

Oifig an
Office of the



Stiúrtóra Ionchúiseamh Poiblí
Director of Public Prosecutions

Releasing my counselling records





We developed this booklet with the help of counselling agencies with whom we have Memorandums of Understanding. These are agreements between two parties.

About this leaflet

This booklet explains in plain language what you need to know if you are the victim of a sexual offence and are asked to consent to the use of your counselling records in a criminal trial.

The booklet does not deal with every possible situation but tries to answer the questions that victims ask most often.

The information in this booklet is about counselling records only.

1. Why does the court want my counselling records?

It is very important that the court knows about anything that could affect the outcome of the criminal trial. If your counselling records contain information that is relevant to the case, the court needs to know about it.

2. How will this happen?

Either the prosecution or the defence can ask for your counselling records. When this happens you will be asked if you consent to your records being released.

3. Do I have to give my consent?

No. You do not have to give your consent to the release of your records. If you do give your consent, you can withdraw it at any time. However, if you do not consent or you withdraw your consent, then the trial judge will have to decide whether your records should be released without your consent.

4. What happens if I give my consent?

When you give your consent the following happens.

- You are allowed to see your counselling records before they are released.

- You can bring a person of your choice with you when you go to see your records.
- Your records are first given to the prosecution solicitor. The prosecution solicitor examines your records to identify what information is relevant to the trial.
- If there is information in your records that is not relevant to the trial, the prosecution solicitor will delete it before releasing your records to the defence. This helps to protect your privacy.
- If nothing in your records is relevant to the trial, your records are not released.

5. Who will see my records?

There are very strict rules in place about who can see your records.

- The **prosecution lawyers** will get a copy of your counselling records. A prosecution lawyer is a solicitor or barrister working for the DPP. The lawyer will delete anything in your records that is not relevant to the trial before giving a copy to the defence. The defence is made up of a solicitor and barrister(s) acting for the accused person.
- The **defence solicitor** gets a copy of your records from the prosecution solicitor. The defence can see

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the information that is relevant to the trial – all other information is deleted. They can copy these records for use by their solicitor and barrister(s) only.

- The **accused person** is also allowed to see the information in your records that is relevant to the trial, but only if their solicitor or barrister is with them. The accused person is not allowed to take a copy of your records.

6. How can I be sure that my records will not be seen by anybody else?

The prosecution lawyer is obliged to treat all information contained in prosecution files with the strictest confidence. This includes your counselling records. The prosecution lawyer will keep your records safe and make sure they are not seen by anyone who does not have a legal right to see them (see list at Q.5).

Before your records are released, the defence must sign a document saying that they will abide by strict rules when handling your records and treat them with the strictest confidence. They must also agree to abide by any other conditions that the court may set down in the interests of protecting your right to privacy and in the interests of justice.

7. What happens if I do not give my consent or I withdraw my consent?

When you do not give your consent, or you withdraw your consent, the following happens.

- A court hearing will take place. The judge will examine your records and decide if any of the information in your counselling notes is relevant to the trial.
- You can see your counselling records before the court hearing if you wish. You can bring a person of your choice with you when you do this.
- You are entitled to a solicitor and/or barrister(s), free of charge, to represent you at the court hearing.

8. What will happen at the court hearing?

There are two possible outcomes of the court hearing:

- The judge will decide that nothing in your counselling records is relevant to the trial. If this happens your records will not be released.

or

- The judge will decide that there is information in your records that is relevant to the trial and which must be released. If this happens the judge

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will say if all of the information is to be released or just certain parts of it. The judge may also put conditions in place to restrict access to the information once it is released. This is to help protect your privacy. The judge will then order the release of the information to the prosecution and the defence.

9. Will the information in my records be heard at the trial?

Yes. If there is information in your records that is relevant to the case it can be introduced as evidence at the trial. The prosecution barrister may ask you questions about the information in your records. When the prosecution has finished asking you questions, the defence may question you. This is called cross-examination.

10. When the trial is over what will happen to my records?

When the trial is over **all** copies of your records will be deleted or returned to the prosecution.

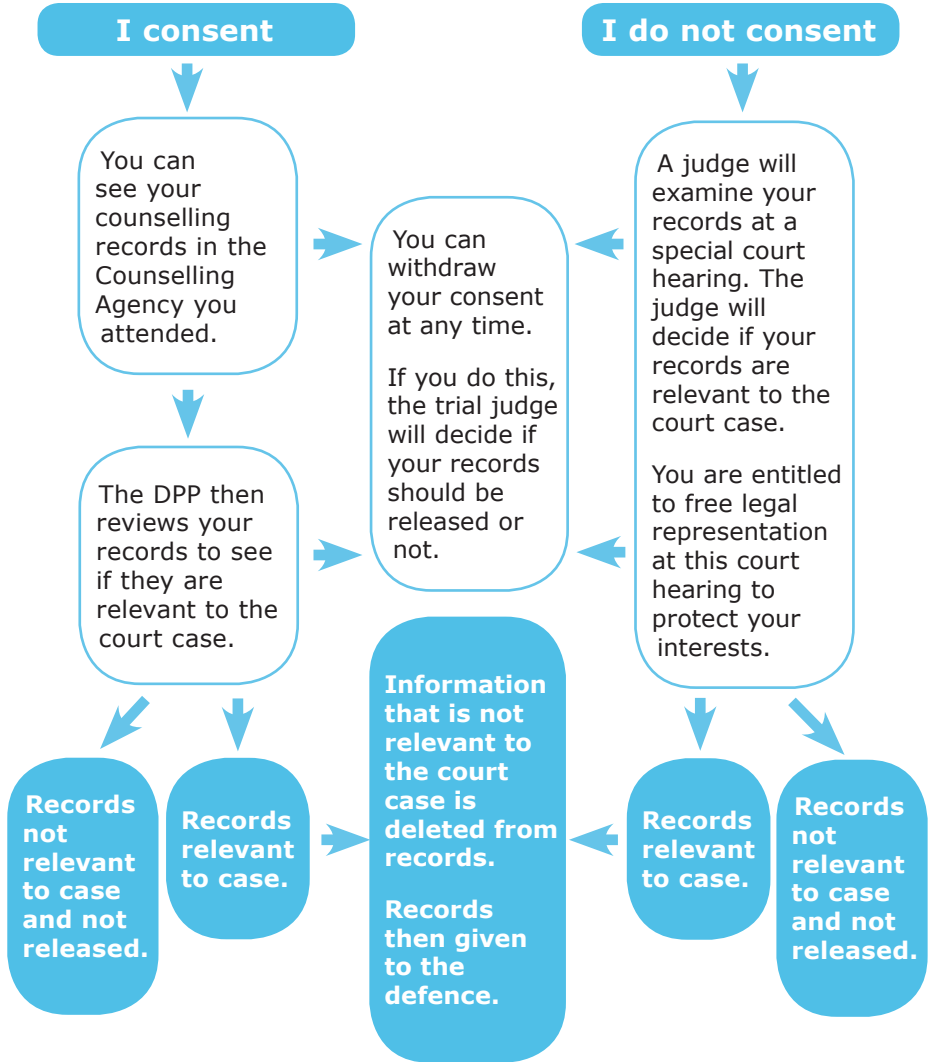
What the law says:

You can find out more about counselling records and the law in section 39 of the Criminal Law (Sexual Offences) Act 2017. You can see a copy of this Act on the Irish Statute Book website, www.irishstatutebook.ie.

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Protecting your privacy

The defence must abide by very strict rules when handling your counselling records.

