

THE PROTOCOL & PROCEDURES IN RESPECT OF  
ACCESS TO SOCIAL SERVICES FILES  
AS AGREED BY:

THE SOCIAL SERVICES DEPARTMENTS OF BRISTOL CITY COUNCIL,  
BATH & NORTH EAST SOMERSET, SOMERSET, SOUTH GLOUCESTERSHIRE  
AND NORTH SOMERSET; (ATHE SOCIAL SERVICES DEPARTMENTS@) AND  
AVON AND SOMERSET CONSTABULARY AND THE CROWN PROSECUTION SERVICE

## ACCESS TO SOCIAL SERVICES FILES

### 1.0 INTRODUCTION

- 1.1 The protocol and procedures that follow address the co-operation and exchange of information and services between the Avon and Somerset Constabulary and Bristol City Council, Bath and North East Somerset Council, South Gloucestershire Council, Somerset County Council, and North Somerset Council (referred to as the "Social Services Departments".)
- 1.2 The purpose of this document is to establish clarity of understanding between the parties in respect of their responsibilities as they relate to the investigative process.

### 2.0 UNDERTAKING

- 2.1 Avon and Somerset Constabulary will ensure a strict code of confidentiality. Personal information that is disclosed will not be used other than for purposes satisfying paragraph 4.1 below.
- 2.2 Representatives of both the Avon and Somerset Constabulary and the Social Services Departments agree not to issue press statements without prior consultation with the other party.
- 2.3 The Social Services Departments will undertake to facilitate requests made by an officer of Superintendent rank or above, that are related to an enquiry satisfying paragraph 4.1 below. In facilitating the requests the Local Authority will arrange to seek and secure the full and frank disclosure of specific relevant documents to the investigation **and to provide witness statements where the conditions set out in paragraph 5 below are satisfied.**

### 3.0 EXCHANGE OF INFORMATION

- 3.1 Avon and Somerset Constabulary and the Social Services Departments accept that a distinction is to be drawn between (i) requests for information made by Avon and Somerset Constabulary about individuals who are identified in allegations, and (ii) referrals about individuals giving rise to potential, current child protection concerns.
- 3.2 Where as a consequence of their enquiry, Avon and Somerset Constabulary suspect that a person who is still a child has suffered or is likely to suffer significant harm the Senior Investigating Officer will initially discuss the issue with the Local Authority. A referral will then be immediately made by the Senior Investigating Officer to the relevant Child Protection Unit(s) and then to the Social Services Department Children's Services Team(s).
- 3.3 The Local Authorities will ensure that any current child protection concerns that arise from referrals by the Avon and Somerset Constabulary as a consequence of the enquiry are managed in accordance with the Social Services Departments' Area Child Protection Committee's Child Protection Policy and Procedures.

This will involve the convening of a strategy meeting to identify the appropriate action to be taken in an individual case.

#### **4.0 POLICE ACCESS TO SOCIAL SERVICES RECORDS**

Access to information about the Data Subject where consent has been given can be dealt with in the usual way. (See Appendix 1). This section deals with requests for access to information on Social Services files concerning individuals other than the Data Subject, or where consent has not been obtained.

4.1 The Local Authorities and Avon and Somerset Constabulary recognise that information contained within Social Services files is subject to Public Interest Immunity. Further, that the Local Authorities have a duty to claim Public interests Immunity, and this cannot be waived. However, the disclosure of personal information may exceptionally be justified in circumstances set out in paragraphs 6.11, 12, 13 and 22 of DOH Guidance to Social Services, March 2000.

This does not however negate the Local Authorities duty to assert Public Interest Immunity and as such Avon and Somerset Constabulary accept that the specific relevant information with which they may be provided remains sensitive and subject to Public Interest immunity which must be preserved.

The LAC Guidance allows disclosure, without a Court Order, to the Police, where to do so would be in the interests of the administration of justice and any information given must be the minimum necessary to meet the requirements of the situation. It is proposed therefore that the following conditions be satisfied:

- That the crime is sufficiently serious for public interest to prevail.
- Without disclosure the task of preventing or detecting the crime would be seriously prejudiced or delayed.
- That satisfactory undertakings are obtained from the Police not to use the information disclosed for other purpose and if the person under investigation is not prosecuted, or is discharged, or acquitted, to destroy it following the completion of the investigation and any related judicial processes.
- That any request originates from or is approved by a police officer of the rank of Superintendent or above.

