

# Disclosure of Personal Information to the Police

# Purpose

This guidance is provided to assist health and care organisations to determine whether or not to share information with the police for crime related purposes. It covers circumstances where personal information must be disclosed and the legal considerations where there is no such imperative. Appendix 1 provides checklist guidance in a format suitable for a hand-out or poster.

## Introduction

All Health and Care Services should, to the extent permitted by law, support other parts of the public sector, including the police, in their work. This can include the provision of personal information about service users or staff but there are legal constraints on what can and should be provided depending upon the circumstances.

## Managing Requests from the Police

Where practicable, requests (whether written or verbal) should be processed by trained and/or experienced staff. In larger organisations there may be a team with the responsibility for managing disclosures but in a small organisation it may be the responsibility of a single individual. However, any member of staff may be asked for information in the event of an emergency, out of hours request or due to the usual lead being unavailable, so it's important that everybody knows what to do.

Organisations should have their own local procedures in place that set out how requests for information from the Police should be dealt with, including who should deal with a request, who to ask for advice, who should authorise the disclosure of information to the Police and what to do when the request is urgent and usual procedures cannot be followed e.g. outside normal working hours. There may be a senior manager on call.

Staff should be supported to appropriately challenge requests and only in cases of emergency and urgency should a verbal request be responded to and this must be followed up with written confirmation a.s.a.p.

## Making Decisions about Disclosures

Decisions may be needed following a police request, but there may also be circumstances where disclosing information to the police is the right thing to do, but no request has been made e.g. reporting a knife crime. The considerations are similar either way, i.e. is there:

- a legal duty to disclose, or
- a sufficiently important reason to disclose AND a legal basis for doing so.

## Legal Duty to Disclose (you MUST disclose)

You should satisfy yourself that any disclosure is required by law and, if necessary, ask the Police what legal basis are they relying on or what Act are they making the application under. Common examples include:

- **Prevention of Terrorism Act (1989) and Terrorism Act (2000).** You MUST inform the Police if you have information (including personal information) that may assist them in preventing an act of terrorism, or help in apprehending or prosecuting a terrorist.
- **The Road Traffic Act (1988).** You have a statutory duty to inform the Police, when asked, of any information that might identify any driver who is alleged to have committed an offence under the Act. You are not required to disclose clinical or other confidential information.
- **The Female Genital Mutilation Act (2003).** You have a statutory duty to report to the police under [Section 5B](#) of this Act where it appears that a girl under the age of 18 has been subject to genital mutilation.

Court Orders are also sometimes obtained by the Police to acquire information from organisations or individuals. You should always seek advice from senior managers and legal advisors/medical defence organisations where a Court Order has been served. Where a Court Order is ambiguous or appears to

require disclosure of too much data it may be possible to query it with the Court, but the decision to do so needs to be made at an appropriate level of seniority.

### Disclosures in the absence of a legal duty (a choice to disclose or not)

Some Acts of Parliament provide permission to disclose information but do not create a duty to do so. Often this is because of concerns that without a permissive power an organisation would be prevented from disclosing information even when it would be the 'right' thing to do. They are occasionally referenced by the Police when requesting information and so it is important to understand that where there is a choice about whether or not to disclose personal information to the Police, the requirements of both the Data Protection Act (1998) and the Common Law Duty of Confidentiality must be met. Where time permits you should seek advice from a Caldicott Guardian, IG lead, medical defence organisation etc. The policy on this will need to be agreed locally by each organisation. Your organisation may have an information sharing agreement in place to cover routine disclosures in these circumstances and if so you should follow it where appropriate.

The Police and Criminal Evidence Act (1984) permits, but does not require, information to be disclosed to the Police if it is believed that someone may be seriously harmed or death may occur if they are not informed.

Similarly, The Crime and Disorder Act (1998) permits disclosure to the Police if there is a need for strategic cross-organisational planning to detect, prevent or reduce crime and disorder that an individual may be involved in.

