**Internal Protocol**

**Disclosure**

**National Protocol (October) 2013 guidance – PART B**

Full Document can be access here: <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/protocol-good-practice-model-2013.pdf>

**Part B – Disclosure from the Local Authority (LA) / Family Justice System into the Criminal Justice System**

1. **Police request to LA for disclosure**
2. Following commencement of the investigation, the police will provide to the LA single point of contact (*name)* form entitled Annex C (attached to this protocol).
3. Details for the LA single point of contact (SPOC) are contained in Annex B (attached to this protocol).
4. The Annex C must include details of the investigations and prosecution if commenced or a request for information.
5. The police will notify the LA within 20 working days of the commencement of the investigation.
6. Requests for material **must** be as prescriptive and detailed as possible and necessary for the pursuit of reasonable lines of enquiry *(paragraph 3.6 Code of Practice Criminal Procedure and Investigation Act 1996).*
7. Annex C will include reasonable timescales for the police to be given access to relevant material.
8. The LA will deal with any request from the police as expeditiously as possible so as to not jeopardise the criminal investigation; and will notify the police of any delays in processing the request.
9. Timescales will be case specific taking into account the stage/nature of the investigation and/or prosecution.
10. **Disclosure by the LA to the police**
11. Upon receipt of the Annex C from the police, the LA SPOC (or delegated officer) will identify and collate relevant material from the Children’s Services or other files as appropriate.
12. The SPOC (or delegated officer) will liaise with relevant departments within the LA in the collation of such material for the police to assist the criminal investigation.
13. The SPOC (or delegated officer) will liaise with the police to arrange the viewing of the material to the council’s offices.
14. Upon viewing the material, the police may make notes of the record(s) and the name of it so they can request it with the relevant authority, if they decide to do so.
15. No copying of the material is allowed; any coping of unredacted records requires the written permission of the of Heads of Safeguarding for Children or Adults, respectively. The final decision remains with Heads of Safeguarding.
16. Where further relevant Local Authority material comes to light after the police examination of the material, the police must make a further request by way of the Annex C process.
17. The LA will ensure that documents relating to Family Court proceedings *(section 12(1) Administration of Justice Act 1960 prohibits such information)* are **not** included in the files to be examined by the police.
18. Where there are documents relating to Family Court proceedings, the LA **will** provide a list (e.g. by providing a copy of redacted court index) of the material. This **will not** describe what that material is, in order for the police and/or the CPS, if appropriate, to apply to the Family Court for disclosure.
19. Should an application be made to the Family Court, the police shall notify the childcare lawyer with contact of the matter in advance.
20. Any application to the Family Court for disclosure will be made on a C2 application for with a draft order attached.
21. Exceptions to disclosure of documents relating to Family Court Proceedings:
* The LA can disclose to the police documents which are lodged at court, or used in the proceedings, which already existed (*Re Ward (A Child) [2010] EWHC 16 (Fam); [2010] FLR 1497)* (e.g. pre-existing medical reports)
* Text or summary of a judgment given in the Family Court proceedings can be included in the files to be examined by the police *Rule 12.73(1)(c) Family Procedure Rules 2010 and Practice Direction 12G).*
* The LA is not prevented providing the police documents or information relating to Family Court proceedings where:
1. The police officer to whom disclosure is made is carrying out duties under section 46 Children Act 1989 or serving in a child protection or paedophile unit **and**
2. Disclosure is for the purposes of child protection and not for purposes of the criminal investigation *(Rule 12.73(1)(a)(vii) Family Procedure Rules 2010).*

**Should any disclosure be given under the exceptions listed above, the police cannot make onward disclosure of any documentation or information contained therein for the purpose of the investigation or prosecution without the express permission of the Family Court (this also includes disclosure to the CPS.)**

