

GUIDE TO RELEASING A DECEASED PATIENT'S MEDICAL RECORDS

Disclaimer: This guide is provided for general information purposes only and is based on the Health Information Privacy Code 2020 (HIPC), the Privacy Act 2020, and guidance issued by the Office of the Privacy Commissioner. It is intended to support general practice decision-making when responding to requests for access to a deceased patient's medical records by an executor or administrator of the estate. Practices should review the relevant legislation and official guidance directly and seek independent legal advice where there is uncertainty or where the circumstances are complex or disputed.

Legal Legislation and Rules	<p>Core legislation and rules</p> <p>Health Information Privacy Code 2020 (HIPC) especially</p> <ul style="list-style-type: none"> • Rule 6 (right of access) • Rule 11 (limits on disclosure) • Privacy Act 2020 • Health Act 1956 (s22f) – obligation to provide access unless a lawful reason to refuse • OPC guidance on deceased persons
Key Principle	<ul style="list-style-type: none"> • Privacy obligations continue after death under the HIPC • Disclosure is only lawful if a Rule 11 exception applies
Who can request the records (critical threshold)	<p>Executor or administrator (legal representative)</p> <ul style="list-style-type: none"> • The executor of the will (or administrator if no will) is the 'personal representative' • They have the legal right to request access, treated as if the patient requested their own information <p><u>Required verification (before release)</u></p> <p>You must obtain and retain evidence:</p> <ul style="list-style-type: none"> • Written request • Proof of identity • Probated will (showing executor), OR • Letters of administration <p>This step is important for audit and compliance</p>
Decision Framework Can you release the notes?	<p>You are effectively applying HIPC Rule 11 + s22F test;</p> <p>You SHOULD release unless</p> <ul style="list-style-type: none"> • The deceased would not have wanted disclosure, OR • Disclosure is not in the best interests, OR • There is a lawful ground to withhold (Privacy Act refusal grounds)
What can be disclosed	<p>When the executor is validated:</p> <p>Generally appropriate to release</p> <ul style="list-style-type: none"> • Full clinical notes • Correspondence (specialist letters, referrals) • Test results • Medication records • Care plans <p>Because the executor stands in the patient's position</p>

<p>What must be considered/potentially withheld</p>	<p>This is where professional judgment is critical</p> <p>A – Third party information</p> <p>Do not disclose information about other individuals without considering their privacy, for example</p> <ul style="list-style-type: none"> • Family disclosures • Generic information relating to others • Comments about other people <p>Consider redaction</p> <p><u>Highly sensitive information</u></p> <p>May need careful consideration or partial withholding</p> <ul style="list-style-type: none"> • Mental health notes • Sexual health information • Sensitive family disclosures <p><u>Known wishes of the deceased</u></p> <ul style="list-style-type: none"> • If documented, these must be taken seriously • Not always absolute but strong guiding factor <p><u>Risk of Harm</u></p> <ul style="list-style-type: none"> • If disclosure could cause serious emotional to others, you may withhold under Privacy Act grounds <p><u>Where records include:</u></p> <ul style="list-style-type: none"> • The executor’s own information • Third party information <p>You must balance competing privacy interests</p>
<p>Professional practice overlay (very important)</p>	<p>Even when lawful, disclosure must align with:</p> <p>Recognised professional practice – consider:</p> <ul style="list-style-type: none"> • Purpose of request (estate administration vs curiosity) • Scope of request (full file vs specific records) • Clinical sensitivity
<p>Process for sending records (best practice framework)</p>	<p>Step-by-step</p> <ol style="list-style-type: none"> 1. Receive request Written request logged in medical record 2. Verify Identity of requester Executor status (probate/letters) 3. Assess Apply Rule 11 = s22F Consider any redactions required 4. Prepare records Copy (do not send originals) Redact where needed Document decisions

	<p>5. Send securely Secure email (encrypted), OR Registered courier Secure patient portal</p> <p>6. Document Everything What was released What was withheld and why Date and method of release</p>
<p>Sign-off/documentation requirements</p>	<p>There is no prescribed 'form', but best practice is:</p> <p><u>Clinical sign off</u></p> <ul style="list-style-type: none"> • GP reviews and approves release • Documented in the patient's notes <p><u>Cover letter should include</u></p> <ul style="list-style-type: none"> • Confirmation of executor status • Scope of records provided • Statement of compliance with Privacy Act and HIPC • Any limitations and redactions • Contact for follow up <p>Here is an example of a sign off 'These records are released to you in your capacity as te executor of the late (patient's name's) estate, in accordance with the health Info Privacy Code 2020 and section 22F of the Health Act 1956. Certain information may have been withheld or redacted where required to protect the privacy of third parties or where clinically appropriate'.</p>
<p>Key Risks</p>	<ul style="list-style-type: none"> • Releasing to the next of kin without verifying the executor status • Not checking probate/legal authority • Over disclosure of third-party data • Poor documentation of decision making • Sending via insecure channels