



# **POLICE DISCLOSURE POLICY**

**SPRING TERM 2025**

**DUE FOR RENEWAL: SPRING TERM 2027**

## **CHANGES**

**February 2021**

Policy implemented

**February 2023**

Policy reviewed, no changes made

**Spring Term 2025**

Policy reviewed, no changes made

## CONTENTS

1. Introduction.....	4
2. Legislation .....	4
3. Purpose.....	4
4. Procedure .....	5
5. Existing Legal Rights.....	7
6. Notes .....	8

## **I. INTRODUCTION**

- I.1 This policy relates to the disclosure of material held by schools in relation to criminal proceedings.
- I.2 There are some exemptions detailed in the GDPR and the Data Protection Act 2018 that allow for the safe sharing of information with the police in specific circumstances.
- When schools are asked to disclose information to the police they have to be satisfied and must be able to demonstrate that an appropriate exemption applies.
  - They must also ensure that the sharing of that information is carried out safely and securely and is limited to only information that is relevant to the request.
- I.3 This policy does not interfere with the statutory guidance on inter-agency working to safeguard and promote the welfare of children, e.g. 'Working together to safeguard Children 2018'.
- I.4 Information schools share with the police may be submitted to the Crown Prosecution Service and disclosed to the defence where appropriate.
- I.5 For the purposes of this policy, Police Disclosure Officer shall mean the Officer requesting disclosure of information from the school. This will usually be the Police Officer in the Case but can be any other assigned Police Officer or police civilian investigator.

## **2. LEGISLATION**

- 2.1 The legislation that can be relied upon to allow the disclosure of personal information to the police is the Data Protection Act 2018, SCHEDULE 2 PART 1 Paragraph 2; *Crime and taxation: general*
- The listed GDPR provisions and Article 34(1) and (4) of the GDPR (communication of personal data breach to the data subject) do not apply to personal data processed for any of the following purposes:
- (a) The prevention or detection of crime,
  - (b) The apprehension or prosecution of offenders, or
  - (c) The assessment or collection of a tax or duty or an imposition of a similar nature.
- 2.2 Note, however, this exemption does not automatically mean disclosure is appropriate and it does not mean that schools do not need to give due regard to individuals' data privacy rights or the relevance of the information we are sharing.
- It is important to seek advice from your data protection officer before disclosing any information.

## **3. PURPOSE**

- 3.1 This policy has been agreed with Devon and Cornwall Police, for the sharing of relevant information for the purpose of criminal investigations and prosecutions.
- 3.2 This policy will ensure that schools have the correct information before sharing takes place and that any sharing of information is carried out legally and respects the data privacy rights of individuals whose information may be included in the requested records.
- 3.3 This policy accepts:
- a) Schools will act in the best interests of the individual;
  - b) Any information provided by the Police to schools, to assist with either locating records or to assess what information can be shared, must remain confidential. Any misuse of this information may lead to disciplinary action or even criminal prosecution;
  - c) Schools, the Police and the Crown Prosecution Service must protect the confidentiality of information held by schools;

- d) Where consent has not been obtained from the school, the Police and/or the Crown Prosecution Service will not disclose any information obtained, (directly or indirectly) as a result of having access to records held by the school;
- e) The Police and/or Crown Prosecution Service can ask permission from the court to share information without consent. This is called 'leave of the Court' (see Notes 6.3);
- f) In some cases, a child may be (or have been) the subject of proceedings in the Family Jurisdiction. Nothing in this policy authorises the disclosure of any document filed with the court in such proceedings or of any information relating to them. Please see section 5 for more information.
- g) Requests from police forces out of area must follow the same process. Although relevant forms may differ from those specified, the information required to deal with the request remains unchanged.

## **4. PROCEDURE**

### **4.1 Making the request (Police)**

- 4.1.1 As soon as the Police need to know if the school holds any records which may be relevant to an investigation, they will notify the school in writing using either:
  - Personal Data Request Form (Form No.:277), for personal data in respect of an individual, (e.g. they simply require the address of a pupil) or
  - Form POL/SSI, where they need to review or ask the school to review records to establish whether there is any information that will be relevant to a case.
- 4.1.2 The forms must include as much information as possible including:
  - the purpose of the request/a summary of the case;
  - the legal basis for the request or where applicable, the relevant exemption;
  - The identity of the officer or investigator in the case (with contact details);
  - The details of the data subjects whose records are requested. Specifically:
    - the name (including alias or other known names),
    - the date of birth and
    - the address (including all known previous addresses).
- 4.1.3 The relevant form must be supplied before the information is provided, even where the request is urgent. The form can be completed and submitted electronically for speed.
- 4.1.4 This must be sent to an agreed mailbox, such as a small team with restricted access, e.g. a safeguarding team mailbox. If this is not available, the Police Disclosure Officer must contact the school for an appropriate correspondence address before sending the request.

