

London Borough of Sutton People Directorate Procedure - Responding to Police Requests for Service User Information

Adults Social Care- Protocol for handling access to social care records requests from the Metropolitan Police, *in respect of investigating a crime or to assist with criminal proceedings.*

1.0 Introduction

This procedure applies to only those circumstances where Adult Social Care (ASC) has received a request for information from the Police, in respect of investigating a crime or to assist with criminal proceedings. Disclosure of documentation on ASC files is covered by various Statutes, Statutory Instruments, Guidance and Protocols amongst others the following:-

- Data Protection Act (DPA) 1998
- Common law of confidentiality
- Freedom of Information Act 2000
- Human Rights Act 1998 and the European Convention on Human Rights
- Public Interest Immunity
- Criminal Justice Act 2003

- 1.1 The DPA 1998 requires that the London Borough of Sutton (LBS) should only disclose the information that is necessary for the purposes of a criminal investigation, and should not assume that all the data they hold is disclosable to the police for the purpose of investigating this particular serious crime.
- 1.2 Whenever a request for disclosure is made by police both the Local Authority and the police must observe their duties of confidentiality.
- 1.3 Consent of the individuals referred to in the information or documentation should always be considered in the first instance and sought where possible unless it is inappropriate to do so. A copy of the consent provided by the individual must be loaded onto Frameworki to form a clear audit trail.
- 1.4 A decision in relation to disclosure depends on the facts of each Individual case.
- 1.5 The Police may ask to come in and view the records, and then to 'extract what they need for a serious crime they are investigating'. This type of fishing expedition would not be permitted. The information LBS holds may not all actually be relevant to the crime that the Police are investigating. Only material and documents relevant to a criminal investigation should be disclosed.
- 1.6 Before the Local Authority is able to disclose any information a senior Police Officer must sign off a formal request for disclosure (Appendix B, Metropolitan Police Personal Data Request Form), and provide a statement that is as clear

as possible about why the Information is needed. Other Police authorities will have slightly different format but the request should cover the same minimum set of information to support the request. Relevant dates which would assist us in pin pointing the information that the Police require should be included in the request for disclosure as far as possible.

- 1.7 Within the disclosure form the Police must clearly state the provision of the DPA 1998 which they are relying upon when making this request for personal information. Police must clearly state this information themselves before we can consider disclosing any information.
- 1.8 The request should be evaluated to determine exactly what information the Police need for the purposes of their investigation. It may be necessary to discuss with ASC Information Governance Officer or LBS Records Manager the information that is shareable and the safest way to provide this information to the Police.
- 1.9 Once received the completed form should be uploaded as a document onto Frameworki under the category 'Police Information Disclosure Form'

2 Guidance for ASC Staff

- 2.1 Requests for access by the police must be managed by qualified social work staff, and overseen by the head of service. Administrators can be asked to support the process administratively but they cannot make decisions about what information may be disclosed.
- 2.2 If the request for disclosure has not been made on the Pro-forma Request form the Social Worker must advise the police to resubmit the request in the correct format.

3 Consent

- 3.1 If the person who is the subject of this information consents to sensitive and confidential material about them being disclosed, the local authority can disclose the information to the Police. A copy of the consent should be provided by police and uploaded to Frameworki to form a clear audit trail.
- 3.2 If there is no consent, the local authority will have to consider whether any of the sensitive or confidential or court material can be lawfully disclosed by them under statute or common law or whether Public Interest Immunity is attached to this information.
- 3.3 If the stage of the investigation is pre-charge [i.e. no one has been charged with an offence] and the local authority is not prepared to disclose the information, it is then a matter for the Police to consider what if any applications they might be entitled to make against LBS under the Police & Criminal Evidence Act 1984. The matter should be discussed with the ASC

Caldicott Guardian in the first instance and referred to Legal Services as necessary.

- 3.4 If the Police have already charged the defendant the Local Authority may wish to claim Public Interest Immunity. The Prosecution can then seek a witness summons against the Local Authority pursuant to section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965 and the court will rule on disclosure. An advocate from Legal Services will represent the Local Authority at any hearing together with a representative from ASC.

4. Court Orders

- 4.1 If a Court Order is received by ASC ordering the disclosure of specific Information, legal services should be consulted for advice.

5. Public Interest Immunity Hearings

- 5.1 Information and documentation may be covered by the principles of Public Interest Immunity (PUBLIC INTEREST IMMUNITY). This means that information must not be disclosed if as a matter of public policy, the public interest requires that it should be not be disclosed.
- 5.2 Public Interest Immunity must be considered by the court after criminal proceedings have commenced.
- 5.3 Public Interest Immunity hearings are commenced by the Crown Prosecution Service applying for and issuing a witness summons to the Local Authority requiring attendance at the Crown Court with the relevant files.
- 5.4 CPS case workers usually liaise directly with legal services in these matters. However should a witness summons be served direct on ASC it is imperative that the summons is referred to legal services without delay.