4.2 It is accepted that, even if the above conditions as satisfied, the provisions of the Guidance do not amount to a statutory obligation to disclosure on the part of the Local Authorities. In exceptional cases the Local Authority may wish to in the exercise it's discretion to refuse access to information. In these circumstances the Local Authority shall provide written confirmation as to the reasons for the refusal.

4.3 In addition to being satisfied that the above criteria are met the Local Authorities will seek to maximise confidentiality of the information disclosed. This will be achieved by the joint agreement to this document and the acceptance by the Avon and Somerset Police of the following procedure and protocol:

4.4 Avon and Somerset Constabulary in seeking access to the records will ensure that:

- The request, if originating from an officer of lesser rank, is approved by a Superintendent and that it incorporates the following information:
  - (a) A statement as to the seriousness of the crime being investigated.
  - (b) A statement of how failure to disclose specific relevant information from social services records would prejudice or delay the investigation.
  - (c) Sufficient information to identify the records.
  - (d) A clear statement of the specific relevant information or verification which is sought from the records in order to shape the nature of police enquires.
  
- The Social Services Departments will each identify an officer to whom requests will be addressed, and who will have authority to make decisions as to disclosure.

4.5 Upon receipt, by the Local Authority, of a request for disclosure in accordance with the above requirements, the signatory Local Authority will:

- (a) search for the relevant case records (s)
- (b) research the case record for the specific relevant information which is sought
- (c) confirm with the police whether or not the requested specific relevant information is contained within the case record.
- (d) if the information is available, produce it for inspection at the Local Authorities office

4.6 The police may read the specific relevant information and make notes in order to "shape the nature of their enquires". The Local Authorities will keep a register of all applications for disclosure and a note of all documents seen.

4.7 It should be noted that the Local Authority will not permit original records or copies thereof to be removed from their possession without an order of the Court.

4.8 Undertakings by the Superintendent

- To research specific relevant parts of the case record and identify and take notes from documents which:
  - (a) may be regarded as evidence or
  - (b) tend to bring into question the alleged victims credibility, integrity or honesty which may undermine the prosecution case or
  - (c) which may assist the defendant's case.

in accordance with the Criminal Procedure and Investigation Act 1996 (S23(1)) Code of Practice)

- Not to disclose or release the notes of the documents:

- ▶ to any person who is not employed in the investigation or who is not employed in or on behalf of the Crown Prosecution Service
  - ▶ to any person who is not the author of the document
  - ▶ to any person who is not subject to the document
  - ▶ to any person who is not the suspect of the crime being investigated and in respect of which the document was sought
- To inform the Local Authority before they release the notes of documents to anyone and if they become aware of any defence application for disclosure.
  - To keep notes of documents safe.
  - To destroy copies of notes in the event of no prosecution, or a discharge, or acquittal at the earliest opportunity following the completion of the investigation and any related judicial processes.

4.9 The Local Authority will require an undertaking from the Crown Prosecution Service that any defence application for disclosure of records will be notified to the Local Authority in order that a PII argument may be prepared jointly before submission to the court by the Crown Prosecution Service. The Social Services Departments reserve the right to make separate submissions to the Court with regard to PII. Further, an undertaking that no notes of documents will be voluntarily disclosed by Prosecution to Defence, without recourse to the Judge and provision for the Local Authorities to make representations in respect of PII.

**4.10 It is recognised by all parties that in some circumstances new information relevant to an investigation comes to light in care proceedings carried out by the Local Authority. If the police ask the Local Authority for access to this information the Local Authority will first ask the leave of the court dealing with the care proceedings to disclose the relevant information to the constabulary before following the procedure set out in this protocol.**

#### **POLICE REQUESTS FOR WITNESS STATEMENTS FROM SOCIAL WORKERS**

**5.1 This section deals with requests by the police to interview Social Workers for the purpose of preparing witness statements for potential use in criminal proceedings where the consent of the individual concerned has not been obtained.**

**5.2 The principles set out in paragraph 4 also apply where the police are requesting a witness statement from a Social Worker.**

**5.3 It is accepted by Avon and Somerset Constabulary and the Local Authorities that social workers should not be interviewed and asked to prepare witness statements in order to**

provide background information. Such information should be obtained through the Access to Social Services Records Procedure set out in paragraph 4. Any information, which could be obtained from the records, should be obtained in that manner rather than through interviewing the Social Worker.