### **4.2 Dealing with the request (schools)**

- 4.2.1 When the request is received the school must allocate a member of staff, to be responsible for managing the request and liaising with the Police Disclosure Officer and their Data Protection Officer (DPO) throughout the enquiry.
- 4.2.2 As soon as the notification is received, the appointed school staff member must:

- Notify their Data Protection Officer;
- Check that the request includes all of the information needed to locate the records and assess whether or what information can be shared (see 4.1 making the request).
- Where the request is incomplete, contact the requesting officer and advise what additional information is needed.

4.2.2 If the request is urgent for personal information, submitted on the Personal Data Request Form, e.g. to protect the life (vital interests) of a person, a staff member in authority, e.g. the CEO, Head of School, Business Manager, Designated Safeguarding Lead etc. will be able to authorise release of the information where the Data Protection Officer cannot be reached quickly.

4.2.4 For all other requests the member of staff, under the guidance of, or with the DPO, will:

- Identify (e.g. from form POL/SSI) when the information is needed by. If the date requested cannot be met they will contact the Police Disclosure Officer to agree an appropriate timescale;
- Locate the records the school holds in relation to the person that is the subject of the request;
  - Where necessary request information from various locations, e.g. SEND department, school office, safeguarding etc. giving a timescale that the information is needed by;
- Provide an outline of the types of records held, to the Police Disclosure Officer;
- Make the records available to the Police Disclosure Officer for review;
- Agree a suitable time for the Police Disclosure Officer to review the records on school premises in the presence of the staff member and/or DPO.
  - The review may take place elsewhere in exceptional circumstances and only where agreed between the school and the disclosure officer.
  - The school staff member/DPO must bring the file to the location and remain present throughout;
- If agreed by the Police and the school, undertake a review of the information in order to identify any information relevant to the purpose of the request, without the disclosure officer attending.

### **4.3 Information identified as relevant in criminal proceedings**

4.3.1 All records identified by the Police Disclosure Officer during the review, as being relevant to the criminal proceedings, or which may undermine the prosecution or support the defence, should be flagged on the file and brought to the attention of the school staff member/DPO.

4.3.2 The school staff member under the guidance of, or with the DPO will:

- Review any records identified as relevant by the disclosure officer to ensure that they meet the reason for the request.
- Prepare and provide copies of the relevant documents (whether identified by the disclosure officer or staff member/DPO), that they agree can be shared with the Crown Prosecution Service (CPS) (see 4.4.1 below).
- Within an agreed timeframe:
  - Redact any personal information that is not relevant to the purpose of the disclosure;
  - Securely pass copies of the prepared records to the Police Disclosure Officer either in person, by recorded delivery post or secure email;
  - Explain in writing, their reasons where any documents, identified as relevant by the disclosure officer have been withheld. (See section 4.5 Objections to disclosure).

4.3.3 The school understands that:

- As an enquiry develops, the Police Disclosure Officer may need to review the school records again.

- As soon as a trial date is known, the Police Disclosure Officer, will confirm with the school that since earlier reviews, no additional relevant records or information has been created or obtained.

#### **4 Information identified as relevant for disclosure to the defence (Also see Notes 6.1)**

- 4.4.1 The Officer in the Case will meet with the relevant Crown Prosecutor to determine whether any of the records identified by the Police Disclosure Officer passes the Criminal Procedure and Investigations Act (CPIA) 'Disclosure Test' (i.e. is capable of undermining the prosecution or assisting the defence).
- Any documents that meet this test will be detailed by the Officer on a form MG6D.
- 4.4.1 The Police Disclosure Officer will ensure the form MG6D contains an accurate description of the records obtained from the school, its contents and the reason that it has or has not met the 'Disclosure Test'.
- 4.4.2 A Notification for Disclosure will be sent to the school outlining all records that has satisfied the 'Disclosure Test'. This notification should include an appropriately completed copy of the MG6D, so that the school can understand why the CPS has considered each document relevant for disclosure, to assist them with their decisions.
- 4.4.3 Within an agreed timeframe, the school must confirm whether:
- They have no objections to disclosure;
  - They have no objections subject to appropriate editing (further to editing already taken place) or
  - They object to disclosure.

