

Criminal disclosure

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Executive Summary

- Criminal disclosure is the process through which all relevant material pertaining to a prosecution case is released/made available to the defence. It is an integral part of any criminal prosecution and ensures that the process is fair and transparent.
- Police accountabilities in regard to disclosure are governed primarily by the [Criminal Disclosure Act 2008](#) (hereafter the 'CDA'). Police staff must adhere to the requirements set out in the CDA, and the supporting guidance outlined in this chapter.
- The governing principle of disclosure under the CDA is that of 'relevance'; all relevant information must be disclosed, unless there is a legally justified reason to withhold it. Failure to disclose the appropriate information, at the appropriate time, in accordance with the requirements of the CDA, may have negative consequences for the case and those involved in it, the individual responsible for disclosure, and NZ Police.
- The OC case (i.e. the staff member who files the charge/s) with the oversight of their supervisor, is the primary responsibility holder for the case. The OC may be supported in aspects of this work (including disclosure), by groups such as the Criminal Justice Support Unit.
- Disclosure responsibilities begin at the time criminal proceedings are commenced, and continue throughout the duration of a prosecution (or until all relevant material has been disclosed). There are various stages of disclosure, characterised as: initial disclosure, full disclosure, and additional (requested) disclosure.
- The stages of the CDA (i.e. initial and full disclosure) place particular disclosure requirements and timeframes on Police. For example, initial disclosure responsibilities are triggered by the commencement of proceedings, are to be delivered no later than 15 working days from that time, and involves the disclosure of certain proscribed materials). To enable the timely progression of a case, it is considered best practice to take a proactive approach to mandatory disclosure responsibilities. It is also considered best practice to action requests for additional disclosure (e.g. those made by defence counsel) in a timely manner. However, this proactivity and efficiency must not be at the expense of privacy obligations.
- Disclosure can be provided in electronic or hard copy format, although the Police preference (except for small files) is for electronic disclosure.
- Where aspects of the information contained within documents are withheld, all care must be taken to ensure that the correct (electronic) redaction process is followed, and that such information is fully and permanently removed from the disclosed material.
- Effective disclosure is only possible with effective file management. There are two main Police systems that support disclosure:
 - the National Intelligence Application (hereafter 'NIA'), contains a prosecution file form set that enables the creation/building of a file. This material can then be disclosed manually or electronically
 - the Investigation Management Tool (hereafter 'IMT'), is an electronic file management system that enables electronic (or manual) disclosure.
- Police has a number of prosecution processes - operating within districts - through which disclosure is managed. This chapter provides high-level guidance, which should be read through the lens of local practice.

Part 1: Overview

Purpose of this chapter

This Police chapter outlines the duties and responsibilities of NZ Police staff in regard to criminal disclosure.

The primary audiences for this chapter are:

- The Officer in Charge of the Case [hereafter 'OC case']
- Police staff who have supervisory responsibilities towards staff undertaking disclosure activity
- Criminal Justice Service Centre (hereafter 'CJSU') or other service centre staff involved in disclosure activity
- Police Prosecution Service (hereafter 'PPS') staff and managers, and
- All other Police staff who are involved in criminal disclosure work.

Strategic importance of disclosure

Prosecution is the most formal resolution mechanism available to Police, and the prosecution process has significant implications for all those involved - including defendants, complainants/victims, whānau, police, and the courts. As such, the decision to prosecute is of great significance, and is only taken in those instances where the extent of alleged offending justifies this response (i.e. where there is deemed to be a sufficient level of public interest in bringing the case before a court).

In cases of more serious offending, prosecution is the resolution process that enables the courts to hold offenders appropriately to account, enhance public safety, and seek restorative and rehabilitative solutions that target re-offending.

The prosecution case is built on a set of evidence - adduced through the police investigation - which seeks to prove (beyond reasonable doubt) that the alleged offending has been perpetrated by the defendant/s. This set of evidence is then tested by the prosecution and defence through the prosecution process, to enable the court to reach a suitable determination and resolution.

Disclosure is the process through which all parties comply with their legal obligations to provide and share the evidence upon which the prosecution case is built. Disclosure therefore provides the evidential foundation of the case. Compliance with disclosure requirements and timeframes is intended to facilitate the efficient and effective delivery of justice; whereas inadequate disclosure practices can delay (and in some instances undermine) this outcome.

Overview of disclosure obligations

The following sections provide an overview of Police disclosure obligations, as the prosecutor in criminal proceedings, which are then outlined in further detail in subsequent parts of the chapter.

The Criminal Disclosure Act 2008

The disclosure of materials relevant to criminal proceedings in New Zealand is primarily governed by the [Criminal Disclosure Act 2008](#) (hereafter 'CDA'). The purpose of the CDA is 'to promote fair, effective, and efficient disclosure of relevant information between the prosecution and the defence, and by non-parties, for the purposes of criminal proceedings' ([s3](#)). All Police staff who are involved in criminal proceedings must be familiar with the content of the CDA.

The governing principle of disclosure within the CDA is 'relevance'; all relevant information must be disclosed, unless there is a justified reason to withhold it. Failure to disclose relevant information in accordance with the requirements of the CDA may have negative consequences for the case and those involved in it, the individual responsible for disclosure, and NZ Police (e.g., through cost awards and/or reputational damage).

As outlined in the CDA, there are three disclosure stages required of Police as the prosecutor:

- Initial disclosure ([s12\(1\)](#))
- Full disclosure ([s13](#))
- Additional disclosure (at any time after criminal proceedings are commenced, if requested by the defendant in writing ([s12\(2\)](#)), or at any time after the duty to make full disclosure has arisen ([s14](#))).

Police responsibilities in respect of these disclosure stages are outlined in more detail in this chapter.

Note on best practice

While the CDA stipulates timeframes within which disclosure is to be made, Police staff are encouraged to disclose required materials as proactively as possible (and to action requests for additional disclosure in a timely manner). Earlier, fuller disclosure helps the defence to become familiar with the case, promoting more efficient case progression and resolution. However, in doing so, all care must be taken to comply with necessary privacy responsibilities associated with the disclosure of information.

Information recording obligations

[Section 15](#) of the CDA provides that Police is not required to disclose information, if it:

- is not in possession or control of that information at the time, or
- does not hold the information in recorded form at the time.

However, beyond these exclusions, Police must still record all information relevant to an investigation and associated Police activities. Written materials provide the foundations of the Police case against the defendant. Information that is not recorded cannot be used in the prosecution, and the recording of all information relevant to the case against the defendant ensures that Police presents its fullest and strongest possible case in support of its decision to prosecute.

The [Public Records Act 2005](#) requires Police to create and maintain full and accurate records of its affairs, in accordance with normal prudent business practice. The variety of digital methods of communication are expanding the information collection and exchange options available to police officers. For example, text messages, audio-visual platforms utilised by Police, and various other messaging services, are increasingly being used. It is important to remember that these mechanisms all generate business records, and if the communication and information exchange they generate is relevant to the case, it must be preserved, attached to the investigation file, considered for disclosure, and included in the disclosure index (whether disclosed or not).

If relevant information is retained in unwritten form for the purposes of avoiding disclosure, this will likely constitute a breach of the NZ Police [Code of Conduct](#).

Disclosure obligations are the same for all investigations

Within the post-charge arena, Police deals with a wide spectrum of cases, some of which are very serious and/or complex in nature (e.g. those involving homicide, serious violent offending, fraud, and organised crime). It is recognised that the responsibilities and activities associated with disclosure are likely to be more significant and challenging in larger and/or more complex investigations. In such situations, it is the size of the case file, and the number of potentially disclosable documents produced by the investigation, which poses the greatest challenge to the efficient management of disclosure. It is also likely that more serious and complex cases will be managed by a Crown Solicitor (either in a District Court, or, in some cases, the High Court), which means that the OC case will need to liaise closely with an external party regarding the ongoing disclosure work associated with the case.

Notwithstanding the challenges associated with the management of more serious and complex cases, regardless of case specifics, Police is required to comply with the disclosure timeframes and responsibilities outlined in the CDA in all cases. Therefore, it is particularly important, that when dealing with more complex and involved cases, the OC case is well organised and efficient so as to meet disclosure requirements. Failure to disclose the appropriate information at the required time can negatively impact the case, public and stakeholder confidence in Police, and the individual Police employee personally responsible for the failure.

Additional disclosure hearing (Judicial Disclosure Conference) in High Court cases

Effective 8 March 2023, and in consultation with Police, Practice Note HCPN 2023/1 'Criminal Disclosure in High Court Trials' outlines that a Judicial Disclosure Conference will be scheduled by the Judge at the Case Review Hearing or first call in the High Court (where deemed necessary) to consider compliance with disclosure obligations. This process applies only to High Court cases. Further details are available at the Courts of NZ webpages at the link below:

<https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-notes/high-court/20230307-High-Court-Practice-Note-Crim-Trial-Disclosure.pdf>

It is also available on the PPS Practice Notes and Guidelines page [here](#).

Official information vs criminal disclosure

The CDA is the applicable legislation which governs the disclosure of information in criminal proceedings. Disclosure obligations under the CDA are triggered by the 'commencement of proceedings' and continue throughout the entirety of the criminal proceedings.

As outlined in section 13(6) CDA:

"The entitlement of a defendant to information under this section (i.e. that of [s13](#), relating to full disclosure) continues while the criminal proceedings are in progress (including any appeal against conviction) and during the period from the conviction until the expiry of the time for lodging an appeal against the conviction."

Requests for information that are covered by [s12](#) or [s13](#) of the CDA should be managed in accordance with this legislation. Requests made through the [Official Information Act 1982](#) (hereafter 'OIA') and/or the [Privacy Act 2020](#) (hereafter 'PA'), should only be considered as a basis for releasing information when that request:

- is not covered by CDA provisions (e.g., requests made prior to the commencement of proceedings, or after the conclusion of proceedings)
- has not already been disclosed to, or withheld from, the defendant (through [s38](#) and [s39](#) of the CDA)
- does not relate to criminal proceedings.

The relevant refusal grounds are: [s53\(g\)](#) of the [Privacy Act 2020](#), and/or [s18\(da\)](#) of the [Official Information Act 1982](#).

Summary of disclosure roles and responsibilities

The following sections (and FIG 1 below), provide a brief summary of the disclosure roles and responsibilities of the different Police parties to a prosecution.

Role of OC case in disclosure

The general terminology of the CDA refers to the responsibilities of the 'Prosecutor' in respect of disclosure. For the purposes of the CDA, 'Prosecutor' means "the person who is for the time being in charge of the file or files relating to a criminal proceeding, and includes:

- Any other employee of the person or agency by whom the prosecutor is employed who has responsibilities for any matter directly connected with the proceedings; and
- Any counsel representing the person who filed the charging document in the proceedings; and
- In the case of a private prosecution, the person who filed the charging document and any counsel representing that person" (CDA [s6](#)).

Given the role of the OC case as the main responsibility holder for the prosecution file, disclosure responsibilities primarily rest with them. The OC case (with the support, oversight, and approval of their supervisor) leads the process of considering, preparing, and providing disclosure. Therefore, the terminology of 'Prosecutor' often refers to the role of the OC case.

Note on OC case primary responsibility, and local arrangements

This chapter notes that OC case has primary responsibility for the prosecution file and associated activity (including disclosure). However, in some districts, other service groups (e.g., Criminal Justice Support Units) may undertake some disclosure responsibilities. Disclosure activity should be read through the lens of local practice.

Role of supervisors in disclosure

Supervisors, OC Stations, and Senior Sergeants play an integral leadership role in the prosecution process (including the disclosure aspects of this process). Beyond general leadership, coaching, and mentoring of junior staff, supervisors are directly accountable for the standard of prosecution files advanced by their staff, and for reviewing and approving associated disclosures. As such, in instances where their staff member is managing the disclosure process, they hold accountability for those disclosure standards, and liability for failure to meet those standards.

Supervisors are required to take an active role in overseeing and reviewing the disclosure materials prepared by their staff. Reviewing disclosure materials provides an opportunity to ensure statutory requirements are being met, to identify any gaps or further lines of inquiry to be followed up, to resolve problems, and to coach and mentor the OC case. Without this oversight, relevant information could be inadvertently withheld or overlooked, and this could undermine the Prosecutor's case at court.

Supervisors also have a responsibility to ensure sensitive content is not disclosed if withholding grounds apply.

It is also critical that supervisors ensure electronic disclosure and redaction procedures are properly followed - see [Electronic redaction chapter](#). Non-compliance with this process, particularly in relation to sensitive or informant information, may jeopardise an individual's safety and/or privacy, and may lead to an employment investigation.

All materials proposed for disclosure by the OC case must be signed off by their supervisor prior to being delivered to defence counsel. Before approving and signing off materials, supervisors must review all documents (not simply view the Disclosure Index) and then sign the Disclosure Index to signify that a review has been conducted and approval given.

The importance of supervisors to disclosure

Timely disclosure (together with, and enabled by, file quality, currency, and completeness) allows the court to efficiently and effectively advance a prosecution case. What is more, efficient case advancement is directly linked to the delivery of Police strategic goals such as the protection of public and victim 'safety', the 'prevention' of further harm, and enhancing public and partner 'trust and confidence'. Therefore, the work of supervisors in reviewing, overseeing, and supporting file quality and compliance with prosecutorial processes (including disclosure), makes a key contribution to the core strategic goals of NZ Police, as set out in Our Business.

Role of Criminal Justice Support Units (CJSUs) or other service centres

As noted above, while the OC case is/remains the primary responsibility holder for their prosecution case and file, in some districts (varying by district), for some staff (varying by district), and at certain stages of the disclosure process (varying by district), CJSUs or other service centres may assist with the preparation and delivery of criminal disclosure.

Role of Station OC/Senior Sergeants

Station OCs (at a station level) and Senior Sergeants (in respect of the staff under their reporting lines) play a key role leadership and overseeing role in regard to file quality and case management (including the management of disclosure responsibilities). They ensure that supervisors are conducting their disclosure role effectively, that localised disclosure issues and challenges are understood, and that there is an on-going focus on improvement. Station OCs and Senior Sergeants also provide confidence to senior leaders within the district (e.g., Area Commanders) regarding the careful and efficient management of disclosure.

Role of Police Prosecutors

Police prosecutors conduct the prosecution on behalf of Police as it moves through the district court process (or in some instances this role is performed by a Crown Solicitor). Within this role, and in order to facilitate the efficient advancement of the case, Prosecutors have a number of file and disclosure-related responsibilities and obligations, as follows.

File review

The prosecutor has a general obligation to review all cases before they reach a court event - e.g., to ensure that:

- The Test for Prosecution continues to be met, in accordance with the [Solicitor General's Prosecution Guidelines](#)
- Charges are appropriate and justified given the facts of the case

- All required information is contained on the file
- The necessary disclosures have been made.

Police staff (including the OC case and/or supervisors) may seek guidance from Police Prosecutors on matters relating to a specific case - e.g., procedural issues, charging decisions, and/or pre-trial applications. Police prosecutors will endeavour to offer this type of mentoring assistance wherever possible, as it will improve the officer's understanding of both the specific case and general prosecution processes.

Receiving and actioning disclosure requests

Police prosecutors must play an active role in supporting the OC case, to ensure that the disclosure process operates efficiently and effectively (and in compliance with legislative timeframes). This may include:

- Providing initial disclosure to defence counsel at first appearance, when necessary
- Ensuring any disclosure requests received by the Police prosecutor from defence are forwarded to the OC case (via a NIA tasking)
- Providing notice of delays and estimates of time for disclosure delivery to defence, as necessary
- Checking whether previously withheld information has become disclosable after any change in circumstances (note: this task is the primary responsibility of the OC case; the prosecutor's role here is supplementary only).

Applications and submissions

Police prosecutors play a key role in making any necessary applications and submissions to the court to ensure that Police presents its best quality prosecution case, including:

- Applications for extensions to initial disclosure delivery, and conditions on access to exhibits
- Submissions on non-party disclosure, requests for disclosure, or timetabling orders.

Note: When Police prosecutors make applications or submissions, they must provide the court with two copies of the documents: one copy for the court itself, and another for the court's service of these documents on defence.

Challenges to disclosure

Police prosecutors also play a key role in managing challenges to disclosure, including:

- In court work - e.g., making applications for court-ordered disclosure, and appealing court decisions
- Advocating the prosecution position, by conveying Police disclosure decisions (and reasons) to defence counsel and the court
- Out of court work - e.g., advising defence counsel about delays in releasing materials, intentions to withhold information, and conditions on viewing exhibits.

