



## **Criminal disclosure**

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### **Introduction to criminal disclosure**

#### **Summary**

This Police Manual chapter:

- provides instruction to support the practice of criminal disclosure by New Zealand Police
- contains detailed information about each aspect of criminal disclosure and includes key duties and responsibilities for police employees.

The primary audience for this chapter is frontline constables, File Management Centres (FMC) or Criminal Justice Support Units (CJSU) undertaking disclosure work, supervisors and prosecutors.

#### **Introducing the disclosure system**

The [Criminal Disclosure Act 2008](#) (CDA) applies to the disclosure of prosecution materials relevant to all criminal proceedings in New Zealand. The purpose of the Act 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](#)).

The system applies to **all** criminal proceedings commenced by Police including case files prepared by General Duties Branch, Criminal Investigation Branch and Road Policing. Cooperation between Police district (frontline and legal), Police prosecution staff and Crown Solicitors will be required so that the system operates efficiently and effectively.

#### **Links to Police strategic documents and goals**

The approach to criminal disclosure promoted in this manual provides opportunities to enhance service delivery to meet Police's strategic goals.

The system provides integral standardised checks and balances for disclosure, ensuring this service is delivered quickly, competently and to a high standard. Records and operating systems have been put in place to ensure that effective reviewing of disclosure decisions can be undertaken in a timely manner. Through these characteristics the system links directly to the core values of "honesty and integrity" and "loyalty, good faith and professionalism" applied in the New Zealand Police [Code of Conduct](#).

The principles underpinning the creation of the Criminal Disclosure Act 2008 link directly to the idea of integrity in the criminal justice system. Quicker more reliable disclosure assists the criminal justice system in operating more efficiently and providing the public with greater reassurance around the integrity of its operations. This type of reassurance is led by the integrity of the way Police operate.

#### **Aims and spirit of the legislation**

The Criminal Disclosure Act 2008 reaffirms and establishes obligations for Police and other parties to disclose specific information or types of information within set timeframes or timeframes referenced by reasonableness. Collectively these obligations form part of a general principled shift from Police having to find good reason to release information, to the more pragmatic practice of having to justify withholding information.

This key principle was noted in the explanatory note to the Criminal Procedure Bill: "The key principle is that in criminal proceedings the prosecution is required to disclose all relevant information, unless there is good reason to withhold it."

- Police expand further on this and will:
- ensure disclosure is delivered prior to, or at the first appearance

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- disclose all relevant and available information on the prosecution file to the defendant or their lawyers address for service, at the earliest available opportunity
- not wait for a statutory trigger, a request from defence counsel, or an upcoming court event to deliver disclose. Police will proactively and regularly disclose information as it becomes available.



## Overview of disclosure under Criminal Disclosure Act

### Introduction

The CDA:

- creates several disclosure requirements in relation to the types of information that must be disclosed during criminal proceedings
- provides direction around the defence's opportunities to request information it has not already received.

Earlier, fuller disclosure helps the defence to become familiar with the case, promoting earlier guilty pleas, facilitating meaningful case management discussions, and ensuring court and police time is used effectively and efficiently.

### Disclosure obligations and deadlines

This table outlines the four types of disclosure covered by the Act, when the obligation to disclose commences and the timeframes for disclosure.

Disclosure obligation described	The legal obligation to disclose commences...	Deadline
Mandatory initial disclosure (list provided in the Act) (s12(1))	at the <a href="#">commencement of proceedings</a>	As soon as practicable, but <b>no later than:</b> <ul style="list-style-type: none"> <li>• 21 days from the commencement of proceedings (for those commenced up to 30 June 2013)</li> <li>• 15 working days from the commencement of proceedings (for those commenced from 1 July 2013)</li> <li>• first appearance, if the defendant is a child or young person.</li> </ul>
Requested initial disclosure (specifically requested information from the list provided in the Act) (s12(2))	after the commencement of proceedings	As soon as reasonably practicable (don't wait until the next substantive hearing).
Full disclosure (any available relevant information including "standard information" listed in the Act) (s13)	after a not guilty plea has been entered	As soon as reasonably practicable (and at least 5 working days before any case management discussions).
Requested additional disclosure (any relevant information specifically requested) (s14)	after a not guilty plea has been entered	As soon as reasonably practicable (preferably 10 working days before the next substantive hearing).

### Commencement of proceedings

"Commencement of proceedings" is defined in section 9 as the **earliest** of these criteria:

- the service of a summons
- the defendant's first appearance in court following their arrest, or in response to the filing of a charging document

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- the date on which the defendant is granted Police bail under section 21 of the Bail Act 2000
- the filing of a notice of hearing under, or in accordance with, section [21\(8\)](#) Summary Proceedings Act 1957 (applies specifically to infringements defined in that Act. This criterion is triggered when the defendant requests a hearing or for mitigating factors to be heard at court).

### Practical application of the definition of “prosecutor”

All the disclosure obligations in the CDA affecting Police arise from obligations imposed on the “prosecutor”. However, section [6](#) defines prosecutor as something more than the prosecutorial staff generally engaged by Police (i.e. Police Prosecutors and Crown Solicitors). The definition includes any Police employee (or counsel) who is responsible for a file, which includes the O/C case, Criminal Justice Support Units (CJSU), file briefers, Police prosecutors and in some cases, Crown Solicitors.

However, Police have taken a pragmatic and practical approach towards ensuring they properly meet the obligations under the CDA. This means the O/C case retains disclosure responsibilities beyond the period they are immediately responsible for a file. Where a District has implemented a Criminal Justice Support Unit (CJSU), the CJSU may take on the responsibility for disclosure. It is up to each District to identify what disclosure responsibilities are taken on by the District CJSU.

Supervisors, CJSUs, Police prosecutors and Crown solicitors will at various times take on responsibilities for the prosecution but many obligations relating to the disclosure of new information and the management of exhibits must remain with the O/C case. This is necessary because the O/C case retains the primary relationship with these types of information and evidence.

**Note:** The use of the term “prosecutor” in this manual relates only to Police prosecutors.

### Official information or criminal disclosure?

Police can withhold information requested under the Official Information Act 1982 and Privacy Act 1993, if it is information that:

- could be sought under the CDA, or
- could be sought under the CDA and has been disclosed to, or withheld from, the defendant under the CDA.

(Ss [38](#) and [39](#))

<b>Use the CDA to consider requests for information that is...</b>	<b>Use the Official Information Act 1982 and Privacy Act 1993 to consider requests for information...</b>
<ul style="list-style-type: none"> <li>• covered by sections <a href="#">12</a> and <a href="#">13</a> (<a href="#">initial</a> and <a href="#">full</a> disclosure)</li> <li>• <a href="#">relevant</a>.</li> </ul> <p>Obligations under the CDA begin with the commencement of proceedings and continue for as long as information related to the proceedings is held by Police.</p>	<ul style="list-style-type: none"> <li>• before the commencement of proceedings, or</li> <li>• if the matter does not relate to criminal proceedings, or</li> <li>• are not covered by the CDA.</li> </ul>



## Disclosure process outlined

### Introduction

The [Criminal Disclosure Act 2008](#) sets obligations for Police and other parties to disclose specific information or types of information within set timeframes or timeframes referenced by reasonableness.

### Key stages in the disclosure

This table outlines the key stages of the process to be followed to ensure Police meet all statutory requirements for disclosing information to defendants.

Stage	Description
1	<a href="#">Prepare case files.</a>
2	<a href="#">Prepare initial disclosure.</a>
3	<a href="#">Review case and deliver initial disclosure.</a>
4	<a href="#">Prepare full disclosure.</a>
5	<a href="#">Review case and deliver full disclosure.</a>
6	<a href="#">Additional and ongoing disclosure.</a>

Each of these stages has distinct obligations arising directly from the Act requiring compliance by all Police employees.

For a diagrammatic view of the disclosure process, see the [Flowchart: General overview of disclosure](#) (modified for Police from the diagram in section 3 CDA).

### Variations in procedures in some situations

The six [key disclosure stages](#) and the procedures pertaining to each apply to all Police initiated criminal proceedings from the commencement of those proceedings. They continue until the case is disposed of.

However, some variations to the way Police employees are expected to manage information requests and mandatory disclosure apply in [major investigations](#) due to the volume of information that needs to be considered.

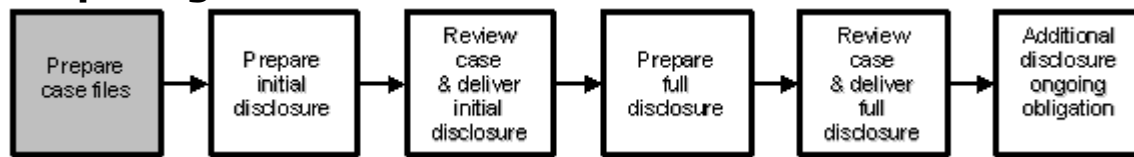
### Costs orders

Section [364](#) Criminal Procedure Act 2011 provides for the court to make costs orders where, in the course of a prosecution, there has been a significant procedural failure or refusal to comply with a requirement of the Criminal Disclosure Act 2008 or any associated Regulations, and there is no reasonable excuse for that failure.

Information on costs orders procedure can be found in the Criminal procedure – [Costs orders](#) chapter.



### Preparing case files



### O/C case responsibilities

The O/C case is responsible for:

- investigating incidents
- filing charging document
- preparing prosecution files and other supporting materials, including the [disclosure index](#).

At some locations, File Management Centres (FMC) or Criminal Justice Support Units (CJSU) take over the file preparation once the investigation and charging duties have been completed. In this scenario, all tasks attributed to the O/C case once the investigation and charging phases are complete, apply to those Units, but the overall responsibility for file ownership remains with the O/C case.

### Record all relevant information using a disclosure index

All relevant information on all case files must be recorded by the O/C case in a Disclosure Index (generated from the NIA Disclosure Module). Start recording information when the file is first constructed and continue until all information and exhibits have been accumulated. This is generally just before the trial. (For information about how to complete the Disclosure Index see [Procedures for creating the disclosure index and completing disclosure](#)).

### Providing the Disclosure Index to defence

Whenever disclosure is delivered to defence, a record of what is being disclosed must be included, and a copy of that record placed on the prosecution file for the prosecutor.

The NIA Disclosure Module will generate a basic Initial Disclosure Record for initial disclosure. A Disclosure Index (also in the NIA Disclosure Module) is more comprehensive and should be used for any disclosure provided beyond the minimum requirements of initial disclosure.

