

Protocol between the Police Service and the Crown Prosecution Service on dealing with third party material

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Introduction

- 1.1 This Joint Protocol between the Crown Prosecution Service (CPS) and the Police draws together the existing guidance and best practice on identifying, inspecting, reviewing and obtaining third party material.¹ It sets out the cooperation arrangements between the Parties in respect of the investigation, the institution and the prosecution of offences in which there is third party material and the relevant duties and functions of the investigator, the disclosure officer and the prosecutor.
- 1.2 This protocol is consistent with the 2013 Protocol and Good Practice Model on Disclosure of Information in Cases of Alleged Child Abuse and Linked Criminal and Care Directions Hearings, which provides the framework for the police and CPS to obtain disclosable material from local authorities, and for applications to be made to the Family Court, in all cases involving children of 17 and under. This Joint Protocol extends the same principles and practices to adult witnesses.
- 1.3 This protocol is not intended to alter the existing provisions and procedures that are in place within the Police to obtain third party material such as medical records and third party material under the Regulation of Investigatory Powers Act 2000 (RIPA), or the Investigatory Powers Act 2016.

Aims and objectives

- 2.1 The objectives of this protocol are:
 - To reflect national Police policy in identifying and seeking access to relevant third party material as early as possible in the investigation;
 - To provide a streamlined and standard process in contacting third parties and specifying any condition sought on the treatment, storage, or return of the material; and
 - To achieve improved and consistent performance in inspecting third party material and determining whether any or all of the material should be retained, recorded and, in due course, disclosed to the defendant.

Identifying third party material

- 3.1 Duties of disclosure under the Criminal Procedure and Investigations Act 1996 (CPIA) and the Code of Practice are imposed upon two categories of persons only: the investigator and the prosecutor. All other categories of persons are to be treated as third parties, rather than as belonging to the prosecution team.
- 3.2 Third parties frequently encountered in a criminal investigation will include:
 - Owners of CCTV material;
 - Social services departments;
 - Schools;
 - Medical practitioners;

¹This does not apply to counter terrorism cases or the intelligence agencies where separate memorandum of understandings exist

- Counsellors;
- Mobile telephone providers;
- Social media companies; and
- Internet providers.

Speculative enquiries without any proper basis in relation to third party material are to be discouraged; in accordance with the CPIA Code of Practice and the Attorney General's Guidelines on Disclosure, the officer in charge of an investigation is not required to make speculative enquiries of other persons; there must be some reason to believe that they may have relevant material. That reason may come from information provided to the police by the accused or from other inquiries made or from some other source but it must be a reasonable line of enquiry in the circumstances of the case.

- 3.3 A third party has no obligation under the CPIA to reveal material to the investigator or to the prosecutor, nor is there any duty on the third party to retain material which may be relevant to the investigation. In some circumstances, the third party may not be aware of the investigation or prosecution.²
- 3.4 If the investigator or the disclosure officer believes that a third party holds material that may be relevant to the investigation, that person or body should be told of the investigation and alerted to the need to preserve relevant material.
- 3.5 The third party should be contacted and requested to confirm the existence of any material they hold. The following national template documents must be used:
- [Letter to third party](#)
 - [Explanatory Note](#)
 - [Third party response letter](#)
- 3.6 A record must be kept of all material sought from third parties and the status of the inspection of such material. The [Index of third party material](#) template should be used.
- 3.7 The letter to the third party and any response are both likely to meet the relevancy test and fall to be scheduled as relevant unused material. The disclosure officers should consider whether any of the contents are sensitive or consist in part of personal data not relevant to the case.
- 3.8 Prosecutors are reminded of the need to provide guidance and support to police in identifying third party material. The prosecutor should consider whether it is appropriate to advise the police to seek access to further material as part of their duties to explore all reasonable lines of enquiry, whether these point towards or away from the suspect. Where possible, there should be early engagement with the defence in identifying lines of enquiry to be pursued.

Consent of the subject of the material and of the third party

- 4.1 The disclosure of records held by a third party may engage the Article 8 right to privacy rights of the subject of the material, whether they are a complainant or witness. The police must therefore consider whether their consent is required to gain access to the material and to

² Although the position is different in relation to RIPA which obligates service providers in the UK to retain communications data and compels the disclosure of data held by these companies for the purposes of prevention and detection of crime

enable any appropriate disclosure to take place. Confidentiality rests with the subject of the material, not with the authority holding it.

- 4.2 When obtaining such consent the Police will make clear to the complainant or witness the reasons for the request, and the use to which the records may be put, making it clear that they may be disclosed to the defence. The response of the complainant or witness should be recorded and passed to the prosecutor using the MG3 and/or the MG6 schedules or Streamlined Disclosure Certificate.
- 4.3 Where material is obtained from third parties, the investigator should discuss with them whether any sensitivities attached to the material that might influence whether it is used as evidence, or otherwise disclosed to the defence, or whether there may be public interest reasons that justify withholding disclosure. The third party's view must be passed to the prosecutor using the MG6D.
- 4.4 Where the third party in question refuses to allow inspection of the material, or requires the prosecution to obtain an order before handing over copies, the prosecutor will consider whether it is appropriate to obtain a witness summons using section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965 or section 97 of the Magistrates' Court Act 1980. Part 28 of the Criminal Procedure Rules and paragraphs 3.5 and 3.6 of the Code of Practice should be followed.
- 4.5 In respect of cases involving child victims, access to and exchange of third party material held by a local authority will be dealt with in accordance with the local protocol signed between the Police, CPS and the Local Authority.

Reviewing third party material

- 5.1 Where it is apparent to an investigator that a third party has material that may be relevant to an issue in a case, all reasonable steps should be taken to identify and consider such material. There will be occasions where the third party permits inspection of such material but will not allow the police to retain copies. In those circumstances the [Third Party Material Inspection Log](#) should be used. The officer should describe all of the relevant material which has been inspected. Where upon inspection material is not considered to be relevant because it is incapable of having any bearing on the issues in the case, a short explanation should be noted on the Inspection Log.
- 5.2 Where the third party allows the police to take possession of the relevant material, it must be appropriately described by the disclosure officer on the schedule of unused material. On the Streamlined Disclosure Certificate, the officer should list any relevant material within the box marked 'Schedule of Unused Material'.
- 5.3 It is important that the prosecutor is made aware at the point of charge, what reasonable lines of enquiry have been undertaken in relation to the case and in particular what third parties have been identified as potentially holding relevant material which has not yet been obtained. This information should be included on the MG3. Where officers have identified third party material but have made the decision that this is unlikely to contain relevant material, they should explain their reasoning on the MG3. This is in order that the prosecutor may fully explain the parameters of reasonable lines of enquiry conducted by the police and set that out in a Disclosure Management Document, to assist all parties to the criminal proceedings.

Further guidance in respect of third party material can be found in the [CPS disclosure manual](#).