Defence disclosure

The CDA requires defence to disclose specific information in certain circumstances. In such instances, the Police prosecutor should:

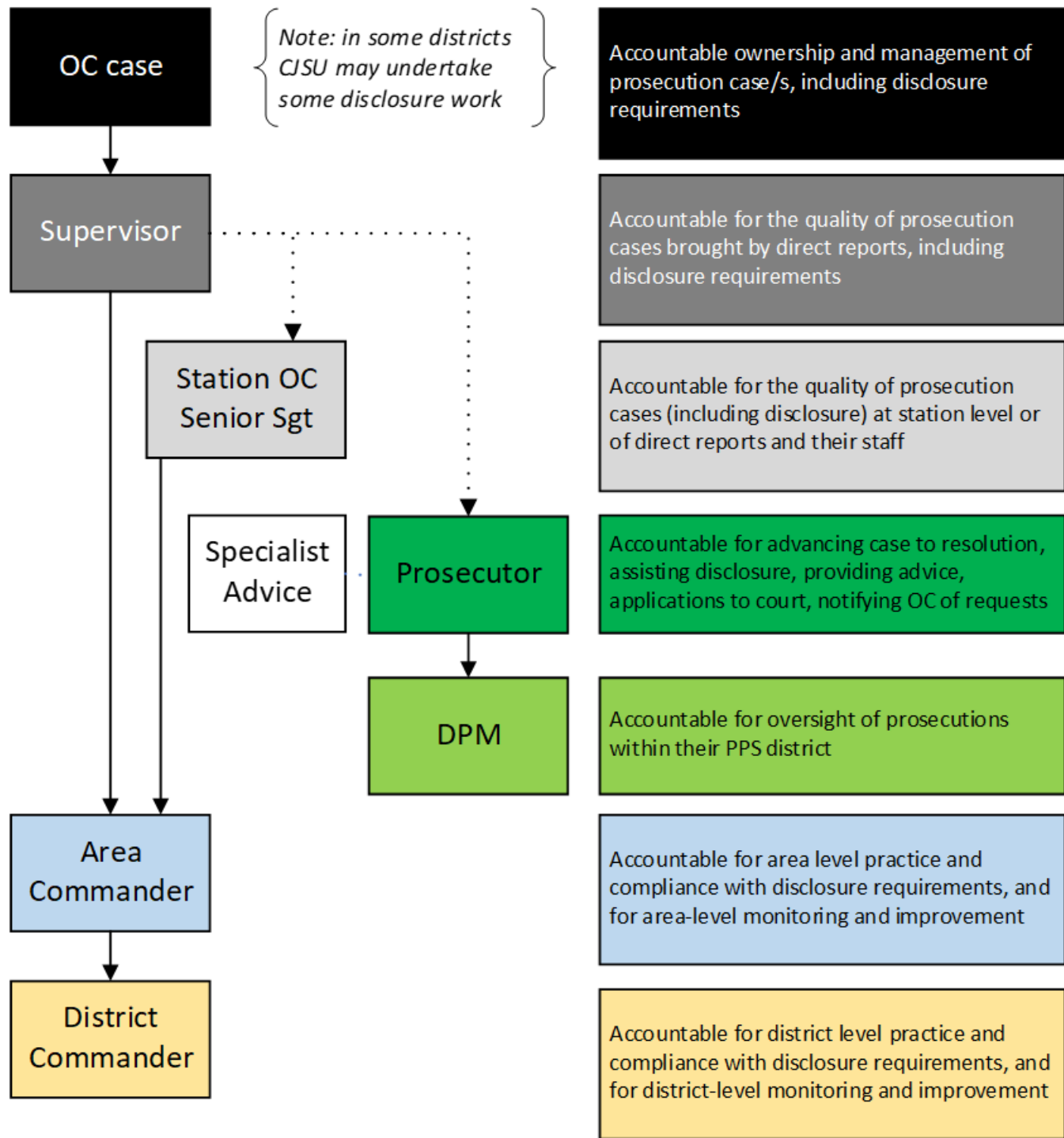
- Act as the conduit for receiving defence alibi and expert witness disclosure information
- Challenge the defence if information is not provided in accordance with the CDA
- Seek to secure adjournments when the defence adduces evidence in court that should otherwise have been disclosed before the hearing.

Undisclosed information adduced in court by defence

Section [34\(3\)](#) of the CDA prohibits the court from excluding evidence sought to be adduced in court by the defence, where the court has not given the defence notice of the requirement to disclose such evidence. However, the court may adjourn proceedings if the prosecutor so requests.

Police prosecutors should actively seek an adjournment when the evidence adduced is significant enough to require (of the prosecutor) time to review the material and prepare a challenge to it.

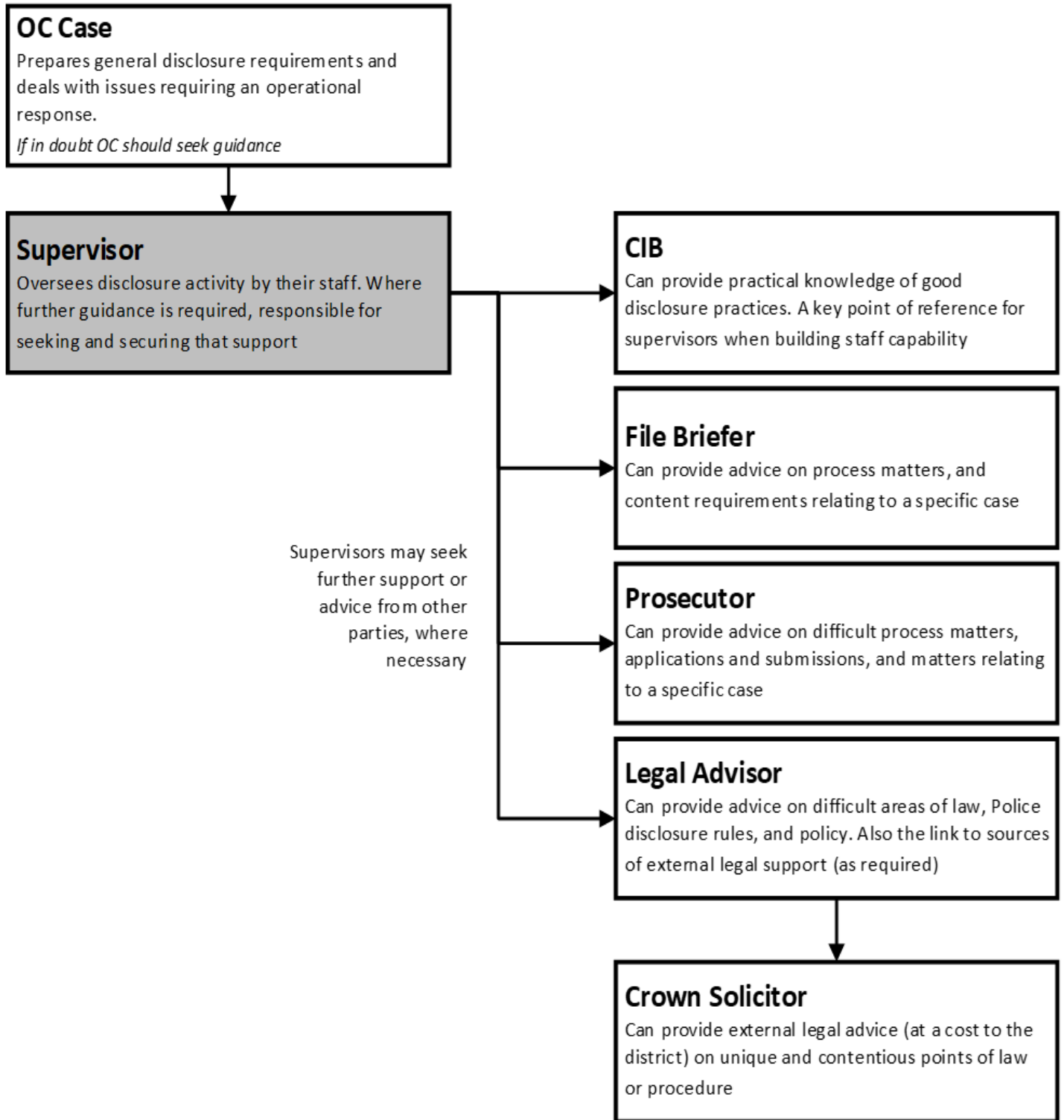
FIG 1: Summary of Police roles in disclosure



Specialist Advice

Where a prosecution has commenced and an OC case requires information or advice pertaining to that case, a Police prosecutor is typically the primary point of contact for that advice. However, where additional advice is required, there are other specialists who may also be able to provide advice and guidance. These are outlined in FIG 2, and include teams such as District Legal Services, CIB, and file briefers (such as CJSUs).

FIG 2: Seeking specialist advice regarding disclosure practice



Role of District Prosecution Manager

The District Prosecution Manager (hereafter ‘DPM’) is responsible for the oversight of all prosecutions managed by their staff within their PPS district, and for all aspects of prosecutor practice. Given that PPS staff have a unique knowledge and insight into district prosecution files (including issues such as file quality and disclosure), the DPM plays a key district leadership role in highlighting noted file quality and disclosure-related opportunities for improvement (e.g., both to staff supervisors and to senior leaders).

Role of Crown Solicitor as prosecutor

As set out in the [Crown Prosecution Regulations 2013 \(reg 4\)](#), Crown Solicitors prosecute certain -typically more serious - cases on behalf of Police. The effective prosecution of these cases is important, not only because of the public interest in (and implications of) bringing serious offenders to justice, but also because of the significant amount of work that Police puts into investigating such types of offence.

Here, as in all other cases, disclosure is a critical component of the prosecution process, and in ensuring the efficient and effective management of the prosecution. Failure to meet disclosure requirements will likely result in negative consequences for the case being prosecuted, and possibly for the Police and Crown solicitors themselves (including cost orders).

Crown prosecutions and responsibility for disclosure

Good working relationships between Police and the Crown are crucial to the administration of Crown-managed prosecution cases, and to the flow of relevant information that enables these prosecutions. Where a case is prosecuted by the Crown, the Crown prosecutor will have custody of the trial file, but the OC case retains responsibility for disclosure (as in the case of a PPS-managed prosecution). This is because they will:

- Have the best relationship with case file material that attracts disclosure obligations
- (Possibly) continue to investigate the case, and generate new material
- Be responsible for the management of exhibits
- Have control over the Disclosure Index, that requires regular updating as further disclosures are made.

In a Crown prosecution, a Crown prosecutor should ensure that the OC case is aware of, and has complied with, their obligations under the CDA.

The Crown prosecutor should also forward any materials they generate (and which fall within the ambit of the CDA - e.g., expert briefs of evidence, or documents relating to the briefing of a witness) to the OC case, so that they can be:

- Reviewed for the purpose of disclosure (e.g., tested for relevance, considered for withholding grounds)
- Reviewed by the OC case supervisor, and approved for disclosure
- Logged in the Disclosure Index
- Disclosed, if required.

Role of Area Commander

The Area Commander is the primary responsibility holder for OC case compliance with prosecution case requirements (including disclosure) within their area.

Role of District Commander

The District Commander is the primary responsibility holder for OC case compliance with prosecution case requirements (including disclosure) within their district.

Role of Police Infringement Bureau

The Police Infringement Bureau (hereafter 'PIB') manages infringement offences. These are defined in [s 2\(1\)](#) of the [Summary Proceedings Act 1957](#), as any offence under any Act in respect of which a person may be issued with an infringement notice. Disclosure arrangements relating to infringement cases are outlined below.

Disclosure responsibilities in PIB-initiated prosecutions

Most cases administered by the PIB do not give rise to disclosure obligations, because they deal with uncontested infringement offences. However, where a case is contested, proceedings are deemed to have been commenced under [s9\(d\)](#) of the CDA once a notice of hearing (SP10A) is filed under, or in accordance with [s 21\(8\)](#) of the [Summary Proceedings Act 1957](#). Full disclosure must then be provided in accordance with [s13](#) of the CDA. Initial disclosure timelines do not apply to infringement offences (as noted in [s12\(3\)](#) of the CDA). Therefore, as a general rule, all information specified for mandatory initial disclosure should also be provided to the defendant at time of full disclosure.

When PIB receives the request for a defended hearing, its staff will:

- enter the charge into NIA, and create an SP10A form (i.e. the court-generated charging document), which is sent to the district court.
- send a copy of the SP10A form with nominal hearing date, and any other relevant and available information (e.g. a copy of the ticket, speed camera photographs, 'red light' photographs) to the defendant.
- send a copy of this disclosure pack to the OC case, who will prepare the prosecution file (including the prosecution cover sheet).
- prepares the initial disclosure pack for the OC case

- prepares the prosecution file (including the prosecution cover sheet)

The OC case must disclose, to the defendant, any other relevant information that is on the file and has not been provided in initial disclosure, prior to the nominal hearing date. Once the prosecution file has been completed, and any further disclosure provided, the OC case will forward it to the prosecution office at least one week prior to the nominal hearing date.

PIB is also responsible for commencing proceedings of Safety Camera Traffic Offence Notice (TON) cases. Once PIB receives a notice, it will enter this into NIA, generating the SP1 form (i.e. the summons). PIB will then prepare the prosecution file (including the prosecution cover sheet), and the file will be forwarded to contact persons for the district, or to the relevant prosecution office at least one week prior to the nominal hearing date. Those contact persons will disclose any other relevant information on the file (to that already fully disclosed by PIB) to the defendant prior to the first appearance.

Failure to disclose information: case implications

The direct consequences of failing to disclose information, as per the terms of the CDA, relate directly to the level of impact that the failure has caused (or could reasonably be expected to have caused), and when the failure to disclose was discovered.

Early cases of non-disclosure are likely to be dealt with by defence counsel through applications to the court for:

- Leave to disclose an informant or witness address ([s17\(2\)](#) of the CDA)
- Provision of initial or full disclosure, if not received (disclosure order) ([s 30\(1\)\(a\)\(i\)](#) of the CDA)
- Court registrar, or court order, setting conditions for inspection of an exhibit ([s 31\(1\)](#) of the CDA)
- Timetabling directions relating to full disclosure material (timetabling order) ([s 32\(1\)](#) of the CDA).

For more serious instances of non-disclosure, [s 34\(2\)](#) of the CDA empowers the court to either:

- Exclude the evidence, or
- With or without requiring the evidence to be disclosed, adjourn the hearing or trial, or
- Admit the evidence if it is in the interests of justice to do so.

A significant disclosure failure, without reasonable excuse, could result in:

- The exclusion of evidence
- An order for retrial
- The dismissal of charge/s, on defence application or on the court's own motion pursuant to [s 147\(2\)](#) of the [Criminal Procedure Act 2011](#) (CPA)
- A costs order being made against the prosecutor, pursuant to [s 364](#) of the CPA.

Failure to disclose information: organisational implications

Failure to comply with disclosure requirements may lead to outcomes that compromise public safety. It may also negatively affect public and partner perceptions of Police professionalism, fairness and/or credibility (and thereby trust and confidence in Police).

Additionally, [s 364](#) of the CPA enables the court to make costs orders where, in the course of a prosecution, there has been a significant procedural failure to comply with CDA requirements or any associated regulations, and there is no reasonable excuse for that failure. More detailed information on 'costs orders procedure' can be found in the [Police Criminal Procedure Costs Orders chapter](#).

Failure to disclose information: personal implications

Under [s 32\(4\)](#) and [s 34\(4\)](#) of the CDA, Police prosecutors or other Police employees may be held personally accountable for failing to disclose information. In situations where disclosure failures are deliberate, this will likely result in a criminal investigation and potential prosecution action. In cases where there is a neglect of duty, this may result in an employment investigation for breaching the Police Code of Conduct.

The Police Code of Conduct requires employees to:

- Consistently practice good judgement and integrity when creating, accessing, modifying and using, securing, and disclosing all information
- Handle information appropriately, for legitimate work purposes, and in line with the law, our policies, processes, and systems.

Police prosecutors, who are lawyers, may also be held to account for poor disclosure practices. Under [r13.12](#) of the [Lawyers and](#)

[Conveyancers Act \(Lawyers: Conduct and Client Care\) Rules 2008](#), prosecuting lawyers are required to act fairly and impartially at all times, and in doing so, they must:

- Comply with all obligations concerning the disclosure of evidence
- Present the prosecution case fully and fairly, and with professional detachment
- Avoid unduly emotive language, and inflaming bias or prejudice against an accused person
- Act in accordance with any ethical obligations that apply to prosecutors acting for the Crown.

Part 2: The stages of disclosure

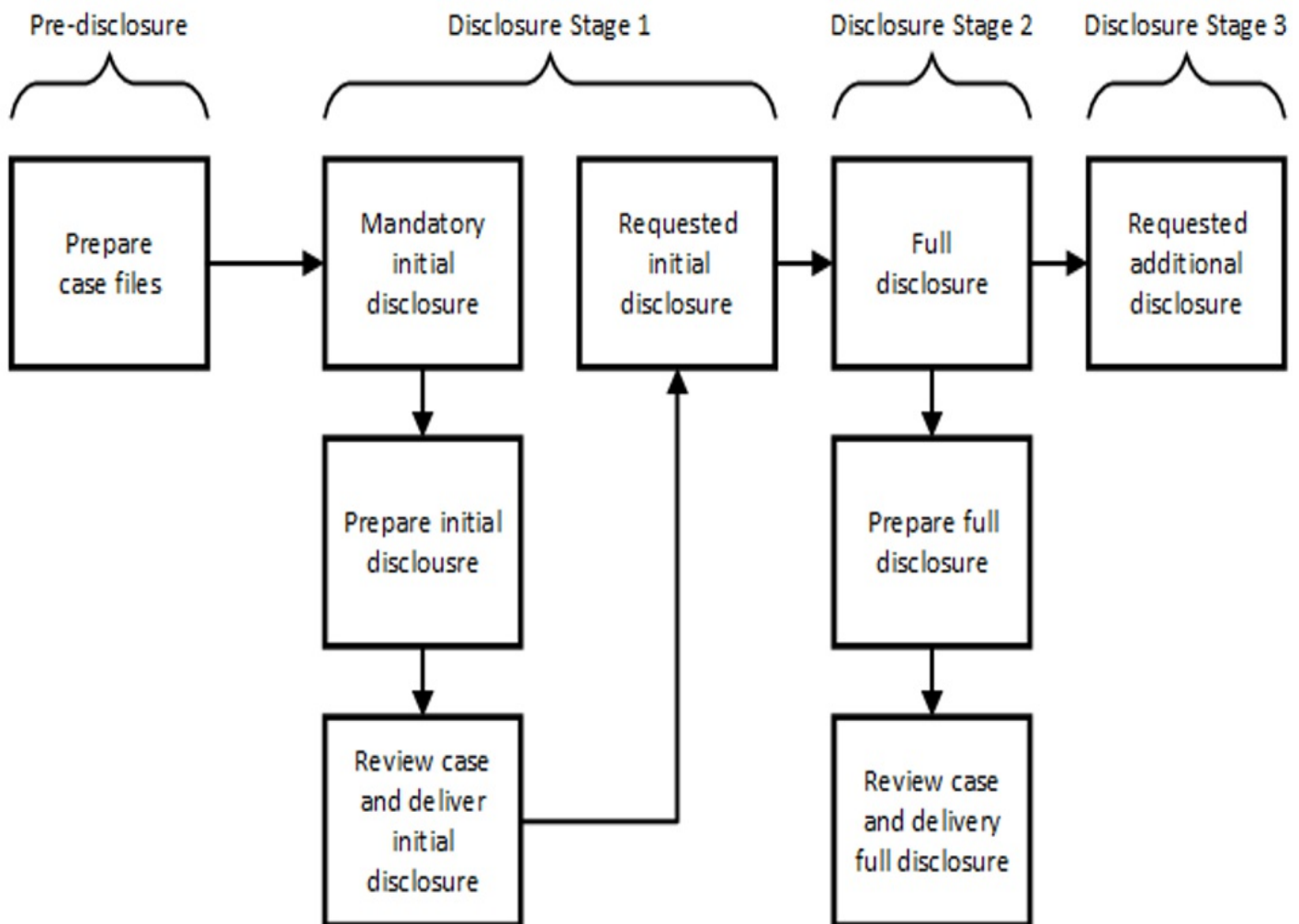
Part 2 of this chapter outlines the disclosure stages, processes, and responsibilities (as set out in the CDA) as they relate to NZ Police (part 2A), and others (part 2B).

