



**Information Commissioner's Office**  
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## **Data Protection Good Practice Note**

### **How does the Data Protection Act apply to professional opinions?**

This good practice note aims to inform organisations and practitioners about some of the data protection issues that arise in relation to the information about individuals that they record in their professional opinions. The information in this note may also be of interest to individuals.

#### **The situation**

The Data Protection Act covers any expression of opinion about individuals. Employers, medical professionals, teachers and social workers, among others, will routinely record professional opinions. Opinions may also be recorded informally in reports, letters, memos, and so on, in a way that is covered by the Act. Many organisations and practitioners are unsure how they should record this information, whether they are entitled to use or rely on it, and how to respond when faced with challenges to its accuracy.

#### **Recommended good practice**

When an opinion is recorded, it is good practice to do the following.

- Make it clear that it is an opinion. The record should show who gave the opinion and when.
- If possible, provide contact details.
- Structure the record so that if someone objects to its accuracy, their view or challenge can be included in such a way that it is given proper weight.
- Have a records policy that lays down the criteria that should be considered for continuing to keep the information or, where appropriate, specific retention periods for certain categories of information.

Make sure that when an opinion is disclosed it is not presented as fact.

#### **What does the Data Protection Act say about:**

- **The content of the opinion**

The Act does not lay down specific rules about what organisations or practitioners should or should not record. In many cases they will have a duty of care to the person who is the subject of the opinion. They will need to decide what information they need to record to fulfil this duty, and they will use their professional judgement to do this. However, the Act does lay down standards that should be followed.

- **The accuracy of the information**

Personal information should be accurate, and where necessary kept up to date. This requirement will be met if a record accurately reflects the professional opinion. The Act cannot be used to challenge a professional opinion on the basis that it is inaccurate just because another person, even another practitioner, may have a different opinion. If the opinion contains factual information that is incorrect then it could be challenged. A challenge to a factual inaccuracy or the reliability of an opinion may be recorded alongside it, since it will usually be important to maintain the original record. This is because, for example, only the entire record will adequately show a medical history, record of care or why a course of action was taken. However, it is recommended that the fact that a challenge exists should be made clear on the record.

- **The adequacy and relevance of the opinion**

Personal information should be sufficient for its purpose and not include irrelevant material. This does not mean that someone can demand an opinion to be deleted because they think it has taken account of irrelevant information, or not taken account of information they think is important. It does mean that when an opinion is recorded, it (or the context in which it is held) should contain enough information to allow a reader to be able to interpret it correctly. For example, the date, the name and position of the author should be made clear. Where an opinion is likely to be controversial or very sensitive, or when it will have a significant impact when used or disclosed, it is likely to be even more important to explain the circumstances, or evidence on which the opinion is based.

A record will sometimes contain an opinion that is only a summary of more detailed records held elsewhere. For example, a GP's record may only hold a letter from a consultant and it will be the hospital file that contains greater detail. In this case, the record containing the opinion should contain enough information to allow the more detailed records to be traced.

- **How long an opinion should be kept**

Personal information should not be kept any longer than is necessary to do the job it is intended for, unless there is another valid need to keep a comprehensive record. Individuals may ask for an opinion to be deleted which they think is irrelevant or unjustified (for example, because they have obtained a second opinion which contradicts the first). In these circumstances, organisations and practitioners will need to consider if they need the information for the adequacy of the record and for their own purposes. For example, they may consider that the information needs to be kept to explain action that was taken at a later stage. In some professions there will be statutory periods laid down for the retention of different types of information.

## Good and bad practice

Example	<input checked="" type="checkbox"/> Good practice	<input checked="" type="checkbox"/> Bad practice
A patient gets a copy of his medical file from his GP and disputes an opinion recorded in it. He also provides convincing evidence that it includes incorrect factual information.	The surgery explains that it has to be kept as a true record of the doctor's professional opinion but agrees to include the patient's comments clearly on the file. The correct factual information is recorded but a record of the error may continue to be held to explain possible unforeseen consequences.	The surgery refuses to record the patient's objections to the opinion and only notes the factual inaccuracies.
Parents get a copy of a social work file about their child. It contains information about them that they consider does not give a complete picture of the family circumstances.	The social work department records the parents' concerns about the opinion and adds any other relevant information to the child's record.	No action is taken. The parents remain concerned about the adequacy of the opinion, who it might be disclosed to, and how it might affect their child's welfare.

## More information

If you need any more information about this or any other aspect of data protection, please contact us.

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