

1. Background

Based on conversations with law firms, legal professionals say they must follow up on 70% of all medical and billing requests issued using a third-party HIPAA authorization. It takes them at least 30 to 40 minutes for the multiple follow-up calls and long hold times waiting to speak to someone. For every 100 requests sent with a HIPAA authorization, a legal professional will spend 35 to 46 hours making follow-up calls.

The individual right of access methodology and Arctrieval's software slashes the number of follow-up telephone calls made to providers to less than 10% of the issued requests. For every 100 requests sent as an individual right of access request, a legal professional will only spend 5 to 6 hours on follow-up calls. The calls are also more effective because you have leverage through the HIPAA Privacy Rule and the Office for Civil Rights to compel providers to take action.

Unfortunately, Arctrieval cannot control a healthcare provider, facility, or Contact's action or inaction regarding releasing protected health information. Some providers and facilities need an extra nudge to comply with the HIPAA Privacy Rule.

A healthcare provider, facility, or Contact cannot ignore an individual right of access request because it opens them up to an Office for Civil Rights investigation, penalties, monetary fines, and corrective action plans. Responding to an Office for Civil Rights inquiry, even if nothing was done wrong, is a time-consuming task, and healthcare providers, facilities, and Contacts want to avoid it—especially if they are going to get in trouble.

Generally, the need for a follow-up call to the Contact 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 situations.

The key to a successful call is discussing a potential HIPAA Privacy violation with the Contact. "HIPAA Privacy violation" is a trigger phrase in the health information management community and is taken very seriously. A HIPAA Privacy violation means someone did something wrong, staff education and training are needed, and there may be disciplinary action for the person that made the mistake.



Please remember 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.

2. Ideal Contact

The first step in the escalation process is determining the best person to 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 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.
- **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.
- **Quality Assurance**—is the identification, assessment, correction, and monitoring of essential 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 for Civil Rights investigation for a potential HIPAA Privacy Rule violation that carries a monetary penalty is a risk 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 substantial additional 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 the administration gets involved—especially when the HIM department makes a mistake or is proven wrong.

The release of information vendors such as CIOX, IOD, MRO, ShareCare, ScanStat, Vital Records Control, and other companies are intentionally excluded from the list. It is usually the release of information from 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 with the facility 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, not a 3rd 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 a designated third-party—your office. They are in the wrong if they have not responded as HIPAA 45 CFR 164.524 requires. You must communicate that you are contacting them about a potential HIPAA Privacy Rule Violation.

The HIPAA Privacy Rule is your leverage over healthcare providers to get them to do what they were suppose to do in the first place.

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 for 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 you off to the person who 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 and leverage.

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 or someone help resolve the issue so I don’t have to file a formal complaint with the Office for Civil Rights?”

4. Past Due Request

Suppose you or your client has not received records after the 30-day response period, and the Arctrieval system issued a final notice. In that case, the request must be escalated, and you must call the provider or facility.

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 rd 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 3rd Party

When speaking about or leaving a message for a past-due request, below is a starting script that we found 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 a potential HIPAA Privacy Rule Violation.

Individual: Our client and your patient (patient name) with a date of birth (date of birth) issued an individual right of access request issued to (contact organization) on (request date). Our client directed the information to be sent to (firm name) as the designated 3rd party.

Personal Representative: Our client (client's name) is the personal representative for your patient (patient name) with a date of birth (date of birth) and issued an individual right of access request issued to (contact organization) on (request date). Our client directed the information to be sent to (firm name) as the designated 3rd party.

Our client and our firm have yet to receive a response. 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 for 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).

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 about a potential HIPAA Privacy Rule Violation.

Individual: 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.

Personal Representative: I am calling on behalf of (client's name), who is the personal representative for your patient (patient name), with a date of birth of (date of birth). (Client name) submitted an individual right of access request to (contact organization) on (initial request date) for a copy of (patient name's) records.

(Client name) has yet to receive (patient name's) 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 for 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).

The provider or facility may say they cannot talk to you because the firm is not the designated third party. That is not true. You are not asking the facility or provider to disclose protected health information. You are acting as the client's or personal representative's attorney. That is all they need to know.

If the provider says they cannot talk to you, here is your response.



1. I am not asking you to divulge any protected healthcare information.
2. (Client or personal representative) issued the request in question to (Contact name) on (request date) and informed us it was delivered.
3. The firm represents our client (or personal representative) for a potential civil rights violation under HIPAA Privacy Rule 45 CFR 164.524.
4. If a response was sent to (Client or personal representative), I would like to know when and how it was sent so I can inform (Client or personal representative).
5. If a response was not sent, I would like to know when it will be sent. I aim to avoid filing an official complaint with the Office for Civil Rights on behalf of (Client or personal representative).

5. Rejected Request

If a provider, facility, or Contact sends any communication rejecting the request, you will use the Mark Request as Rejected Activity on the Request detail page. Please see the Rejected Request Guide on the Arctrieval support page for directions on the Mark Request as Rejected feature. If you would like training on using the Mark Request as Rejected feature, please get in touch with us at support@arctrieval.com to schedule a training session.

If you received a second rejection notice after completing the Mark Request as Rejected Activity, most likely the same person reviewed the letter and does not understand the difference between a defective 3rd party authorization and an individual right of access request. You must call the healthcare provider, facility, or Contact to speak with someone from the ideal contact list 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 for 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).

6. Incomplete Response

The first step is to use the Mark Request Incomplete Activity on the Request detail page. Please review the Incomplete Request Guide on the Arctrieval support page for directions on the Mark Request Incomplete feature. 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. A complete response was due on (request due date).

I want to resolve the matter without filing a formal complaint with the Office for 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. Arctrieval Assistance

The individual right of access request, combined with Arctrieval's software automation, will eliminate most of the phone calls you usually make when using a third-party HIPAA Authorization. However, the software does not control a healthcare provider, facility, or Contact's actions and behavior (or lack thereof); some phone calls are still needed.

After you call a provider or facility, speak to one of the ideal contacts listed above, and do not get the correct resolution, then Arctrieval will help enforce compliance. You must make sure you speak with a person the facility employs. Speaking to a representative from a release of information service, like Ciox, MRO, ShareCare, etc., will not get you the results.

To properly assist you, you must provide the following information about the call.

1. Date and time of the conversation with a live person.
2. Number that was called.
3. The name, title, and employer of each person you spoke to (initial contact person and name of supervisor or manager).
4. Detailed summary of each conversation.
5. Reason why the request was not processed, or the information was not sent.
6. If they don't resolve the issue, what is their HIPAA Privacy Officer's name and contact information?



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 when you do not get the desired outcome.

8. Official Office for Civil Rights Complaint

Arctrieval will file a formal complaint with the Office for Civil Rights on your client's behalf as a last resort. Please be advised that it can take two to three months before the OCR responds and takes action.