Part 2A: The NZ Police disclosure process

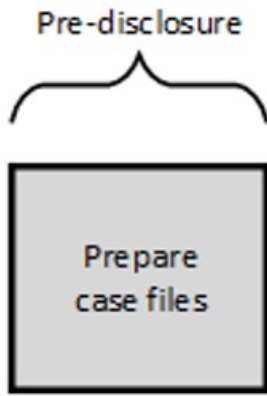
Disclosure becomes relevant during the investigation stage of a case, as information is collected. However, disclosure responsibilities begin from the point at which criminal proceedings are commenced (see [s 9 CDA](#)). These responsibilities filter through various disclosure stages (see below diagram), and continue throughout the duration of a prosecution, or until all relevant material pertaining to the case has been disclosed.

The following sections provide further detail about the various stages of disclosure, specifically:

- Pre-disclosure practices, and case file preparation
- Disclosure stage 1: Mandatory initial disclosure (and any further requested initial disclosure)
- Disclosure stage 2: Full disclosure
- Disclosure stage 3: Requested additional disclosure.



Pre-disclosure stage: Preparing case files



This stage of the process involves the collection of evidential material, and the decision to charge individuals where prosecution is deemed to be the appropriate resolution.

Collecting evidence and building the prosecution file

The OC case is responsible for investigating incidents, collecting evidence, making initial charging decisions, filing charging document/s (where charges are warranted as the resolution approach), and preparing the associated prosecution file. For instructions on the preparation and compilation of a prosecution file, please refer to the PPS '[Prosecution file and trial preparation](#)' chapter.

All information collected by police during the course of an investigation and prosecution must be considered for disclosure (as outlined in the CDA). To enable this process, where possible, all information relating to an investigation and prosecution should reside on the prosecution case file.

The Police Disclosure Index

The Police Disclosure Index is a template enabling Police to maintain a current and historical record of all disclosure (and non-disclosure) relating to the prosecution case.

Given that disclosure is an ongoing process - e.g. as new information is collected during the investigation - the Disclosure Index provides an up-to-date record of what has been disclosed (or considered for disclosure, where withheld), and ensures that the process is efficient, effective, and transparent.

Where the prosecution file is a part file (e.g. because the investigation file is too large to be maintained as a single file), or where a summons file has been created as a part file, the Disclosure Index becomes even more important as a tool for understanding disclosure activity.

The Index is also the main document used by a supervisor when reviewing/approving disclosure.

The NIA module generates a basic initial disclosure recording template (for use only at the stage of initial disclosure). Then, beyond the point of initial disclosure, a more detailed Disclosure Index template can be generated via the NIA Disclosure Module (which is typically used by frontline staff), or through the IMT system (which is more typically used by CIB staff and/or for more complex investigations).

The OC case (or party making the disclosure) must record all disclosure (and non-disclosure of relevant material) in the Police Disclosure Index. Recording begins at the point of first disclosure and continues to be updated until all disclosure obligations are met. Whenever disclosure is made to defence, the

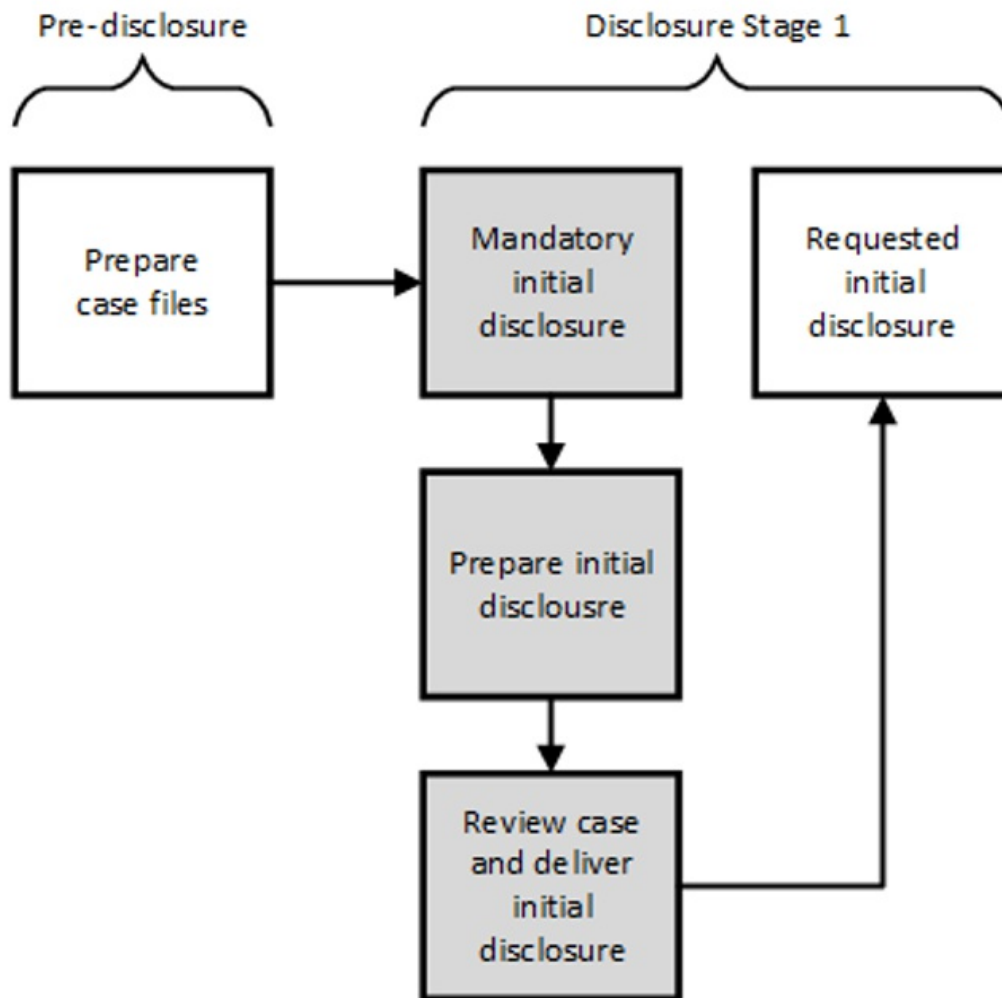
Disclosure Index must be updated, and a copy of that updated record placed on the prosecution file to ensure the prosecutor's awareness.

For more detailed guidance on the Disclosure Index, see 'Creating and managing the Disclosure Index' section, in Part 3C (Determining How to Disclose) of this chapter.

Disclosure Stage 1: Mandatory initial disclosure

This section refers to the first stage of the disclosure process: mandatory initial disclosure. It provides general advice, and covers the activities of preparing initial disclosure, and reviewing and delivering initial disclosure. Obligations regarding mandatory initial

disclosure are set out in [s 12](#) of the CDA.



Mandatory initial disclosure timeframes

As outlined in [s 12\(4\)](#) of the CDA, initial disclosure must be delivered:

- At the commencement of criminal proceedings, or ‘as soon as practicable after that time’, and no later than 15 working days after commencement, or
- Within a longer period of time, if allowed by the court or court registrar on application by a prosecutor, or
- Not later than first appearance, if the defendant is a child or young person, appearing in the Youth Court.

As a matter of best practice, Police should release disclosable information at the earliest available opportunity; and as such, if defence counsel makes contact to seek initial disclosure prior to first appearance (and where there is sufficient time for Police to do so) all efforts should be made to provide the materials.

Where commencement of proceedings is by way of summons, it may be some weeks before the first appearance; and in such circumstances the OC case should prepare initial disclosure before, or as soon as, the summons is served. However, where commencement of proceedings is by way of arrest, in practice, the OC case will often provide initial mandatory disclosure to defence counsel at first court appearance, via the Police prosecutor at the hearing (e.g., by placing it on the file).

Information to be provided as part of mandatory initial disclosure

As outlined in [s 12\(1\)](#) of the CDA, Police must disclose the following information at the commencement of criminal proceedings (or as soon as practicable after that time).

FIG 3: Summary of evidence required for mandatory initial disclosure

CDA Section	CDA requirement	Police to provide ...
12(1)(aa)	'A copy of the charging document'.	A copy of the charging document printed from NIA. <i>Note: this does not have to be a filed charging document. It is sufficient to include a draft charging document that is intended to be filed.</i>
12(1)(a)	'A summary that is sufficient to fairly inform the defendant of the facts on which it is alleged that an offence has been committed, and the facts alleged against the defendant'.	POL262 Summary of Facts, which includes the maximum and minimum offence penalty.
12(1)(c)	'The maximum penalty, and the minimum penalty (if one is provided for) for the offence'.	
12(1)(b)	'A summary of the defendant's right to apply for further information under section 12(2)'.	Initial Disclosure Record or covering letter to defence counsel (POL2125). <i>Note: both documents contain a paragraph explaining the defendant's right to apply for further information and the method of doing so.</i>
12(1)(d)	'A list of the defendant's previous convictions that are known to the prosecutor'.	NIA prosecution report: defendant 'query history all' (QHA) printout.
12(1)(e)	'A list of any previous offences proved to have been committed by the defendant and of a kind to which section 284(1)(g) of the Oranga Tamariki Act 1989 applies, that are known to the prosecutor'.	

Although not required as part of mandatory initial disclosure, a Police opposition to bail form ([POL128](#)) and receipt are often available at this stage of proceedings. If so, they should be considered for disclosure; and so too should any other documentation that is available and disclosable.

Initial disclosure: roles and responsibilities (preparation, review, delivery)

As outlined in part 1 of this chapter, the OC case has primary responsibility for the content of their prosecution file, including associated disclosure activity. However, the OC case supervisor also has a review and approval role in the process, and a PPS prosecutor may provide technical advice (if sought) and facilitate the provision of disclosure at first appearance. The overarching process - including responsibilities - is outlined in FIG 4.

FIG 4: Initial disclosure roles and responsibilities

Step	Task	Role	Detail
1	Assessing ability to comply with initial disclosure timeframe	OC case	The OC case is primarily responsible for managing the disclosure process. Once proceedings commence, the OC should consider whether initial disclosure can be provided within no more than 15 working days. If initial disclosure <i>can be provided</i> within the legislated timeframe, the OC should work to prepare that disclosure (as per step 2). If initial disclosure <i>cannot be provided</i> within the legislated timeframe, the OC should seek the advice of their supervisor/PPS (as required) and advise the PPS prosecutor so that they can advise, and, if deemed necessary, apply to the court for a time extension. <i>Note: applications of this nature will be rare, since the minimum requirements for mandatory initial disclosure are not demanding.</i>
		Supervisor	The OC's supervisor can provide advice, if requested.

		Prosecutor	<p>A prosecutor can provide advice on any identified difficulties relating to initial disclosure, if requested.</p> <p>If the prosecutor agrees that an extension to the legislated initial disclosure timeframe is warranted, they will apply to the court, in writing, seeking an extension (through s 12(4)(c) of the CDA).</p> <p>As per r 4.1(2)(a) of the Criminal Procedure Rules 2012, if initial disclosure (under s.12(1) of the CDA) has not been made to the defendant before or at the defendant's first appearance, the prosecutor is required to notify the court of the date by which disclosure is expected to be made.</p>
2	Preparing initial disclosure	OC case	<p>The OC case will prepare initial disclosure, as per the 'Evidence required at initial disclosure' section/table above. When preparing initial disclosure, they will:</p> <ul style="list-style-type: none"> - Review material for relevance - Consider information covered by s 12 of the CDA (regarding initial disclosure) - Create and complete a Disclosure Index (including details of/reasons for the withholding of any materials) - Ensure that electronic redactions are carried out using the appropriate Adobe software (as outlined in the 'Redacting materials for disclosure' section of this chapter).
3	Reviewing initial disclosure	OC case	<p>Once initial disclosure is prepared, the OC case will provide the materials to their supervisor for review and any remedial work/approval to release.</p>
		Supervisor	<p>The OC case's supervisor will:</p> <ul style="list-style-type: none"> - Discuss the investigation with the OC case to ensure that all relevant information has been collected, documented, and is recorded in the Disclosure Index - Review the provided initial disclosure pack/materials, and advise the OC case of any remedial work required, or otherwise approve the pack for release to defence counsel - Ensure that any required electronic redactions have been carried out fully and appropriately using the necessary Adobe software (as outlined in the 'Redacting materials for disclosure' section of this chapter) - Review and approve for release the initial disclosure materials following any remedial work. The supervisor must sign the Disclosure Index to denote their review of, and approval to release, initial disclosure. <p><i>Note: The initial disclosure record or Disclosure Index (generated from the NIA Disclosure Module) is a key aid in assisting the supervisory review of disclosure materials. However, the Disclosure Index is simply a guide to the materials requiring specific attention, and the decisions (and reasoning) made by the OC case in relation to those materials. Supervisors must review both the Disclosure Index and the individual documents to be disclosed.</i></p>
4	Remedial work	OC case	<p>The OC will undertake any remedial work, required by their supervisor, prior to the release of initial disclosure, and ensure their supervisor approves the amended materials for release.</p>
5	Delivery of initial disclosure	OC case	<p>Once approved for release by their supervisor, the OC case should arrange delivery of these materials to the defendant/defence counsel within the legislated timeframe, by:</p> <ul style="list-style-type: none"> - Post before first appearance - e.g. if the defendant is summonsed or released on Police bail - Placing on the prosecution file for the prosecutor to deliver at first appearance - e.g. if the defendant was arrested and taken to court immediately. <p><i>Note: Police best practice is to disclose relevant and available materials early. Therefore, the OC case should make all efforts to deliver mandatory initial disclosure in the most timely manner possible.</i></p>

1-5	Seeking specialist advice	OC case Supervisor	<p>When complicated disclosure issues arise, the OC case should seek the advice of their supervisor. If the supervisor cannot resolve the issue/s, they may seek specialist advice (see ‘specialist advice’ section of this chapter).</p> <p>If the matter relates to a Crown prosecution, advice may be sought from the assigned Crown prosecutor. Areas that commonly require advice include:</p> <ul style="list-style-type: none"> - Withholding information and the reasons for withholding - Managing partial disclosure of information and selecting the correct information to redact.
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Withholding information

All relevant information should be disclosed unless there are legitimate statutory grounds for withholding it (see part 3 of this chapter, below).

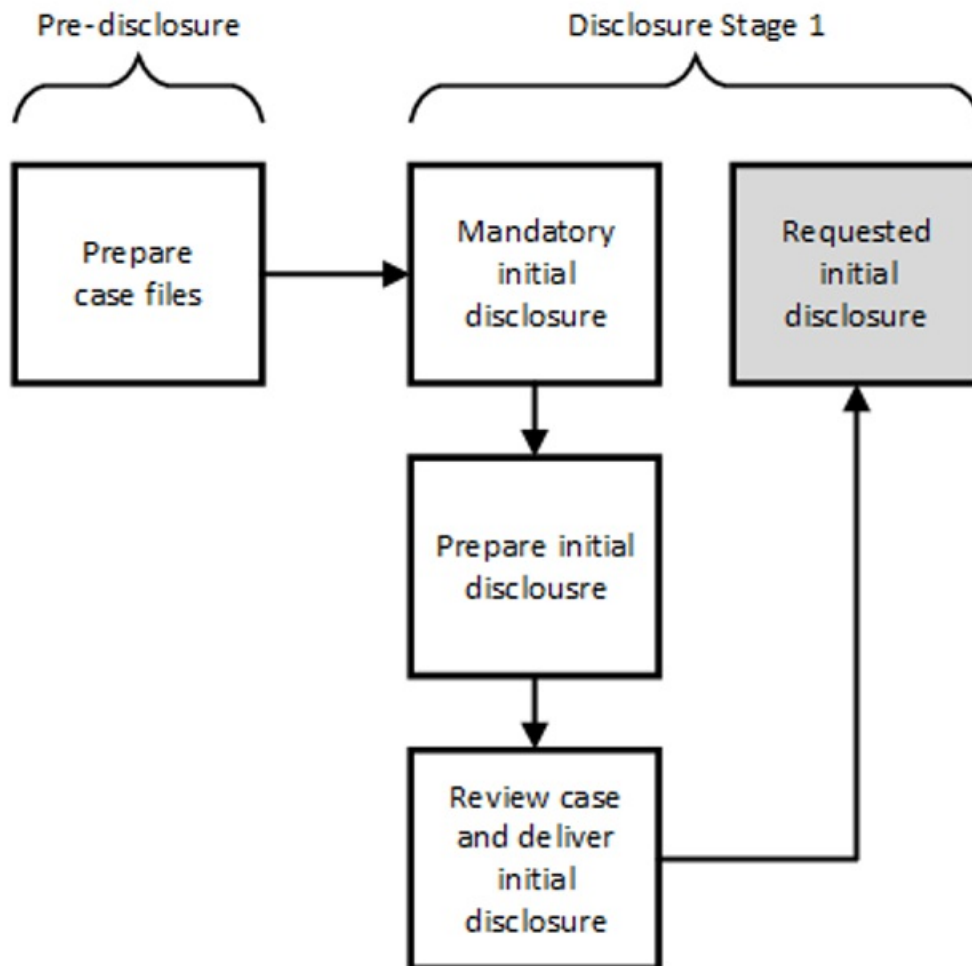
Communicating any delays to defence counsel

Notwithstanding any applications made to the court (via the prosecutor) for additional time in which to deliver initial disclosure, the OC case should make all efforts to maintain effective lines of communication with defence counsel: to advise them of any delays in providing disclosure within statutory timeframes, and when delayed materials can be expected. This will ensure transparency, promote a better understanding of Police operations, and reduce the incidence of defence applications to the court for undisclosed materials.

