

## 1. Background

Despite using the individual right of access methodology and Arctrieval's software, some situations need a follow-up call. Unfortunately, Arctrieval cannot control a healthcare provider, facility, or Contact's action or inaction regarding releasing protected health information. Arctrieval significantly reduces follow-up calls and leverages an Office of Civil Rights complaint to compel a healthcare provider, facility, or Contact to take action.

A healthcare provider, facility, or Contact cannot ignore an individual right of access request because it opens them up to an Office of Civil Rights investigation, penalties, monetary fines, and corrective action plans. Responding to an Office of Civil Rights inquiry is time-consuming, and all healthcare providers, facilities, and Contacts want to avoid it.

Generally, the need for a follow-up call is a result of one of three situations:

1. the request is past due,
2. the request was rejected for HIPAA compliance issues, or
3. an incomplete response was sent.

This guide explains the escalation process when encountering one of the above situations.

## 2. Ideal Contact

Depending on the size of the healthcare provider, facility, or Contact, you will reach out to the following departments or people:

- Health Information Management (HIM)— is responsible for acquiring, analyzing, and protecting digital and traditional medical information vital to providing quality patient care. Medical records and the release of information are functions within HIM. The manager or director-level employee is the correct person to contact.
- Quality Assurance—is the identification, assessment, correction, and monitoring of important aspects of patient care and includes identifying problems or issues with care delivery and designing activities to resolve the problems or issues. Not responding to an individual right of access request in 30 days, as specified in the HIPAA Privacy Rule 45 CFR 164.524, is a quality-of-care issue.
- Risk Management—comprises the clinical and administrative systems, processes, and reports employed to detect, monitor, assess, mitigate, and prevent risks. An Office of Civil Rights investigation for a potential HIPAA Privacy Rule violation that carries a monetary penalty is a risk that the risk management department would want to avoid.
- Legal Department—most hospitals or large healthcare organizations will have a legal department. Part of the department's responsibilities are HIPAA compliance and responding to governmental investigations. The department is motivated to avoid an OCR investigation because it creates much work for them.

- Administration—is responsible for coordinating all departments within a provider or facility to ensure they function as a whole. A properly formulated complaint to the administration or leadership team will force action through the organization to address the issue. The HIM department does not like it when administration gets involved—especially when the HIM department makes a mistake or is proven wrong.
- HIPAA Privacy Officer or Chief Privacy Officer—oversees the development, implementation, maintenance of, and adherence to privacy policies and procedures regarding the safe use and handling of protected health information (PHI) in compliance with federal and state HIPAA regulations. The HIPAA Security Rule mandates that every practice or healthcare organization that creates, stores, or transmits electronic protected health information, must designate a privacy compliance officer regardless of size. They will be held accountable for HIPAA Privacy Rule violations.
- Office Manager or Practice Manager—oversees the various aspects of a medical office. They manage the facility's office staff and perform human resources duties, such as hiring and training new staff members. In smaller organizations, they often also serve as the privacy officer.

The release of information vendors such as CIOX, IOD, MRO, ShareCare, ScanStat, Vital Records, and other companies are intentionally excluded from the list. It is usually the release of information vendors' employees causing the problem due to a lack of knowledge and training. If you are connected to a release of information vendor, immediately insist on speaking to a supervisor or manager about a potential HIPAA Privacy Rule Violation.



When contacting medical records, select the options for “physician” or “patient” requests. Often you will be connected directly with a provider or facility employee rather than a release of information vendor. The individual right of access request is a first-person request and is not a 3<sup>rd</sup> Party Request.

### 3. Key Message Point

Regardless of the issue, the healthcare provider, facility, or Contact violated your client's rights under the HIPAA Privacy Rule. Your client is entitled to a copy of their protected health information and has the right to direct an electronic copy to your office. They are in the wrong if they have not responded as required by HIPAA 45 CFR 164.524. You must communicate that you are contacting them about a potential HIPAA Privacy Rule Violation.