6. Information about a child that is now an adult

Information requests of this nature should be assessed and actioned by the last children's social work team who had contact with the individual.

If you are in any doubt about the application of this Protocol please speak to your head of service in the first instance. Following this it may be necessary to refer the matter Legal Services to gain further advice.

7.0 Children's Social Care- Protocol for handling access to social care records requests from the Metropolitan Police *in respect of investigating a crime or to assist with criminal proceedings.*

7.1 Introduction

7.2 This procedure applies to only those circumstances where Children's Social Care (CSC) has received a request for information from the Police, in respect of investigating a crime or to assist with criminal proceedings. Disclosure of documentation on CSC files is covered by various Statutes, Statutory Instruments, Guidance and Protocols amongst others the following:-

- Data Protection Act (DPA) 1998
- Common law of confidentiality
- Freedom of Information Act 2000
- Human Rights Act 1998 and the European Convention on Human Rights
- Public Interest Immunity
- Sections 10, 11 and 13 of the Children Act 2004
- Sutton Local Safeguarding Children Board
- London Child Protection Procedures
- Criminal Justice Act 2003

7.3 Whilst there is a complex interplay between all of the above Sutton CSC will have regard to the following guiding considerations in dealing with any request for disclosure:-

- a) Whenever a request for disclosure is made by police both the local authority and the police must observe their duties of confidentiality
- b) Consent of the individuals (or persons with parental responsibility in the case of children) referred to in the information or documentation should always be considered in the first instance and sought where possible unless it is inappropriate to do so. A copy of the consent provided must be loaded onto Frameworki to form a clear audit trail.
- c) A decision in relation to disclosure depends on the facts of each individual case.
- d) Only material and documents relevant to a criminal investigation should be disclosed.
- e) The Police or Crown Prosecution Service (CPS) should be specific and clear about what information or documentation is sought. This should be clearly set out in their written request for disclosure (Please see Children's Social Services Police Information Disclosure Form Appendix A)

- 7.4 The standard template in Appendix A should be used by CSC to gather the required information from the Police. Use of the Pro Forma will enable Sutton CSC to deal with requests expeditiously.
- 7.5 Once received the completed form should be uploaded as a document onto Frameworki, under the category 'Police Information Disclosure Form'.

8 Guidance for CSC Staff

- 8.1 There will be occasions when CSC will receive a request from the Police for disclosure of material held on CSC files and records for the purposes of assisting them in their investigation into a criminal offence.
- 8.2 Requests for access by the police must be managed by qualified social work staff and overseen by the Head of Service. Administrators can be asked support the process administratively but they cannot make decisions about what information may be disclosed.
- 8.3 If the request for disclosure has not been made on the Pro-forma request form the Social Worker must advise the police to resubmit the request in the correct format.

9 Guidance for CSC Staff – Information to be provided by Police

- 9.1 The allocated Social Worker is required to check that the following matters have been addressed in the request for disclosure before considering the files:-
- Has the request been completed using the appropriate form?
 - Is the request specific in that you can identify what information and documents are sought by the Police as opposed to a generalised request for all material in relation to a named child/individual? In particular have the Police addressed the following:
 - Name and details of child in which information is requested including date of birth, school, etc
 - The alleged offence being investigated including names and details of alleged victims and perpetrators. The circumstances of the alleged offence.
 - The stage in the investigation i.e. pre or post charge?
 - Reasons why material is being sought and relevance to investigation

- Likely effect on the criminal investigation if the request for disclosure is refused?
- Has consent been sought by the Police from the individual who is the subject of the social work files? If not, why not?
- Is there a court order in place ordering the disclosure of the information? If so, guidance should be sought from legal services
- Is there a reason why the subject or if a child, the person(s) with Parental Responsibility should not be notified of the Police's request for disclosure?

10. Guidance on perusing CSC files for information sought by the Police

- 10.1 It is good practice for a social worker to ask the police officer to indicate which documents are of particular importance to the police and to keep a record of those documents for future reference in any Public Interest Immunity application.

11. Ongoing section 47 Children Act 1989 investigation

- 11.2 If there is an ongoing section 47 Children Act 1989 investigation, information can be shared with Police and other agencies under s10 and s11 of the Children Act 2004 and in accordance with guidance such as Working Together to Safeguard Children (2006) and Information Sharing.