Mandatory initial disclosure checklist

The PPS Disclosure Good Practice Guidelines contain an ‘Initial Disclosure Checklist’. It is available at: [Initial disclosure checklist final \(police.govt.nz\)](https://www.police.govt.nz/policies/initial-disclosure-checklist-final)

Disclosure Stage 1: Requested additional initial disclosure



As outlined in [s 12\(2\)](#) of the CDA, the defence may, in writing, request the disclosure of additional specific information from Police. Where the information exists, Police must provide it as soon as reasonably practicable, except where it can be withheld under [ss.15-18](#) of the CDA (see [s 12\(2\)\(k\)](#) in FIG 5 below), or [s 16](#) of the [Victims' Rights Act 2002](#) (in which instance Police must provide a written response outlining the grounds for full or partial refusal).

The OC case is primarily responsible for the prosecution case and associated disclosure. Therefore, if the request is sent to a Police prosecutor, they should forward it on to the OC case (through a NIA tasking), so that it can be actioned in a timely manner. The additional materials that can be requested, and the associated Police materials to be disclosed (when deemed disclosable) are outlined in FIG 5 below.

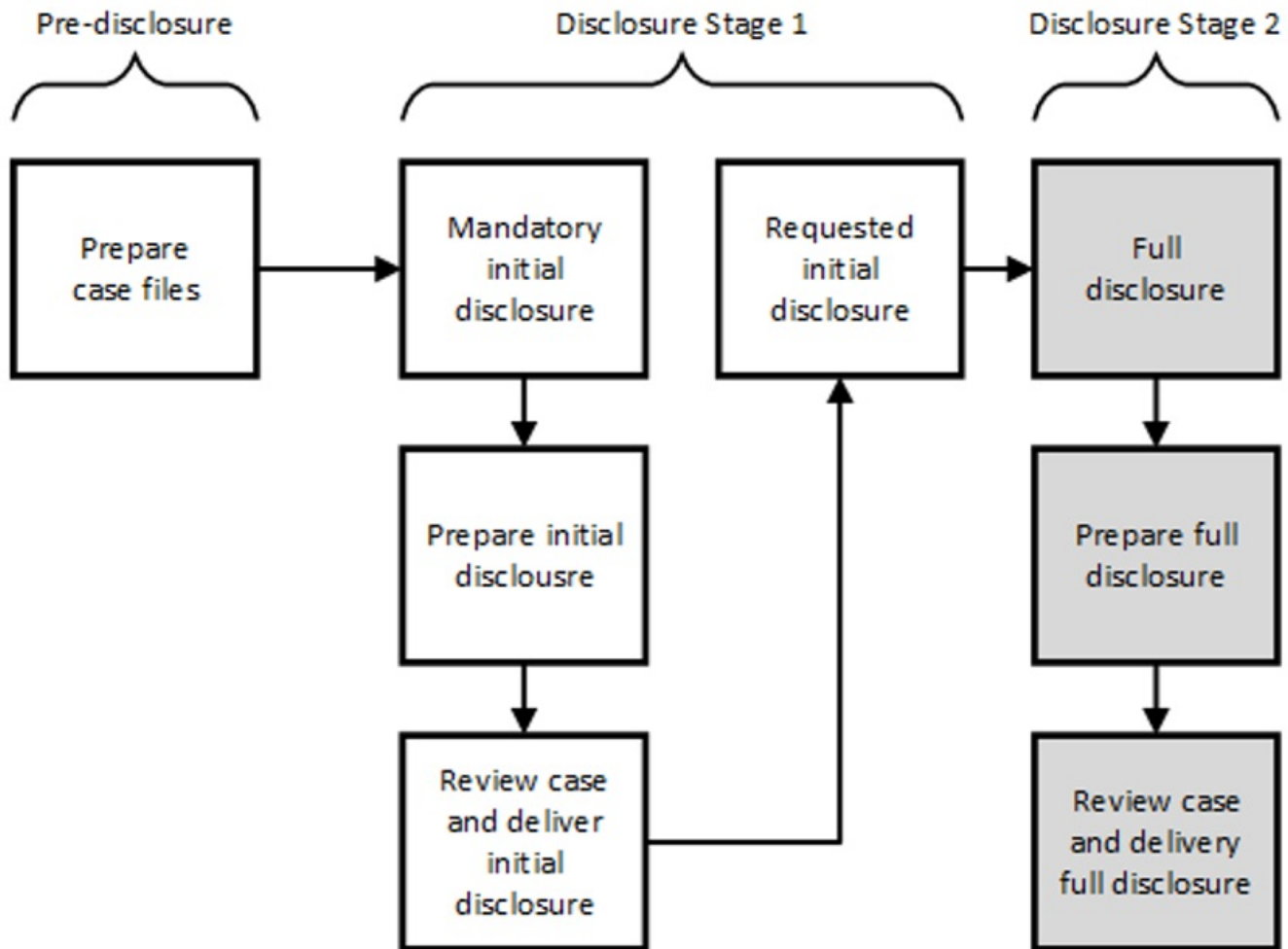
FIG 5: Additional materials that may be requested following initial disclosure

Section	CDA requirement	Police to provide
12(2)(a)	'The names of any witnesses whom the prosecutor intends to call at the hearing or trial'	POL275 witness list/request for summons
12(2)(b)	'A list of the exhibits that are proposed to be produced on behalf of the prosecution at the hearing or trial'	
12(2)(c)	'A copy of all records of interviews with the defendant'	Notebook entries and defendant statements
12(2)(d)	'A copy of all records of interviews of prosecution witnesses by a law enforcement officer that contain relevant information'	Job sheets, briefs of evidence, and witness statements (including any formal statements that have been prepared)
12(2)(e)	'A copy of job sheets and other notes of evidence completed or taken by a law enforcement officer that contain relevant information'	
12(2)(f)	'A copy of any records of evidence produced by a testing device that contain relevant information'	ESR reports, official breath and blood testing printouts, device logbook entries, and device calibration certificates
12(2)(g)	'A copy of any diagrams and photographs made or taken by a law enforcement officer that contain relevant information and are intended to be introduced as evidence as part of the case for the prosecution'	Family Harm Investigation Report (located in OnDuty), burglary/crash maps, crime scene and victim photographs, notebook entries
12(2)(h)	'A video copy of any video interview with the defendant'	Video copy of defendant interview
12(2)(i)	'A copy of relevant records concerning compliance with the New Zealand Bill of Rights Act 1990 '	Suspect's rights, and excess breath alcohol (EBA) forms (POL515), notebook entries
12(2)(j)	'A copy of any statement made by, or record of, an interview with a co-defendant in any case where the defendants are to be proceeded against together for the same offence'	Handwritten or typed statements, notebook entries, audio interviews
12(2)(k)	'A list of information described in paragraphs (a) to (j) that the prosecutor refuses under section 15 , 16 , 17 , or 18 to disclose to the defendant, together with - <ul style="list-style-type: none"> - The reason for the refusal, and - If the defendant so requests, the grounds in support of that reason, unless the giving of these grounds would itself prejudice the interests protected by section 16, 17, or 18 and (in the case of the interests protected by section 18) there is no overriding public interest'. 	Disclosure Index <i>Note: An updated Disclosure Index must be provided with each batch of materials disclosed (including the materials disclosed and the details of materials sought but not disclosed).</i>

Withholding information

All relevant requested information should be disclosed unless there are legitimate statutory grounds for withholding it (see part 3 of this chapter, below).

Disclosure Stage 2: Full disclosure



For those defendants who enter a not guilty plea, and whose cases will therefore continue to move towards trial, the provision of ‘full disclosure’ is then required. Again, this work is the primary responsibility of the OC case. Legislative requirements pertaining to the provision of full disclosure are set out in [s 13](#) of the CDA and are discussed in further detail in the following sections of this chapter.

Full disclosure timeframes

As outlined in [s 13\(1\)](#) of the CDA, full disclosure must be delivered ‘as soon as is reasonably practicable after a defendant has pleaded not guilty’ (this includes denying a charge in the Youth Court jurisdiction).

While a more specific timeframe for the provision of full disclosure is not contained in the CDA, the CPA and [Criminal Procedure Rules 2012](#) provide legislative timeframes for certain appearances. As such, the timely provision of disclosure is essential to case management.

As outlined in FIG 6, the CPA anticipates a plea at the second appearance of its Administrative Stage. Where a not guilty plea is entered, it then anticipates its next scheduled event (a Review Stage Case Review Hearing/CRH) to be no more than 45 working days from entry of a not guilty plea - for category 4 and category 3 (with jury trial election) cases - and up to 30 working days for all other (i.e. most) proceedings.

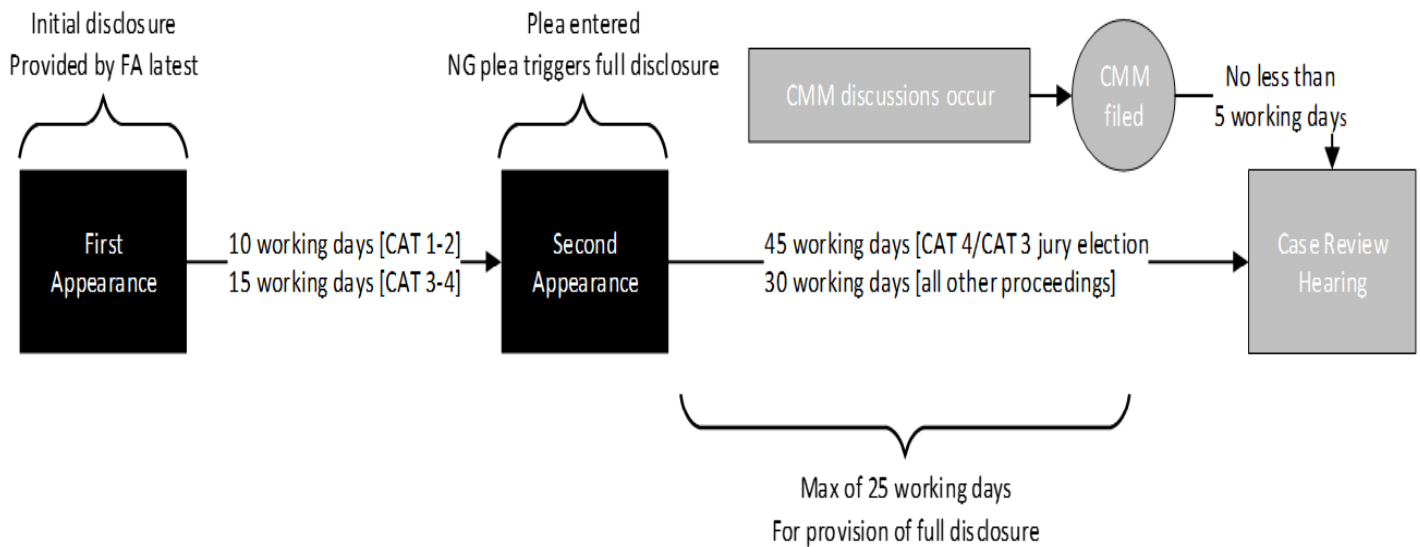
In preparation for the CRH, the prosecutor and defence counsel are expected to engage in case management discussions and, following those discussions, file a Case Management Memorandum (hereafter ‘CMM’). The purpose of the memorandum is to enable judicial direction at the CRH, and must be filed with the court (by defence counsel), not more than 5 working days prior to the CRH.

Therefore, in most instances, the maximum period between a not guilty plea and the filing of a CMM is approximately 5 weeks. Thus, to enable the prosecutor sufficient time to have meaningful resolution discussions with defence counsel, and so a CMM can then be filed within the statutory timeframe, full disclosure must take place within no more than 3 weeks of the not guilty plea being entered.

FIG 6: Criminal Procedure Act 2011 timeframes

Admin Stage

Review Stage



To ensure that the OC case is aware of the trigger for full disclosure, once a not guilty plea is entered in court, the Police prosecutor must advise the OC of that fact (by entering a NIA tasking).

Information required to be provided in full disclosure

As outlined in [s 13\(2\)\(a\) and \(b\)](#) of the CDA, Police must disclose:

Any relevant information, including, without limitation, the information described in subsection [\(13\)\(3\)](#), and

A list of any relevant information that the prosecutor refused to disclose to the defendant, under sections [15](#), [16](#), [17](#), or [18](#).

FIG 7 provides further guidance on [s 13\(3\)](#). However, given that full disclosure requires the provision of 'any relevant information', it is indicative only, and is not necessarily a complete list of all disclosable materials.

FIG 7: Summary of standard information required in full disclosure

Section	CDA requirement	Examples include ...
13(3)(a)	'A copy of any statement made by a prosecution witness'	Witness statements, Fingerprinting Officer's statement, Scene of Crime Officer's statement
13(3)(b)	'A copy of any brief of evidence that has been prepared in relation to a prosecution witness'	Signed or unsigned briefs of evidence in relation to a prosecution witness, including any formal statements
13(3)(c)	'The name and (if disclosure is authorised under section 17), the address of any person interviewed by the prosecutor who gave relevant information and whom the prosecutor does not intend to call as a witness, and: - Any written account of the interview, whether signed or unsigned, and any other record of the interview, and - Any statement made to the prosecutor by the person'	Notebook entries, statements, video interviews, video synopses, video transcripts
13(3)(d)	'Any convictions of a prosecution witness that are known to the prosecutor and that may affect the credibility of that witness'	Witness QHA, with irrelevant material deleted and convictions listed in cover letter
13(3)(e)	'A list of all exhibits that the prosecutor proposes to have introduced as evidence as part of the case for the prosecution'	Exhibit list
13(3)(f)	'A list of all relevant exhibits in the possession of the prosecutor that the prosecutor does not propose to have introduced as evidence'	Exhibit schedule
13(3)(g)	'A copy of any information supplied to the prosecutor in connection with the case by any person or persons whom the prosecutor proposes to call to give evidence as an expert witness or witnesses'	Medical reports, analytical reports, Fingerprint Technician statement
13(3)(h)	'A copy of any relevant information supplied to the prosecutor by a person or persons whom the prosecutor considered calling to give evidence as an expert witness or witnesses, but elected not to do so'.	Expert statements, analyses, or reports.

Full disclosure: roles and responsibilities (preparation, review, delivery)

The OC case has primary responsibility for the content of their prosecution file, including associated disclosure activity. However, the OC case supervisor also has a review and approval role in the process. The overarching process - including responsibilities - is outlined in FIG 8.

