

ANNEX 2 - GUIDANCE NOTES

1. THE AIMS OF THE REQUEST FORM ARE:

- 1.1. To provide the Family Court with early information to enable it to properly determine any necessary direction(s) which need to be made in relation to documents, records or other evidential material held by the police in relevant criminal proceedings or investigations which may inform the court (and the parties) in the determination of any factual or welfare issue within family proceedings.
- 1.2. To provide timely advance notice to the police, of the existence of the family proceedings and the nature and detail of the information sought from the police.
- 1.3. To enable the police to indicate in advance what documents, records or other evidential material (including both used and unused material) is or may be available to be disclosed to the family court and whether there is any objection to or difficulty in the immediate disclosure of the same.
- 1.4. To assist the court (and the parties) in the framing of standard directions directed to the police which will act (if necessary) as the conduit to process and deal with all such directions for disclosure affecting any division/borough without any undue delay.
- 1.5. To encourage early disclosure of full and frank information between the police, the parties and the court subject only to the avoidance of prejudice to the proper conduct of ongoing police enquiries at the time of the request.
- 1.6. To encourage applications for disclosure that are limited to material that is relevant and necessary to resolution of the issues in the Family Court proceedings

Limited checks as defined by the police will be completed in order to locate the requested information detailed on the application. NOTE: research is not exhaustive of all police intelligence/information systems and there may be other information held. Only Law Enforcement Data Service (LEDS) and investigation report research will be completed in the majority of requests received by the police.

2. UNDERSTANDING ON CONFIDENTIALITY

Police information will not be disclosed unless there are important considerations of public interest to depart from the general rule of confidentiality. The protection of children is one of the areas where exceptions may be made.

Information supplied by the police in pursuance to the application is subject to the following implicit undertakings on the part of the parties and their legal representatives unless otherwise specifically directed by the court:

- 2.1. Any material disclosed will only be used for the purposes of, and preparation for, the current proceedings unless the permission of the court and police is obtained;
- 2.2. It will only be disclosed to professionals in the proceedings (and the parties) unless the permission of the court is obtained and early notification is given to the police;
- 2.3. The material will otherwise be kept confidential and copying should be kept to the minimum necessary to avoid the proliferation of copies of sensitive material;
- 2.4. Where there is an Achieving Best Evidence (ABE) or other audio/video/digital evidence one copy will normally be made available on request as soon as police investigations allow. Copies of audio/video/digital evidence will not be provided to unrepresented parties however this will be considered on a case-by-case basis, depending on the content of the information and the risk to third parties. The copying of such evidence should be kept to a minimum and consideration should be given to the parties attending the appropriate police station or local authority premises in order to view the evidence at a mutually convenient time. Where this is not possible and the evidence has to be further copied, the party(ies) will meet the reasonable costs incurred by the police of copying unless alternative arrangements have been agreed between the police and the parties' legal representatives for making copies;
- 2.5. Parties must sign and abide by the terms of the Handling Instructions in order to prevent the unauthorised dissemination / copying / use of the evidence. See the Handling Instructions Form attached to the application form - this form can be suitably "adapted" to cover other evidence if necessary by either the police or relevant parties;
- 2.6. That the police will not transcribe or make arrangements to transcribe any video interviews or tape-recorded interviews unless this has already been done in connection with a criminal prosecution/investigation. Should the police be required to transcribe evidence, the party(ies) will meet the reasonable costs incurred in providing this service.

3. GENERAL FEES AND CHARGING

Guidance allows the police to appropriately recover the costs for the disclosure of information in respect of family proceedings. Cash payments unfortunately cannot be accepted.

Please refer to the police website for charging schedules. The Standard Disclosure Fee will be reviewed annually.

4. PROPORTIONALITY

It is to be understood by all parties that this process is designed to facilitate only requests for items of evidence which the requesting party cannot, or cannot easily,

obtain for itself, which only the police have and which are of central and not peripheral importance to the issues and incidents under consideration by the Family Court.

All parties should use the application proportionately having regard to what is reasonable, directly relevant and necessary when seeking disclosure from any third party.