### Construction of files

The starting point for disclosure obligations is the investigation file. Where possible, all information relating to the Police investigation and prosecution must reside on the prosecution case file. This is required because all information Police collect during the course of the investigation and prosecution must be considered for disclosure.

Where the prosecution file is a part file (because the investigation file is too large to be used practically) or a summons file has been created as a part file, the disclosure index becomes even more important. All the relevant information on the investigation file and summons file must be properly recorded in the index, as it will be the main tool the supervisor will use when reviewing and/or signing off the file for disclosure purposes.

**Note:** Documents disclosed by electronic means must be in PDF format. **All redactions must be made using the approved redaction software Adobe Pro 9 or higher** which permanently redacts texts and images from PDF files. See [Electronic redaction and](#)



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[disclosure](#) (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for detailed information on preparing electronic files and redaction.

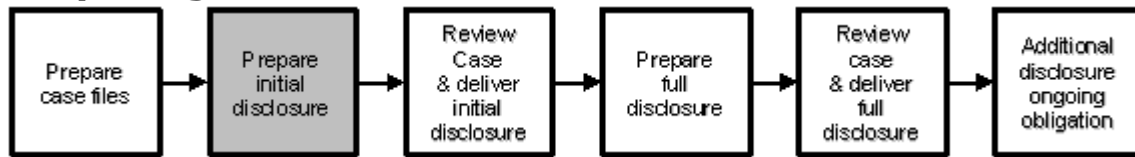
### **National prosecution case file standard at "first appearance"**

When preparing a case file for first appearance, use the national file order in the [Prosecution File Preparation](#) chapter.





## Preparing initial disclosure



### Introduction

This section outlines:

- when information must be disclosed as part of initial disclosure
- the information that must be disclosed.

### Employee responsibilities summarised

This table summarises the broad responsibilities of employees involved at this stage of the disclosure process.

O/C Case	Prosecutor
<ul style="list-style-type: none"> <li>• Monitor disclosure timeframes.</li> <li>• Advise prosecutor of need for time extension application.</li> <li>• Ensure all available information that can be released is disclosed.</li> <li>• Log all requests for further initial disclosure and respond as soon as practicable.</li> </ul>	<ul style="list-style-type: none"> <li>• Apply for time extensions if required.</li> <li>• Facilitate delivery of initial disclosure at first appearance (if not delivered before).</li> </ul>

### Delivery of initial disclosure

Initial disclosure must be delivered at:

- the [commencement of proceedings](#), or
- "as soon as practicable" after commencement, but no later than 21 days after commencement for proceedings commenced up to 30 June 2013, or 15 working days for those commenced from 1 July 2013, or
- within a longer period as allowed by a court or registrar, or
- if the defendant is a child or young person, no later than first appearance.

In practice, this usually means the O/C case gives a disclosure package to the prosecutor to provide to the defence at the first appearance (unless the O/C case has already provided it).

You should include **two** disclosure packs on the first appearance file:

	Contents
1. Initial disclosure (usually for the duty lawyer)	A pack that complies with the minimum requirements of <a href="#">s12(1) CDA</a> : <ul style="list-style-type: none"> <li>• copy of the charging document</li> <li>• summary of facts</li> <li>• Q History printout</li> <li>• POL2127 Initial Disclosure Record (which includes notice of the defendant's right to apply for further information).</li> </ul>
2. "Full" disclosure (for the assigned counsel, or duty lawyer if a resolution is likely at first appearance)	Initial disclosure PLUS all other available, relevant information on the prosecution file.

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If any disclosure packs are still on the prosecution file after first appearance, the prosecutor will deliver the pack to the defence upon receipt of the address for service (preferably by post or electronic means). Note: If electronic delivery is chosen, disclosed documents must be in PDF format and redacted using **Adobe Pro 9 or higher version**. See [Electronic redaction and disclosure](#) (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for more information.

Where commencement of proceedings is by way of summons, this may be some weeks before the first appearance. In these circumstances it is appropriate for the O/C case to prepare initial disclosure prior to or as soon as the summons has been served. Service of the summons and delivery of initial disclosure should be completed at the same time wherever possible.

If defence counsel make contact to seek initial disclosure prior to first appearance (and where there is sufficient time to prepare), initial disclosure should be delivered to them.

### Requested information

The defence may request in writing further [specific information](#) after the [commencement of proceedings](#). Where the information exists, police must provide the information as soon as reasonably practicable after the request is received.

If the prosecutor receives a request, they should send the O/C case a NIA Task to action the request.

### Procedure

Use the steps in this table as a guide when preparing initial disclosure.

Step	Actions by O/C
1	<p>As soon as proceedings have commenced, the O/C case must consider whether the <a href="#">mandatory initial disclosure</a> information can be provided within 21 days for proceedings commenced up to 30 June 2013, or 15 working days for those commenced from 1 July 2013.</p> <p>If it cannot be provided, the prosecutor must apply to the court or registrar to extend the deadline for providing disclosure (s12(4)(c)). (These applications should be rare, since the minimum requirements for initial disclosure are not demanding).</p>
2	<p>Prepare:</p> <ul style="list-style-type: none"> <li>• <a href="#">mandatory information</a> in accordance with CDA requirements</li> <li>• all other relevant and releasable information available at that time, not just the minimum requirements</li> <li>• a relevant and accurate record of what has been disclosed and withheld in the NIA disclosure module.</li> </ul> <p><b>Note:</b> Documents disclosed by electronic means must be converted to PDF format. (See 'Creating PDF files' in <a href="#">Electronic redaction and disclosure</a> (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for information on how to convert).</p>
3	Prepare the Initial Disclosure Record from the NIA Disclosure Module.
4	Proceed to <a href="#">Review case and deliver initial disclosure</a> .

### Managing timeframes

As a general rule, the O/C case should maintain effective liaison with the defendant or defence counsel to advise them of delays in providing disclosure within statutory timeframes and when they can expect delayed materials. This approach will promote a

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better understanding of police operations and reduce the incidence of defence applications to the court for undisclosed materials.

If the O/C case is unable to make initial disclosure under section [12](#) by the applicable date, they should advise the prosecutor that an application for a later delivery date (under s12(4)(c)) is necessary. The prosecutor must then apply in writing to the court or registrar citing the grounds for requiring an extension.



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### Composition of information for initial disclosure

#### Initial disclosure- mandatory information

This table lists the information that must be prepared and delivered to the defendant as part of initial disclosure after the commencement of proceedings.

Materials to be disclosed	CDA requires disclosure of...	CDA section
Initial Disclosure Record or covering letter to defence counsel (both found in the NIA Disclosure Module). These documents include a paragraph explaining the defendant's right to apply for further information and the contact details for the O/C case and prosecutor.	a summary of the defendant's right to apply for further information under section 12(2).	<a href="#">12</a> (1)(b)
A copy of the charging document printed from NIA.  <b>Note:</b> 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.	copy of the charging document.	<a href="#">12</a> (1)(aa)
POL 262 Summary of facts, which includes the maximum and minimum offence penalty.	<ul style="list-style-type: none"> <li>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</li> <li>the maximum penalty and the minimum penalty (if one is provided for) for the offence.</li> </ul>	<a href="#">12</a> (1)(a) & (c)
NIA prosecution report: defendant QHA.	<ul style="list-style-type: none"> <li>a list of the defendant's previous convictions that are known to the prosecutor</li> <li>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 Children, Young Persons, and Their Families Act 1989 applies, that are known to the prosecutor.</li> </ul>	<a href="#">12</a> (1)(d) (e)
Opposition to bail form and receipt.	Not required by the Act, but generally available at this phase of proceedings.	
Any other relevant information available at the point of delivery.	Not required by the Act, but considered Police best practice.	

#### Initial disclosure - further requested information

If requested by defence counsel, the O/C case must prepare and deliver these items where they exist, except where they can be withheld under sections [15](#) -[18](#) of the Criminal Disclosure Act 2008 (CDA) or section [16](#) of the Victims' Rights Act 2002.

Police materials to be	What the CDA requires...	CDA
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<b>disclosed</b>		<b>section</b>
<a href="#">Disclosure Index</a> (If disclosure is delivered over more than one occasion, then an updated index must be provided with each batch of materials disclosed).	a list of any information described in section 12(2)(a)–(j) that the prosecutor refuses under sections 15-18 to disclose to the defendant, together with: <ul style="list-style-type: none"> <li>• the reason for the refusal, and</li> <li>• if the defendant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 16, section 17 or section 18 and (in the case of interests protected by section 18) there is no overriding public interest.</li> </ul>	<a href="#">12(2)(k)</a>
POL275 Witness and exhibit list.	<ul style="list-style-type: none"> <li>• the names of any witnesses the prosecutor intends to call at the hearing or trial</li> <li>• a list of the exhibits that are proposed to be produced on behalf of the prosecution at the hearing or trial.</li> </ul>	<a href="#">12(2)(a) &amp; (b)</a>
Notebook entries and defendant statements.	a copy of all records of interviews with the defendant.	<a href="#">12(2)(c)</a>
Job sheets, briefs of evidence, and witness statements (including any formal statements that have been prepared).	a copy of: <ul style="list-style-type: none"> <li>• all records of interviews of prosecution witnesses by a law enforcement officer that contain relevant information</li> <li>• job sheets and other notes of evidence completed or taken by a law enforcement officer that contain relevant information.</li> </ul>	<a href="#">12(2)(d) &amp; (e)</a>
ESR reports, official breath and blood testing receipts, device logbook entries and device calibration certificates.	a copy of any records of evidence produced by a testing device that contain relevant information.	<a href="#">12(2)(f)</a>
POLFVIR, burglary/crash maps, crime scene and victim photographs, notebook entries.	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.	<a href="#">12(2)(f)</a>
Suspect's rights and excess breath alcohol (EBA) forms, notebook entries.	a copy of relevant records concerning compliance with the New Zealand Bill of Rights Act 1990.	<a href="#">12(2)(i)</a>
Video copy of a defendant interview.	a video copy of any video interview with the defendant.	<a href="#">12(2)(h)</a>
Hand written or typed statements, notebook entries, audio interviews.	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.	<a href="#">12(2)(j)</a>

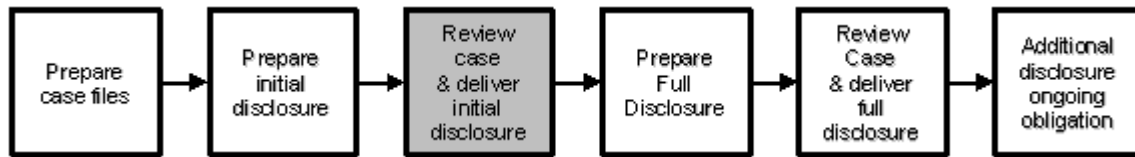
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## Review case and deliver initial disclosure



### Employee responsibilities summarised

This table summarises the broad responsibilities of those involved at this stage of the disclosure process.

