

WESTGATE CHAMBERS



Sussex Protocol for Disclosure of Police Material for Public Law
Proceedings.

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SUSSEX PROTOCOL FOR DISCLOSURE OF POLICE MATERIAL FOR PUBLIC LAW PROCEEDINGS

This protocol is agreed by the following organisations:- Sussex Family Court Service	Sussex Police
Crown Prosecution Service (Sussex)	East Sussex County Council
Brighton and Hove City Council	West Sussex County Council

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2. Overview

a) This protocol sets out the procedures and expectations within Sussex for the disclosure of Police material both prior to the issue of care proceedings and within proceedings, and for disclosure of material from the Local Authority to the Police.

b) This protocol should be treated as a guide to minimum expectations and where possible, the aim should be to exceed these expectations.

c) The aim of the revised protocol is to reflect changes in local practice and to respond to a significant increase in demand and pressures on the Police to provide information within the timescales of the Court. The protocol also reflects the agreed aim of the Police and the Local Authority to work co-operatively in the interests of the safety of the children.

d) This protocol follows the 2013 National Protocol and Good Practice Model.

3. Definitions

Caselines - is a cloud based storage system used to create and store court bundles. Access is given by invitation only from the Local Authority to relevant personnel involved in the case including lawyers, experts and Judges. The invitee is required to create an account and access is password protected. The Court – The Sussex Family Court and Family Division of the High Court sitting in Sussex.

Initial Report – report provided by Sussex Police with list of information on occurrences available on their systems.

The Local Authority – East Sussex County Council. Brighton and Hove City Council and West Sussex County Council.

The Police – Sussex Police Authority.

Primary disclosure – incident logs, PNC printouts, Crime reports, MOGP1 forms, SCARFS, Vulnerable Adult referral forms, Missing Person forms.

Secondary disclosure - investigative material including investigation logs, interview records, witness statements and copies of exhibits including photographs and video/audio recordings.

SERF – Sussex Early Request Form for Disclosure of Information in Family Proceedings held by Sussex Police – appended to this protocol.

4. Pre-proceedings disclosure

a) In the event that the Local Authority is contemplating public law proceedings where disclosure from the Police is relevant and will be required, it shall where time allows, make a request to the Police using a SERF form for:-

i) an Initial Report; and/or

ii) Primary Disclosure where the request is specific and there are known incidents upon which the Local Authority relies and which are clearly relevant to matters to be determined by the Court; and/or

iii) Secondary Disclosure where the request is specific and the Local Authority knows what information is held by the Police and that it is clearly relevant to matters to be determined by the Court

b) The standard provision of Primary and Secondary disclosure shall be limited to up to 2 years preceding the date of the SERF form. In exceptional circumstances, specific information older than 2 years may be requested. Such a request must include details of why it is relevant, necessary and proportionate, taking into account the material that will be available from the standard disclosure.

c) Such requests shall be made by email to the Information Access team at Sussex Police Headquarters Lewes (court.order@sussex.pnn.police.uk) and identify in the subject heading the name of the person(s) in respect of whom disclosure is sought.

d) The Police shall provide the requested disclosure within 20 working days of receipt of the SERF.

e) Documents shall be provided by email to a Local Authority email address.

f) Documents will be provided by the Police on the understanding that they will be disclosed into any subsequent public law proceedings.

5. Disclosure within proceedings

a) In the event that pre-proceedings disclosure has not been requested prior to the issue of proceedings, the Local Authority shall request an Initial Report from the Police prior to the Case Management Hearing using the SERF.

b) The Initial Report will be provided by the Police within 10 working days with details of the actual volume of available information and the length of time required to provide it, if all of the available information is requested.

c) The Initial Report and information on timeframes for disclosure shall be disclosed to the parties and the Court.

d) The Court shall determine the necessity and relevance of any request for disclosure from the Police and the direction for Primary and/or Secondary disclosure made within the proceedings will be focused on what is necessary and proportionate to be disclosed, based on the issues in the case and by selecting from the Initial Report relevant available information from the last 2 years. In exceptional circumstances where the Court considers that disclosure of historical information older than 2 years is necessary to determine the issues in the case, the Court order must specify with reference to the Initial Report the additional information required and why this is considered necessary.

e) The direction for disclosure from the Police shall give a date for compliance at least 14 days from the date of service of the approved Court order.

f) The direction for Police disclosure shall be on a stand alone order (see Annex H of National Protocol for example) and must be focused on the issues, be specific, and contain the following information:-