The police should not be asked to consider documents for disclosure which have been generated by a third party agency. The court/solicitor should seek disclosure directly from the third party agency so that a risk assessment can be completed and any necessary redactions applied.

5. SECTION 8 OF THE APPLICATION

In order to maintain a good working relationship with the police, and to reduce any potential risk caused by onward disclosure of police material (such as 87d forms; case conference notes, Public Protection Notice, Merlin reports etc), the local authority should seek permission to share any information with the Court and the parties involved in the ongoing proceedings.

Any documents that need to be considered for disclosure must be attached to the application and forwarded to the appropriate address.

6. REDACTIONS

The determination of what redactions are to be made will be based on information at the disposal of the police and that provided by the court/solicitor requesting disclosure including information on the issues being determined in the family proceedings. In the absence of guidance from the parties, the police will make the assessment of relevance. Should there be a query with regard to the redactions applied by the police, the parties' legal representatives are encouraged to identify the specific document and list what redaction requires further explanation. It is anticipated this can be dealt with through correspondence and without the need to return the matter to court. If the explanation provided does not satisfy the parties and there remains dispute over any particular redaction, the police will consider whether it will be necessary to make an application to the court and where possible, put the parties on notice.

Should it be requested by the court or the parties that any of the redactions need to be lifted, the police will consider that request and lift redactions where appropriate. Redactions will also be removed by the police at the point at which information being withheld on the basis of prejudice to an ongoing investigation, no longer poses such a risk and on the basis no other redaction category applies.

Directions for unredacted disclosure should not be sought from the court.

7. POST CHARGE MATTERS

CPS will take the lead on decisions relating to disclosure of material which has been generated as a result of an investigation that is at a post charge stage. In the event that the CPS have any objections and/or concerns about the material requested in terms of the impact on the trial, they as the prosecuting authority must be responsible for making any necessary application/submissions to the Court directly. The Police may make separate representations in terms of any concerns from a safeguarding perspective.

In order to take this forward the Police will discuss the matter with the CPS, advise them of the nature of the ongoing proceedings and the material requested at this stage. Any directions subsequent to CPS involvement must specifically reference the Police and CPS.

The Police will only provide disclosure in circumstances where they have no safeguarding concerns and the CPS confirm that they have no objections to the disclosure request, or where the Court makes a further order for disclosure following any representation made by the CPS and the Police.

8. PUBLIC INTEREST IMMUNITY (PII)

In the event that it is deemed necessary for an application to be made claiming PII over material or specific information contained within, the police will inform the court and if appropriate put the parties on notice.

9. ELECTRONIC DEVICES

This section applies to the electronic devices seized by police as part of an investigation and the data downloaded from those devices (mobile phones, iPad, laptops etc.).

It should be noted the police will endeavour to assist the family proceedings with the disclosure of what is understood to often be key information and the starting point is therefore that in principle, there is no objection to provision of this material. There can however be significant difficulties in providing such disclosure to the extent required within the family proceedings timetable.

The downloading of devices and/or forensic analysis of the data, is not always classified as a priority in a criminal investigative strategy and therefore may possibly be unavailable at an early stage of an investigation. Further, when the downloading exercise is undertaken, it is often done by experts independent of the police, who have their own priorities in workload deadlines. Notwithstanding these complications, the police will seek to expedite the process where such information is sought; something that can be assisted by the parties providing information such as:

- 9.1.Details of what specific devices are to be downloaded
- 9.2.Details of who the device belongs to
- 9.3.Date parameters for any forensic analysis
- 9.4.Any key information (i.e. Communications between named individuals; telephone numbers etc.).

If a request for disclosure of electronic download data is received, the request will be considered by the investigating officer having regard to the following:

- 9.5.Whether the officer has in their possession a copy of the download or has access to the requested information.
- 9.6.If so, whether or not the investigating team have reviewed the content for material relevant to the ongoing investigation. Until this is complete the police is unable to permit onward disclosure as the content of the device could give rise to further enquiries/investigative actions. Early disclosure without review could jeopardise the ongoing criminal investigation and any ensuing prosecution.
- 9.7.If this is the case the police will provide an estimate timeframe of when the officer endeavours to complete the review and provide the results in readable format.
- 9.8.Whether there is any possible risk of harm to individuals in disclosing the information (redacted or otherwise) to the parties.