O/C Case	Supervisor
<ul style="list-style-type: none"> <li>• Provide supervisor with materials to review.</li> <li>• Make any changes suggested by supervisor.</li> <li>• Manage disclosure timeframes effectively.</li> <li>• Ensure copies of partially disclosed materials and the original materials are placed on the case file.</li> </ul>	<ul style="list-style-type: none"> <li>• Review materials, providing feedback on any changes required.</li> <li>• Provide field guidance to O/C case.</li> </ul>

### Procedures for reviewing the case and delivering initial disclosure

Use this table as a guide when reviewing the case and delivering initial disclosure.

Step	Action
1	<p>The O/C case must provide their supervisor with a prosecution file that includes an <a href="#">initial disclosure pack</a> for reviewing purposes.</p> <p>When preparing the initial disclosure pack, follow the procedures for:</p> <ul style="list-style-type: none"> <li>• <a href="#">creating a disclosure index</a></li> <li>• considering information covered by sections <a href="#">12</a> and <a href="#">13</a></li> <li>• <a href="#">reviewing material for relevance</a></li> <li>• <a href="#">copying and editing material</a> to be disclosed.</li> </ul> <p><b>Note:</b> Documents disclosed by electronic means must be in PDF format. <b>All redactions must be made using Adobe Pro 9 or higher version.</b> See <a href="#">Electronic redaction and disclosure</a> (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for detailed information about preparing and redacting electronic files and the requirements for supervisors' approvals.</p>
2	<p>The O/C case's supervisor:</p> <ul style="list-style-type: none"> <li>• reviews the materials prepared for disclosure when necessary and provides <a href="#">feedback</a> to the O/C case on any changes that are required</li> <li>• <a href="#">signs off</a> the initial disclosure materials before they are released for provision or delivery to the defendant, duty solicitor, or defendant's counsel.</li> </ul> <p>The Initial Disclosure Record or Disclosure Index (generated from the NIA Disclosure Module) should be the primary aid to assist the supervisor in reviewing disclosure materials. The index is not a replacement for reviewing individual documents, but is a guide to the materials that require specific attention and the decisions (and reasoning) made by staff in relation to those materials.</p>



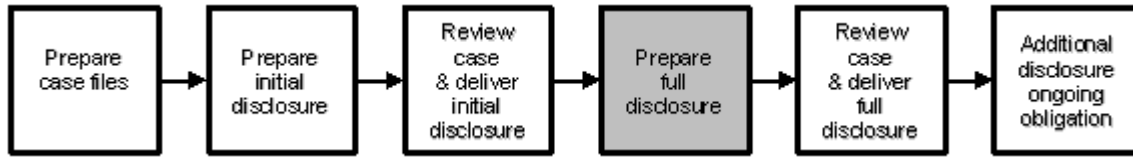
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3	If the materials require any remedial work, the O/C case should do this before the disclosure materials are delivered.
4	Where complicated disclosure issues arise, specialist advice should be sought. Areas that may require advice and guidance commonly include: <ul style="list-style-type: none"><li>• <a href="#">withholding information</a> and reasons for withholding, and</li><li>• managing partial disclosure and selecting the right information for deletion.</li></ul>
5	Once disclosure materials have been reviewed and/or signed off, arrange delivery to the defendant or defendant's counsel within the specific timeframes by: <ul style="list-style-type: none"><li>• post prior to first appearance if the defendant is summonsed or released on Police Bail, or</li><li>• placing on the prosecution file for the prosecutor to deliver at the first appearance, if the defendant was arrested and taken to court immediately.</li></ul>
6	Where materials for mandatory initial disclosure have not been delivered prior to the defendant's first appearance in court, hand the materials to the prosecutor to pass on to defence counsel.  ( <b>Note:</b> In terms of best practice, the O/C case must take all reasonable steps to deliver the materials earlier and not just hand the materials to the prosecutor immediately after the materials have been prepared).
7	The O/C follows <a href="#">procedures for delivering materials</a> to the defendant or defendant's counsel personally.



## Prepare full disclosure



### Summary of O/C case responsibilities

At this stage of the disclosure process, the O/C case is responsible for:

- Preparing full disclosure materials
- Advising prosecutor of need for time extension application
- Monitoring case file materials to fulfil the ongoing disclosure obligation.

### Timeframes for providing full disclosure

Full disclosure must be provided as soon as reasonably practicable after the defendant enters a not guilty plea to a charge (this includes denying a charge in the Youth Court jurisdiction).

While the legislative trigger for full disclosure is the entry of a plea, Police best practice is to deliver all relevant information to the defence as soon as it is available (including before the entry of a plea). In practice this means preparing a 'full' disclosure pack for the first appearance file.

In any event, to facilitate meaningful case management discussions between the prosecution and defence, the OC case must ensure any relevant information not already provided to the defence prior to the plea is delivered at least five working days prior to the out-of-court case management discussions.

The prosecutor must advise the O/C case (by a NIA Task) that a defendant has entered a not guilty plea and the obligation to provide full disclosure has been triggered.

### O/C case responsibilities

The O/C case has these responsibilities when preparing full disclosure:

- Prepare full disclosure materials for review and then delivery as soon as is reasonably practicable
- Prepare the disclosure index
- Advise the prosecutor of any anticipated delay to relevant information, and when they can expect the information to be disclosed
- Monitor case files to fulfil the ongoing disclosure obligation.

### Standard information for full disclosure

Section 13(2)(a) CDA states that full disclosure includes all [relevant](#) information and is not limited by the standard information listed in the Act. Therefore the following table should only be used as a **guide** and Police should follow the general principle of releasing all relevant information that cannot be withheld under one of the reasons listed in the Act.

Police materials to be disclosed	What the CDA requires...	CDA section
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## Criminal disclosure, Continued...

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Updated Disclosure Index (If disclosure is delivered over more than one occasion, then an updated index must be provided with each batch of materials disclosed.)	a list of any relevant information that the prosecutor refuses under sections <a href="#">15- 18</a> to disclose to the defendant together with: <ul style="list-style-type: none"> <li>the reason for the refusal, and</li> <li>if the defendant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section <a href="#">16, 17</a> or <a href="#">18</a> and (in the case of the interests protected by section 18) there is no overriding public interest.</li> </ul>	<a href="#">13(2)(b)</a>
<ul style="list-style-type: none"> <li>Witness statements</li> <li>Fingerprinting Officer's statement</li> <li>Scene of Crime Officer's statement</li> </ul>	a copy of any statement made by a prosecution witness.	13(3)(a)
Signed or unsigned briefs of evidence in relation to a prosecution witness (including any formal statements)	a copy of any brief of evidence that has been prepared in relation to a prosecution witness.	13(3)(b)
Notebook entries	the name and, if disclosure is authorised under section <a href="#">17</a> , 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 <ul style="list-style-type: none"> <li>any written account of the interview, whether signed or unsigned, and any other record of the interview, and</li> <li>any statement made to the prosecutor by the person.</li> </ul>	13(3)(c)
Statements		
Video interviews		
Video synopses, video transcript		
Witness QHA with irrelevant material deleted or convictions listed in the cover letter	any convictions of a prosecution witness that are known to the prosecutor and that may affect the credibility of that witness.	13(3)(d)
Exhibit list	a list of all exhibits that the prosecutor proposes to have introduced as evidence as part of the case for the prosecution.	13(3)(e)
Exhibit schedule	a list of all relevant exhibits in the possession of the prosecutor that the prosecutor does not propose to introduce as evidence.	13(3)(f)
Expert statements, analyses or reports	a copy of any relevant information supplied to the prosecutor by a person or people the prosecutor considered calling to give evidence as an expert witness or witnesses, but elected not to do so.	<a href="#">13(3)(h)</a>
Medical reports	a copy of any information supplied to the prosecutor in connection with the case by any person or people the prosecutor proposes to call to give evidence as an expert witness or witnesses.	13(3)(g)
Analyst reports, fingerprint technician statement		

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## **Criminal disclosure, Continued...**

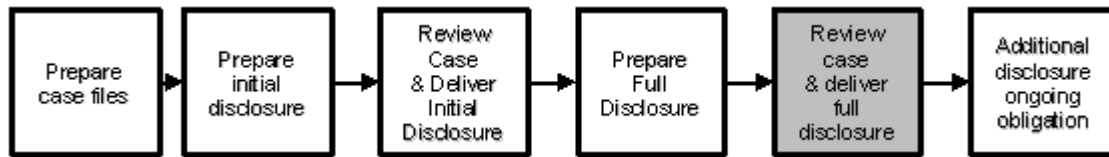
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Any other information available at the point of delivery (e.g. nominated persons form, scene examination reports)	any relevant information, including, without limitation, the information (standard information) described in section 13(3).	13(2)(a)
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**Review case and deliver full disclosure**



**Employee responsibilities summarised**

This table summarises the broad responsibilities of those involved at this stage of the disclosure process.

O/C Case	Supervisor
<ul style="list-style-type: none"> <li>• Provide supervisor with materials to review.</li> <li>• Make any changes suggested by supervisor.</li> <li>• Manage disclosure timeframes effectively.</li> <li>• Ensure copies of partially disclosed materials and the original materials are placed on the case file.</li> </ul>	<ul style="list-style-type: none"> <li>• Review materials, providing feedback on any changes required.</li> <li>• Ensure that the requirements for electronic redaction are complied with (see <a href="#">Electronic redaction and disclosure</a> (Part 10 of the 'Information Management, Privacy and Assurance' chapter)).</li> <li>• Provide field guidance to O/C case.</li> </ul>

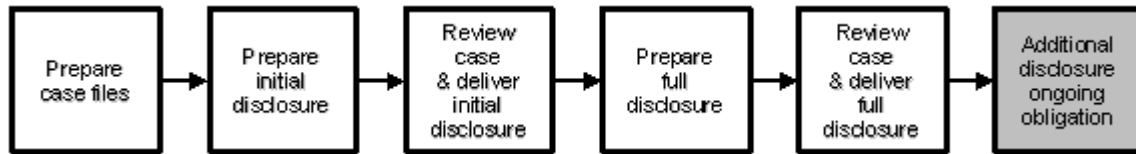
**Procedures**

Use this table as a guide when reviewing prepared full disclosure materials and delivering them to the defendant. (Note that these procedures are similar to those for [reviewing initial disclosure](#)).