FIG 8: Full disclosure roles and responsibilities

Step	Task	Role	Detail
1	Assessing full disclosure requirements	OC case	<p>The OC case is primarily responsible for managing the disclosure process. Once a not guilty plea is made, full disclosure obligations must be met 'as soon as reasonably practicable'.</p> <p><i>Note: this is an on-going obligation for as long as the case progresses, and disclosable materials become available. Therefore, the below processes refer to all full disclosure activity during the progression of the prosecution case.</i></p> <p>The OC case will review all case evidence to assess whether it is disclosable (referring to s 13(2)(a) and (b) of the CDA).</p>

Criminal disclosure
Proactively released by New Zealand Police

		Supervisor	The OC's supervisor can provide advice, if requested.
		Prosecutor	A prosecutor can provide advice on any identified difficulties with providing full disclosure, if requested.
2	Preparing full disclosure	OC case	<p>The OC case will prepare full disclosure. When doing so, they will:</p> <ul style="list-style-type: none"> - Update the Disclosure Index (including details of/reasons for the withholding of any materials) <p><i>Note: reasons for withholding information may change over time; if and when those grounds are no longer applicable, the OC case must reassess, and (if appropriate) disclose the materials</i></p> <ul style="list-style-type: none"> - Consider information covered by s 13(3) of the CDA - Consider all other disclosable materials associated with the case - Ensure that electronic redactions are carried out using the appropriate Adobe software (as outlined in the 'Redacting materials for disclosure' section of this chapter).
3	Reviewing full disclosure	OC case	Once full disclosure is prepared, the OC case will provide [a.] a full disclosure pack, and [b.] an updated Disclosure Index to their supervisor for review and any remedial work/approval to release.
		Supervisor	<p>The OC case's supervisor will:</p> <ul style="list-style-type: none"> - Discuss the investigation with the OC case, to ensure that all relevant information has been collected, documented, and is recorded in the Disclosure Index - Review the provided disclosure pack/materials, and advise the OC case of any remedial work required, or otherwise approve the pack for release to defence counsel - Review, and approve for release, the disclosure materials following any remedial work. The supervisor must sign the Disclosure Index to denote their review of, and approval to, release full disclosure - Undertake further review work associated with on-going full disclosure obligations.
4	Remedial work	OC case	<p>The OC will undertake any remedial work, required by their supervisor, prior to the release of full disclosure, and ensure their supervisor approves the amended materials for release.</p> <p>They will also undertake any remedial work tasked by a PPS prosecutor (e.g. identified when PPS staff review the file prior to a court hearing or out of court event).</p>
5	Delivery of disclosure	OC case	<p>Once approved for release by their supervisor, the OC case should arrange delivery of these materials to the defendant/defence counsel within the legislated timeframe - i.e. 'as soon as reasonably practicable'.</p> <p>Full disclosure can be undertaken electronically, by mail, or by handing materials directly to defence counsel.</p> <p>The OC case should also ensure that copies of partially/fully disclosed materials are placed on the case file, so the Prosecutor is aware of, and can properly represent, any disclosure discussions.</p>

1-5	Seeking specialist advice	OC case Supervisor	<p>When complicated disclosure issues arise, the OC case should seek the advice of their supervisor.</p> <p>If the supervisor is unable to resolve the issue/s, they may seek specialist advice. If the supervisor cannot resolve the issue/s, they may seek specialist advice (see 'specialist advice' section of this chapter).</p> <p>If the matter relates to a Crown prosecution, advice can be sought from the assigned Crown prosecutor. Areas that commonly require advice include:</p> <ul style="list-style-type: none"> - Withholding information, and the reasons for withholding - Managing partial disclosure of information and selecting the correct information to redact.
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Ongoing full disclosure obligations

As outlined in [s 13\(5\)](#) of the CDA, there is an ongoing requirement to review and release (or withhold) any new information that is generated through the investigation, as soon as is reasonably practicable. Therefore, full disclosure responsibilities continue until all relevant materials have been disclosed and/or the case is resolved.

Withholding information

All relevant information should be disclosed unless there are legitimate statutory grounds for withholding it (see part 3 of this chapter).

Reviewing withheld/undisclosed materials

In addition to the disclosure of new information generated through the investigation, the OC case is responsible for regularly reviewing the status of previously (fully or partially) withheld materials, to ensure that the grounds for withholding this material remains current and valid. At the very least, this practice should take place:

- When initial and full disclosure requirements are discharged
- Whenever additional disclosure requests are actioned
- Shortly before the case goes to court.

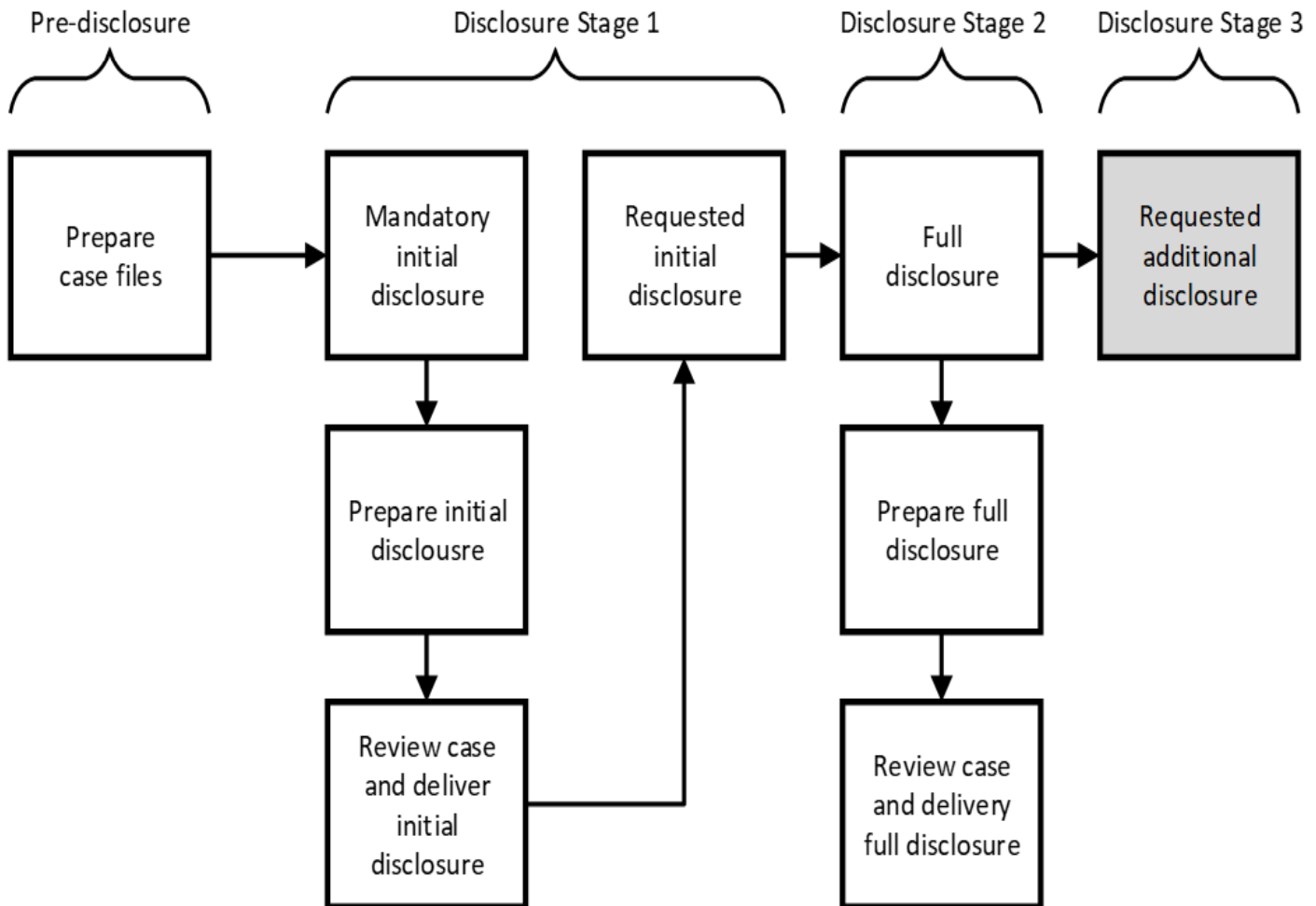
Communicating any delays to defence counsel

The OC case should make all efforts to maintain effective lines of communication with defence counsel, to advise them of any delays in providing full disclosure, and when delayed materials can be expected. This will ensure transparency, promote a better understanding of Police operations, and reduce the incidence of defence applications to the court for undisclosed materials.

Full disclosure checklist

The PPS Disclosure Good Practice Guidelines contain a 'Full Disclosure Checklist'. It is available at: [Full disclosure checklist final \(police.govt.nz\)](#)

Disclosure Stage 3: Additional disclosure



As outlined in [s 14](#) of the CDA, requests for additional disclosure can be made by the defendant/defence counsel at any time after the duty to make full disclosure arises. This request need not be in writing, but the request for information should be identified with as much particularity as possible.

Additional disclosure timeframes

Except in respect of declining requests for additional disclosure (see below), no timeframe for additional disclosure is stipulated in the CDA. However, in accordance with Police best practice and legislative directions for full disclosure, it is expected that in all cases, this occurs ‘as soon as reasonably practicable’ after the request is received.

Additional disclosure: roles and responsibilities (preparation, review, delivery)

The OC case has primary responsibility for the content of the prosecution file, including associated disclosure activity. Therefore, in the event that any such requests are made to Police staff other than the OC (e.g. a Police prosecutor) the request should be passed to the OC case to consider and action at the earliest opportunity.

To ensure clarity, transparency, and efficiency in managing additional disclosure requests, when receiving such a request, the OC case must log it (which also enables supervisors to maintain a current overview of disclosure delivery practices). Thereafter, the process for managing additional disclosure requests, and responsibilities pertaining to any such requests, is the same as that outlined in the full disclosure section (refer to FIG 8 for details).

Withholding information pertaining to additional disclosure

Section [14\(2\)](#) of the CDA outlines the grounds upon which Police can decline a request for additional disclosure. The grounds are that:

- The information is not relevant
- The information may be withheld under section [15](#), [16](#), [17](#), or [18](#)
- The request appears to be frivolous or vexatious.

Where a request is declined on the basis that it appears to be frivolous or vexatious, proof of a pattern of frivolous or vexatious activity by the defendant/defence counsel will be the most compelling evidence in support of this refusal ground. Therefore, the OC case should collate all available evidence that supports this conclusion.

If a request for additional disclosure is declined, the OC case must, as soon as is reasonably practicable after making the decision, inform the defendant/defence counsel of the decision, and the reason(s) for that decision. On the defendant's request, the grounds in support of the reason for refusal must also be provided unless the giving of those grounds would itself prejudice the interests protected by [ss 15-18 \(s14\(3\)\)](#) of the CDA).

Part 2B: Disclosure responsibilities of other parties

Defence disclosure

Alibi witnesses

If the defendant intends to call evidence in support of an alibi, they must provide Police with a notice containing the particulars of any alibi witness within 10 working days after the defendant has:

- Entered a not guilty plea to the alleged offence, or
- As a child or young person, makes a first appearance in the Youth Court ([s 22](#) of the CDA).
- The particulars of the alibi notice must include the witness's name and address, or any information that might provide material assistance in locating that witness. If this information is not provided to Police within the required timeframe, the Police prosecutor should ensure this fact is documented in the CMM.

Whenever a defendant puts forward an alibi under [s 22\(1\)](#) of the CDA, the OC case must ensure that the previous conviction history (QHA), and a report of any active charges, are prepared on the witness. The OC case should also make inquiries to confirm or rebut evidence in support of the alibi. This information must be provided to the prosecutor as soon as reasonably practicable.

Procedure when an alibi witness is interviewed by Police

The OC case should not interview an alibi witness unless the Police prosecutor requests that they do so. If an interview is requested, the interviewer should follow the steps outlined in FIG 9 below.

FIG 9: Interviewing alibi witnesses

Step	Action
1	<p>If the defendant is represented:</p> <ul style="list-style-type: none">- Advise counsel of the proposed interview, and ensure they are given sufficient notice so that they can be present if they wish to be. <p>If the defendant is self-represented:</p> <ul style="list-style-type: none">- Endeavour to ensure that the witness is interviewed in the presence of an independent person (i.e. a person who is not a Police employee, has no conflict of interest, and/or has had no involvement in the case).
2	<p>Make a copy of the witness's signed interview statement available to defence counsel/the self-represented defendant, through the Police prosecutor. Any information that reflects on the credibility of the alibi witness can be withheld under s 16(1)(o) of the CDA.</p>

Expert evidence

If the defence intends to call an expert witness during proceedings, this must be disclosed to the prosecutor, together with:

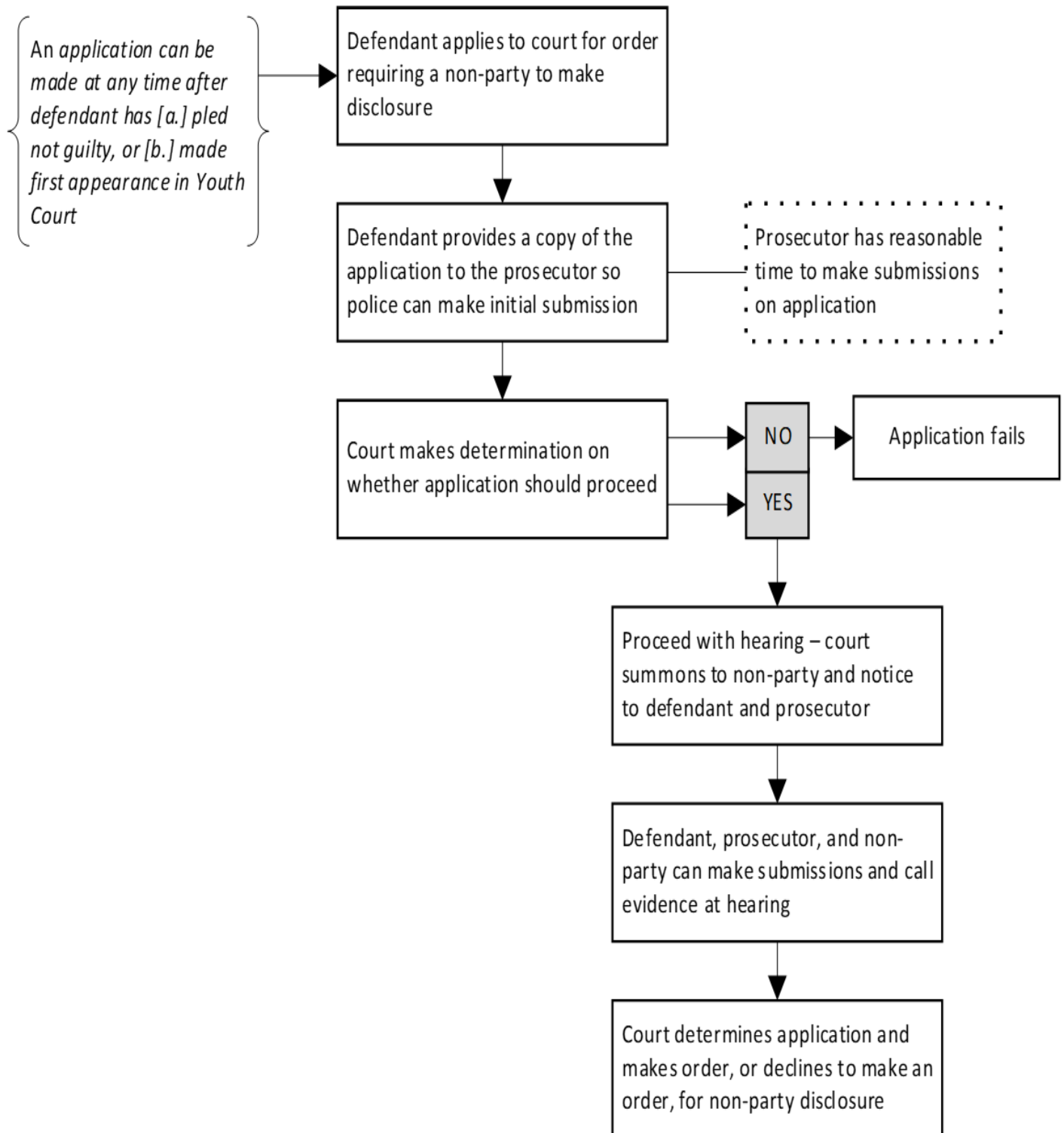
- Any brief of evidence to be given, [or any](#) report provided by that witness, or
- If that brief or any such report is not then available, a summary of the evidence to be given and the conclusions of any report to be provided.

This information must be disclosed at least 10 working days before the date fixed for the defendant's hearing or trial, or within any further timeframe that the court allows ([s 23\(1\)](#) CDA).

Non-party disclosure

The duties of disclosure outlined within the CDA are imposed on Police and the defence. All other persons and agencies are to be treated as non-parties. As set out below, the CDA imposes certain disclosure responsibilities on non-parties.

FIG 10: Process for determining disclosure by non-party to proceedings



[Section 24\(2\)](#) of the CDA enables the defence to apply for an order granting a hearing to determine whether information that is held by a non-party be disclosed to the defendant. Applications for non-party disclosure can be made at any time after the defendant has pleaded not guilty, or in the case of a young person, made a first appearance in the Youth Court.

A copy of the application must be provided to the prosecutor, and the prosecutor must be allowed a reasonable amount of time to make written submissions to the court concerning the application ([s 24\(4\)](#) of the CDA). Any submission made by the prosecutor is included in the court's consideration of the application, and whether it can proceed to a hearing. The court may also invite submissions

from the non-party that holds the information. FIG 10 outlines the process for determining non-party disclosure.

The court may grant the defendant's application for a non-party disclosure hearing if it is satisfied that all or part of the information sought by the defendant is likely to be held by the non-party or another person, and all or part of the information appears to the court to be relevant ([s 25](#) of the CDA).

If the court grants the application for a non-party disclosure hearing, a summons is served on the non-party ([s 26\(1\)\(a\)](#) of the CDA) and the prosecutor is advised that a hearing will take place ([s 26\(1\)\(b\)](#) of the CDA).

At the hearing, the prosecutor, defendant, non-party, or (with the court's leave) another person likely to be affected by the decision, may call evidence or make submissions. Non-party disclosure hearings are not open to the public ([s 27\(5\)](#) of the CDA).

After the non-party disclosure hearing, under [s 29](#) of the CDA the Judge may:

- Order the non-party to disclose the information sought by the defendant, if satisfied that the information or part of it is relevant, and disclosure is necessary in the public interest. Non-party disclosure may be ordered subject to conditions deemed appropriate by the Judge ([s 29\(4\)](#) of the CDA).
- Refuse to order disclosure of the information, if satisfied that any of the reasons in [ss 16-18](#) of the CDA apply to the information.

The result of the hearing will be updated in NIA by the prosecutor who represents Police at the hearing.

Part 3: Police decision making and practice

Part 3 of this chapter provides more detailed information about key aspects of disclosure practice, to aid the OC case in decisions about ‘whether’, ‘what and where’, and ‘how’ to disclose information. Much of this guidance traverses different stages of the disclosure process, and should be considered accordingly.

3A Considerations about ‘whether’ to disclose

Determining Relevance

Relevance is the governing principle of disclosure under the CDA, and is defined in [s 8](#) as ‘*information or an exhibit that tends to support or rebut, or has a material bearing on, the case against the defendant*’. A consideration of relevance by the OC case is therefore the first step in the disclosure process.