- i) The issues in the case and the Court timetable, including confirmation of the date for compliance with the direction and the date of any Court hearing for which the disclosure is required;
- ii) Full name(s), dates of birth and address(es) of the person(s) in respect of whom disclosure is sought;
- iii) The incident/occurrence number and/or date and to what it relates;
- iv) Details of the documents sought e.g., statement, summary of ABE interview.

g) A direction for the disclosure of 'all information' which is not specific or proportionate is likely to cause delay to information being provided.

h) The Local Authority shall serve the Court order once approved by the Court on the Police by sending it to the Information Access team at Sussex Police Headquarters Lewes (court.order@sussex.pnn.police.uk). The subject heading of the email shall include identification or the person(s) in respect of whom disclosure is sought. An order which is confirmed by the Local Authority to be approved but which has not yet been sealed is acceptable to action the order.

i) The Police shall provide the requested disclosure within 20 working days of receipt of the approved Court order, unless specified otherwise.

j) Documents shall be provided by email to a Local Authority email address.

k) The Local Authority shall serve the disclosed documents on the parties as soon as practicable after receipt.

l) If there are any difficulties complying with the Court order within the timescale given or for any other reason, the Police shall make the Local Authority aware either by email or telephone within 7 days of receipt of the Court order so that the Local Authority can raise such issues with the parties and/or the Court with a view to seeking a resolution acceptable to all parties, the Court and the Police by consent, avoiding the need for further hearing if at all possible.

6. Urgent requests

a) In the event that the Local Authority makes an urgent application to the Court seeking the immediate emergency protection of a child where it has been unable to provide advance notice of a request for disclosure and information is required for an initial hearing, an urgent request for initial Primary Disclosure limited to essential information required for the hearing may be made to the Police. Contact 101 – Extensions: 545170, 544033, 544116 or 545421.

b) In such circumstances the Police will use its best endeavours to provide the initial Primary Disclosure prior to the initial hearing.

c) Further Primary and Secondary disclosure may be requested following the initial hearing by way of the standard procedure set out at paragraph 5 above.

d) In urgent applications where the Local Authority is already in receipt of information from the Police other than SCARF's for child protection purposes and this information is vital to the initial hearing, the Local Authority may seek urgent permission from the Police to disclose the information already in its possession with suggested redactions, if required. This request has to be made to the Police by sending an email the Information Access team at Sussex Police Headquarters Lewes (court.order@sussex.pnn.police.uk) marked urgent.

e) In urgent applications where the Local Authority is already in possession of a SCARF(s) and the Local Authority lawyer is of opinion that disclosure of the SCARF is necessary for the immediate protection of the child and that delay whilst written consent is obtained from the Police would be likely to be harmful, consent is given to the Local Authority to disclose the SCARF on the proviso that:-

i) i) The names and other details identifying third parties in the Occurrence Details section are redacted;

ii) ii) The Address Section is redacted in its entirety, except where an address is already known to all parties;

iii) iii) The question section is redacted unless there is an answer which relates specifically to a party in the case;

iv) iv) The Police SCARF disclaimer is supplied with the SCARF when it is disclosed. This clarifies that a SCARF is a Police record but is not written with the intention that it will be used as evidence.

f) In other urgent cases, whether pre-proceedings or already in proceedings, any urgent requests for disclosure shall be clearly marked 'urgent' in the subject heading of the email to the Police and the body of the email will explain the reasons why the request is urgent. The Police will use its best endeavours to expedite the request and provide disclosure within 10 working days.

7. Concurrent criminal and family proceedings

a) Consideration shall be given to whether there is a need for linked directions hearings in respect of the criminal and public law proceedings.

b) Upon request the Police shall provide an update to the Local Authority on the progress of the case, bail conditions, whether and when a charging decision will be made, court timescales and the information that has been obtained to date so that a decision can be made on what material is relevant to the issues in the public law case and should be disclosed.

c) Where the disclosure relates to a criminal charge still under investigation and particularly when the Crown Prosecution Service has been asked for advice or charges are being made and/or the matter has been listed for trial, it will be necessary for the Police to liaise with the Crown Prosecution Service regarding Secondary Disclosure. The Crown Prosecution Service will deal promptly with such requests to enable the Police to comply with the request for disclosure within the directed timeframe.

d) In the event that the Court requires information regarding Crown Prosecution Service decision making, this request should be directed in a stand alone Court order and made to the Crown Prosecution Service, City Gate, 185 Dyke Road, Hove, East Sussex, BN3 1TL. The Crown Prosecution Service shall comply with such a request within 10 working days or provide to the Local Authority and/or Court its reasons for not being able to comply and an up to date summary of the current situation.