12. Police information requests relating to the Safeguarding of Children

- 12.1 Matters relating to Safeguarding Children, and related information disclosures are managed by the Sutton MASH team; (mash@sutton.gov.uk) or mash@sutton.gov.uk.cjism.net
As such, police information requests relating to the Safeguarding of Children should be directed to the MASH team

13. Confidential information/documents

- 13.1 Information or documents recording the following; confidential conversations between a Child and a professional i.e. social worker, counsellor etc or between professionals can be disclosed in the following circumstances:
- (i) If there is consent from a Gillick competent child or person with Parental Responsibility
 - (ii) if no consent is in place and there a public interest of sufficient force to justify disclosing this information or documents despite the interests of the child (this is a balancing exercise to be carried out by the court).
 - (iii) If there is a court order in place ordering the disclosure of the information

14. Personal information

- 14.1 This includes material and documents with personal identifying details or information about the child or other persons.
- 14.2 Information can be disclosed under the DPA 1998 if individual consents to disclosure.
Information may also be disclosed under section 29 of the DPA if it is relevant to criminal investigation and if necessary for the administration of justice, however these disclosures are not compulsory, and there may be certain circumstances where the Local Authority is not comfortable with making the disclosure based solely on the Information provided in the 'Police Information Disclosure Form'. In these cases the Local Authority may request that a Court Order is issued before they are willing to release the requested information. Please see 7.11 below for further details.

15. Court Orders

- 15.1 In certain circumstances it may be necessary for the Local Authority to request that a court order is issued before it is prepared to disclose the Information that has been requested (for example, where the Local Authority is not comfortable with making the disclosure based solely on the Information provided in the 'Police Information Disclosure Form'). In these cases the Caldicott Guardian for Children Social Services should be involved in the decision making process and Legal Services should be consulted as required.
- 15.2 If a Court Order is received by CSC ordering the disclosure of specific Information, Legal Services should be consulted for advice.

16. Consent

- 16.1 If the person who is the subject of this information consents to the disclosure, the local authority can disclose the information to the Police. A copy of the consent should be provided by police and uploaded to Frameworki to form a clear audit trail.
- 16.2 If there is no consent, the local authority will have to consider whether any of the information can be lawfully disclosed by them under statute or common law; or whether Public Interest Immunity is attached to this information. As noted above, in some cases the Local Authority will request that a Court Order is issued, ordering the release of the information.
- 16.3 If the stage of the investigation is pre-charge [i.e. no one has been charged with an offence] and the local authority is not prepared to disclose the information, it is then a matter for the Police to consider what, if any, applications they might be entitled to make against. The Local Authority under the Police & Criminal Evidence Act 1984. The matter should be discussed with the CSC Caldicott Guardian in the first instance and referred to Legal Services as necessary.

16.4 If the Police have already charged the defendant the Local Authority may wish to claim Public Interest Immunity. The Prosecution can then seek a witness summons against the Local Authority and the court will rule on disclosure. An advocate from Legal Services will represent the Local Authority at any hearing together with a representative from CSC.

17. Public Interest Immunity Hearings

- 17.1 Information and documentation may be covered by the principles of Public Interest Immunity (PUBLIC INTEREST IMMUNITY). This means that information must not be disclosed if as a matter of public policy, the public interest requires that it should be not be disclosed.
- 17.2 Public Interest Immunity must be considered by the court after criminal proceedings have commenced.
- 17.3 The court will perform a balancing exercise weighing up the various competing public interests, which will include the interests of the child, respect for family life and the need for social workers to maintain a working relationship with that child and his/her family and the wider interest in maintaining the confidentiality of the child protection system against the need for a fair hearing, the need to protect the liberty of an individual, the need for the effective administration and prosecution of justice.
- 17.4 Public Interest Immunity hearings are commenced by the CPS applying for and issuing a witness summons to the Local Authority requiring attendance at the Crown Court with the relevant files.
- 17.5 CPS case workers usually liaise directly with legal services in these matters. However should a witness summons be served direct on CSC it is imperative that the summons is referred to legal services without delay.

18. Information about a child that is now an adult

Information requests of this nature should be assessed and actioned by the last children's social work team who had contact with the individual.