### Data Protection Act Requirements

The Data Protection Act (1998) (DPA) is occasionally misrepresented as permissive legislation but this is not the case. It sets out conditions that must be met when using or sharing information that identifies an individual, or could be used to identify an individual by matching it to other information. These include informing the individuals concerned about the sharing and use of information about them, and conditions that must be satisfied set out in two schedules.

However Section 29<sup>1</sup> of the DPA enables the work of the police to be exempt from a number of these requirements (though not all) where meeting them would undermine work to investigate and prosecute crime. Section 29 **does not** provide a duty to disclose information, nor does it override the requirements of the common law duty of confidentiality which must be met prior to disclosure being lawful (see below) - it does no more than relax the DPA requirements that need to be met.

Many Police forces have standard forms (often referred to as DP7 or DP9) for requesting personal information. This should be provided in writing, signed by a senior officer (usually Inspector or above), and should provide:

- A clear indication that the Police are confident that they are working within the framework of the DPA and will satisfy all relevant DPA requirements
- Clarification on whether informing the individual about the disclosure would prejudice the investigation
- A clear description of the specific information that is requested

<sup>1</sup> see <https://ico.org.uk/media/for-organisations/documents/1594/section-29.pdf> for guidance on Section 29

However, whilst this can provide useful information to support decision making about disclosure, it **does not enable confidentiality requirements to be set aside or overridden**. Note that where the Section 29 request does not set the requirement to inform an individual aside, then this must be done as soon as is practicable but should not delay any disclosure.

## Common Law Duty of Confidentiality

In the absence of a statutory duty to disclose confidential personal information to the Police, any disclosure would need to be supported by either the explicit consent of the individual concerned or be sufficiently in the public interest to warrant the disclosure, i.e. the public good arising from the disclosure is thought to outweigh both the duty of confidentiality to the individual and the public good served by the provision of confidential care services. Guidance on public interest disclosures is available [here](#). The following table explains what sort of information is confidential.

Confidentiality	Examples
Highly confidential	Physical or mental health condition, care records, in receipt of services warranting strong privacy protection (e.g. sexual health, mental health, rape counselling etc)
Confidential by association	Names and addresses of individuals associated with non-specific care (e.g. attendance at a GP surgery, visit by social care staff, residence in a care home)
Non-confidential	Names and addresses and other publicly available demographic information not associated with an individual's health or care.

The second step is to determine how important the disclosure might be:

Importance of disclosing	Examples
High	Life or death situation, terrorism, safeguarding children or adults at risk, murder, rape, kidnapping or other serious crime, gun or knife injuries, significant public health risks, significant risk to one or more individuals
Low	Less serious crime and disorder offences, low to moderate risks to individuals

Bringing these together:

Importance of Disclosing			
Confidentiality	Low		High
	Highly confidential	Do not disclose without the explicit consent of the individual concerned	Disclose proportionate and relevant information in the public interest. Inform the individual concerned unless a section 29 request requires otherwise but consent is not needed and should not be sought.
	Confidential by association		
	Non-confidential	Disclose on receipt of formal request from the Police. NB it is rare for personal information to be non-confidential in the hands of care staff as it will generally be confidential by its association with other information.	