8. Ongoing disclosure

a) Where further incidents similar in nature to information already provided under the original Court direction occur during the course of the proceedings and/or further information/documents become available during the course of the proceedings in relation to the original incident(s), the Local Authority may request disclosure of this information from the Police under the remit of the original Court order.

b) It is acknowledged that the Local Authority has responsibility for ensuring that the Court has available to it all relevant Police disclosure. The Local Authority may prior to a hearing ask the Police whether it holds in its possession any further information obtained since disclosure was last given which may be relevant to the public law proceedings by sending an email to court.order@sussex.pnn.police.uk. The Police shall respond to such a request within 7 days, if relevant with a list of the additional information in its possession.

9. Caselines

a) Once the Police have disclosed Police material to the Local Authority, the Local Authority becomes the Data Controller and may add the disclosed material to the Court bundle on Caselines, this includes audio and visual material.

b) The Local Authority accepts that as the Data Controller it is responsible for ensuring that the information is secure and processing is compliant with the Data Protection Act 2018.

c) Access given to the Court and parties' legal representatives will not allow the material to be downloaded.

d) In the event that audio and visual material is uploaded onto Caselines, there would be no requirement for the Police to provide additional copies of discs for the parties and the court.

10. Disclosure to the Police

a) A request by a Police Officer to the Local Authority for disclosure of information from Children's Services for the purpose of a criminal investigation or child protection purposes shall be made to:

ChildSocialCare.Legal@eastsussex.gov.uk at East Sussex County Council
familycourtorders@brighton-hove.gov.uk at Brighton and Hove City Council
police.disclosure.team@westsussex.gov.uk at West Sussex County Council

b) This request will be made using the Police form: 'Request to external organisation for the disclosure of personal data to the Police' – appended to this protocol.

c) If requested, the Local Authority will endeavour to communicate to the Police what information is available as soon as possible after the initial request is made.

d) If required, the Local Authority shall make arrangements with the Police Officer for the available information to be viewed for the purpose of identifying what material is relevant within 10 working days. The Local Authority shall provide copies of the identified material within 20 days. If there is any difficulty with complying with the request and/or these timescales, the Local Authority shall inform the Police within 7 days of the request.

e) Where the information is required for child protection purposes the Local Authority shall disclose all relevant information within its possession, including information obtained at the direction of the Court for public law proceedings and the details of the Court which is hearing/heard the case, including case number, address and Judge, and details of the solicitors representing the other parties.

f) Where the information is required for the purpose of criminal investigation, the Local Authority shall disclose relevant information within its possession, redacted if necessary, and, where there are public law proceedings, the index to the Court bundle, redacted if necessary, Family Court judgments, or summaries thereof, in the possession of the Local Authority and the details of the Court which is hearing/heard the case, including case number, address and Judge, and details of the solicitors representing the other parties.

g) Unredacted information disclosed by the Local Authority to the Police Officer for child protection purposes which was not obtained at the direction of the Court for public law proceedings may be shared with other investigating Police Officers, the Crown Prosecution Service and any legal representative instructed by the Police or the Crown Prosecution Service but may not be shared with anyone else or used in criminal proceedings without giving at least 7 days prior notice to the Local Authority so that objections, if any, can be raised and the material can be redacted if considered necessary prior to onward disclosure.

h) In the event that the Police wish to make use of information obtained and filed in the public law proceedings for a criminal investigation and/or within any criminal proceedings, the Police must make an application to the Court for permission to do so.

i) In any case which involves a joint investigation with the Police, the Local Authority social worker shall notify the Police Officer of the outcome of any fact finding hearing in the Court.

11. Charging for disclosure

The Police and the Local Authority agree that they are working in partnership together with the shared aim of the protection of children and vulnerable adults and on this basis:-

a) Disclosure will be provided by the Police to the Local Authority without charge.

b) Disclosure will be provided by the Local Authority to the Police without charge.

June 2020 (updated 7 June 2021)

Appendices

SERF Form

SERF Form.pdf

'Request to external organisation for the disclosure of personal data to the Police' Form

Sussex Police Disclosure Request Form