

Annex B - An Explanatory Note On The Principles And Procedures Relating To Third Parties Under The Criminal Procedure And Investigations Act 1996 And The Disclosure Of Material In Their Possession

Introduction

This note explains the procedures to be followed by the prosecution in seeking to obtain relevant material held by individuals and organisations that are regarded as third parties in criminal proceedings.

The law governing material held by third parties is contained in the Criminal Procedure and Investigations Act 1996, as amended (the CPIA 1996) and the Attorney General's Guidelines.

Who are third parties?

In the course of an investigation to determine whether an offence has been committed, the police may become aware of relevant material in the possession of persons or organisations which may have a bearing on the investigation. It is only the investigator and the prosecutor who have statutory duties of revelation and disclosure under the CPIA. All other categories of persons are third parties so far as the conduct of the case is concerned.

The legal requirements of the prosecution

Every accused person has a right to a fair trial, a right enshrined in our law and guaranteed under the European Convention on Human Rights. This right to a fair trial is fundamental and the accused's right to fair disclosure is an inseparable part of it.

The scheme set out in the CPIA is designed to ensure that there is fair disclosure of material to the accused which may be relevant to an investigation and which does not form part of the prosecution case. This is known as 'unused material'. Fairness does, however, recognise that there are other interests that need to be protected, including those of the victims and witnesses who might otherwise be exposed to harm. The CPIA protects those interests.

Investigators are under a duty to pursue all reasonable lines of enquiry, whether these point towards or away from the accused. What is reasonable in each case will depend on the particular circumstances. Investigators and prosecutors must do all they can to facilitate proper disclosure, as part of their general and professional responsibility to act fairly and impartially, in the interests of justice.

Where you possess material, which has not been obtained by the police, they are under a duty to inform you of the existence of the investigation and to invite you to retain the material in case they receive a request for its disclosure. Where the police

inspect material with your agreement and do not retain it, they are under a duty to record details of that material and to reveal it to the prosecutor.

Where you do not allow the prosecution access to the material, the prosecution or defence may apply to the court for a witness summons, which if granted would require you to attend court to produce the material to the court. Application for a witness summons will only be made where the prosecution or defence considers that the material sought is likely to be material evidence in the proceedings. You do have the right to make representations to the court against the issue of a witness summons.

Where the relevant material held by you or owned by you but in the possession of the prosecution is sensitive, in that it is not in the public interest to disclose, then the prosecution will treat that material in confidence. Where that material satisfies the disclosure test a Public Interest Immunity application must be considered to prevent disclosure to the defence. Where you have an interest in that material and an application is considered appropriate, the prosecution is under a duty to notify you in writing of the time and place of any Public Interest Immunity application. You have a right to make representations to the court.

If a court, on hearing an application for Public Interest Immunity determines that the material in question should be disclosed to the defence, the interests of justice require, in appropriate cases the prosecution to terminate the proceedings rather than make such disclosure.