**5.4 The Local Authority will agree to a social worker being interviewed if the conditions in paragraph 4.1 are satisfied and the following circumstances apply:**

- **The Social Worker is a first-hand witness of a relevant incident or has received relevant information from the proposed defendant or others involved in the investigation and without a witness statement from the Social Worker the task of detecting or prosecuting the crime will be seriously prejudiced.**
- **The witness statement would be admissible evidence in any criminal proceedings.**
- **The Social Worker agrees to being interviewed and preparing a witness statement.**

**5.5 In seeking witness statements Avon and Somerset Constabulary will ensure that the procedure set out in paragraph 4.3 is followed.**

**5.6 Upon receipt by the Local Authority of a request for a witness statement the Social Worker will discuss the matter with his/her Team Manager and respond to the police agreeing a date for the interview to take place or inform the police in writing as to why he/she does not agree to an interview.**

**5.7 Undertakings by the Superintendent**

- **To inform the local authority before the witness statement is disclosed to anyone**
- **To destroy the witness statement in the event of no prosecution, or a discharge or acquittal at the earliest opportunity following the completion of the investigation and any related judicial processes**

**6.0 INSURANCE**

6.1 The Avon and Somerset Police recognise that the Local Authorities insurance companies may have a legitimate interest in the enquiry, and therefore accept that when necessary they will liaise with their insurers on relevant aspects of the enquiry.

Signed \_\_\_\_\_  
for and on behalf of Avon and Somerset Constabulary Date \_\_\_\_\_

Signed \_\_\_\_\_  
for and on behalf of Bristol City Council Date \_\_\_\_\_

Signed \_\_\_\_\_  
for and on behalf of Bath and North East Somerset Date \_\_\_\_\_

Signed \_\_\_\_\_  
by and on behalf of South Gloucestershire Date \_\_\_\_\_

Signed \_\_\_\_\_  
by and on behalf of North Somerset Date \_\_\_\_\_

Signed \_\_\_\_\_  
for and on behalf of the Crown Prosecution Service Date \_\_\_\_\_

Signed \_\_\_\_\_  
for and on behalf of Somerset County Council Date \_\_\_\_\_

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## **APPENDIX 1 TO DISCLOSURE PROTOCOL**

1. Any person who is the subject of personal information held by Social Services has a right of access to that data.

This includes factual information, expressions of opinion and the intentions of the Authority in relation to the individual. There is a right of appeal to refusal.

2. A person does not have the right to know what is recorded about someone else. Therefore if files are maintained on an entire family one member is not entitled to see information about another member of the family without that person's consent. However there may be circumstances where the Local Authority considers it reasonable to disclose such information without consent. The data subject can appoint an agent to make a request for access. To do so they must have capacity (ie. understand the consequences of their consent) and that person can make a valid request for access on behalf of the data subject. They should provide evidence of their authority and confirm their identity. This should be provided in writing. The Social Services Department must treat the request as if it had been made by the data subject.

Any request for access to files has to be made in writing.

3. If an Authority does not hold personal information requested they have a duty to inform the applicant as quickly as possible.

Social Services can refuse to give access to information where they have previously complied with an identical or similar request from the same individual.

4. If another person is mentioned in the information and disclosure would allow that person to be identified the Authority may decide to obtain that person's consent before disclosure. It may decide however that it is reasonable in all the circumstances to disclose without obtaining that person's consent. The Authority would have to have regard to:

- (i) any duty of confidentiality owed to the other person;
- (ii) any steps taken to seek consent of the other person;
- (iii) whether the other person is capable of giving consent;
- (iv) any express refusal of consent by the other person.

The Social Services Department also have a duty to provide as much information sought as can be disclosed without revealing the other person's identity whether by omission of names or other identifying particulars.

The Authority has 40 days maximum to seek third party consent. The 40 day period does not commence until the Authority has received a written request and sufficient information to satisfy itself as to the identity of the person making the request and to locate the information sought.

If consent is not forthcoming within 40 days the Authority should give as much information as possible without identifying that person (although see above). The Authority has to give reasons why the information has not been given.

The information provided should be in an intelligible form and subjects should be provided with a permanent copy of the information.

Certain personal information is exempt from compliance to disclose:

- (i) information may be withheld concerning the prevention or detection of crime;
- (ii) if disclosure to the data subject would be likely to prejudice the carrying out of social work by causing serious harm to the physical or mental health or condition of the data subject or another person;
- (iii) the authority must not disclose information about physical or mental health or condition without first consulting the appropriate health professional (normally the GP).

Where there are other enactments to prevent disclosure then the subject cannot rely on the DPA to access records, eg. adoption records and reports.

If the Authority refuse for any reason to disclose data then the refusal should be given in writing and the data subject may appeal to either the Data Protection Commission or the Court.