Step	Action
1	The O/C case provides their supervisor with a prosecution file that includes: <ul style="list-style-type: none"> <li>• a full disclosure pack</li> <li>• an updated <a href="#">Disclosure Index</a>.</li> </ul>
2	The O/C case reviews any previous decisions to withhold materials to determine whether the grounds for withholding still apply.
3	The supervisor reviews and/or signs off the prepared materials and file as appropriate, broadly following the same procedures as for <a href="#">reviewing the case and delivering initial disclosure</a> . Use the disclosure index to identify items requiring particular attention during the review and seek <a href="#">specialist advice</a> when necessary. Ensure procedures for electronic redaction are complied with, taking particular care with sensitive or informant information (see <a href="#">Electronic redaction and disclosure</a> (Part 10 of the 'Information Management, Privacy and Assurance' chapter)).
4	The supervisor signs the disclosure index relating to the full disclosure package.
5	The O/C case ensures disclosure materials are <a href="#">delivered</a> to the defence counsel <b>as soon as is reasonably practicable</b> . Delivery can be conducted by mail, <a href="#">electronic device</a> or by handing the information to defence counsel directly.



**Additional disclosure and the ongoing obligation to disclose**



**Additional disclosure**

Requests for additional disclosure can be made by the defendant or their lawyer any time after the full disclosure requirement arises. This request need not be in writing.

These requests must be processed “as soon as reasonably practicable”, preferably not later than 10 working days before the next substantive hearing or case management discussion, or in accordance with a court-ordered timetable.

**Summary of responsibilities**

This table outlines the responsibilities of those providing additional disclosure (after full disclosure has been completed).

O/C case	Supervisor	Prosecutor
<ul style="list-style-type: none"> <li>Log and track additional requests for disclosure</li> <li>Prepare materials</li> <li>Deliver materials</li> <li>Advise prosecutor if information needs to be withheld and the grounds.</li> </ul>	<ul style="list-style-type: none"> <li>Review materials, providing feedback on any changes required</li> <li>Ensure the requirements for electronic redaction are complied with (see <a href="#">Electronic redaction and disclosure</a> (Part 10 of the 'Information Management, Privacy and Assurance' chapter).</li> <li>Maintain an overview of disclosure delivery practices</li> <li>Provide field guidance to O/C case.</li> </ul>	<ul style="list-style-type: none"> <li>Forward any additional requests for disclosure to the O/C case to log and action.</li> </ul>

**Procedure when additional disclosure is requested**

Use this table as a guide when additional disclosure is requested.

Step	Action
1	The O/C case: <ul style="list-style-type: none"> <li><a href="#">logs the requests</a> for additional disclosure and tracks the preparation of the materials</li> <li>confirms the provision of the materials to defence counsel.</li> </ul> (The logging of requests also gives supervisors an opportunity to maintain an overview of disclosure delivery practices).
2	The O/C case prepares additional disclosure material and considers if information should be withheld. The information prepared for disclosure should include an updated disclosure index.
3	The O/C case's supervisor reviews the information when it is prepared and/or signs it off. Any changes the supervisor requests should be made by the O/C and signed off before the information is delivered to defence counsel.



## Criminal disclosure, Continued...

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4	<p>The O/C case <a href="#">delivers</a> the material to the defendant or defendant’s counsel.</p> <p>Consider the <a href="#">format</a> in which the information is held when determining the delivery method.</p>
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### Withholding additional information

Section [14](#)(2) allows prosecutors to withhold requested information, if:

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

If information is being withheld in these circumstances the O/C case must as soon as is reasonably practicable provide the defence with the reason(s) and ground(s) for withholding.

When withholding information on the ground that the request was frivolous or vexatious, the O/C case should collate all evidence that supports this ground. Proof of a pattern of frivolous or vexatious activity by the defendant or defence counsel will be the most compelling evidence.

### Ongoing disclosure

The Police obligation to disclose all relevant material held on a case file continues beyond the initial, full and additional disclosure obligations in the CDA ([s13](#)(5)).

The O/C case and their supervisor must ensure that every time new material emerges from the investigation that:

- it is reviewed for relevance and considered for disclosure
- the disclosure decision is recorded on the disclosure index
- the material is disclosed, if appropriate, as soon as reasonably practicable.

Similarly, prosecutors should check that any materials they receive, during the period in which they have responsibility for the case file, have been recorded on the disclosure index and considered for disclosure.

### Summary of responsibilities

This table outlines the responsibilities of those providing additional disclosure (after full disclosure has been completed).

O/C case	Supervisor
<ul style="list-style-type: none"> <li>• Ensure all materials are reviewed and disclosed appropriately fulfilling police’s ongoing disclosure obligation.</li> <li>• Review earlier withheld information regularly to ensure it can still be withheld or should be disclosed.</li> </ul>	<ul style="list-style-type: none"> <li>• Maintain an overview of disclosure delivery practices.</li> <li>• Ensure the requirements for electronic redaction are complied with (see <a href="#">Electronic redaction and disclosure</a> (Part 10 of the ‘Information Management, Privacy and Assurance’ chapter).</li> <li>• Provide field guidance to O/C case on the ramifications of the ongoing obligation.</li> </ul>

### Regular review of withheld materials

The O/C case should also regularly review all withheld materials (either fully or partially) on the case file to ensure the materials can still legitimately be withheld. This process is best conducted:

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## **Criminal disclosure, Continued...**

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- when initial and full disclosure requirements are completed
- whenever an additional request is completed, and
- shortly before the case goes to court.

Take care to ensure information is disclosed so the defence has adequate time to review it. This enables counsel to have meaningful conversations with the defendant, thereby promoting the possibility of earlier case resolution.



## Major investigations

### Flexibility may be required in major investigations

Investigations that are large may require a more flexible approach to managing disclosure obligations. These investigations may relate to:

- serious violent offending
- organised crime (theft and drugs), or
- fraud.

They will typically comprise multiple offenders who are charged with Category 3 or 4 offences. It is the size of the case file and the number of potentially disclosable documents produced by these investigations that pose the greatest challenge to disclosure requirements under the CDA.

It is also likely that these proceedings will be Crown Prosecutions, and the O/C case will need to liaise closely with the Crown Solicitor regarding disclosure.

### Key factors to consider

Police do not have discretion to decide when to disclose relevant information. The CDA proscribes:

- what is to be disclosed, and
- when it is to be disclosed.

Failure to disclose the appropriate information at the appropriate time will result in [consequences](#) for the case being prosecuted and possibly against the people responsible for the failure to disclose. For proceedings commenced after 1 July 2013, this may include costs ordered against Police if the departure from what would have been acceptable practice is significant. However, there is still room for flexibility as long as the requirements in the CDA are met.

### Major investigation disclosure under the Criminal Disclosure Act 2008

This table outlines the requirements that Police working on major investigations need to fulfil to ensure compliance with the CDA.

Requirement	Obligation commences	Deadline	Information required	Risk/problem areas
Mandatory initial disclosure	At the <a href="#">commencement of proceedings</a> (s9)	As soon as reasonably practicable but no later than 21 days after the commencement of proceedings for those commenced up to 30 June 2013, or 15 working days for those commenced from 1 July 2013.	Refer <a href="#">Composition of initial disclosure - mandatory information table</a> .  (s12(1)) CDA lists the required information).	Disclosure must be provided within 21 days of commencement of proceedings for those commenced up to 30 June 2013, or 15 working days for those commenced from 1 July 2013.  Advise defence of the ability to request further information under s12(2)
Requested initial disclosure	Upon written request after criminal	As soon as reasonably practicable	Refer <a href="#">Composition of initial disclosure</a>	Requirement to provide an index of relevant

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	proceedings are commenced (s9)		<p><a href="#">- requested information table.</a></p> <p>(s12(2) CDA lists the information that may be requested by the defence).</p>	materials not disclosed (s12(2)(k)) (Disclosure index)
Full disclosure	<p>After the defendant:</p> <ul style="list-style-type: none"> <li>elects trial by jury or has their first appearance for an indictably laid charge (for proceedings commenced <b>up to 30 June 2013</b>)</li> <li>pleads not guilty (for those commenced <b>from 1 July 2013</b>) (s13(1))</li> </ul>	<p>As soon as reasonably practicable (preferably as soon as actually possible to aid earlier effective decision-making by the defence).</p> <p>(See <a href="#">Timeframes for providing full disclosure</a>).</p>	<p>Refer <a href="#">Full disclosure - standard information table.</a></p> <p>(s13(2) states any available relevant information including "standard information" listed (s13(3))</p>	<p>Requirement to provide:</p> <ul style="list-style-type: none"> <li>an updated index of relevant materials not disclosed (s13(2)(b))</li> <li>lists (in a timely manner) of exhibits: <ul style="list-style-type: none"> <li>to be, and not to be, introduced to court as evidence (s13(3)(e) &amp; (f))</li> </ul> </li> </ul> <p>(Disclosure index)</p>
Requested additional disclosure	<p>Upon request (verbal or written) after the defendant:</p> <ul style="list-style-type: none"> <li>elects trial by jury or has their first appearance for an indictably laid charge (for proceedings commenced <b>up to 30 June 2013</b>)</li> <li>pleads not guilty (for proceedings commenced <b>from 1 July 2013</b>)</li> </ul>	<p>As soon as reasonably practicable (preferably no later than 10 working days before the next substantive hearing)</p>	<p>s14(1) states any particular requested information that is:</p> <ul style="list-style-type: none"> <li>relevant</li> <li>not withheld, or</li> <li>not the subject of a frivolous or vexatious request.</li> </ul>	<p>Requirement to provide an updated index of relevant materials (s14(3)) (Disclosure Index).</p>
Ongoing	After full	As soon as	Refer <a href="#">Full</a>	Failing to ensure





## Criminal disclosure, Continued...

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requirement to disclose	disclosure has been provided (s13(5))	reasonably practicable	<a href="#">disclosure - standard information table</a> . Section 13(2) states any available relevant information including "standard information" listed (s13(3))	this ongoing obligation is monitored and fulfilled appropriately.  Failing to record this information in an updated index of relevant materials (Disclosure Index).
Managing exhibits (s19)	After s13(3)(e) and (f) exhibits lists have been disclosed.	As soon as reasonably practicable after a request for access to an exhibit.	Any exhibits included in the lists created under s13(3)(e) and (f).	Failure to provide exhibit lists in a timely manner may delay the defence's access to exhibits and promote applications to the court under <a href="#">s30</a> .  Failure to record decisions for withholding or restricting access to exhibits may promote successful challenges to restrictions on exhibits.