There are two dependent limbs to the statutory definition of relevance, which should be considered together to ascertain relevance. FIG 11 outlines the two inter-dependent questions that an OC case should consider in determining relevance. If the answer to these questions is ‘yes’, the information is relevant to the case, and disclosure should be considered.

FIG 11: The Relevance Test

CDA terminology	Question [if ‘yes’, it is relevant]
‘Supports or rebuts’ the case against the defendant	Will the information/evidence either help or hinder the defendant’s ability to defend the charges against them?
‘Has a material bearing on the case against the defendant’	Would (or might) the information/evidence assist or detract from either the prosecution or defence case?

The duality of relevance questions

Noting the interdependent nature of these two relevance questions, in *Tito v R* (2019, NZCA 586: 23) the Court of Appeal stated: “an assessment of whether information has a tendency to support or rebut the case against the defendant requires an assessment of the issues in the proceeding. This is because information that can have no possible bearing on an issue in the proceeding cannot have a tendency to support or rebut the case against the defendant”.

The evaluation of whether information is relevant can start from the time the investigation file is first compiled, and should always have begun once criminal proceedings have been commenced. As the investigation progresses and new information is collected, assessments of relevance should be made regularly to ensure ongoing disclosure obligations are met.

Relevance and rebuttal information

Regardless of whether it supports the Police position, all information that has a material bearing on the case is relevant and disclosable. Rebuttal information is that which materially challenges the prosecution case; for example, it might cast doubt on a suspect’s guilt, or implicate another person. Examples of rebuttal evidence could include the following:

- CCTV footage that did not record the crime, location, or suspect in a manner that is consistent with the prosecution case
- A police notebook record of a person, present at an alternative location to that of an alleged offence, at the time the offence occurred
- A fingerprint from a scene that cannot be identified as belonging to a known suspect

The inability to match crime scene samples with samples taken from the accused.

Withholding information grounds: ss 15-18 Criminal Disclosure Act 2008

Once information or exhibits have been assessed as ‘relevant’ to the prosecution case, they must be disclosed, as stipulated within legislative parameters (primarily the CDA), unless the OC case determines that there is any reason for withholding the information (in full or in part). There are a variety of considerations (mainly set out in [ss 15-18](#) of the CDA, and summarised in FIGs 12-15, below) which may justify the withholding of relevant information.

Where the OC case assesses that a withholding ground applies through [ss 15-18](#) of the CDA, they should list the specific withholding ground relied upon, and the reasons for withholding the information, as the decision may subsequently be challenged by the defendant through an application for court-ordered disclosure.

FIG 12: Withholding information, s 15 Criminal Disclosure Act 2008

Section CDA requirement	Meaning/Examples ...
<p>15 Prosecutor* not required to record information or to obtain information for the sole purpose of disclosure</p> <p><i>*As noted earlier in this chapter, the term ‘prosecutor’ has a wide meaning in the CDA. In this context, it refers to the OC case, as they are the responsibility holder for disclosure.</i></p> <p>15(1) ‘Nothing in this Act requires a prosecutor to disclose information if, at the time a disclosure obligation would, but for this section, arise or at the time a request for disclosure is made, as the case may be -</p>	
<p>15(1)(a) The prosecutor is not in possession or control of that information</p>	Police is not required to disclose information that does not exist
<p>15(1)(b) The prosecutor does not hold the information in recorded form’.</p>	Police is not required to obtain or record information solely for the purpose of disclosure

FIG 13: Withholding information, s 16 Criminal Disclosure Act 2008

Section CDA requirement	Meaning/Examples ...
<p>16 Reasons for withholding information</p> <p>16(1) ‘A prosecutor may withhold any information to which the defendant would otherwise be entitled under this Act if -</p>	
<p>16(1)(a) Disclosure of the information is likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences</p>	<p>This might include some operational orders, operational plans for surveillance, Armed Offenders Squad callouts, covert operations, or other information that discloses a similar type of content.</p> <p>Equally, it might include materials that refer to police informants, including: who they are, personal information, and/or any other identifying/contact details.</p>
<p>16(1)(b) Disclosure of the information is likely to endanger the safety of any person</p>	<p>This pertains to the threat of violence to any person, coupled with the ability to deliver on that threat</p> <p><i>Note: Using this withholding ground in the Disclosure Index may exacerbate the threat. The OC should seek specialist advice before relying upon this withholding ground.</i></p>

- 16(1)(c)** The information is material that is prepared by This might include a purely administrative [POL258](#) that does not include any
- (i)** or for the prosecutor to assist the conduct of undisclosed information relevant to the case
- the hearing or trial
- Note: [POL258](#) reports are not withholdable as of right, although their disclosure is likely to be rare owing to [16\(1\)\(c\)\(i\)](#).*
- 16(1)(c)** A communication dealing with matters relating This might include purely administrative communications (e.g. e-mails, faxes,
- (ii)** to the conduct of the prosecution, and between memos) between a Police prosecutor and any other police employee, or legal
- (A) The prosecutor and another person or technical advisor, that does not include any undisclosed information
- employed by the same person or agency that relevant to the case.
- employs the prosecutor
- (B) The prosecutor and any adviser to the prosecutor
- 16(1)(c)** Analytical or evaluative material, prepared in This might include charts, analyses, or schedules.
- (iii)** connection with an investigation that led to the defendant being charged, by a person
- employed by a person or agency for another *Note: in Ministry of Business, Innovation and Employment v Centreport Ltd*
- person employed by that person or agency or *[2014] NZHC 2751, the High Court confirmed that this withholding ground*
- for the prosecutor *“relates to reports and assessments evaluating or analysing the evidence, case or investigation at the pre-charge stage of the case”. Evaluative reports on the investigation and a subsequent decision to charge can therefore be withheld under this ground.*
- Such reports are more likely to be compiled in serious or complex cases, such as sexual violence matters (where the only evidence may be that of the complainant, and an evaluative assessment of their credibility is made by the investigator).*
- 16(1)** The information is subject to sections [108](#) and This includes material that references undercover police officers who hold a
- (d)** [109](#) of the [Evidence Act 2006](#) (which relates to Commissioner’s certificate attesting to their duty, and who are likely to give
- information about undercover police officers) evidence in the case. Its purpose is to protect their identity.
- 16(1)(e)** The information is subject to a pre-trial witness This pertains to witness anonymity orders.
- anonymity order under [section 110](#) of the
- [Evidence Act 2006](#) or a witness anonymity
- order under [section 112](#) of the [Evidence Act](#)
- [2006](#)
- 16(1)(f)** The information is subject to [section 16](#) of the This includes any materials that list a victim’s address or contact details -
- [Victims’ Rights Act 2002](#) (which relates to except where the information is contained in a charge, and it is necessary to
- information about witnesses’ addresses) disclose that information to ensure that the defendant is fully and fairly
- informed of the nature of the charge.

- 16(1)(g)** The disclosure of the information would be likely to prejudice - This might include information from Interpol or another international police agency, used for investigative purposes.
- (i) The security or defence of New Zealand or the international relations of the Government of New Zealand It might also include information sourced through diplomatic channels.
- (ii) The entrusting of information to the Government of New Zealand on the basis of confidence by the government of any other country or any agency of such a government or any international organisation
- 16(1)(h)** Disclosure of the information would be likely to facilitate the commission of another offence This might include information that creates vulnerability (of a person or of property) to victimisation, such as security/access codes to a building, or to a computer system.
- 16(1)(i)** Disclosure of the information would constitute contempt of court, or contempt of the House of Representatives This might include name suppression orders, or any other information that is already subject to a disclosure restriction imposed by a court, or by the House of Representatives.
- It might also include a briefing paper or departmental report to a Select Committee that has yet to report back to the House on the matter.
- 16(1)(j)** The information could be withheld through any privilege applicable under the rules of evidence This might include information generated through a doctor-patient, or lawyer-client, relationship. It may also apply to Police informers (see below).
- 16(1)(k)** Disclosure of the information would be contrary to the provisions of any other enactment This is relevant when another enactment prohibits the disclosure of information. For example, see the [Protected Disclosures Act 2000](#) ('Whistleblowers Act'), or the [Tax Administration Act 1994](#).
- 16(1)(l)** The information is publicly available and it is reasonably practicable for the defendant to obtain the information from another source This refers to information that has already been publicly released - e.g. through the media, or on a website.
- 16(1)(m)** The information has previously been made available to the defendant This refers to information has already been provided - e.g. pursuant to an OIA or Privacy Act request, through the previous disclosure of materials, or via another agency (such as MOJ).
- 16(1)(n)** The information does not exist or cannot be found This refers to information that is not recorded and therefore does not exist, or that has been genuinely misplaced.
- 16(1)(o)** The information:
- (i) Reflects on the credibility of a witness, who is not to be called by the prosecutor to give evidence, but who may be called by the defendant to give evidence, and
- (ii) Is not for any other reason relevant'
- For example, information that challenges the credibility of a defence alibi witness.

Part documents may still need to be disclosed

Police can only withhold specific information that relates to the withholding grounds in [s 16](#) of the CDA. Where that ground does not cover all information within the document, those parts of the document that remain disclosable should be disclosed ([s 16\(2\)](#) of the CDA).

When withholding reasons no longer apply

Additionally, where previously withheld information is no longer covered by the withholding reason (thereby becoming disclosable), it must be disclosed as part of Police's ongoing disclosure obligations ([s 16\(3\)](#) of the CDA).

FIG 14: Withholding information, s 17 Criminal Disclosure Act 2008

Section CDA requirement	Meaning/Examples ...
17 Restriction on disclosing address of witness or informant	
17(1) 'This section applies to information that identifies, or that may lead to the identification of, the address of the place where a witness or informant lives (for example, his/her postal address, residential address, e-mail address, fax number, or phone number).'	Section 17 may justify the partial withholding of certain information, such as that within: <ul style="list-style-type: none">- Summaries of Facts- POL258 reports- Witness statements- Any other document, listing the details of witnesses or informants
17(2) The information may be disclosed to the defendant only with the leave of the court.	
17(3) The court - <ul style="list-style-type: none">(a) Must not grant leave unless it is satisfied that the disclosure of the information is necessary in the interests of justice, and outweighs any prejudice to the witness's or informant's interests, or any harm to the witness or informant, that is likely to be caused by the disclosure of the information(b) May, if it grants leave, impose conditions in relation to the disclosure of the information	<i>Note: Where the information is to be partially withheld, staff should appropriately redact the applicable parts, and disclose the remainder.</i>
17(4) This section applies to an informant regardless of whether the prosecutor intends to call the informant as a witness'	

Withholding witness and informant personal details/information

As outlined in FIG 14, [s 17](#) of the CDA restricts the disclosure of a witness or informant's home address and telephone number. However, this information may be provided to the defence if the witness or informant's permission has been obtained to do so. An OC case should seek this permission only in instances where a request for this information (and the supporting reasons) have been sought by the defence, and are considered to be legitimate.

Conversely, the defendant may seek leave from the District Court (under [s 17\(2\)](#) of the CDA) for the disclosure of this information. The court must not grant leave unless it is satisfied that the disclosure of the information is necessary in the interests of justice, and outweighs any prejudice or harm to the witness's interests that would likely be caused by disclosure. If Police opposes the release of any such information, the prosecutor should make submissions to the court to assist in its determination on disclosure.

Section 14A of the CDA also sets out when information relating to an "identification witness" must be given to the defendant. An "identification witness", in relation to the trial of the defendant, means "a person who claims to have seen the offender in the circumstances of the offence."

At any time after a defendant has been charged with an offence, and on their request, the prosecutor must supply them with:

- The name and address of an identification witness
- Statements of any descriptions of an offender made by an identification witness to the prosecutor
- Any identikit pictures, or other drawings, made by an identification witness, or from information supplied by an identification witness.

However, [s 14A\(3\)](#) enables the prosecutor to apply for an order excusing them from disclosing the name and address of an identification witness, if Police has concerns about the safety of that witness or of any other person. For instance, this may be appropriate where the witness is also the victim and is not already known to the defendant.

Note: it is s 14A(3) of the CDA - and not ss 16-17 of the CDA, or s 16 of the Victims' Rights Act - that should be used to withhold identification witness details.

FIG 15: Withholding information, s 18 Criminal Disclosure Act 2008

Section CDA requirement	Meaning & examples ...
18 Trade secrets may be withheld	Note: 'trade secret' has the same meaning as in s 230(2) of the Crimes Act 1961
18(1) 'The prosecutor may withhold any information to which the defendant would otherwise be entitled under this Act if disclosing the information:	This might include such things as manufacturers technical manuals - e.g. workings of a secret device or process not covered by patent - or costings/charging information.
(a) Would disclose a trade secret, or	
(b) Would be likely to unreasonably prejudice the commercial position of the person who supplied, or who is the subject of, the information	
18(2) Despite subsection (1), information must not be withheld under this section if, in the circumstances of the particular case, the interests in subsection (1) protected by the withholding of that information are outweighed by other considerations that make it desirable in the public interest to disclose that information'	This section outlines that any justification for withholding associated with 18(1) must be balanced against the weight of factors such as the public interest.

Withholding grounds in other legislation

Some of the ss 15-18 withholding grounds, are augmented by other enactments, as outlined below.

Withholding victim contact information

Provisions contained within the CDA (s 16(1)(f)) for withholding victim information are also replicated in the Victims' Rights Act 2002. Specifically, s 16 prohibits the disclosure of a victim's contact details in court (referred to as: residential address, postal address, e-mail address, home/business/mobile telephone number, fax number). Such details may only be given in evidence 'with the leave of the judicial officer.' Before granting leave, the judicial officer must be satisfied that:

- The information is directly relevant to the facts at issue in the proceedings, and
- The evidential value of the information (if any) outweighs any prejudice to the victim's interests, or any harm to the victim, that is likely to be caused by the giving of the information.

It should be noted, however, that s 16A Victims' Rights Act 2002, states that 'nothing in s 16 applies to a criminal proceeding, if it is necessary to disclose the information in the charge in order to ensure that the defendant is fully and fairly informed of the nature of the charge'.

3B Considerations about 'what' and 'how' to disclose

The following sections provide general advice about the disclosure of a range of documents/types of evidence (listed alphabetically) that Police sometimes, often, or always generates during a prosecution, and to which disclosure considerations will apply.

Note: the below content is not determinative of the decision to disclose a particular document, and is to be read as general guidance only. Considerations of relevance and withholding grounds are always case specific, and case specific factors override general guidance.

Alibi witness interview notes

Interview notes are generally disclosed. However, any information that reflects on the credibility of the alibi witness can be withheld under s 16(1)(o) of the CDA.

CARD reports

CARD reports are generally disclosed. However, they may be withheld if their release would be likely to prejudice the maintenance of

law and order.

Commercial confidentiality

Any information that would either disclose a trade secret or unreasonably prejudice the commercial position of the person who supplied it, or who is the subject of the information, may be withheld under [s 18](#) of the CDA.

Custody sheets

Custody sheets are generally disclosed.

Digitally recorded oral notifications

Digitally recorded oral notifications (containing information that is similar to written notes of evidence) should generally be disclosed as soon as required under the CDA.

The first requirement for disclosure of this information (but only if requested by defence) is at the initial disclosure stage [§ 12\(2\)\(e\)](#) of the CDA). If this information is not requested, it will subsequently become disclosable at time of full disclosure (through [s 13\(2\)\(a\)](#) of the CDA) when a not guilty plea is made.

Note: infringement offences (as defined in [s 2\(1\)](#) of the [Summary Proceedings Act 1957](#)) are not subject to disclosure requests in [s 12](#) of the CDA. This means the obligation to disclose digitally recorded oral notifications arise as part of the full disclosure process (see [s 13\(2\)\(a\)](#) of the CDA) once Police has received a request for a hearing, or for mitigating factors to be heard in court (see [s 9\(d\)](#) of the CDA).

When disclosed, these files should be provided on a compact disc or by e-mail in the first instance. If defence cannot access the file, it can alternatively be transcribed and disclosed as a transcript.

While an audio file might generally be considered to be an exhibit to be played in court, audio files that are oral notations are unlikely to be considered exhibits. This is because these notations are generally prepared in a written format that would become disclosable at a fairly early point in the proceedings. A mere change to the information's recording format should not alter the obligation to disclose the information.

EAGLE helicopter video footage

Where police have concerns about the unconditional disclosure of Eagle helicopter footage, consideration should be given to withholding that information, pursuant to [s 16\(1\)\(a\)](#) of the CDA. The defendant/counsel is then at liberty to seek a disclosure order through [s 30](#) of the CDA. If they do so, conditions on disclosure should be sought by Police (via the prosecutor) at the hearing.

The below information (*Ihaia v R* [2022] NZCA 599) provides a recent case law example of how the courts have considered and responded to requests for the unconditional disclosure of Eagle footage.

Ihaia v R [2022] NZCA 599 provides useful case law on EAGLE footage disclosure practice.

In this case, the Police Eagle helicopter was deployed to assist in a vehicle pursuit, and recorded approximately 90 minutes of footage. The pursuit ended in the arrest and prosecution of the individual. The defendant sought unconditional disclosure of the eagle footage for trial preparation purposes. The footage formed part of the evidential basis for Police allegations, and both parties agreed that it was 'relevant information'.

In the District Court, the presiding Judge considered that unconditional disclosure of the footage presented a real risk of more widespread distribution (with a further risk that this might encourage 'copycat' behaviour). Therefore, disclosure was ordered, but conditions were put in place to mitigate the identified risks. Specifically, the Judge ordered that Corrections (the defendant was remanded in custody) hold a copy of the footage - to be made available to the defendant for viewing, and returned to the Crown at the conclusion of proceedings, or when the defendant was released from custody.