If you are in any doubt about the application of this Protocol please speak to your head of service in the first instance. Following this it may be necessary to refer the matter Legal Services to gain further advice

Appendix A – Children’s Social Services, Police Information Disclosure Form (This is an example form only, please download a full copy of the form from the Intranet)

| | |
|---|--|
| Date of request: | |
| [NAME OF POLICE FORCE] requests disclosure of material held by the London Borough of Sutton CSC in respect of the following: | |
| [CHILD/REN NAME/S] & DOB | |
| ADDRESS: | |
| The [NAME OF POLICE FORCE] are conducting a criminal investigation into allegations | |
| MADE BY: : | |
| AGAINST: | |
| Consent | |
| Have you sought the consent of the NAMED CHILD OR INDIVIDUAL or their parents/carer to the disclosure of this material? | |
| If not, why? | |
| Do you object to Authority notifying the NAMED CHILD OR INDIVIDUAL or their parents/cared about this request for information? | |
| If yes, why? | |
| Pre or Post Charge: | |
| Has an individual been charged in respect of this criminal investigation? | |
| Details of Offence: | |
| | |


| | |
|---|--|
| <p>The allegations being investigated are:</p> <ul style="list-style-type: none"> - alleged offence - relevant dates - alleged victim & perpetrator - circumstances of incident - stage in investigation | |
| <p>Details of the alleged victim:</p> | |
| <p>The following child is alleged victim of the offence/s</p> <ul style="list-style-type: none"> - Name of child - Address - Date of Birth - Social Worker (if applicable) - Relationship to the Offender - Name of school or educational facility Attended - Other children in the family | |
| <p>Details of the alleged perpetrator, if known</p> | |
| <ul style="list-style-type: none"> - Name - Address - Date of Birth - Social Worker (if applicable) - Relationship if any to the victim | |

| | |
|---|--|
| Details of any identified witness | |
| <p>In addition, we have obtained evidence from the following child/children/ adults</p> <ul style="list-style-type: none"> - Name - Address - Date of Birth Social Worker (if applicable) - Relationship to the Offender - Any other relevant information | |
| Relevance of material sought? | |
| <p>I believe that the Authority may hold material relating to the alleged offender and/ or perpetrator and /or children listed above which may be relevant to our investigation and I therefore request:</p> | |
| Specify nature of material sought | |
| Any specific Reports or Document | |
| Reasons why this material is relevant to the criminal investigation | |
| Reasons why any delay in disclosing the document requested may delay or prejudice your investigation | |
| Conclusion | |
| Please can you confirm if your Authority holds any such material as described above? | |
| Please reply by: | |

| | |
|---|-------------|
| Please specify the reason for this deadline: | |
| If you require further information or wish to discuss this request , please contact me: | |
| Name of Officer: | |
| Email: | |
| Telephone: | |
| Fax: | |
| Additional Counter signatory | |
| <i><u>If the nature of the enquiries is specified above this form must be countersigned by a Sergeant or Supervisor; if the investigation is such that no explanation can be given, this form will be countersigned by a Superintendent.</u></i> | |
| Signed: | Print Name: |
| Shoulder No.: | Date |
| | |

Appendix B- Social Services, Police Information Disclosure Form

(This is an example form only, please download a full copy of the form from the Intranet)

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|--|-----------------------------------|-----------|
|  METROPOLITAN POLICE Working together for a safer London | Personal Data Request Form | Form 3022 |
|--|-----------------------------------|-----------|

| |
|---|
| To <i>(name and position if known)</i> : |
| Organisation and Address: |
| This request for personal data and other information is made under the powers invested in me as a constable of the Metropolitan Police by the Police Act 1996 (section 30(1) which gives constables all the powers and privileges of a constable throughout England and Wales and Section 30(5) defines powers as powers under any enactment when ever passed or made). These powers include the investigation and detection of crime, apprehension and prosecution of offenders, protection of life and property and maintenance of law and order. Under the Police Reform Act 2002, the Commissioner can delegate certain powers to police staff. |
| The personal data I require relates to the following individual(s): <i>(Include identifying details of the person where known, such as name, address and date of birth)</i> |
| |
| I have the following information to assist you in locating the personal data and other information: <i>(Include further details, where available, to assist locating the information sought)</i> |
| |
| I require the following personal data and other information: <i>(Describe the information sought)</i> |