### File indexing

In most instances a disclosure index generated from the NIA disclosure module will be used for indexing all relevant information on a case file and recording disclosure decisions relating to that information. However, the size of case files for major investigations may be an impediment to using the NIA Disclosure Index.

The requirement to provide indexes is listed in the table [above](#) and must be followed. If the NIA Disclosure index cannot be used, employees may develop their own index so long as it contains:

- the name and brief description of each piece of [relevant](#) material on the case file
- all decisions relating to those materials including:
  - the decision to fully or partially withhold the material
  - the reason (section of the Act) it was withheld under
  - the grounds for why it was withheld (short general explanation)
- when the materials were disclosed
- who disclosed the materials and how they were disclosed
- a version dating facility and PRN number for identification purposes
- a mechanism for the supervisor to sign the materials off.

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## Criminal disclosure, Continued...

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The [Serious Crime Template](#) provides a Disclosure Index in Microsoft Excel which meets these requirements.

Whenever a copy of the Index is disclosed it must also be added to the case file and attached to the NIA Disclosure Record. If the index is only held in an electronic format, save a copy of the version disclosed (password protected) in an electronic file that can be made available to the prosecutor or Crown prosecutor when necessary.

### **Court order obligations in major investigations**

The defence may apply for court orders that have an effect on disclosure requirements and access to exhibits. These court orders must be factored into disclosure and exhibit management for major investigations. Orders can include requirements to:

- disclose witness or informant's contact details ([s17\(2\)](#))
- disclose information ([s30](#))
- abide by specific conditions for inspection of an exhibit ([s31](#))
- meet a specific timetable for the disclosure of materials ([s32](#)).

Follow these steps when dealing with court orders.

<b>Step</b>	<b>Actions by O/C case</b>
1	Notify the O/C case as soon as a notification of a defendant's application for a court order is received (in NIA or by the prosecutor or Crown prosecutor).
2	The O/C case must: <ul style="list-style-type: none"><li>• liaise with the prosecutor or Crown prosecutor to inform them of the background to the application and assist in preparing submissions, if required</li><li>• locate the information or exhibit(s) under application, so that they are readily accessible if required.</li></ul>
3	The prosecutor or Crown prosecutor must notify the O/C case of the outcome of the application and the requirements of any order(s) created as a result.
4	The O/C case must action any order(s) in accordance with the stipulated requirements both as to content and timeframes.

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### **Getting advice and assistance**

#### **Supervisor's responsibility to support disclosure**

The O/C case must notify their supervisor when they have identified issues they cannot deal with themselves.

Supervisors will act as the focal point for securing additional support and advice on legal or procedural matters relating to disclosure. If the supervisor cannot address issues raised about disclosure, they can escalate the matter and seek further advice and support from other parties and specialists in accordance with the flowchart below.

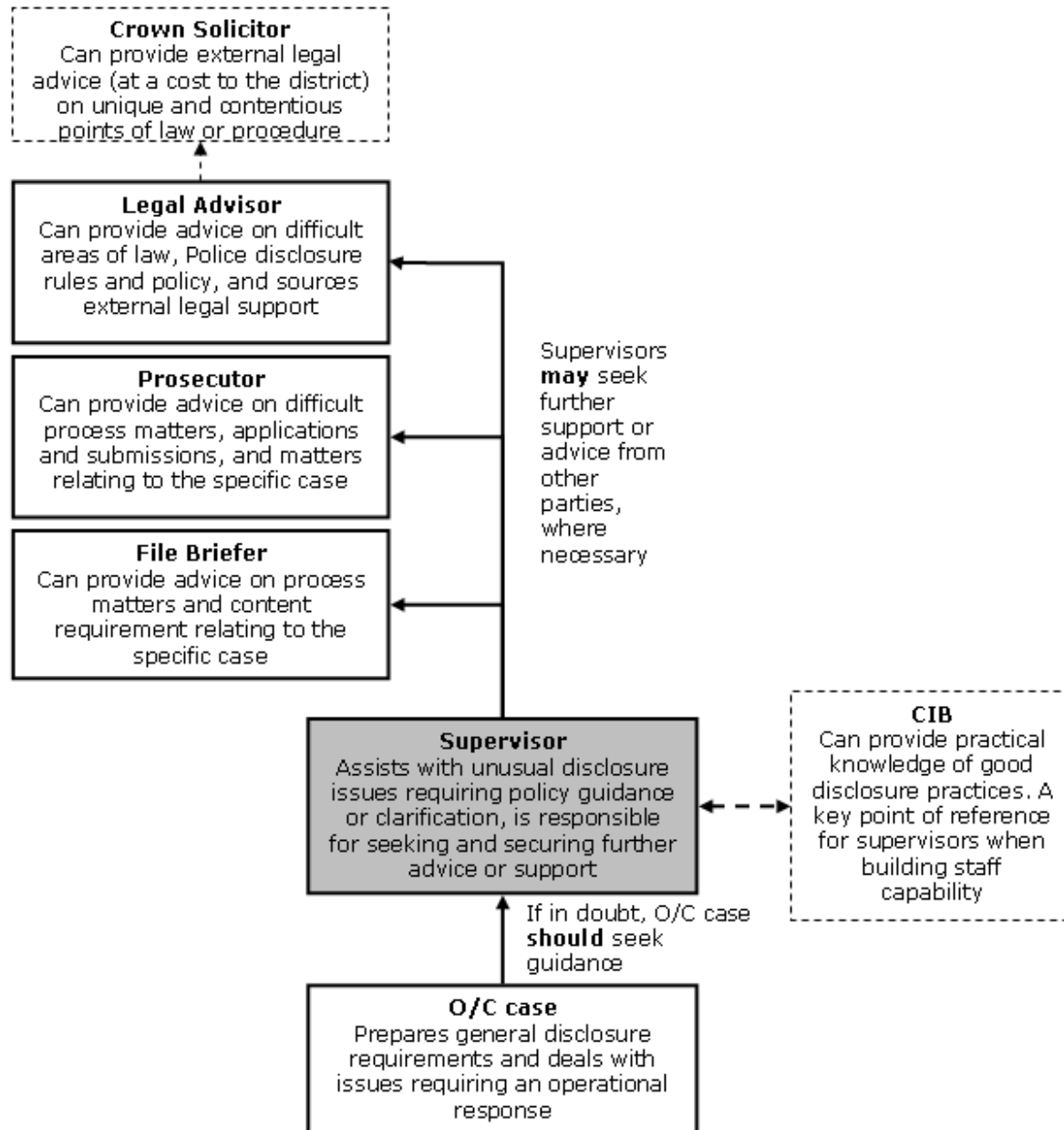
Supervisors must also ensure that the requirements for electronic redaction are complied with, taking particular care with sensitive or informant information (see [Electronic redaction and disclosure](#) (Part 10 of the 'Information Management, Privacy and Assurance' chapter). Adherence to the electronic redaction protocols is critical in preventing serious breaches of confidentiality which may jeopardise an individual's personal safety and privacy.

#### **Supervisors should share advice received**

The supervisor should endeavour to disseminate advice received on legal and procedural disclosure matters among their staff. In this way, all staff will have the opportunity to maintain an up-to-date working knowledge of effective disclosure practices.



## Flowchart showing disclosure support model





## Documenting disclosure requests and provision

### Introduction

This section outlines requirements for:

- [creating a disclosure index](#) when an investigation case commences
- recording all relevant information on the index
- [logging and monitoring](#) disclosure requests and when disclosure is provided
- [preparing and editing](#) material for disclosure
- recording decisions about the review and disclosure of individual items of relevant information.

The procedures in this section apply to **all** mandatory and requested disclosure throughout the case.

### Disclosure Index

The O/C case must create a Disclosure Index when an investigation case file is commenced and regularly update the index during the life of the case file. The index does not need to be provided to the defence for [initial disclosure](#) (an Initial Disclosure Record can be used instead) but must be provided for all subsequent types of disclosure i.e. [requested initial disclosure](#), [full disclosure](#) and [additional disclosure](#).

The Disclosure Index satisfies requirements in the CDA to provide a list of the relevant contents of the case file (s12(2)(k), s13(2)(b) and s14(3)) 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 disclosure of each relevant documents.

The Disclosure Index also:

- enables supervisors, O/C station, senior sergeants, Police prosecutors and Crown prosecutors to effectively and efficiently review disclosure materials and staff disclosure decisions
- gives defence counsel a table of all relevant documents on a file and disclosure decisions in relation to that information compliant with the CDA
- will assist in gaining judicial confidence and approval by giving the Judge a table of all relevant documents on file and reasons for withholding information. This is particularly useful where an application to review a decision to [withhold information](#) is made.

### Procedures for creating the Disclosure Index and completing disclosure

Follow these steps for creating and completing a Disclosure Index.

Step	Action
1	Create a Disclosure Index when an investigation case file is commenced. Use the NIA Disclosure Index for this purpose.
2	Complete this important information in the index: <ul style="list-style-type: none"> <li>• defendant's particulars - name, date of birth, PRN and CRN(s)</li> <li>• O/C case's particulars - name, QID, phone number and (the email address will pre-populate from QID)</li> <li>• name of the O/C case's supervisor</li> <li>• the description and disclosure status (withholding reasons and grounds if appropriate) of each piece of <a href="#">relevant</a> information</li> <li>• the version date of the index and case file DOCLOC number (to easily identify the index version and applicable case file).</li> </ul>
3	Carefully consider all information on an investigation file for relevance and to see if it is covered under sections <a href="#">12</a> and <a href="#">13</a> . Regularly update the index by

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	<p>logging all relevant material in the index.</p> <p><b>Note:</b> Only relevant material needs to be logged. Failure to apply the <a href="#">relevance test</a> appropriately could have serious consequences for the prosecution.</p>
4	<p><a href="#">Prepare disclosure materials</a> and submit them to your supervisor for review and/or sign off with a prepared disclosure index.</p> <p><b>Note:</b> Documents disclosed by electronic means must be in PDF format. <b>All redactions must be made using Adobe Pro 9 or higher version.</b> See <a href="#">Electronic redaction and disclosure</a> (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for information about preparing and redacting electronic files and the requirements for supervisors' approvals.</p>
5	The supervisor reviews and/or signs off the file and signs the disclosure index.
6	<p>The O/C Case will complete the 'date disclosed' column of the Index to reflect the date the information was disclosed to the defence. The O/C should sign the final version of the Index before providing to the Defence.</p> <p>As the Disclosure Index is both a record for the defence and the prosecutor, the proper completion of the signoff is essential to the effective prosecution of the case.</p>
7	Provide a new version of the index to the defence every time disclosure materials are delivered (subsequent to initial disclosure). Keep a copy of each version of the Disclosure Index on the file.