The defendant challenged the ruling to the Court of Appeal on two questions:

Whether the judge erred in finding a real risk that disclosure would prejudice the maintenance of the law by glorifying and encouraging

copycat behaviour

Whether the judge erred by imposing conditions on the disclosure of Eagle footage to the defendant.

On the first question, the Court of Appeal found it likely that unconditional disclosure would lead to wider dissemination of the footage. The Court noted the defendant's reckless behaviour - particularly towards Police - and noted that even if he did not personally distribute it, the likelihood of it being distributed by others with whom it could be shared, was strong. The Court also considered that any wider distribution of the footage would promote the defendant's notoriety, and encourage copycat behaviour. The Court therefore held that unconditional disclosure would prejudice the maintenance of the law if circulated to uncontrolled media platforms.

On the second question, the Court of Appeal found that the Judge did not err by imposing conditions on release of the footage. The Court reasoned that Corrections already had legitimate control of the defendant's possessions, and set conditions under which he could access them. It made practical sense that the Court had similar jurisdiction over the conditions for viewing the footage, and the court did not consider those conditions to be too restrictive. Furthermore, the Court considered that the traditional route for suppressing details of a case - i.e. [s 205](#) of the CPA - would not be effective here, since the material could still be distributed (e.g. through the internet or social media) by people unaware of the suppression order.

The appeal was therefore dismissed.

Event chronology

Event chronology is disclosed when it contains relevant information. However, any personal details must be deleted/redacted.

Family violence (Family Harm Investigation Report)

Body injury maps, and risk and lethality reports, can be used in court to support the Police case. They are therefore relevant, and generally disclosed. Other information in the Family Harm Investigation Report (located in the OnDuty application) should be assessed for relevance and disclosed/withheld accordingly.

Human Source/Police informant

A Police Human Source is defined by Police as 'anyone who provides information to Police with the expectation that Police will protect their identity and, where they will not be a witness in any potential court proceedings connected with the information they have provided'. The term 'Police human source' is used to refer to either:

[a.] A confidential contact (i.e. 'an individual who passively and infrequently obtains information, either as a result of their occupation or other normal day to day activities, and who passes such information to Police with the expectation that their identity will not be disclosed'. This person will not be tasked by Police, and will not receive any financial or other reward for providing information.

[b.] A covert human intelligence source (CHIS) (i.e. an individual who regularly provides confidential information to Police and as a result of an arrangement. As part of the arrangement, the individual will maintain or establish a relationship with others in order to provide information, and may actively seek information as a result of direct taskings from Police. They may receive reward (in some instances) for the provision of information.

As noted in part 8 of the Police Human Source chapter, 'For practical and legal purposes, a human source and informer are the same'. A Police human source/informer has legally recognised privilege (subject to meeting the criteria set out in [s 64](#) of the [Evidence Act 2006](#)) which protects their identity from disclosure.

Section 64 of the EA states:

- (1) "An informer has a privilege in respect of information that would disclose, or likely disclose, the informer's identity.
- (2) A person is an informer for the purposes of this section if the person -
 - (a.) Has supplied, gratuitously or for reward, information to an enforcement agency, or to a representative of an enforcement agency, concerning the possible or actual commission of an offence in circumstances in which the person has a reasonable expectation that his

or her identity will not be disclosed; and

(b.) Is not called as a witness by the prosecution to give evidence relating to that information.

An informer may be a member of the Police working undercover.

There is a distinction between a member of the public reporting an incident, and a person confidentially providing information to Police about criminal offending. That difference is that the former may be called to give evidence, but the latter will not be. Therefore, the legal privilege referred to in [s 64\(1\)](#) of the EA, does not apply to those being called to give evidence.

Note: where an individual does not meet the statutory definition of an ‘informer’ but Police considers that their identity needs to be withheld, consideration should be given to other withholding provisions (e.g. [ss 16\(1\)\(a\)\(b\)](#) of the CDA).

Particular care must be taken in the disclosure of documents containing/derived from Police human sources, noting that inadvertent or negligent errors can have serious safety implications for individuals.

For more detail on Police Human Source information, including criminal disclosure, see [Police Covert Human Intelligence Sources chapter](#).

Information revealing Police investigative techniques

This information includes such things as operational orders, operational plans for surveillance, Armed Offender Squad callouts, covert operations, and other mechanisms relating to ways in which Police obtains information.

A key test pertaining to the disclosability of any such information is whether disclosing the method/technique would be likely to prejudice the maintenance of law and order (i.e. make the job of the Police more difficult).

Job sheets

Job sheets are generally disclosed. However, any witness or informant contact details contained within job sheets must be withheld.

Legal opinions

Legal opinions must be withheld on the grounds of legal professional privilege.

MOJ bail application memorandum

The MOJ bail application memorandum should be considered for disclosure unless it has previously been made available to the defendant (as per [s 16\(1\)\(m\)](#) of the CDA).

Notebook entries

Relevant Police notebook entries must be collected, included on the investigation file and disclosure index, and disclosed (unless they can be legitimately withheld). This includes the notebook entries of all officers who attended the event to which the case pertains, and/or worked on the investigation in some capacity.

Attention should also be given to the ongoing obligation to provide late annotations. These entries can often contain information that is important to both the defence and prosecution.

Note: any witness or informant contact details contained within notebook entries must be withheld.

OC case availability form

The OC case availability document is generally not relevant for disclosure. However, it should be used by the prosecutor to enable discussions with counsel about hearing dates.

Photo montages

Photo montages are generally disclosed.

Report Form: Prosecutions (POL258)

[POL258s](#) are not withholdable as of right. However, this information should be withheld if it only contains internal communications between an investigator and a prosecutor (See [s 16\(1\)\(c\)\(i\)](#) for further). However, it should be (partly or fully) disclosed if it contains relevant information about the defendant or other individuals (e.g. witness statements not available in other disclosable documents).

Search warrant applications

Search warrant applications are generally disclosed with redactions. However, they may be withheld if their release would be likely to prejudice the maintenance of law and order.

Tactical Options Reports (TORs)

TORs are usually disclosable. If the defendant is charged with an offence for which the TOR is relevant - e.g. resisting arrest, or assault on Police - the report must be released (see *Pearce v Thompson* [1998] 3 CRNZ 268 for associated case law).

TASER footage

For guidance on downloading TASER footage, see the 'TASER evidential downloads and disclosures' section of the [TASER \(Electronic Control Devices\)](#) Police Manual chapter.

In cases where the defendant is represented by counsel, follow the steps outlined in FIG 16 to manage the process for determining relevance and disclosability of TASER footage, and (if relevant and disclosable), disclosing to counsel.

FIG 16: Process for disclosing TASER footage to counsel/self-represented defendants

StepActions

- 1 The OC case should first determine whether TASER footage is relevant to the charges before the court. In some situations the footage will clearly be relevant - e.g. when a defendant is charged with having assaulted a police officer and is arguing self-defence. In other situations, it may be less clear - e.g. charges where the defendant is seeking the exclusion of evidence on the basis of an unlawful arrest.

If there is any uncertainty as to the relevance of TASER footage, the OC should seek the advice of their supervisor, and thereafter specialist advice, as required (see 'Seeking Specialist Advice' section in this chapter).

- 2 If the TASER footage is deemed relevant to the prosecution case, the OC should then consider whether there are applicable withholding grounds under the CDA.

If there are grounds for withholding

The OC case should record the existence of the footage, and the grounds upon which it is withheld, in the Disclosure Index.

Note: If there are concerns that the unconditional disclosure of TASER footage may prejudice the maintenance of the law, the information should be withheld under [s 16\(1\)\(a\)](#) of the CDA, and the defendant/counsel invited to seek a disclosure order under [s 30](#) of the CDA (as was the approach taken to Eagle footage in *Ihaia v R* [2022] NZCA 599).

In this instance, no further action is required, except at the direction of the court following the outcome of a [s 30](#) CDA application by defence counsel/a self-represented defendant (see section 3 below).

If there are no grounds for withholding

The footage will need to be obtained and disclosed. Note: when disclosing TASER footage there is no legislative basis for Police to set conditions for the viewing of that footage (such as requiring that it is viewed at a Police station, under supervision).

TASER disclosure practice may vary by district, and OCs should be familiar (and comply) with local expectations. However, the NZ Police TASER chapter (see 'TASER Evidential Downloads and Disclosures') states that:

- CJSUs process TASER footage for disclosure, and
- the OC should work through their District CJSU to arrange for the relevant TASER footage to be disclosed via an electronic link or provided on a portable disc.

The OC case must also ensure that all **relevant** information (whether disclosed or withheld) is recorded in the Disclosure Index. However, data that is **not relevant** only needs to be included in the Disclosure Index when the defendant has specifically requested it as 'additional disclosure'. In these circumstances, the data should be withheld under [s 14\(2\)\(a\)](#) of the CDA, and recorded in the Disclosure Index accordingly.

- 3 If defence counsel/a self-represented defendant wishes to challenge a Police decision about the disclosure of TASER footage, the mechanism for doing so is through an application to the court (under [s 30](#) of the CDA).

In such instances, the Prosecutor should consider whether to prepare and file any written submissions in advance of the hearing. Any proposed conditions of disclosure should then be sought at the disclosure hearing.

- If the defendant is in custody, sought conditions may be that the defendant has viewing access to the footage, but not possession or control of it (see *Ihaia v R* [2022] NZCA 599, paragraph 27).
- If the defendant is on bail, appropriate sought conditions might include that they do not have possession or control of the footage, and that their temporary access to it is facilitated by a third party (such as Police or counsel). Also that it is returned to Police at the conclusion of proceedings.

The Prosecutor preparing submissions should seek advice from the PPS National Legal Counsel in regard to this work, as required.

Victim Impact Statements (VIS)

No person (other than the victim, or a person acting under the victim's authority) may give the offender a Victim Impact Statement

(hereafter 'VIS') to keep. However, [s 23](#) of the VRA requires a prosecutor (directly or via the offender's defence counsel) to show the VIS to the defendant, unless the prosecutor or defence counsel:

- (a.) Intends to apply for an order under [s 25](#) of the VRA in respect of part of the statement, or
- (b.) Knows that an application of this kind is to be made, or has been made, but has not yet been determined.

In administering this process, and for the purpose of protecting a victim's physical safety, [s 25](#) of the VRA permits a judicial officer to order that any part of a VIS not be shown to the offender or every lawyer (if any) representing the offender. This provision links directly to [s 16\(1\)\(k\)](#) of the CDA (see FIG 13), which permits a prosecutor to withhold any information to which the defendant would otherwise be entitled under the CDA, if 'disclosure of the information would be contrary to the provisions of any other enactment'.

FIG 17 outlines the process staff should follow in withholding a VIS from general disclosure packs, and/or in response to specific requests for VIS disclosure.

FIG 17: Process for consideration of withholding VIS

Step	Question	Yes	No
1	Consider the test for relevance. Is the VIS determined to be relevant to the case?	<p>The VIS should be withheld from disclosure in general disclosure packs. The withholding ground that is to be recorded in the Disclosure Index is s 16(1)(k) of the CDA. The provisions to which s 16(1)(k) relate are: s 16 of the VRA (regarding contact details) and s 23(2) of the VRA (regarding the offender not being given the VIS to keep).</p> <p>Move to step 2.</p>	<p>Do not take any further action regarding VIS disclosure.</p>
2	Consider victim safety concerns. Does Police and/or the prosecutor have concerns for the victim's physical safety or security?	<p>The VIS should be withheld from disclosure pending the Police prosecutor's application to the judicial officer for an order (under s 25 of the VRA) that the VIS not be given or shown to either the offender or defence counsel.</p> <p>In the interim, if defence counsel specifically requests a copy of the VIS before an order is made, an OC should respond with the advice that the VIS is withheld pending a decision under s 25 of the VRA. To do so use the following letter template: Response to a request for a Victim Impact Statement: s25 decision pending (see appendix also).</p> <p>Move to step 3.</p>	<p>Move to step 3.</p>
3	Consider the views of the judicial officer. Has the judicial officer made an order that the VIS be withheld?	<p>Comply with the directions of the judicial officer. Do not provide the VIS to either the offender or defence counsel.</p>	<p>Determine whether the Police prosecutor will apply to the judicial officer (under s 27 of the VRA) for the imposition of directions or conditions on the disclosure, or distribution of the VIS. If so, await and follow those directions.</p> <p>If they have not/do not intend to do so, the VIS must be shown to defence counsel/the offender as soon as practicable. Before doing so, the OC case must make all necessary redactions - e.g. to the victim's contact details - considering s 16 and s 16A of the VRA.</p> <p>Use template: Response to a request for a Victim Impact Statement: delivery of document (see appendix also).</p>

Video interviews and transcripts

A video interview or transcript (VRI) is an electronic means of recording what a witness or defendant has to say about an event, and may or may not form part of the evidence in a proceeding. Determining relevance is key to assessing whether full or partial disclosure of the VRI is required. Their disclosure (and any transcript) is governed by the Evidence Act and Evidence Regulations, not the CDA.

Suspect/defendant interviews

A suspect/defendant VRI is an electronic record of what a suspect/defendant has said about an event. To determine the relevance (and therefore disclosability) of a defendant's/suspect's VRI, the OC case should follow the steps set out in FIG 18.

FIG 18: Steps to determine defendant/suspect VIR relevance (and disclosability)

StepAction

- 1 Consider whether [a.] the entire interview, [b.] part of the interview, or [c.] none of the interview is relevant for disclosure, and therefore disclosable.
- 2 **If the material is not relevant for disclosure:** nothing further is required.

If it is relevant, but withholding grounds apply: disclosure is not required, but the details of this decision should be noted on the Disclosure Index.

If the material is disclosable and no withholding grounds apply, it should be disclosed either:
 - Upon written request of the defendant/defence as part of further disclosure ([s 12\(2\)](#) of the CDA), or
 - As part of full disclosure ([s 13](#) of the CDA), whichever is the earlier.
- 3 If the video is to be shown at trial (i.e. either a judge-alone trial, or a jury trial), the OC case should prepare a transcript as soon as practicable after the Case Review Hearing, and provide that transcript to the defence and the judge before the trial.

Victim and witness interviews

A victim/witness interview, or 'Police video record' ('PVR'), is an electronic record of what a victim or witness has said about an event. The CDA does not apply to PVR's ([s 42\(2\)](#) CDA). Rather, all PVR's are governed by the [Evidence Act 2006](#) and [Evidence \(Video Records and Very Young Children's Evidence\) Regulations 2023](#) ('the Regulations').

Part 2 of the Regulations sets out the rules around accessing, showing, and disclosing PVR's in criminal and civil proceedings. The definition of 'access' means that, rather than Police giving a person a DVD copy of a video record, the standard way of providing access to PVR's will be through giving electronic access to view the digital file.

The [Evidence Act 2006](#) continues to govern defence lawyers' entitlement to access video records. Section [106\(4\)](#) and [\(10\)](#) of the Act provides that access to (or a copy of) the video record must be given to the defendant's lawyer when it is to be offered by the prosecution as an alternative way of giving evidence (i.e. when a mode of evidence application is to be made). However, this is subject to [section 106\(4A\)](#), which restricts entitlement to access video records of child complainants and witnesses in sexual or violent cases. Sections [106\(4A\) to \(4C\)](#) provide that the defendant's lawyer is not entitled to be given access to (or a copy of) an especially sensitive video record, but they can apply to a Judge for access.

Regulations 21 and 22 set out what occurs when a defendant's lawyer is permitted or required to be given access to the video record, including the purposes for which they may access or use the video record and transcript; and stipulate that the defence lawyer may not allow the defendant to view the video record unsupervised. Defence lawyers may show the video record to experts, and give experts access to video records that are not especially sensitive video records; but they need permission from the Judge if they want to give an expert access to an especially sensitive video record.

Police must ensure that a typed transcript of a PVR is given to the defendant or the defendant's lawyer as soon as practicable after the defendant has pleaded not guilty (reg 22).

If a person requests that access to a PVR be given in another way (e.g. by receiving a copy on DVD), under reg 38(1) Police must first:

- (a.) Be satisfied that it is not reasonably practicable for the person to be given access by electronic means; and
- (b.) Consider:
 - The privacy of the witness
 - The likelihood that the witness is vulnerable
 - The desirability of minimising the number of copies of the video record that circulate independently of a Police storage system or facility or court-controlled storage system or facility
 - The need to ensure the Police video record is not viewed or accessed by any unauthorised person
 - The public interest in ensuring that video records of the type dealt with in the Regulations are protected from misuse
 - The interests of justice.

Witnesses' previous convictions

The previous convictions of witnesses must be disclosed if those convictions are relevant to the credibility of the witness ([s 13\(3\)\(d\)](#) CDA). However, convictions that are not relevant to the witness's credibility do not have to be disclosed. The test for determining relevance in regard to credibility is set out in (*Wilson v Police* [1992] 2 NZLR 533, at p 537):

Wilson v Police [1992] 2 NZLR 533

As to the kind of conviction within the scope of the duty, the test must be whether a reasonable jury or tribunal of fact could regard it as tending to shake confidence in the reliability of the witness".

Convictions that are likely to be relevant, and should therefore generally be disclosed, include:

- Convictions for perjury or attempting to pervert the course of justice
- Convictions for assault or violence-related offending, when the witness is the alleged victim (as a defence may be that the witness - who has previous convictions for violence - was, in fact, the aggressor)
- Dishonesty convictions, which exhibit a propensity to be untruthful.

Note on Criminal Records (Clean Slate) Act 2004

The [Criminal Records \(Clean Slate\) Act 2004](#) will not form legitimate grounds for withholding witnesses' convictions, as [s19\(3\)\(b\)\)](#) of the Clean Slate Act permits Police to disclose criminal record information if it is relevant to criminal proceedings before a court.