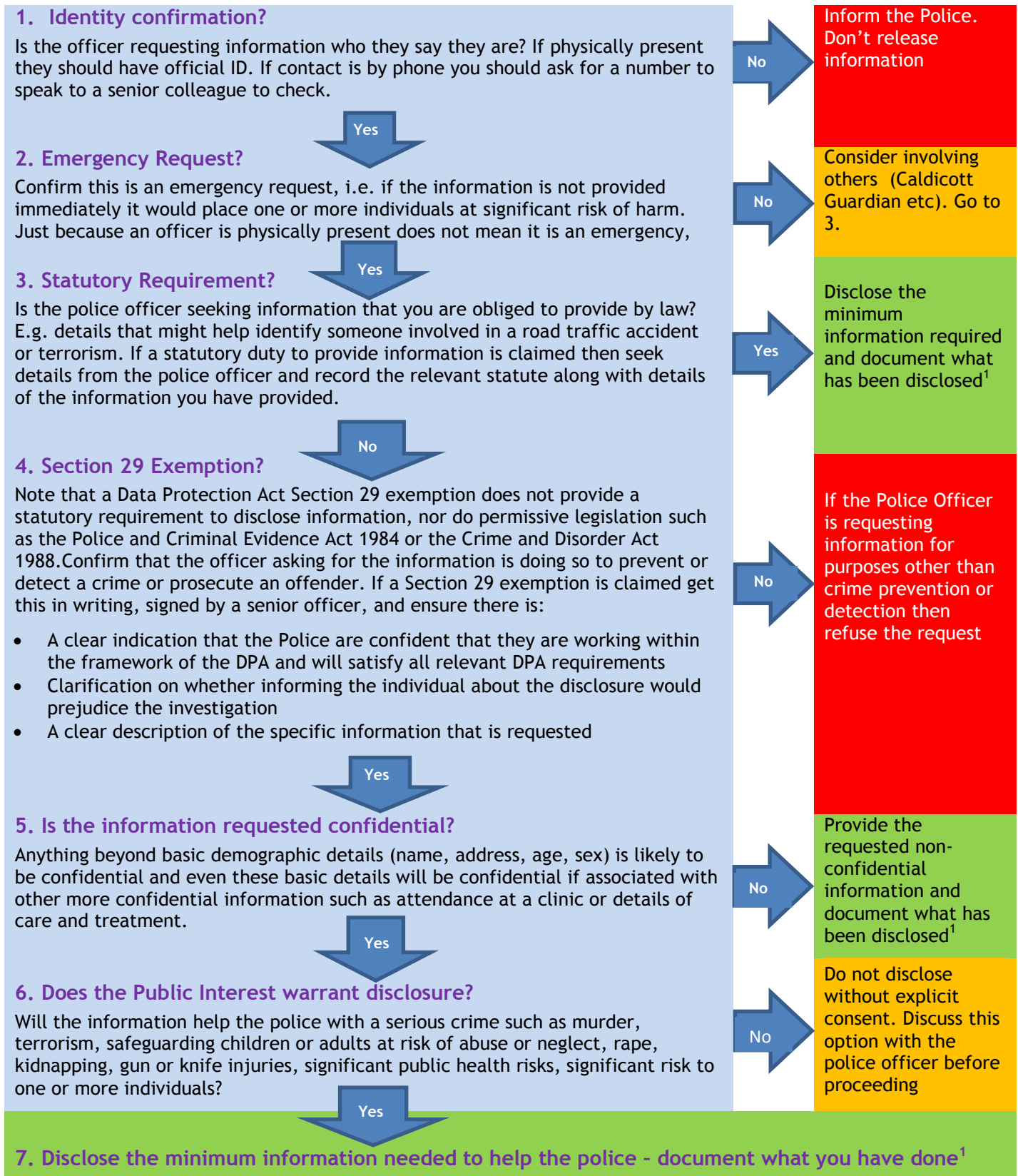
## Transfer of Information/Data to the Police

If you have been asked to provide information either on a CD, DVD, USB or via digital media or email the files must be encrypted or sent from an NHSmail account or gcsx account to a .pnn.police.uk email account<sup>2</sup>. All transfers, including paper, must be to a named individual and be secure. Guidance on secure transfer of information can be found in the Information Governance Toolkit<sup>3</sup>.

<sup>2</sup> See guidance at <http://systems.hscic.gov.uk/nhsmail/secure>

<sup>3</sup> <https://www.igt.hscic.gov.uk/>

## Disclosure of personal information to the Police for crime related purposes



1. Document the information disclosed, to whom, when, and on what basis; and whether the data subject was informed or not.