### Delivery of disclosure

Deliver disclosed materials to defence counsel as soon as is reasonably practicable, or for mandatory documents for initial disclosure, within:

- 21 days of the commencement of proceedings, for those commenced up to 30 June 2013
- 15 working days of the commencement of proceedings, for those commenced from 1 July 2013.

Provide additional requested initial disclosure as soon as reasonably practicable. From 1 July 2013, requests of this type are likely to be rare, as all available disclosure should be prepared for the first appearance and sent to the defendant following the receipt of an address for service.

If there has been a delay in providing mandatory or requested information, get that information to the defence counsel as soon as possible. This will enable counsel to have meaningful conversations with the defendant, thereby promoting the possibility of earlier case resolution.

Early delivery of disclosure will also facilitate the mandatory case management procedures required by the Criminal Procedure Act 2011. Any issues with outstanding disclosure must be recorded by the prosecution and defence in the case management memorandum. Delays or failure to provide disclosure may result in costs being ordered against Police.

### Delivery method

Delivery of initial disclosure may be conducted by handing the materials to the prosecutor to pass on to defence counsel, if it has not already been provided by the first appearance.

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All further disclosure should be delivered by the O/C case by mail, electronic device or by handing it directly to the defence counsel ([s10](#)).

When choosing electronic delivery, note that all documents disclosed must be in PDF format. **All redactions must be made using Adobe Pro 9 or higher version.** See [Electronic redaction and disclosure](#) (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for information about preparing and redacting electronic files and the requirements for supervisors' approvals.

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

### Receipt of posted and electronically sent materials

Disclosure materials that are posted are considered to have been received four days after being posted ([s10\(3\)](#)). These timeframes also apply to [electronic disclosure](#). This may have implications when timetabling or timing is an issue.

### Refusal to accept materials

If the defence refuses to accept the materials, the O/C case should bring the existence and availability of the materials to their attention. In this situation, making the defendant or defendant's counsel aware of the materials will fulfil police obligations for delivery under section [10\(1\)](#).

### Logging and monitoring processes

All requests for and provision of disclosure under the CDA must be logged and tracked. Logging ensures disclosure obligations arising out of a statutory trigger or a request are recorded and can be monitored and managed effectively. While defence counsel should be encouraged to make requests in writing, requests for additional disclosure can be made orally.

Requests received by prosecutors or other Police employees must be tasked to the appropriate O/C case. A NIA Task is an appropriate mechanism to do this, as it can be viewed by anyone looking at the NIA case, including the O/C's supervisor. The O/C case must ensure all requests are logged and a supervisor must regularly monitor requests to ensure compliance with the CDA.

The logging process should involve an assessment of whether disclosure can be delivered within the required timeframes. This assessment must be made quickly so that if disclosure cannot be made within the timeframe, an application for a time extension for initial disclosure under section [12\(4\)](#) can be filed with the court or registrar. If there are to be lengthy delays related to any type of disclosure, the defence should be notified as soon as practicable. Good communication may limit defence applications to court for undisclosed information. This logging process will initially be a manual process, but will move towards an electronic solution in the future.

### Tasking disclosure requests to the O/C case

Follow these steps to create a NIA Task about disclosure to the O/C case when a request for disclosure is received from the defence.

Step	Action
1	Open the NIA Case, and click on the Tasks node on the left hand side.
2	Right mouse click in the lighter grey area of the screen and select 'Create'.

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3	Enter the Assignee (QID of person who will receive the Task), the Target date (when the task is due), the Narrative (what you would like done), then click Create.
4	As soon as reasonably practicable, the O/C case reviews the request and prepares the materials.
5	The O/C case advises their supervisor of any delay or access issues arising in relation to the request.  Any delay or access issues relating to the request must be communicated to the defence in a timely manner. The prosecutor should be advised of the need for an application for time extension on mandatory initial disclosure, if required.
6	Having actioned the disclosure requirement, the O/C case updates the NIA Task to indicate it is complete.

### Editing / redacting materials

Police are obliged to disclose all relevant information where no reason to withhold it exists (s16(2)). In practical terms, this means passages that need to be withheld within an otherwise discloseable document need to be blacked out in such a way that counsel cannot see the underlying text.

For the purposes of disclosure, a copy should be made of all original relevant material on file, as only copied information is provided in disclosed materials. While all the decisions around what should be disclosed need to be made (in the first instance) by the O/C case, administrative staff can assist by collating and copying materials.

### Electronic editing / redaction

All disclosure being **delivered electronically** must be in PDF format and redacted **using Adobe Pro 9 or higher version**. See [Electronic redaction and disclosure](#) (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for information on:

- creating electronic disclosure files
- how to edit and redact information required to be disclosed, including sensitive information, to ensure that information removed cannot be recovered by the defence
- file naming conventions for electronic files
- page numbering
- security and encryption
- requirements for supervisors' approval
- delivery procedures.

### Manual editing procedure

Follow these steps to manually edit documents for disclosure. (See [Electronic editing / redaction](#) above for all disclosure being delivered electronically).

Step	Action
1	The O/C case photocopies the original file and highlights the parts or pages of the file that should be withheld.
2	The O/C case discusses the completed highlighted file with the supervisor to reach agreement on what should be withheld.
3	Once agreement has been reached, the O/C case or office administrator prepares a blacked out version. If: <ul style="list-style-type: none"> <li>• only a few lines need removing, use a permanent black marker pen and a ruler to black out text</li> <li>• substantial parts of the document need removing, cover those parts with a bit of scrap paper and stamp the paper with "deletions have been made to this page".</li> </ul>
4	When sections of a document have been covered using a permanent black

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	<p>maker, the O/C case or office administrator copies the blacked out version and on the copy recoats any sections previously blacked out.</p> <p>Unless these sections are recoated using a permanent black marker they can be revealed by manipulating the shade settings on a photocopying machine.</p>
5	<p>The O/C case or office administrator copies the blacked out version (or double blacked out version for sections deleted by permanent black marker): one copy for the file and one for each requester. This way if someone challenges the deletions, a working copy and an exact replica of what was sent are on the file.</p> <p>Without a copy of disclosed material on the file:</p> <ul style="list-style-type: none"> <li>• the prosecutor has no record to refer to at court of what was disclosed to the defence</li> <li>• the defence will have the only copy of materials that were partially disclosed.</li> </ul>
<p><b>Note:</b> It is important to keep statutory timeframe requirements in mind when preparing disclosure materials. Materials should be prepared with enough time for the sign-off processes to be conducted effectively. The importance of signing off materials must never be underestimated.</p>	

### Format for disclosed information

Information need only be disclosed in the format it is held in (s10(4)).

When determining the material's mode of delivery, the O/C case should consider the format in which the material is held and produced and whether this format is readily accessible to the defence. For example, providing electronic copies of a written document may not be appropriate where the defence has little or no access to a computer. If electronic disclosure is the method selected, you **must** follow the procedures in [Electronic redaction and disclosure](#) (Part 10 of the 'Information Management, Privacy and Assurance' chapter) for creating and maintaining electronic disclosure files and for ensuring the security of the information disclosed.

It would be good practice in some circumstances to liaise with the defence with a view to practical discussions around any issues with format, and keep a record of same. This will maintain good faith on the part of Police and most likely provide a clear indication of the most appropriate format for disclosure that will be unlikely to negatively impact on progressing the case.



### **Maintaining an electronic criminal disclosure file**

#### **Introduction**

Section [10](#) Criminal Disclosure Act 2008 provides that information required to be disclosed may be delivered by electronic means, and disclosed in an electronic form.

Delivery of disclosure in an electronic format requires the disclosure information to be held electronically – hence the creation of an electronic disclosure file. Prosecution files maintained electronically can be disclosed in electronic or hard copy format.

#### **Deciding whether to maintain an electronic disclosure file**

Not all prosecution files need to be converted to electronic files and disclosed electronically. It may be more efficient for smaller, straight-forward prosecutions to manage disclosure in hard copy format.

Consider the following when deciding whether to maintain an electronic disclosure file:

- the anticipated scale of the investigation and prosecution process
- the availability of technology within your office (i.e. scanners)
- the technical capability of the O/C case or the person responsible for disclosure
- defence agreement to receive disclosure in a particular format
- whether a lot of the material is already held in electronic format (e.g. phone data)
- whether the investigation file is being run as an electronic file, hard copy file or a combination of both.

#### **Procedures for creating, maintaining and disclosing electronic disclosure files**

You must comply with the procedures in [Electronic redaction and disclosure](#) (Part 10 of the "Information Management, Privacy and Assurance" Police Manual chapter) when making disclosure electronically. That chapter details procedures for:

- creating electronic criminal disclosure files using **Adobe Pro 9 or later versions**
- creating electronic disclosure files for sensitive and informant information (some variations in procedure apply)
- converting information to PDFs and the PDF standards that apply
- file naming and page numbering using Adobe Pro 9 or later versions
- redacting information electronically from documents to be disclosed
- the security requirements to be applied to documents being disclosed electronically
- using email to deliver criminal disclosure.



## Relevance

### Reviewing for relevance

Reviewing information or evidence on a case file for relevance could start when the investigation case file is first compiled and should start once proceedings have commenced and at regular intervals thereafter. Information received after disclosure has been delivered, should also be reviewed promptly.

Any information previously withheld should be reviewed at regular intervals to determine whether circumstances supporting the information being withheld have changed. As soon as the information is found to be disclosable, it should be disclosed.

### Test for relevance

Information or an exhibit are relevant if it tends to **support** or **rebut**, or **has a material bearing on**, the case against the defendant (s8 CDA).

Even with a statutory definition for "relevant", it can be difficult to assess whether information or exhibits are relevant. When determining whether information or an exhibit:

- "supports" or "rebuts" the case against the defendant, consider whether it will help or hinder the defendant's ability to defend the charges against them
- has a "material bearing" on the case against the defendant, consider whether it would or might detract from the prosecution case or assist the defence or incriminate another person.

### Rebuttal information

Distinguishing rebuttal information from purely irrelevant information can also be difficult. However, it includes the result of any enquiry that differs from what might have been expected, given the prevailing circumstances. Police must retain material or information that points towards a fact or an individual and also that which casts doubt on the suspect's guilt or implicates another person.

