screen

Your practice policy and procedures should include clearing screens for privacy.

Your policy should cover the following:

- remember to exit the previous patient's electronic file before the next patient enters the consulting room
- position computer monitors to keep information private, including computers used by reception staff at the front desk
- use 'clear screen' function keys, which instantly close down an open file or switch off the monitor
- use password-protected screensavers
- log off when leaving computers unattended or use automatic session time-outs.

#### Create a policy: Clear desk

Your practice policy and procedures should include clearing desks for the purpose of securing information and data.

Your policy should remind staff that:

- at the end of each day, each practice team member clears their desks of all documents, notes and media
- all documents should be removed from printers and fax machines immediately after being copied, sent or received.

# Healthcare identifiers

## Healthcare identifiers

The use of healthcare identifiers instead of names is useful to protect privacy. However, the adopted identifier system used by your practice must not include any prohibited details. In addition, the identification number should not reveal any health information about the patient.

### ! Healthcare identifiers

- Healthcare identifiers generated by your practice's desktop system should not include any information from:
  - the patient's name
  - the patient's date of birth
  - the patient's address
  - the patient's telephone number
  - the patient's Medicare number
  - any identifier assigned by a government agency
  - any other information that could identify the person.
- Your practice must not use or disclose a patient's Medicare number, their individual identifier assigned by or on behalf of a government agency, unless:
  - required to fulfil their obligations to that agency
  - to lessen or prevent a serious threat to life, health or safety or public health and safety
  - required or authorised by law, or for certain law-enforcement purposes.

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# Health research

## Health research

### Health research

Key points include:

- health research participant consent must be obtained
- research data should be de-identified at the earliest possible time
- researchers must strictly comply with both privacy and ethical obligations when conducting research using human participants.

Participant consent is paramount in health research that uses human participants, where patient data is identified, and this is reflected in the legal and ethical principles governing health research.

Patients should understand what the proposed research involves, the ways in which their information will be used or disclosed, the risks and benefits of agreeing to participate and whether the research will be published.

Ethical obligations include ensuring the research design clearly collects informed consent, avoiding publishing identifiable information (unless participants have consented otherwise) and informing participants of the potential to be identified even from de-identified material.

For more information, refer to the NHMRC's [National statement on ethical conduct in human research \(https://www.nhmrc.gov.au/about-us/publications/national-statement-ethical-conduct-human-research-h-2007-updated-2018\)](https://www.nhmrc.gov.au/about-us/publications/national-statement-ethical-conduct-human-research-h-2007-updated-2018) (updated 2018) and the Therapeutic Goods Administration's [Australian Clinical Trial Handbook \(https://www.tga.gov.au/resource/australian-clinical-trial-handbook\)](https://www.tga.gov.au/resource/australian-clinical-trial-handbook).

## Considerations when participating in health research

Patients should be made aware your practice might use de-identified health information for public health research. This might be done by way of an information sheet in the waiting room.

## Interaction between the Privacy Act and health research

In addition to privacy obligations, practices must comply with all ethical requirements for research conducted on human participants.



For example, where human research has approval to publish identifiable health information, practices must ensure all relevant Privacy Act requirements are satisfied beforehand. The safest approach is obtaining written participant consent.

The option to use health information for a secondary purpose is also left open by the Privacy Act, if it is reasonable to expect this information will be used in health research (refer to [Use for primary and secondary purposes \(https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/use-for-primary-and-secondary-purposes\)](https://www.racgp.org.au/running-a-practice/security/protecting-your-practice-information/privacy-of-health-information/use-and-disclosure-of-health-information/use-for-primary-and-secondary-purposes)). This might include use for quality improvement activities within the practice.

If in doubt as to whether the proposed research is directly related to the purpose for which the information was collected or within the reasonable expectations of the patient, written consent should be obtained.

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# Privacy considerations: A summary

## Privacy considerations: A summary

### Privacy considerations summary

This list of considerations should be used as a guide only and does not exhaustively describe the complete list of activities that should be undertaken when assessing privacy measures within your practice.

Each privacy consideration is included to guide you on what is required to address each question. The privacy considerations list is to help your practice:

- assess its level of compliance to the laws governing health information
- assess, achieve and maintain good privacy practice
- identify areas requiring practice innovation and improvements, and to seek assistance where necessary.