1. Where, in exceptional circumstances *(The law permits the disclosure of confidential information where a countervailing public interest can be identified. Such a public interest will include the administration of justice, the prevention of wrongdoing and enabling another public body to perform its public duty (R v Chief Constable of North Wales Police ex parte Thorpe [1996] QB 396). In these circumstances, the exchange of relevant material with the police and CPS is not restricted under Data Protection Act 1998),* The LA is not able to include other material (not relating to Family Court proceedings) in the files to be examined by the police, the LA will notify the police in writing of the existence of this material; indicating the reason why the material is not being made available to the police. Such a course should be exceptional because the LA recognises that the material will be regarded as sensitive by the police and the CPS. It will not be disclosed to the defence without further consultation with the Local Authority or order of the court.
2. Within the timescales set out in the Annex C request (or otherwise agreed between the Local Authority and the police), the police will examine and review the material collated by the Local Authority. The review will usually take place on Local Authority premises but may be elsewhere by agreement. The police will read and mark what material they require. The Local Authority will then review and make any necessary redactions before forwarding to the police. The material will not be disclosed to the defence without further consultation with the Local Authority or order of the court.
3. Similarly, where new issues arise in the criminal case (e.g. following the receipt of the defence case statement), the police will submit a further Annex C form requesting access to material not previously examined.
4. **Applications by police and the CPS to the Family Court for disclosure of material relating to family proceedings**
5. At the stage prior to service of prosecution papers pursuant to section 51 of the Crime and Disorder Act 1998, applications will be generally made by the police. After this stage, applications will generally be made by the CPS.
6. Applications by the police for disclosure must contain details of the named officer to whom release is sought and must specify the purpose and use to which the material is intended to be put. Applications should seek leave (where appropriate) to disclose the material to the CPS, to disclose the material to the criminal defence solicitors *Where required under section 3 or section 7A Criminal Procedure and Investigations Act 1996)* and *(subject to section 98(2) of the Children Act 1989)* to use the material in evidence at the criminal proceedings.
7. Applications shall be made on Form C2. The application must be served by police or the CPS on all Parties to the Family Proceedings (The Local Authority having informed the police of details of all parties to Family Proceedings).
8. The application will be determined at a hearing at the Family Court. Police and the CPS will not attend the hearing unless directed to do so by the Family Court.
9. Where it is practicable to seek prior written consent to disclosure from **all Parties** to the Family Proceedings, the police or the CPS should do so. Application should then be made in writing to the Family Court seeking a consent order.
10. Alternatively (and whenever this is possible), the police and/or the CPS will ask the Local Authority allocated lawyer (or SPOC if details of allocated lawyer are not known) to request that the Family Court considers the issue of disclosure to the police and/or the CPS at the next hearing. In this way, the Family Court will be in a position to make any orders as appear appropriate without the need for police and/or the CPS to make application to the Family Court. When requesting the Family Court to make an order in accordance with this paragraph, the Local Authority will put the other parties to the proceedings on notice; and will provide the court with details of the officer to whom disclosure is to be made and the purpose for which it is to be made.
11. In rare cases, where it considers it appropriate to do so, the Family Court should make orders for disclosure to the police and/or the CPS without application having been made by the police or the CPS.
12. **Text or summary judgment in family proceedings**
13. The Local Authority will forward to the CPS copies of relevant Family Court judgments (and summaries thereof) in the possession of the Local Authority. The judgments may be appropriately redacted.
14. Where the Local Authority is not in possession of a judgment which appears to be relevant to the concurrent criminal proceedings (e.g. fact-finding judgment), it will notify the CPS in order that the CPS can obtain the judgment directly from the Family Court. In these circumstances it will not be necessary to make formal application for disclosure on Form C2; the CPS will request release of the judgment under Practice Direction 12G above.
15. Where it appears to the Local Authority that the judgment will be relevant to the criminal proceedings, the Local Authority will request that the Family Court expedites the preparation of the judgment for release to the CPS (and if possible, at public expense). Alternatively, the issue of disclosure of the judgment to the CPS under Practice Direction 12G can be considered at a linked directions hearing.

Suffolk County Council

Legal Services