### Examples of rebuttal evidence

Examples of rebuttal information include:

- closed circuit television 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 a particular location at the time that an offence is alleged to have taken place stating they saw nothing unusual
- a fingerprint from a crime scene that cannot be identified as belonging to a known suspect
- any other failure to match a crime scene sample with a sample taken from the accused.

### Procedure for reviewing information

These steps must be followed when reviewing information or evidence on a case file.

Step	Action
1	Review all information on the investigation file to determine whether it is: <ul style="list-style-type: none"> <li>• specifically required to be disclosed under section <a href="#">12</a> or section <a href="#">13</a> CDA, or</li> <li>• <a href="#">relevant</a> to the case against the defendant as defined in the CDA.</li> </ul>
2	Determine whether any of the information should be withheld (e.g. the document contains sensitive information about police operations or witness or informant details).



## **Criminal disclosure, Continued...**

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3	Determine whether any of the information that should be withheld can be partially or entirely withheld under one of the disclosure <a href="#">exceptions</a> listed in sections <a href="#">15</a> - <a href="#">18</a> CDA.
4	Seek advice from a prosecutor or legal advisor about any issues relating to this decision-making process if they cannot be resolved through your supervisor.



## Withholding information

### Deciding whether to withhold or disclose

All "relevant" information in the hands of the prosecution should be made available to the defence subject **only** to exceptions needed to avoid prejudice to the wider public interest.

Once information or exhibits have been confirmed as relevant, determine whether they should be withheld. Police staff must consider the spirit of the CDA and the efficiency aims it was designed to deliver in making this determination.

If there are concerns about disclosing the information that outweigh the benefit of releasing it, consider whether the evidence or information is permitted to be withheld.

### Grounds for withholding information

This table outlines the general situations in which information to which the defendant would otherwise be entitled may be withheld. Every document must be considered and if relevant, disclosed unless a reason for withholding applies. For example, in some situations POL 258s may be withheld, in others they need to be disclosed. It depends on the content of the POL 258 in question.

Police may withhold/refuse to disclose information when...	Examples of Police material	CDA section
<p>at the time a disclosure obligation would arise or at the time a request for disclosure is made, the prosecutor:</p> <ul style="list-style-type: none"> <li>is not in possession or control of that information; or</li> <li>does not hold the information in recorded form.</li> </ul> <p><b>Note:</b> Prosecutors are <b>not</b> required to record information or to obtain information for sole purpose of disclosure.</p>	The information is not usually recorded and genuinely does not exist.	<a href="#">s15</a>
disclosure of the information is likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences.	Operational orders, operational plans for surveillance, AOS call outs, covert operations or other information that discloses a similar type of content. Materials or aspects of materials that refer to police informants including who they are and any contact details or other personal information.	<a href="#">s16(1)(a)</a>
disclosure of the information is likely to endanger the safety of any person.	Threat of violence to any person accompanied with the ability to deliver on that threat. <b>(Note:</b> Using this section in the disclosure index as a reason for withholding information may exacerbate the threat. Seek advice from legal advisor before using this	<a href="#">s16(1)(b)</a>

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	section).	
the information is material prepared by or for the prosecutor to assist the conduct of the hearing or trial.	Purely administrative 258 reports that do not include any undisclosed information relevant to the case. <b>(Note:</b> 258s are not withholdable as of right).	<a href="#">16(1)(c)(i)</a>
the information is a communication dealing with matters relating to the conduct of the prosecution and is between: <ul style="list-style-type: none"> <li>the prosecutor and another person employed by the same person or agency that employs the prosecutor, or</li> <li>the prosecutor and any adviser to the prosecutor.</li> </ul>	Purely administrative communications (emails, faxes and other memos) between prosecutors and any other Police staff member or legal or technical advisor – that do not include any undisclosed information relevant to the case.	<a href="#">s16(1)(c)(ii)</a>
it is analytical or evaluative material prepared, in connection with an investigation that led to the defendant being charged, by a person employed by a person or agency for another person employed by that person or agency or for the prosecutor.	Charts, analyses and schedules.	<a href="#">s16(1)(c)(iii)</a>
the information is subject to sections 108 and 109 of the Evidence Act 2006 (which relates to information about undercover police officers).	Materials or aspects of materials that reference undercover police officers who have a Commissioner's Certificate attesting to their duty and protecting their identity and are likely to give evidence.	<a href="#">s16(1)(d)</a>
the information is subject to a pre-trial witness anonymity order under s110 Evidence Act 2006 or a witness anonymity order under s 112 Evidence Act 2006.	Witness anonymity orders.	<a href="#">s16(1)(e)</a>
the information is subject to s16 Victims Rights Act 2002 (which relates to information about witnesses' addresses).	Any materials or aspects of those materials that list a victim's address or contact details – except where the information is contained in a charge and it is necessary to disclose the information in order to ensure that the defendant is fully and fairly informed of the nature of the charge.	<a href="#">s16(1)(f)</a>
disclosure of the information would be likely to prejudice: <ul style="list-style-type: none"> <li>the security or defence of New Zealand or the international relations of the Government of New Zealand; or</li> <li>the entrusting of information to the</li> </ul>	Information from Interpol or other jurisdictions used for an investigation. Information sourced through diplomatic channels.	<a href="#">s16(1)(g)</a>

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<p>Government of New Zealand on a basis of confidence by the government of any other country, or</p> <ul style="list-style-type: none"> <li>any agency of such a government or any international organisation.</li> </ul>		
<p>disclosure of the information would be likely to facilitate the commission of another offence.</p>	<p>This includes information that might detail the existence of a person or property with a propensity to being victimised (e.g. security/access codes to a secure residence or computer system).</p>	<p><a href="#">s16(1)(h)</a></p>
<p>disclosure of the information would constitute contempt of Court or contempt of the House of Representatives.</p>	<p>Name suppression orders or any information already the subject of a restriction as to disclosure imposed by a court or House of Representatives, or a briefing paper or departmental report to a select committee that has yet to report back to the House on the matter.</p>	<p><a href="#">s16(1)(i)</a></p>
<p>the information could be withheld under any privilege applicable under the rules of evidence.</p>	<p>Information generated as part of a doctor-patient or solicitor-client relationship.</p>	<p><a href="#">s16(1)(j)</a></p>
<p>disclosure of the information would be contrary to the provisions of any other enactment.</p>	<p>When another Act prohibits the disclosure of information such as in the Protected Disclosures Act (Whistleblowers Act) or Tax Administration Act 1994.</p>	<p><a href="#">s16(1)(k)</a></p>
<p>the information is publicly available and it is reasonably practicable for the defendant to obtain the information from another source.</p>	<p>Information already released in the media or on a website.</p>	<p><a href="#">s16(1)(l)</a></p>
<p>the information has previously been made available to the defendant.</p>	<p>Information already provided under an Official Information Act or Privacy Act request or through previous disclosure of materials, or the document has been provided to the defendant by another agency (e.g. Ministry of Justice)</p>	<p><a href="#">s16(1)(m)</a></p>
<p>the information does not exist or cannot be found.</p>	<p>The information has been genuinely misplaced or is not recorded and therefore does not exist.</p>	<p><a href="#">s16(1)(n)</a></p>
<p>the information:</p> <ul style="list-style-type: none"> <li>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</li> <li>is not for any other reason relevant.</li> </ul>	<p>Information that challenges the credibility of a defence alibi witness.</p>	<p><a href="#">s16(1)(o)</a></p>

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<p>the information identifies, or may lead to the identification of, the address of the place where a witness or informant lives, e.g. their:</p> <ul style="list-style-type: none"> <li>• postal, residential or email address</li> <li>• fax or phone number.</li> </ul> <p>The information may be disclosed to the defendant only with the consent of the witness or informant or with the leave of the Court.</p>	<p>This justifies partially withholding information and is likely to affect:</p> <ul style="list-style-type: none"> <li>• summaries of facts</li> <li>• 258 reports</li> <li>• witness statements, or</li> <li>• any other document listing details of witnesses and informants.</li> </ul> <p>Mask or black out the witness/informant details and disclose the rest.</p>	<p><a href="#">s17</a></p>
<p>disclosing the information would:</p> <ul style="list-style-type: none"> <li>• disclose a trade secret; or</li> <li>• be likely to unreasonably prejudice the commercial position of the person who supplied, or who is the subject of, the information.</li> </ul>	<p>Manufacturer's technical manuals e.g. workings of a secret device or process not covered by patent. Costings or charging information.</p>	<p><a href="#">s18</a></p>

### Part documents may still need to be disclosed

Police can only withhold the specific information listed in the reasons for withholding. Where that does not include a full document, the part of the document which is disclosable should be disclosed ([s16\(2\)](#)).

### When withholding reasons no longer apply

Where previously withheld information no-longer fits within a withholding reason (thereby becoming disclosable) disclose it as part of Police's ongoing disclosure obligation ([s16\(3\)](#)).

### Selecting withholding reasons

It is important to be specific when selecting withholding reasons. The information should fit clearly within a withholding reason rather than have the 'potential to fit' and only the information that fits the reason should be withheld. Listing a large number of withholding reasons could appear insincere and potentially create more work later if Police are asked to justify their withholding reasons.





### Further restrictions on disclosure

#### Overriding the exceptions

The [exceptions](#) listed in sections [15](#) to [18](#) are not absolute. Under section [30](#) the defence may apply to the court to review any police decisions to withhold relevant information. The court may overturn and order the disclosure of material if the interests protected by 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)).

The public interest was addressed in *R v McFarlane* [1992] 1 NZLR 495 citing this quote from the Australian case *Young v Quin* (1985) 59 ALR 225:

"The public interest has two aspects which may conflict: one that harm should not be done to the community by disclosure of material; the other that the administration of justice should not be frustrated by the withholding of material which should be produced if justice is to be done".

Therefore, section 30 can be seen to apply a balancing test to remedy rare situations where the legitimate withholding of relevant information is likely to cause an injustice.

#### Disclosure of witnesses' previous convictions

Previous convictions of witnesses must be disclosed if convictions are relevant to the credibility of that witness (*Wilson v Police* [1992] 2 NZLR 533). However, convictions that are not relevant do not have to be disclosed. A test for determining whether a conviction is relevant or not was laid down in *Wilson v Police* (at p 537):

"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 should 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 – the defence may be that the witness (who has previous convictions for violence) was in fact the aggressor
- dishonesty convictions which exhibit a propensity to lie.

#### Procedure

Provide a list of convictions to the defence within a reasonable time before trial, preferably 14 days before, but earlier if any of the convictions are to be withheld. This will allow the defence time to seek a ruling from the court without delaying the overall proceedings.

If you leave out any convictions Police consider not relevant, include a notice advising that information has been withheld.

