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When is it reasonable to disclose a patients' personal information?

By Michael Webster

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New guidance has been released to help medical professionals understand their obligations when asked to disclose personal information by law enforcement agencies [Image: Thea on Unsplash]

Is the right to privacy an absolute rule? **Michael Webster** talks through the nuances of when it's okay to disclose patient information to the police

We all know that privacy is paramount in healthcare and that patients rightly expect information about them and their medical situation to be kept confidential.

But is this right to privacy an absolute rule? What are the times that health and safety concerns are the most important factors, and when is the disclosure of personal information necessary to uphold or enforce the law?

Making these decisions can be a bit nuanced and you want to know you're doing the right thing if you're asked by a law enforcement agency for patient details.

To help clarify things, the Office of the Privacy Commissioner has released some updated guidance to help you – *Releasing personal information to Police and law enforcement agencies: guidance on health and safety and the maintenance of law exceptions to the Privacy Act 2020*.

This guidance will help explain your obligations and what factors you need to consider under the Privacy Act when you're asked to disclose personal information by law enforcement agencies.

The rules relating to voluntary requests and how these differ from mandatory demands, such as search warrants, production orders or the use of other specific statutory powers, are also explained.

To help you make the right decision, the guidance discusses the questions that often arise when considering whether information may be released to police and other law enforcement agencies under the health and safety and maintenance of the law exceptions of the Privacy Act.

As you work under the Health Information Privacy Code when handling health information, that Code also requires you to have a reasonable belief that it is not desirable or practicable to obtain the individual's authorisation in order for the exceptions to apply.

Your decision will also need to take account of any professional and ethical obligations that apply in the particular circumstances. It is important that:

When dealing with voluntary requests, you are under no compulsion to comply with the request. The responsibility for ensuring there are adequate grounds to release the information rests with you,

and you must turn your mind to whether the disclosure is reasonably necessary in the particular circumstances.

If it is not clear to you why disclosure is necessary, or why they need all of the information requested, you can ask the requesting agency for more information – they need to provide you with enough information to make the decision.

You can also decline a request for other reasons. For example, ethical and professional obligations or the information may be privileged.

In addition to the guidance, there are also real-life examples, case notes and information on our website that help demonstrate the criteria.

By way of example, one of the case notes concerns a patient who complained that his doctor has disclosed information to the police. In this case, they had expressed suicidal thoughts and had told their doctor they had purchased a gun. The doctor consulted several colleagues involved in the man's care and treatment. All agreed that, in the circumstances, it was appropriate for the doctor to contact the police. The doctor rang the police the same day and asked them to visit the man.

In this case, my office formed the opinion the doctor was justified in disclosing information about the patient to the police and therefore had not caused an interference with the privacy of the complainant.

As health professionals, you will all understand the importance of documentation and keeping good records. The request, your decision whether or not to disclose the requested information and the reasons for that decision, should be well documented.

If you are disclosing information in reliance on an exception, your documentation should make it clear which exception you are relying on, what you have considered, your reasons for disclosing, and what you have disclosed.

Recording reasons at the time helps to support good decision-making and promote accountability.

It also helps you to explain and justify the decision if the individual raises concerns about the disclosure or makes a complaint to our office.

Michael Webster is the privacy commissioner

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