If the contact has not responded within the 30-day timeframe, they:

- violated the patient's rights, broke the law,
- denied access to the patient's protected health information,
- will be referred to the Office of Civil Rights within the Department of Health and Human Services,
- may be contacted by an OCR investigator,
- and may be subject to monetary penalties.



Never say you are following up on a medical record or billing request. As soon as you say that, whomever you are speaking to will pass your off to the same people that did not process the request in the first place. It is critical to reiterate that you are calling about a potential HIPAA Privacy Rule Violation to maintain your advantage.

Until you get to the correct person, you will continue to say, “I am contacting you about a potential HIPAA Privacy Rule violation related to your patient. Can you assist me in resolving the issue, so I don’t have to file a formal complaint with the Office of Civil Rights?”

## 4. Past Due Request

Suppose your firm has yet to receive records for a Patient-to-Self or Patient Directed to 3rd Party request after the 30-day response period, and the Arctrieval system issued a final notice. In that case, the request needs to be escalated. When escalating the request, the critical point is that they are required by HIPAA 45 CFR 164.524 (b)(2) to respond to the request within 30 days.

The Arctrieval system issues a final notice at 37 days and provides a two-day grace period for the healthcare provider or facility to contact your office. The Final Notice is sent after multiple correspondence documents were sent to the contact, as shown in the table below.

Correspondence Type	Patient Directed to 3 <sup>rd</sup> Party	Patient to Self
Initial Request Document	Day 0	Day 0
Follow up	Day 3	Day 3
Due Date Reminder	Day 15	Not applicable
Past Due Notice Notice of Potential HIPAA Violation	Day 30	Not applicable
Final Notice Notice of HIPAA Violation	Day 37	Day 37

When escalating the request, remember it is the healthcare provider, facility, or Contact’s responsibility and obligation to respond to the individual right of access request. It is not your responsibility to chase them.

## 4.1. Patient Directed to 3<sup>rd</sup> Party

When speaking about or leaving a message for a past-due request, below is the script we found most effective to remove roadblocks.

My name is (first name), I am with (firm name), and I can be reached at (telephone number).

I am calling about an individual right of access request issued to (contact organization) on (request date) by our client and your patient (patient name) with a date of birth (date of birth).

We have yet to receive the records. Your response is now (number of days) days past the 30-day response period as required by HIPAA Privacy Rule 45 CFR 164.524.

I want to resolve the matter without filing a formal complaint with the Office of Civil Rights for a HIPAA Privacy Rule violation.

**Live person:** Are you able to assist me? Or can you connect me to a supervisor or manager? Who can assist me in resolving the issue?

**Message:** Please have the appropriate person contact me at (telephone number). Again, my name is (first name), and I am with (firm name).

## 4.2. Patient to Self

We recommend the script below when speaking about or leaving a message for a past-due request.

My name is (first name), I am with (firm name), and I can be reached at (telephone number). I am calling on behalf of your patient (patient name), whose date of birth is (date of birth).

(Patient Name) submitted an individual right of access request to (contact organization) on (initial request date) for a copy of their records.

(Patient Name) has yet to receive their records. Your response is now (number of days) days past the 30-day response period as required by HIPAA Privacy Rule 45 CFR 164.524.

I want to resolve the matter without filing a formal complaint with the Office of Civil Rights for a HIPAA Privacy Rule violation.

**Live person:** Are you able to assist me? Or can you connect me to a supervisor or manager? Who can help me in resolving the issue?

**Message:** Please have the appropriate person contact me at (telephone number). Again, my name is (first name), and I am with (firm name).

## 5. Rejected Request

The first step is to use the Mark Request as Rejected Activity on the Request detail page. For directions on using the Mark Request as Rejected feature, please review the Rejected Request Guide on the Arctrieval support page. If you would like assistance with training using the Mark Request as Rejected feature, please contact us at support@arctrieval.com to schedule a training session.

