

COMMON LAW POLICE DISCLOSURE POLICY

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NORFOLK
CONSTABULARY



SUFFOLK
CONSTABULARY

COMMON LAW POLICE DISCLOSURE

Owning Department: Information Compliance

Department SPOC: Compliance and Data Protection Officer

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Legal Basis

Legislation specific to the subject of this policy document:

- Common Law Powers

Other relevant legislation which you must check this document against (required by law)

- [Human Rights Act 1998 \(in particular A.14 – Prohibition of discrimination\)](#)
- [Equality Act 2010](#)
- [Crime and Disorder Act 1998](#)
- [Health and Safety at Work etc. Act 1974 and associated Regulations](#)
- [General Data Protection Regulation \(GDPR\) and Data Protection Act 2018](#)
- [Freedom Of Information Act 2000](#)
- [The Civil Contingencies Act 2004](#)

Other documentation which you must check this document against:

- [College of Policing – Code of Ethics](#)
- [Norfolk and Suffolk Constabularies' Standards of Professional Behaviour](#)
- Information Management Policy
- Data Protection Policy
- Information Sharing Policy
- College of Policing APP - Information Sharing
- NPCC – Common Law Police Disclosures (CLPD) – Provisions to supersede the Notifiable Occupations Scheme

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1. Statement of Policy

- 1.1 This policy has been formally agreed via the approved policy development/review process. It will be maintained by the Information Management Department in conjunction with the Central Policy Unit.
- 1.2 The policy is intended to promote equality, eliminate unlawful discrimination and actively promote good relations regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, economic or family status.
- 1.3 Managers have a responsibility to ensure this policy is applied fairly, and unless otherwise stated, all policies and procedures are non-contractual.

2. Introduction

- 2.1 The Police Service can make a lawful disclosure about an individual who is reasonably believed to be a **significant risk to the public** within their **paid or voluntary place of work** and **where there is an urgent and pressing social need to mitigate the identified risks**. This is called Common Law Police Disclosure (CLPD). Disclosure in such circumstances will likely be to the employer but may also be to a Government or Regulatory Body.
- 2.2 The general presumption is that the police should maintain the confidentiality of personal information. The police do however possess a common law power to share personal sensitive information with third 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.
- 2.3 CLPD relates to the circumstances in which the police use common law powers to disclose police information regarding an individual in order 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. It supersedes Home Office Circular 06/2006 (the Notifiable Occupations Scheme (NOS) which has been withdrawn.
- 2.4 This policy details how Norfolk and Suffolk Constabularies will consider CLPD. CLPD provides a power to make disclosure to the appropriate employer/body that can take immediate action to mitigate significant risks presented by an individual within their working role. The appropriate bodies include a Government department, Professional Regulatory/Disciplinary body and/or employer.
- 2.5 The information that can be considered for disclosure includes relevant convictions, cautions, reprimands, final warnings and ‘any other information’.

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3. Legal Basis

- 3.1 There is no statutory requirement for the police to share conviction or other information about individuals with third parties. However, it is recognised that there is a Common Law power for the police to share information where it is **necessary to do so for a policing purpose** (prevention and detection of crime and other policing purposes as defined in Code of Practice on the Management of Police Information (MoPI)). Third parties have an entitlement to an expectation of privacy in regard to the data that the police hold about them, however, that duty can be outweighed where disclosure of personal data is absolutely necessary in the public interest (e.g. necessary for the protection of the vulnerable, for the prevention/detection of crime and for the administration of justice).
- 3.2 CLPD has the potential to interfere with the rights and freedoms of the individual and connected third parties. In particular, a disclosure under CLPD is likely to interfere with an individual's Article 8 right to respect for private and family life. It is essential therefore, that prior to disclosure being made, the decision maker considers the potential impact on the rights and freedoms of the individual (and connected persons) and be satisfied that that, if to be made, disclosure is lawful, follows a legitimate aim, is necessary for a policing purpose, is proportionate to the risk identified and that any disclosure made is the minimum necessary to achieve the policing purpose and is not discriminatory. It is essential therefore that each case is considered on its own individual circumstances and a record of the decision making made and retained.
- 3.3 Disclosure of personal data is subject to the Data Protection Act 2018 and GDPR. Disclosure of necessary personal data will be made for law enforcement purposes under the Constabularies' duty to protect and safeguard the public. To ensure compliance with the legislation, disclosure will be accurate, factual, proportionate and not excessive for the intended purposes. Outside of the lawful exceptions, each referral will be considered on a case-by-case basis.
- 3.4 If there is any doubt regarding the legal basis for disclosure in any case, advice should be sought from the Data Protection Officer or from Legal Services.

4. Primary Responsibilities of Frontline Staff

- 4.1 To enable any disclosure to be considered the occupation / volunteering of an individual and their place of work / volunteering has to be known. It is the responsibility of the Officer to identify and record this information.
- 4.2 When an individual has been arrested, or is interviewed as a Voluntary Attender the Athena booking in processes need to be followed. Within this process the Custody Officer or Detention Officer asks a mandatory question relating to the detainee/voluntary attender and their occupation/voluntary work and the protection of the public. If the detainee/voluntary attender is reasonably believed to present any risk to the public through their

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occupation or voluntary work select “Yes”. This may include the following examples:

- An individual who works with children and has been arrested for allegations of child abuse or indecent images of children.
- An individual who works in a Care Home and has been arrested for an assault on the elderly or vulnerable.
- An individual who works in a Care Home and has been arrested for theft from the elderly or vulnerable.
- An individual who works as a plumber or hairdresser attending people’s homes and has been arrested for theft.
- An individual who works as Door Staff at a Nightclub or as a Security Officer at events who has been arrested for assault.
- An individual whose main employed or volunteering role is to drive members of the public who has been arrested for driving over the limit or who has failed a drugs test when stopped driving a vehicle.