10. REDACTIONS TO DATA HELD ON ELECTRONIC DEVICES (owned by the parties)

Taking into consideration the volume of the information held and the fact that the police are not a party to the ongoing proceedings, it needs to be established that there is sufficient resource to undertake the disclosure exercise and that it is reasonable and proportionate.

Should the police have no objection to downloads being released in an unredacted format (i.e. no risk of prejudice to investigation or harm to an individual) the police will require an order from the court specifying that downloads should be disclosed in an unredacted format (limited to the forensic timeframe of interest).

Where the police have no objection but the owner of the device raise concerns with the disclosure of unredacted data, the following options will be available:

- 10.1. The parties and court agree to the police providing unredacted downloads (limited to the forensic timeframe of interest) to the owner's legal representative, who will then review the content for redactions; or

10.2. The parties and court agree to the police providing unredacted downloads (limited to the forensic timeframe of interest) to independent counsel instructed by the applicant's legal representative, to review the content for redactions. The unredacted downloads should then be returned to the police via a secure method and redacted versions passed to the applicant's legal representative. The parties will of course need to give the applicant's representative instructions with regard to what information needs to be redacted and this should also be discussed at the next hearing.

11.WITNESS SUMMONS IF NECESSARY

Any requesting party who wishes to use the witness summons procedure, should only do so as a last resort, where the police has been unable to comply with a request for disclosure, or if an officer is required to personally attend court to give evidence. The requesting party must liaise with the police prior to using this procedure.

12.INDECENT IMAGES

In the course of an investigation, the police may seize material including actual or alleged indecent images of children (under 18). If relevant and necessary, a request should seek the police description of those images to be provided, or a further and better description, not the images themselves. Access to such images will not be granted without an order of a Family Court judge. A judge who is being asked to consider an order facilitating access to the images themselves should be addressed on the provisions of s.160 of the Criminal Justice Act 1988 and ss.1 to 7 of the Protection of Children Act 1978, in particular the offence of "making an indecent photograph of a child" and the statutory defences and exceptions, and should only be asked to consider ordering police-facilitated, controlled access (including access which permits a party to have confidential discussion with their legal representatives). The same considerations apply to any other images where dissemination is prohibited.

13.POLICE TERMINOLOGY

13.1. Law Enforcement Data Service (LEDS) – this report will detail any convictions/cautions or warnings

- 13.2. Investigation report - CRIS/Niche/FWIN etc. This report will document the path of the investigation, what information has been gathered as a result of any enquires and the outcome.
- 13.3. Merlin/Public Protection Notice (PPN) – this report will document an initial assessment or decision making around an incident that involves a vulnerable person. These records are automatically referred to the local authority and therefore these reports should be requested using section 7 of the application.
- 13.4. MG11 – statements
- 13.5. MG15 – transcript of interview
- 13.6. VRI/ABE – visually recorded interview
- 13.7. ROTI – Record of Taped Interview
- 13.8. ROVI - Record of Video Interview
- 13.9. BWV – Body Worn Video
- 13.10. CAD/999 call/STORM – this relates to a call log to the police operator

Example of a summary report drafted by the MPS.

Crime No.	Date of incident	Current Classification on CRIS system	Full Name	DOB	Role	Outcome
1236072/19	27/05/2019 to 29/06/2019 Reported 02/08/2019	SUBSTANT./Offence of Harassment Victim reports that her ex-partner (Suspect) is harassing via email, calls and text messages.	Ash Smith	10/10/1974	Suspect	Suspect issued a prevention from harassment warning.
			Cat Smith	16/08/1975	Victim	
2821234/20	07/07/2018 Reported on 19/09/2020	SUBSTANT./Cruelty to or Neglect of Children Whilst at appointment informant mentioned assault on daughter by suspect	Jill Smith	18/09/2013	Victim	No Further Action
			Ash Smith	10/10/1974	Informant	
			Cat Smith	16/08/1975	Suspect	

Please note the summary report will vary depending on the constabulary.