

**NOT PROTECTIVELY MARKED**

Published |

| Event History

**Policy owned by Investigative Services  
Common Law Police Disclosures to Employers****1. Policy Purpose and key drivers****Policy purpose and aims**

This policy relates to the circumstances in which the police use common law powers to disclose police information concerning an individual. Such disclosure is intended to enable a third party to consider risk mitigation measures in respect of an employment or voluntary role believed to be undertaken by that individual.

This policy aims to outline the narrow scope for the police to use their professional judgement to make common law based disclosures in circumstances where they consider this to be necessary to support public protection. This complements but remains separate from the statutory DBS arrangements.

It supersedes the guidance contained in Home Office Circular 06/2006 which has been withdrawn.

The legal basis for a disclosure is :

- Common Law Power
- Part V Police Act 1997

Any decision to disclose police information will need to balance the rights and interests of the individual, subject of the disclosure, against those of the public in general or any specific member or members of the public. This will involve giving consideration to the impact of disclosure on the private life of the individual concerned, also taking into account any adverse impact disclosure might have on the prevention or detection of crime. More generally, any decision to disclose information should have regard to:

- Data Protection Act 1998,
- Human Rights Act 1998 and the
- Rehabilitation of Offenders Act 1974.

The “pressing social need” threshold for making a disclosure under common law powers is considered to be the same as that required for the disclosure of “approved information” in accordance with the provisions of Part V of the Police Act 1997 (as amended). This principle was established by the Supreme Court ruling in *R (on the application of L) (FC) (Appellant) v Commissioner of Police of the Metropolis (2009)*. It is therefore recommended that Chief

Officers apply the Home Office "Quality Assurance Framework" methodology in determining what, if any, information will be disclosed.

Recent judicial decisions in the Police Act 1997 disclosure arena have highlighted the importance of seeking the subject's representations regarding any proposed disclosure prior to it being made. The use of common law powers of disclosure under this guidance is restricted to where there is an URGENT pressing social need only. As such the very *raison d'être* of making the disclosure could be thwarted by any delay. It is therefore recommended that representations should only be sought from the disclosure subject at the time they are in police detention in connection with the allegation(s) that is/are the basis of the proposed disclosure. The seeking of such representations MUST NOT interfere with the proper investigation of the allegation(s). Representations should therefore only be sought after the initial investigative processes in accordance with the Police and Criminal Evidence Act 1984 have been concluded, and never as part of the evidential interview.

This policy is designed to allow the police to use their professional judgement to make common law based disclosures in circumstances where they consider this to be necessary to support public protection. The general presumption is that the police should maintain the confidentiality of personal information, but legal opinion supports the disclosure of individuals' sensitive personal information to relevant parties where a "pressing social need" can be established. A pressing social need might be the safeguarding or protection from harm of an individual, a group of individuals, or society at large.

The Standard Operating Procedures linked to this policy give further guidance on the Force procedures in place.

#### Related Documents

Links to related documents:

- [Common Law Police Disclosures - Decision rationale \(Procedure\)](#)
- [Common Law Police Disclosures - Forms, Letters and Templates \(Procedure\)](#)
- [Common Law Police Disclosures - Process map \(Procedure\)](#)
- [Common Law Police Disclosures to Employers \(Procedure\)](#)

**Gatekeeper** - the Author suggested the following Procedure document(s) to link to.

#### Relevant Dates and Review Period

Effective Date:	12/05/2017
Review Date:	21/09/2018
Review Frequency:	Annually

#### Policy Basis and Implications

2. Legal Basis:	Common Law Power Part V Police Act 1997
3. Management of Police	MoPI Policing Purpose:

Information (MoPI): Protecting Life and Property, Preserving order, Preventing the commission of offences, Bringing offenders to justice, Any duty or responsibility arising from common or statute law  
**MoPI Review, Retention and Disposal addressed as follows:**  
 This policy will be reviewed annually. All other information collected during the operation of the policy in connection with Public Protection will be classified according to the MoPI category of the offence under investigation e.g. assault, rape and homicide.

- 4. **Associated Benefits:** This policy is designed to allow the police to use their professional judgement to make common law based disclosures in circumstances where they consider this to be necessary to support public protection. The general presumption is that the police should maintain the confidentiality of personal information, but legal opinion supports the disclosure of individuals' sensitive personal information to relevant parties where a "pressing social need" can be established. A pressing social need might be the safeguarding or protection from harm of an individual, a group of individuals, or society at large.
- 5. **Consultation:** The policy has undergone a robust consultation process with practitioners and management within Public Protection Safeguarding.
- 6. **Financial Implications:** Implementation to be met through existing funding.
- 7. **Human Resources / Training:** No Human Resource implications.
- 8. **Associated Policy:** None

**FOI, Human Rights and Equality Impact Assessment Indicators**

FOIA:	Release to Public	
ECHR:	Compliant with proportionality test	<b>Articles engaged:</b> Article 2 Right To Life; Article 3 Prohibition of Torture; Article 5 Right to Liberty and Security; Article 6 Fair Trial; Article 7 No Punishment without Law; Article 8 Right to respect for Private and Family life; Article 14 Prohibition of Discrimination
EIA:	Compliant	<b>Compliant with Code of Ethics:</b> Yes

**Indexing**

Categories: Protecting Vulnerable People

**NOT PROTECTIVELY MARKED**