4.3 For all arrests of Police Officers, Armed Forces personnel and Members of Parliament, the “Yes” response must always be selected.

4.4 There is no single or definitive list of occupations for which disclosure may be considered. Disclosure is considered on a case by case basis according to the occupation/voluntary work, offence and individual circumstances.

4.5 Disclosure may not be made immediately but considered throughout the life of an investigation. When requested, Officers are to provide updates on cases or further information to the Common Law Police Disclosure Team via clpd@suffolk.police.uk.

4.6 Disclosure can be made at any time during an investigation, depending on the severity and gravity of the information, relevance to the occupation and level of risk presented by the individual to the general public through their employment. An Officer is to seek advice from the CLPD Team if disclosure is potentially required.

5. Primary Responsibilities of Disclosure Staff

5.1 The CLPD Team will:

- Receive all notifications where the response “Yes” was selected as part of the booking in process.
- Consider recent information held locally by the force and/or on PNC and assess relevance to the position held.
- Use the Risk Assessment Form for processing all cases referred to the team. The Risk Assessment Form can be located under the following path:

W:\Collaboration\Information Management\Information
Compliance\Disclosure Barring Service (SC)\Org\Guidance and

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Templates\Common Law Police Disclosure Risk Assessment\CLPD Risk Assessment Document.doc

- Be responsible for the accurate, relevant, proportionate and timely disclosure of information.
- Provide relevant and proportionate updates subsequent to initial disclosures.
- Undertake a clear and transparent decision-making procedure and full audit trail is to be maintained by the CLPD Team.
- Make and a record of information disclosed which will be retained for ten years, in compliance with MoPI.

6. Secondary Responsibilities of Disclosure Staff

- 6.1 Answering of enquiries/challenges/complaints against the content of the disclosures.
- 6.2 Referring individuals to the Barring Arm where appropriate.
- 6.3 Providing advice to internal and external staff on a case by case basis relating to disclosure under Common Law.
- 6.4 Provide input to new police officers, specials, PCSOs and other staff on Common Law disclosures and promote awareness within the Constabularies.

7. Common Law Decision Making Process

- 7.1 The CLPD Team receives notifications of individuals who have come to the attention of Suffolk or Norfolk Constabularies. Common Law Disclosures are undertaken in line with the local procedure and in compliance with the law as identified at section 2 above. The disclosure recommendation, authorisation and decision making rationale are recorded on the Risk Assessment Form.
- 7.2 The disclosure of information is at the discretion of a delegate of the Chief Officer, currently the Information Compliance Manager (ICM). When the ICM is absent from the office for a significant period of time, for example on annual leave for a day and disclosure cannot wait for the return of the ICM as disclosure is time critical, the DBS Manager can authorise disclosure.
- 7.3 There may be times when an urgent decision is required out of standard office hours, i.e. from 17:00 hours to 09:00 hours on weekdays and at any time over a weekend or Public Holiday. On these occasions a decision can be made by the Duty Custody Inspector who will record the reason and rationale for the disclosure, the information disclosed and to whom disclosure was made on the Custody record.
 - Prior to making any proposed disclosure, the Duty Custody Inspector shall inform the detainee of the decision to make

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disclosure and invite the individual to raise any objections. This is referred to as 'seeking representations' and 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.

- The comments made by the detainee along with the information above will be recorded on the Custody record.
- The ICM will be notified of the disclosure and justification for it as soon as reasonably practicable.

7.4 It will be standard procedure to make disclosure via letter to the registered body and/or employer of an individual where an urgent pressing social need to do so is identified and where it cannot be confirmed that the registered body/employer is already aware of the information. In extraordinary and/or urgent circumstances (undefined) a verbal disclosure can be made once the Duty Custody Inspector is satisfied of the identity of the individual they have phoned.

7.5 Disclosure can be made at any time within an investigation, depending on the gravity of the information and relevance to the post held. Further updates will be provided to the regulatory body or employer by the CLPD Team, where relevant, e.g. bail dates, charging decisions and/or court results.

7.6 A clear and transparent decision-making procedure and full audit trail is to be maintained and a record of information disclosed will be retained for ten years, in compliance with MoPI.

7.7 The decision-making process is recorded in flow chart format at Appendix A.

8. Complaints

8.1 Complaints/dissatisfaction regarding the disclosure of information under CLPD are sometimes received by PSD. On receipt PSD is obliged by IOPC Statutory Guidance and Police Reform Act 2002 to carry out an assessment and make a recording decision in accordance with that legislation.

8.2 In the event that a complaint is recorded and is to be handled in accordance with the IOPC Statutory Guidance and the Police Reform Act 2002, it will be passed to the Information Compliance Manager (ICM) to deal with in accordance with the police complaints process.

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Appendix A – Decision Making Process Flowchart