Establishing a practice privacy policy	
Does your practice have an up-to-date, accurate, accessible and freely available privacy policy?	Your practice should have a policy that defines how to handle enquiries and complaints.
Quality and content of medical records	
Does your practice have processes in place to ensure it holds accurate and up-to-date data at all times, including accurate health summaries and medication lists?	Your practice should develop a policy for everyone to understand and follow regarding how data is accurately collected and safely held.
Patient consent	

<p>Does your practice have a procedure for requesting and recording patient consent? Do your practice staff understand the requirements surrounding this?</p>	<p>Consent might be sought for primary and secondary uses provided they are adequately stipulated. Although inferred consent might be relied on in certain circumstances, express consent (a signature or a documented positive response to a question) should always be sought.</p>
<p>Collecting health information</p>	
<p>Does your practice have defined processes to inform patients of when, what and how the practice collects health information? Does your practice have a process or policy in place to handle requests for anonymity or pseudonymity?</p>	<p>This might include manual procedures, practice policies or the ability of your systems and software to handle the tasks.</p>
<p>Patient access to personal information</p>	
<p>Does your practice have procedures for handling patient requests for access to and correction of their information?</p>	<p>These procedures include assessment of requests, refusal procedures and administration fees.</p>
<p>Use and disclosure of personal information</p>	
<p>Does your practice have a process for patients to opt in or out of marketing communications?</p>	<p>Ensure you communicate marketing options to your patients clearly and transparently.</p>
<p>Medical research</p>	
<p>Does your practice have procedures for conducting health research, including participant consent and notification?</p>	<p>This includes procedures for how to deal with requests for the secondary use of data. Refer to the <a href="https://www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data">RACGP's Secondary use of general practice data (https://www.racgp.org.au/running-a-practice/security/managing-practice-information/secondary-use-of-general-practice-data)</a> resource for guidance and a decision-making support tool.</p>
<p>Quality improvement and continuing professional development</p>	

<p>Does your practice have procedures to record occurrences of patient information use for quality improvement and continuing professional development?</p>	<p>Your practice's privacy policy should disclose whether patient information is used for continuing professional development purposes and/or for quality-improvement activities.</p>
<p>Information security and data retention</p>	
<p>Does your practice offer an information security level sufficient to ensure the safe and proper protection of the information it holds? Does your practice have a process for document classification, retention, destruction and de-identification of patient information?</p>	<p>This will provide documented evidence of good practice in information security, including the secure disposal and de-identification of information and proper data retention periods.</p>
<p>Healthcare provider identification</p>	
<p>Does your practice have a process for identifying the need for, and recording of, the consent of a healthcare practitioner?</p>	<p>This occurs when sharing information identifies the practice even though the patient health information might be de-identified.</p>
<p>Healthcare identifiers</p>	
<p>Do your practice staff understand the restrictions on use of healthcare identifiers?</p>	<p>Educate staff on the requirements of the <i>Health Identifiers Act 2010</i> and other government initiatives that your practice is engaged in.</p>
<p>Mandatory data breach notification plan</p>	
<p>Does your practice have a data breach response plan?</p>	<p>Your practice should have a regularly tested emergency response plan to deal with data breaches and a plan outlining how to, and who should, communicate a data breach.</p>

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# Australian state and territory advice on privacy

## Australian state and territory advice on privacy

### Australian Government

**Office of the Australian Information Commissioner** Website: <https://www.oaic.gov.au/> (<https://www.oaic.gov.au/>) Phone: 1300 363 992

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### ACT

**Human Rights Commission** Website: <https://www.hrc.act.gov.au/> (<https://www.hrc.act.gov.au/>) Phone: (02) 6205 2222

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### NSW

**Information and Privacy Commission** Website: <https://www.ipc.nsw.gov.au/> (<https://www.ipc.nsw.gov.au/>) Phone: 1800 472 679

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### NT

**Office of the Information Commissioner** Website: <https://infocomm.nt.gov.au/> (<https://infocomm.nt.gov.au/>) Phone: 1800 005 610

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### QLD

**Office of the Information Commissioner** Website: <https://www.oic.qld.gov.au/> (<https://www.oic.qld.gov.au/>) Phone: (07) 3234 7373

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### SA

**Privacy Committee of South Australia** Website: <https://www.archives.sa.gov.au/privacy-committee/making-a-privacy-complaint> (<https://www.archives.sa.gov.au/privacy-committee/making-a-privacy-complaint>) Phone: (08) 7322 7077

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## TAS

**Ombudsman Tasmania** Website: <https://www.ombudsman.tas.gov.au/> (<https://www.ombudsman.tas.gov.au/>) Phone: 1800 001 170

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## VIC

**Office of the Commissioner for Privacy and Data Protection** Website: <https://ovic.vic.gov.au/> (<https://ovic.vic.gov.au/>) Phone: 1300 006 842

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# Disclaimer

## Disclaimer

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*We acknowledge the Traditional Custodians of the lands and seas on which we work and live, and pay our respects to Elders, past, present and future.*



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