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| |
| <p>I require the personal data and other information to assist with my enquiries into: <i>(Describe the subject of those enquiries as far as is possible without prejudicing them)</i></p> |
| |

| <p>I confirm the personal data and other information is required for the following purpose(s): <i>(Check the relevant box(es) and complete the other row where necessary)</i></p> | | | |
|--|--|--|--------------------------|
| | | Purpose | Tick |
| 1 | For the prevention, investigation and detection of crime | Police Acts, Common law | <input type="checkbox"/> |
| 2 | For the apprehension and prosecution of offenders | Police Acts, Common law | <input type="checkbox"/> |
| 3 | To confirm or corroborate information for intelligence purposes | Police Acts, Common law | <input type="checkbox"/> |
| 4 | To put before a court to obtain a search warrant | Police Acts, Common law | <input type="checkbox"/> |
| 5 | To prepare a file for the Coroner's court | On request of the Coroner | <input type="checkbox"/> |
| 6 | To further a money laundering or confiscation investigation | Proceeds of Crime Act 2002 | <input type="checkbox"/> |
| 7 | To risk assess the address to safeguard the health and safety of any emergency personnel attending | Police Acts, Health & Safety, Common law | <input type="checkbox"/> |
| 8 | To identify if there are children at the address to negate any harm caused by police action | Children Act 2004 | <input type="checkbox"/> |
| 9 | To locate a missing person to ascertain their well being | Police Acts, Common law | <input type="checkbox"/> |
| 10 | To progress enquiries into a Road Traffic Incident | Police Acts, Common law | <input type="checkbox"/> |
| 11 | To protect life or property | Police Acts, Common law | <input type="checkbox"/> |
| 12 | Other (please specify): | | <input type="checkbox"/> |

I request that the personal data and other information should be provided to the police in the following manner:

(Having considered factors such as the protective marking indicate how the information should be provided to the police, e.g. in person, by post, by fax, by email etc.)

The Data Protection Act 1998 defines personal data as data which is biographical in nature, has the applicant as its focus and/or affects the data subject's privacy in his or her personal, professional or business life. Under the Data Protection Act 1998, disclosure of personal data:

- For the prevention and detection of crime or the apprehension or prosecution of offenders is permitted under s29(3)
- Required by or under any enactment, by any rule of law or by order of the court is permitted under s 35(1) (including the Health and Safety Act)
- For the purpose of, or in connection with, any legal proceedings is permitted by s35(2) (a)

Where no data protection exemption applies, consideration should be given to the first principle issue of fairness. Where the rights and freedoms or the welfare of an individual is in doubt such as in enquiries 8 and 9 above, a harm test should be applied. It is highly unlikely disclosure would be unfair in these circumstances.

Human Rights Act 1998 Article 8 – right to privacy. This request is consistent with Article 8(2) prevention of disorder or crime.

(To be completed by the officer requesting the personal data and other information – check appropriate box(es))

I confirm that:

- | | |
|--------------------------|---|
| <input type="checkbox"/> | this information will be used in connection with this enquiry and held and used only as long as this is required for policing purposes and any subsequent criminal justice proceedings. |
| <input type="checkbox"/> | if this personal data is not disclosed it will prejudice the prevention or detection of crime or the apprehension or prosecution of offenders. |
| <input type="checkbox"/> | if this personal data is not disclosed it will prejudice the purpose indicated above. |

| | | |
|---------------|---------------|-------|
| Signed: | Shoulder No.: | Date: |
|---------------|---------------|-------|

| | | |
|---|------|--------------------------|
| Print Name: | | Post: |
| BOCU/Dept. Address: | | |
| Phone: | Fax: | Email: |
| <i>If the nature of the enquiries is specified above this form must be countersigned by a Sergeant or Supervisor; if the investigation is such that no explanation can be given, this form will be countersigned by a Superintendent.</i> | | |
| Signed: | | Shoulder No.: Date: |
| Print Name: | | Post: |
| <i>This section to be completed by the recipient of request for personal data and information</i> | | |
| Response | | |
| <i>Please reply to all requests so that we know they have all been considered and to help prevent duplication.</i> | | |
| <i>As part of your decision making process, please take into account the requirements upon you/your organisation in relation to the request, for example the Crime and Disorder Act 1998, (any person or organisation has a power to provide information to a relevant authority in order to achieve in order to achieve a crime and disorder objective), the Local Government Act, Children Acts 1989 and 2004, and other legislation relevant to your organisation.</i> | | |
| Signature: | | Date: |
| Name: | | Position: |
| Organisation and Dept.: | | |
| <input type="checkbox"/> * The information requested above has been approved for disclosure and is attached | | |
| <input type="checkbox"/> * The information requested above has not been approved for disclosure | | |
| <i>* Check box as applicable</i> | | |
| Please explain why you have decided not to disclose the information so that we know whether you need additional information or for us consider presenting to the Court to obtain a Disclosure Order: | | |
| | | |
| If there is insufficient room please continue on an additional sheet(s). | | |
| The subject of the request should not be given any indication that this request has been made prior to consultation with the requesting officer. If your organisation subsequently receives a request for a copy of this document (e.g. under the Data Protection Act or Freedom of Information Act) for this information, please contact the <u>Force DP or FOI Officer</u>. | | |

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