The disclosure of any convictions should be provided by the OC case, concurrent with full disclosure, or (e.g. if a witness with relevant convictions is later identified, or convictions become relevant) as soon as possible thereafter. If the witness has convictions which are deemed not to be relevant, the OC should disclose the fact of their existence and cite a lack of relevance as the applicable withholding ground.

Section 30, CDA 2008 Court orders for disclosure information

The withholding grounds listed in [ss 15-18](#) of the CDA (and other legislation, above) are not absolute. Under [s 30](#) of the CDA, the defence may apply to the court for disclosure of information that Police has failed or refused to disclose. The court may then order disclosure of the information sought, on the basis that the withholding ground(s) relied upon do not apply to the information (in the case of a refusal under [ss 16-18](#)), or that the information ought to have been properly disclosed under [s 17\(3\)](#) or [s 18\(2\)](#) (in the case of witness addresses and trade secrets respectively) ([s 30\(1\)\(a\)](#) CDA).

Alternatively, if the court finds that the information may be withheld under the CDA, it retains a residual discretion to make an order for its disclosure if satisfied that the interests protected by the withholding of that information are outweighed by other considerations that make it desirable, in the public interest, to disclose the information ([s 30\(1\)\(b\)](#) CDA).

In considering whether it is satisfied that the defendant is entitled to the disclosure of any particular information, the Court should have regard to the overall context in which the issue arises, including:

- The purpose of the Act to promote fair, effective, and efficient disclosure of relevant information
- The right to receive information (see *Hutton v R* [2018] NZCA 419).

In carrying out this balancing exercise, and assessing the public interest, the court should also consider the purpose of the proposed disclosure, and its potential helpfulness to the defence. For example, see *Hutton v R*, at [35], for the Court's articulation of the balancing exercise as an assessment of the need to preserve the confidentiality of the prosecution's investigative technique, against the public interest in the fair disclosure of information to the defendant to assist in his defence (including his ability to mount an effective defence and receive a fair trial).

Thus, [s 30](#) of the CDA (in part) provides a balancing test, to remedy rare situations where the legitimate withholding of relevant information is likely to cause an injustice.

If a [s 30](#) application is made by the defendant, and the court determines either that the defendant is entitled to the requested information, or that the information should be disclosed in the public interest, it will be required to be disclosed by the OC case.

Appeals against court orders for disclosure

Where the prosecutor has concerns about a court order for the disclosure of information, [s 33](#) of the CPA provides a route for appeal. In these circumstances, the prosecutor and/or OC case should urgently refer the decision in question to the PPS National Legal Counsel (or, in the case of a Crown prosecution, the Crown prosecutor) for consideration of an appeal, together with a copy of the submissions filed in opposition to the application, and any further details about the nature of the information ordered to be disclosed.

As a notice of application for leave to appeal against a disclosure order must be filed within **3 working days** of the date of the decision, it is imperative that the prosecutor and/or OC case seek urgent advice from the PPS National Legal Counsel/Crown prosecutor on the merits of an appeal.

Managing exhibits

Responsibility for exhibits

In most instances, the OC case is responsible for managing exhibits. When they receive a request from defence to inspect an exhibit they should:

- Notify the defence of when and how this may take place, as soon as is reasonably practicable
- Copy and disclose to defence any exhibits that can reasonably be produced.

If inspection conditions or the withholding of an exhibit are necessary, the OC case (or potentially the CJSU, dependant on how case management activity is organised within the district) is responsible for advising defence of this fact, as soon as is reasonably practicable - first by phone and then confirming by email. This ensures that defence has early awareness of the circumstances relating to their request for an exhibit, and that there is also a written record of the details of that communication.

Allowing inspection of exhibits

Police must allow the inspection of exhibits under [s 19\(1\)](#) of the CDA when:

- The defence asks Police to allow inspection, and
- The exhibit/s specified are referred to in a list of exhibits, supplied under [ss 13\(3\)\(e\) or \(f\)](#) of the CDA.

This means that the work to facilitate inspections can arise only after full disclosure requirements have been triggered, and lists of exhibits Police is holding (as documented on the exhibit schedule) and/or intends to use during prosecution (as documented on the exhibit list) have been disclosed to defence.

It should be noted that the inspection of exhibits is not absolute. Police may place conditions on the inspection of exhibits if this is necessary:

- To ensure the security and integrity of the exhibit/s, or otherwise maintain its evidential value
- If the exhibit/s will be used for ongoing law enforcement purposes, and/or
- For compliance with any conditions the court imposes under [s 31](#) of the CDA.

Police may also refuse the inspection of an exhibit, if:

- That exhibit is needed for use on an ongoing basis for enforcement purposes
- The imposition of conditions would not enable the inspection to take place without prejudicing ongoing law enforcement.

Defence access to ESR examinations

All requests from defence for details of ESR analysis reports should be dealt with through the provisions set out in the CDA. Further advice is provided in the following sections.

Blood alcohol charges

In cases relating to blood alcohol charges, defence requests to discuss the case with an ESR analyst, or for a sample for private analysis, should be made in accordance with [s 74\(5\)](#) of the [Land Transport Act 1998](#). ESR will refer any such requests, made directly to them, to the PPS Traffic Prosecution Advisor for on-referral to the 'authorised person'.

Accessing ESR examinations in criminal cases

Formal requests to Police, by defence, to access and inspect exhibits, will be made under [ss 19](#) or [31](#) of the CDA. These requests require careful consideration, to ensure both that Police obligations under the CDA are met, and that adequate safeguards to any examination are applied for under the CDA. Police can refuse or restrict access to the relevant exhibit in certain circumstances, and defence is not permitted, as of right, to test the actual Police exhibit - e.g. a blood-stained shirt. Reasons for applying conditions, or withholding access to exhibits, must always be recorded.

The following defence requests, and their response, sit within the remit of the OC's role. Requests:

- To discuss the case
- To test a Police exhibit
- To have ESR perform a particular test on a Police exhibit
- For defence experts to be present during the examination of an exhibit or experimentation by ESR
- For ESR to test materials supplied by the defence
- For information about general techniques employed by an analyst during testing.

The OC case will consider and determine the Police position to any such defence requests in consultation with the Police Prosecutor/Crown Solicitor, District Crime Scene Manager, and the ESR, as required. Having done so, where any doubt exists as to the handling of any such defence requests, the OC case should seek advice (via their supervisor) from the National Crime Manager at PNHQ, the PPS National Legal Counsel, and/or a District Police Legal Advisor, as necessary.

Non-party orders for disclosure by ESR

Under [s 24](#) of the CDA, defence may seek a hearing to determine whether information held by a person or agency other than Police (i.e. a non-party) may be disclosed. For instance, this provision may be used by defence to obtain information directly from ESR. Any [s 24](#) non-party disclosure order requests should be referred to the OC case. They will then consult with the Crime Services Manager, ESR, the Police Prosecutor/Crown Solicitor, PPS National Legal Counsel, and/or District Police Legal Advisor, as necessary.

Based on the outcome of those consultations, appropriate submissions should be prepared by the prosecutor to assist the Court in its determination of the application.

Court exhibit orders

[Section 31](#) of the CDA enables both Police and the defence to apply to the court, or the court registrar, for an order regarding:

- Whether the defendant may inspect a particular exhibit under the CDA, or in accordance with an order under the CDA.
- The conditions that will apply to the defendant's inspection of a particular exhibit.
- The powers enabled under [s 19](#) of the CDA are substantial, so it is only likely to be in rare circumstances that Police will apply for these types of ([s 31](#)) orders.

Defence applications will be a more common scenario, making the recording of reasons for applying conditions or withholding exhibits essential. Prosecutors will need this information, if they are to provide properly informed submissions on defence applications under [s 31](#) of the CDA.

In making a determination, the court or court registrar must have regard to the public interest, ensuring the security and integrity of the exhibit, and whether the exhibit is required for ongoing law enforcement purposes.

3C Determining 'how' to disclose

The following section provides general information and guidance about how to disclose material.

ICT systems/processes for managing disclosure

NZ Police does not employ a singular investigation management system or process for administering prosecution cases. Instead, districts utilise one or more of a range of tools (typically NIA or IMT, but in some instances SWIFT) for this purpose. Correspondingly,

therefore, local-level administrative processes and practices vary, as do the forms and templates on which information is recorded.

Furthermore, NZ Police case management specialists (such as Criminal Justice Support Units), operate differently, by district. Collectively, this means that (beyond the generic requirements that are outlined in this document, and which can be applied to local practice) this disclosure policy cannot provide specific guidance as to the details of local-level operational disclosure process.

Generic disclosure principles and approaches

While NZ Police maintains multiple processes and systems in respect of investigation management, there are certain generic disclosure principles that govern all of these systems and processes - such as the need to maintain a complete and current record of disclosure, or the need to properly and fully remove/redact all information that is to be withheld. The following sections highlight these general requirements.

Creating and managing a Disclosure Index

The OC case must create a Disclosure Index when an investigation case file is commenced, and maintain and update this index throughout the advancement of the prosecution case. The Disclosure Index satisfies CDA requirements to maintain a list of the relevant contents of the case file (CDA [ss 12\(2\)\(k\)](#), [s 13\(2\)\(b\)](#) and [s 14 \(3\)](#)), and provides an open and transparent basis for disclosure decisions by recording:

- All of the relevant information on the investigation case file
- Who created and disclosed each relevant document, and when it was disclosed
- Decisions regarding the disclosure/non-disclosure of each relevant document.

The Disclosure Index also:

- Enables supervisors, Police and Crown prosecutors, and any other police staff with responsibilities for the advancement of the prosecution case, to effectively and efficiently review disclosure materials and disclosure decisions.
- Provides defence counsel with a summary table of all relevant documents on a file, and disclosure decisions in relation to that information, compliant with the CDA.
- Enhances judicial knowledge and confidence, by giving the judge a table of all relevant documents on file, including what has been disclosed and the reasons for withholding information. This is particularly useful when an application to review a decision to withhold information is made.

A Disclosure Index can be generated through both the NIA and the IMT systems.

Note on updating the Disclosure Index

A new and updated version of the Disclosure Index should be provided to defence every time new documents are disclosed. The OC case should keep a copy of every version for reference. Whenever a copy of the Disclosure Index is provided, it must also be added to the case file, and attached to the NIA Disclosure Record or IMT file (dependant on which system is being used).

If the Disclosure Index is only held in an electronic format, the OC case must save a copy of the disclosed version in an electronic file that can be made available to the Police prosecutor or Crown prosecutor, when necessary.

Tasking and actioning disclosure requests

Disclosure requests are typically received by the OC case or Police prosecutor. While defence counsel should be encouraged to make requests in writing, requests for additional disclosure can also be made orally. All requests for disclosure under the CDA that are made of Police staff other than the OC case, must be tasked to the OC case. To do so a task can be created in NIA or IMT depending on the tool being used.

As soon as is reasonably practicable after a task has been created, the OC case will review the request, assess its relevance, and (where disclosure is required) prepare the necessary materials.

In the event of any expected delay, the OC case will:

- Advise their supervisor (and seek their advice and guidance, as necessary)
- Advise defence counsel/the defendant of any delay and the likely timeframe
- Advise the Police prosecutor (including of the need for any formal application to the court - e.g. an application for a time extension to initial disclosure under [s 12](#) of the CDA)
- Having actioned the disclosure requirement/s, the OC case will update the NIA task to indicate that it is complete. They will also log any associated disclosure in the Disclosure Index.

Logging disclosure requests and monitoring processes

All requests for (as well as provision of) disclosure under the CDA must be logged and tracked by the OC case. Logging ensures that disclosure obligations can be monitored and managed effectively (including by supervisors), and that there is clarity, transparency, and currency in regard to what has been disclosed.

Logging processes may vary according to the specific case management approach within a district. However, typically the Disclosure Index will be used as the disclosure log.

If there are to be delays related to any type of disclosure (beyond the timeframes stipulated in the CDA), the OC case should notify defence counsel as soon as practicable. Good communication between Police and defence is expected practice, can assist in the timely progression of a case, and may limit defence applications to the court for undisclosed information.

Disclosure format

Disclosure can be provided in a hard copy or electronic format, or in person ([ss 10\(1\)\(a\) and \(b\)](#) of the CDA), and information need only be disclosed in the format in which it is held (see [s 10\(4\)](#) of the CDA).

If defence raises any issues about the format within which disclosure information is provided, it is good practice to engage in practical discussions with defence about how these issues can best be resolved. A record should also be kept of these discussions/any agreements. This approach maintains good faith on the part of Police, and is likely to resolve issues efficiently so as to enable the timely progression of the case.

Maintaining an electronic file and electronic disclosure process

Delivery of disclosure in an electronic format requires disclosure information to be held electronically (and therefore the creation of an electronic disclosure file). Police has systems - such as IMT - that can be used to electronically manage a file and disclosure. However, not all prosecution files need to be managed electronically, and, even when they are, this does not necessitate the universal use of electronic disclosure.

An OC case should consider the following issues, when determining whether to maintain an electronic file and/or electronic disclosure process:

- The anticipated scale of the investigation and prosecution process (e.g. it may be more efficient for smaller, straight-forward prosecutions to provide disclosure in a hard copy format)
- Technical capability/familiarity with the relevant electronic file management process (e.g. IMT)
- The availability of technology in the office to manage electronic disclosure (e.g. scanners)
- The format in which much of the material is held
- Defence agreement to receive disclosure in a particular format
- Whether the broader investigation is being run as an electronic file, hard copy file, or combination of both.

Redacting materials for disclosure

Police is obliged to disclose all relevant information where no reason to withhold it exists ([s 16\(2\)](#) of the CDA). In practical terms, this means that parts of documents may need to be redacted prior to being disclosed.

All decisions about what should be disclosed/redacted need to be made by the OC case (in consultation with/the agreement of their supervisor). However, advice can be sought and provided by legal specialists (via the OC's supervisor - see 'seeking specialist advice' section in this document).

For the purposes of redacting materials, a copy should be made of all original relevant documents on the prosecution file, as only copied information is disclosed. This is the responsibility of the OC case; however, administrative staff can sometimes assist the OC

case by collating and copying materials.

While disclosure can be made in either electronic or hard copy format, the NZ Police [Electronic redaction chapter](#) states that electronic disclosure is the preferred method of disclosing: 'Because of the volume of correspondence, electronic disclosure of documents can be a more efficient method of disclosing a file to interested parties than disclosure in paper form. In general, except for small files or some specific information, electronic disclosure is Police's favoured method of disclosure'.

Manual redaction processes are prohibited

The NZ Police Electronic redaction chapter provides guidance on how to prepare and redact information for disclosure. As outlined in this chapter, manual redaction processes, such as 'covering over information intended to be removed', or 'using a marker pen and photocopier' 'must NOT be used in any circumstances'.

Lessons Learnt: Redaction Disclosure Error [published 19-06-2017]

'Ensure that any redaction necessary is undertaken using the redaction function in Adobe Acrobat Pro. The use of pen/felt pen or other form of redaction is unacceptable'.

Electronic redaction

For written documentation, electronic redaction (using Adobe Acrobat Pro DC or a later version of this software) is the correct method of removing non-disclosable content from documents, and the process for doing so is set out in the NZ Police Electronic redaction chapter.

This chapter states that: 'all employees must comply with the electronic instructions detailed in this chapter [and] it is critical that supervisors of employees who are making electronic redactions ensure the disclosure complies with these instructions, to prevent compromising the confidentiality of information' [P.4].

Similarly, the NZ Police Privacy and Official Information Chapter, 'Disclosure under the Privacy Act 2020' document states that: 'Police uses Adobe Acrobat to redact information that is being withheld ... no other method is acceptable' [P.24].

For non-written forms of evidence - e.g. CCTV footage - other disclosure software, approved by NZ Police should be used.

Delivering disclosure

If it has not already been provided by first appearance, initial disclosure can be delivered by the OC case handing materials to the Police prosecutor to pass to defence counsel at the hearing, or by placing them on the prosecution file for that purpose. All further disclosure should be delivered by the OC case (or other party managing the disclosure) by mail, electronically, or by handing it directly to defence counsel (s 10 of the CDA). Electronic disclosure using IMT Partner File Share may also be available for disclosing materials (see [here](#) for guidance).

If defence refuses to accept materials, making the defendant or defence counsel aware of those materials will fulfil Police obligations for delivery under [s 10\(1\)](#) of the CDA. Therefore, in such situations the OC case should bring the existence and availability of the materials to the attention of the defendant and/or defence counsel.

If double-sided documents are included among disclosure materials, the OC case should bring this to the attention of the defendant or defence counsel. This will help to avoid unnecessary requests for information that has already been disclosed, but mistakenly overlooked by the recipient.

Receipt of disclosed materials

Disclosure materials that are posted, are considered to have been received within five working days ([s 10\(3\)](#) of the CDA). These timeframes also apply to electronic disclosure.

Part 4: Appendices

Part 4 of this chapter provides various useful additional resources and information that may assist staff in managing disclosure responsibilities.

- [Criminal Disclosure On-Line Training](#)
- [Disclosure Overview Flowchart](#)
- [IMT Disclosure Training Package](#)
- [NIA Quick Reference Guide \(Disclosure\)](#)
- [Prosecutions Good Practice Guidelines \(Disclosure\)](#)
- [Solicitor General's Prosecution Guidelines 2013](#)

Templates and Forms

Letter Template: Response to request for VIS where s25 decision pending

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 [Response_to_a_request_for_a_Victim_Impact_Statement_-_s_25_decision_pending.doc](#)

40.5 KB

Letter Template: Response to request for VIS where document provided

-

 [Response_to_a_request_for_a_Victim_Impact_Statement_-_delivery_of_document.doc](#)

41.5 KB

Investigation Management Tools: Training and 'How-To' Guides

- [IMT Disclosure Training Materials](#)
- [NIA Disclosure Guide](#)