#### **4.5 Objections to the disclosure**

- 4.5.1 Schedule 2 Part 1 Paragraph 2 of the DPA 2018, allows the school that holds personal data (including the content of e-mails and files) to choose to disclose data, if it is persuaded that it is both necessary and proportionate for the purpose of detecting, investigating or preventing crime.
- 4.5.2 It is the responsibility of the school to ensure that the risk of harm if the information is not disclosed, justifies the breach of privacy that will be caused by disclosing it.
- 4.5.3 Where the school objects to the disclosure of any records identified as suitable for disclosure, the Police and Crown Prosecution Service will not disclose any material until a Public Interest Immunity (see Notes 6.2) application has been made.
- 4.5.4 In the event of the judge making a public interest immunity ruling restricting disclosure, the Crown Prosecution Service will ensure that the dedicated trial judge (if different) be made aware of the material concerned and the ruling made, so that there is no possibility of the information being used in the proceedings.
- 4.5.5 In the event of the defence making an application (s8 CPIA 1996) for further disclosure of material held by the school and considered by the police in their enquiry, the Crown Prosecution Service will liaise with the school prior to the hearing of this application.
- 4.5.6 Following receipt of a defence statement, the Police Disclosure Officer will arrange to review the material held by schools if appropriate. The school will arrange for the files to be available for review by the Police Disclosure Officer.

### **5. EXISTING LEGAL RIGHTS**

- 5.1.1 In some cases, a child may be (or have been) the subject of proceedings in the Family Jurisdiction. Nothing in this policy authorises the disclosure of any document filed with the court in such

proceedings or of any information relating to them.

- 5.1.2 This applies whether the proceedings are concluded or still pending. If material is identified that falls into this category then leave (see Notes 6.3) must first be obtained from the court in which the family proceedings are being (or were) conducted.
- Such leave will be sought by the police or the Crown Prosecution Service.
- 5.1.3 Where the Police Disclosure Officer has identified relevant material to which legal privilege is attached, this will not be released at any stage of this process.
- 5.1.4 This policy does not diminish the existing legal rights of any agency. Specifically, it will not operate to restrict the right of any agency to claim Public Interest Immunity in connection with any material, which has come within the scope of the Police enquiry.

## **6. NOTES**

### **6.1 The disclosure process during an investigation**

- When an allegation is made against someone, the police will begin an investigation. From the outset the police have a duty to record, retain and review material collected during the course of the investigation. The police reveal this material to the prosecution to allow the effective disclosure to the defence.
- Disclosure obligations begin at the start of an investigation, and police have a duty to conduct a thorough investigation, manage all material appropriately and follow all reasonable lines of enquiry, whether they point towards or away from any suspect.
- If police believe there is strong evidence to suggest someone committed a crime they will present evidence to the Crown Prosecution Service, which decides if the person should be charged.
- When a defendant is charged with an offence the investigator will review all material gathered during an investigation – such as CCTV footage, statements from witnesses, mobile phone messages, social media conversations and photographs.
- The investigator will decide which items collected as part of an investigation are capable of having a bearing on any issue in the case. This is called applying the relevance test.
- Some material will be used in the prosecution and will be part of the case. Some will be irrelevant and have no bearing on the case at all.
- Other material will be relevant to the investigation but is not part of the case. This is called unused material. This material is reviewed by the disclosure officer and if any of it may undermine the prosecution case or support the defence it will be disclosed to the prosecutor.
- Prosecutors must provide the defence with the schedules of all of the unused material and provide them with any material that undermines the case for the prosecution or assists the case for the accused.
- A defence statement is submitted to the prosecution in Crown Court cases and in some Magistrates' Court cases, which sets out the defence to the allegations and can point the prosecution to other lines of inquiry. The disclosure officer will then review all of the material held by the investigator and decide whether in the light of the defence statement, additional material is now relevant or meets the test for disclosure because it supports the case for the accused.

### **6.2 Public Interest Immunity**

- 6.2.1 Public interest immunity is a common law principle allowing a litigant to refuse to disclose evidence to other litigants on the basis that it would be damaging to the public interest.
- 6.2.2 During an investigation, the police may collect sensitive material which could undermine the case for the prosecution, and/or assist the case for defence. Nonetheless, it may be withheld by the Crown under the public interest immunity (PII) principle.
- 6.2.3 This means there may be a conflict between the general rule that the defendant should have full access to all non-privileged, relevant material, and the PII principle that allows certain material to be withheld



if it is not in the public interest to disclose it. In the latter case, the public interest is the overriding factor. Sometimes the request from the third party for material they claim is relevant to the conduct of their case, may attract public interest immunity considerations.

- 6.2.4 An application for PII will be made by the prosecution to the court. If the court orders that the prosecution do not have to disclose material to the defence, the defence may challenge that decision and the court may then either uphold its original ruling or order disclosure pursuant to the defence application.
- 6.2.5 Under the Criminal Procedure and Investigations Act 1996 (CPIA 1996), sensitive “material must not be disclosed...to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly”. The main types of sensitive material are:
- National security/affairs and interests of state
  - Journalists’ sources
  - The prevention, detection and investigation of crime
  - Material relating to children or young children

However, this list is not exhaustive, and PII will be considered on a case by case basis.

### **6.3 Leave of the court**

Leave of Court is a request made to the court to obtain permission to do something which would have been unlawful without such permission.