Suppose you received a second rejection notice after completing the Mark Request as Rejected Activity. In that case, the same person reviewing the documents needs to understand the difference between a defective 3<sup>rd</sup> party authorization, and you will need to call the healthcare provider, facility, or Contact to speak with someone that is an ideal contact listed above.

When speaking about or leaving a message for a rejected request, below is the script we found most effective in removing roadblocks.

My name is (first name), I am with (firm name), and I can be reached at (telephone number).

I am calling about an individual right of access request issued to (contact organization) on (request date) by our client and your patient (patient name) with a date of birth (date of birth).

On (date of first rejection), we received correspondence that the Individual Right of Access Request could not be processed because it contained defects.

On (rejection letter, Arctrieval response date), we sent correspondence that explained why the defects did not apply to the individual right of access request.

On (date of second rejection), we received a second letter that the request could not be processed because it contained defects.

The request is an individual's right of access issued under HIPAA 45 CFR 164.524, which is clear, conspicuous, and specific. As such, requiring a HIPAA authorization to access protected health information is unnecessary and imposes an unreasonable measure that impedes access.

I want to resolve the matter without filing a formal complaint with the Office of Civil Rights for a HIPAA Privacy Rule violation.

**Live person:** Are you able to assist me? Or can you connect me to a supervisor or manager? Who can assist me in resolving the issue?

**Message:** Please have the appropriate person contact me at (telephone number). Again, my name is (first name), and I am with (firm name).

## 6. Incomplete Response

The first step is to use the Mark Request Incomplete Activity on the Request detail page. For directions on using the Mark Request Incomplete feature, please review the Incomplete Request Guide on the Arctrieval support page. If you would like assistance with training on how to use the Mark Request Incomplete feature, please get in touch with us at support@arctrieval.com to schedule a training session.

You can use the Mark Request Incomplete Activity as often as necessary until the healthcare provider, facility, or Contact provides the information specific to the individual right of access request. If you still need to get the correct or complete information, then you will need to call the healthcare provider, facility, or Contact to speak with someone that is an ideal contact listed above.

When speaking about or leaving a message for an incomplete request, below is the script we found most effective in removing roadblocks.

My name is (first name), I am with (firm name), and I can be reached at (telephone number).

I am calling about an individual right of access request issued to (contact organization) on (request date) by our client and your patient (patient name) with a date of birth (date of birth).

On (date of response), we received an incomplete response to an individual right of access request. It was missing (list of issues).

The request is an individual's right of access issued under HIPAA 45 CFR 164.524, which is clear, conspicuous, and specific. As such, a complete response was due on (request due date).

I want to resolve the matter without filing a formal complaint with the Office of Civil Rights for a HIPAA Privacy Rule violation.

**Live person:** Are you able to assist me? Or can you connect me to a supervisor or manager? Who can help me in resolving the issue?

**Message:** Please have the appropriate person contact me at (telephone number). Again, my name is (first name), and I am with (firm name).

### 7. Official Office of Civil Rights Complaint

Arctrieval is a software tool that slashes the time, effort, and expense to obtain and manage medical records, billing information, and radiology studies. However, it cannot control a healthcare provider, facility, or Contact's actions and behavior (or lack thereof). As a last resort, we will file a formal complaint with the Office of Civil Rights on your client's behalf. Please be advised that it can take two to three months before the OCR can respond and take action.

Before filing an official complaint, we may be able to resolve the issue with the leadership team at the healthcare provider, facility, or Contact. Before we contact the leadership team, we will need the following information:

1. Date and time of conversation with a live person
2. Number Called
3. Person or persons involved in the conversation (initial contact person and name of supervisor or manager)
4. Person or persons' title (initial contact person and supervisor or manager)
5. Summary of conversation
6. If they don't resolve the issue, what is the name and contact information of the HIPAA Privacy Officer?

Please note that Arctrieval supports our customers through training, education, and coaching. However, you are responsible for initiating follow-up calls with healthcare providers, facilities, and Contacts. The better information you can gather, the better we can assist you in resolving the issue without a formal complaint to the Office of Civil Rights.