**Note:** The Criminal Records (Clean Slate) Act 2004 will not form legitimate grounds for withholding a witnesses convictions as section 19(3)(b)) of that Act permits Police to disclose criminal record information if it is relevant to criminal proceedings before a court.

#### Withholding witness and informant details

Section [17](#) restricts the disclosure of a witness's or informant's home address and telephone number. This information may be provided to the defence if the witness's or informant's permission is obtained. Police employees should pursue obtaining this

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permission only once they have received a request from the defence with details about the reason for accessing permission.

The defence may also make an application to the District Court for the witnesses contact details under section 17(2). In considering whether to order the disclosure of this information the court is required to weigh the prejudice to the defendant in not releasing the information against the harm such a release would likely cause. Prosecutors should provide submissions to assist the court in making this determination, particularly if the disclosure would be likely to cause harm.

### **Identification witnesses**

Section 344C Crimes Act 1961 (**or from 1 July 2013, section 14A of the Criminal Disclosure Act (CDA)**) enables a defendant to request information on an identification witness (defined as a person who claims to have seen the offender in the circumstances of the offence). This provision is an exception to the Police obligation to withhold the address and contact details of witnesses and informants in section 17 of the CDA.

Under section 344C (or section 14A CDA from 1 July 2013), once a charge has been laid the defendant may request:

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

Section 344C (or s14A CDA from 1 July 2013) enables the prosecutor to apply for an order excusing the obligation to provide the name and address of an identification witness, if Police have concerns about the protection of that witness or any other person. This may be appropriate where the witness is also the victim, who is not already known to or is estranged from the defendant. It is section 344C (or s14A(3) from 1 July 2013) and not sections 16 or 17 of the CDA or section 16 of the Victims' Rights Act 2002 that should be used to withhold identification witness details.

### **Digitally recorded oral notations**

Digitally recorded oral notations containing information similar to written notes of evidence should be disclosed as soon as required under the Criminal Disclosure Act.

The first requirement for disclosure of this information is under section 12(2)(e) as notes of evidence. At this point only disclose the information when requested. If it is not requested, it becomes disclosable under section 13(2)(a) when the defendant has:

#### **for proceedings commenced up to 30 June 2013:**

- pleaded not guilty to an offence proceeded against summarily, or
- elected trial by jury, or
- had their first appearance for an indictable offence

#### **for proceedings commenced from 1 July 2013:**

- pleaded not guilty to a charge.

Infringement offences (as defined in section 2(1) Summary Proceedings Act) are not subject to the disclosure requirements in section 12 of the CDA. This means the obligation to disclose digitally recorded oral notations arises as part of the section 13 (2) (a) requirements, once Police have received a request for a hearing or for mitigating factors to be heard in court (refer to s9(d)).



## Criminal disclosure, Continued...

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Disclose these files on a compact disc or by email in the first instance. If the defence then cannot access the file, transcribe the audio file and disclose the 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.

### Victim's information and victim impact statements

Section 16 of the Victims' Rights Act 2002 (VRA) restricts the disclosure of a victim's precise address in evidence or information provided to the court. Section 16A of the VRA, however, allows for the disclosure of victims' addresses where the information is contained in a charge and it is necessary to disclose the information in order to ensure the defendant is fully and fairly informed of the nature of the charge.

Step	Action
1	Copies of victim impact statements should never be disclosed with general disclosure packs.  In general, victim impact statements are not required until a defendant has pleaded guilty to or been found guilty of an offence. Commonly, disclosure of victim impact statements will be done by the prosecutor in court when the defendant has entered a guilty plea.
2	If defence counsel specifically request disclosure of the victim impact statement, provide them with a copy of a POL2124 (Disclosure Index) and provide the reason for withholding the information as: "Disclosure contrary to the Victim Rights Act 2002 - section 16(1)(k)".
3	Retain a copy of the disclosure index for the prosecution file.

### General disclosure rules about specific types of information

This table provides some general rules for specific Police information.

Information item	Disclosure rule/guide
258 Reports	Should be disclosed if they contain information about the defendant or other individuals, (that is witness statements that are not contained in other disclosable documents). However they may be withheld if they are only an internal communication between an investigator and prosecutor (See <i>Tonkin v Manukau District Court</i> 26/7/01).
Jobsheets	Should be disclosed, however any witness or informant contact details must be withheld.
Notebook information	Should be disclosed, however any witness or informant contact details must be withheld. See <a href="#">below</a> for further information about disclosing notebook information.
Tactical options reports	Usually disclosable – if a defendant is charged with an offence for which the use of force report is relevant – resisting arrest, assault on Police – report must be released (see <i>Pearce v Thompson</i> [1998] 3 CRNZ 268).
O/C Case availability form	Generally not relevant but should be used by the prosecutor to engage with counsel regarding the discussion of hearing dates.
Legal opinions	Must be withheld.
Card reports	Should be disclosed but could be withheld if the release would be likely to prejudice the maintenance of the law.

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Custody sheets	Should be disclosed.
Search warrant applications	Should be disclosed but could be withheld if the release would be likely to prejudice the maintenance of the law.
Police informants	Any parts of a search warrant affidavit which identifies a Police informant may be withheld.
Affidavits in support	May be withheld (in full or part) to protect informants.
Information revealing police investigative techniques	Includes operational orders, operational plans for surveillance, Armed Offender Squad call-outs, covert operations and how Police obtain information.  <b>Test:</b> would disclosing the method/technique be likely to prejudice the maintenance of the law (make the Police job harder)?
Alibi witness interview notes	Interview notes should be disclosed. Any information that reflects on the credibility of the alibi witness can be withheld under s16(1)(o).
Commercial confidentiality	Any information that would either disclose a trade secret or unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information, may be withheld (s18).
Event chronology	Disclose when they contain relevant information but delete any personal details.
Ministry of Justice bail application memorandum (or other documents from other organisations)	The information has previously been made available to the defendant (s16(1)(m)).
Photo montages	Should be disclosed.
POL 1310 (Family violence formset)	Body injury maps and risk and lethality reports can be used in court to support the prosecution case and should be disclosed. Other information on the POL1310 (FV formset) should be assessed for relevance.
Suspect video records of interview (VRI) and transcripts	You must disclose, unless there are grounds for withholding.  See <a href="#">Disclosure of video interviews, transcripts and TASER data</a> .
Victim/witness video records of interview (VRI) and transcripts	Disclosure of victim/witness VRI (and any transcript) to defence at any time during a proceeding is governed by the Evidence Act 2006 and Evidence Regulations 2007, not the CDA.  See <a href="#">Disclosure of video interviews, transcripts and TASER data</a> .
PEACE - Adult sexual offending	The process for using video as evidence in chief is governed by the Evidence Regulations not the CDA.

### Police notebooks

It is important to ensure all relevant information in Police notebooks is disclosed unless it can be legitimately withheld. This is particularly important when multiple notebooks have been used or temporary staff have been involved in an investigation.

Give attention to the ongoing obligation to provide late annotations. These entries can often contain information important to both the defence as well as the prosecution.

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Even inadvertent failure to disclose notebook information may result in a negative impact on the case's resolution as well as a negative perception about the Police ability to disclose information in a professional manner.

### **Administrative documents containing relevant facts**

Always remember that if a chart, 258 report or a secret briefing paper contains factual information relevant to the charge or defendant (which has not already been disclosed) then that information must be disclosed. However, the rest of the document may still be withheld and only the relevant factual part of the document needs to be disclosed to the defence.



## **Disclosure of video interviews, transcripts and TASER data**

### **Introduction**

Video records of interview (VRI) are 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. Not all of the content of a video recorded interview will necessarily be relevant or admissible.

### **Suspect interviews**

You must disclose the suspect's VRI unless there are grounds for withholding it.

Follow these steps if a suspect interview has been recorded on video and contains relevant information.

<b>Step</b>	<b>Action</b>
1	Consider whether the entire interview, part of it, or none of it is discoverable.
2	Disclose the video record the earlier of: <ul style="list-style-type: none"> <li>• upon written request of the defendant as part of further initial disclosure (s12(2) CDA), <b>or</b></li> <li>• as part of full disclosure (s13CDA).</li> </ul>
3	If the video is to be shown at a trial (judge-alone or jury), prepare a transcript as soon as practicable after the Case Review Hearing, and provide the transcript to the defence and the Judge prior to the trial.

### **Victim and witness interviews**

All victim and witness interviews conducted on video by Police are conducted under subpart 1 of part 1 Evidence Regulations 2007. As such, the Criminal Disclosure Act 2008 **does not apply** to video record of interviews (VRIs) (s42(2)). The requirement in rule 2.4(1) of the Criminal Procedure Rules 2012 that a filed document must be served on the defence also **does not apply** (eg, when the VRI is filed as a formal statement).

Disclosure of VRI (and any transcript) at any time during a proceeding is instead governed by the [Evidence Act 2006](#) (EA) and [Evidence Regulations 2007](#) (ER). The specific disclosure regime in the Evidence Regulations applies to all VRIs conducted under those Regulations – children and adult.

A transcript of a victim/witness VRI must be prepared and disclosed as soon as practicable after the entry of a not guilty plea (reg 28(1) ER).

A VRI **must not** be disclosed to defence. Police must offer the opportunity to **view** a working copy of the VRI to the defendant and/or their lawyer (reg 20 ER).

If a direction has been given under section 103 Evidence Act for the witness to give their evidence in an alternative way (ie, by way of VRI), section 106(4) requires the VRI to be disclosed to defence unless a Judge directs otherwise. In every instance where a direction is sought under section 103 EA, Police **must** seek a further direction for non-disclosure of the VRI under section 106(4) EA.

### **TASER evidence disclosure**

#### **Process for considering TASER disclosure**

This table outlines the process to be followed when considering the disclosure of TASER data.

<b>Stage</b>	<b>Description</b>
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1	<p>Determine whether the TASER data is <a href="#">relevant</a> to the charges before the Court.</p> <p>In some situations it will be obvious that the data is relevant, e.g. where a defendant is charged with "assaulting police" and is arguing self-defence. In other cases it will be less clear, e.g. with any charges, if the defendant is seeking the exclusion of their statement on the basis on an unlawful arrest.</p> <p>Seek the advice of a legal adviser if you are unable to determine whether the data is relevant.</p>				
2	<p>If you have determined that the data is relevant, consider whether it should be <a href="#">withheld</a>.</p> <table border="1" data-bbox="327 638 1380 900"> <tr> <th data-bbox="327 638 758 705"><b>If there are grounds for withholding...</b></th> <th data-bbox="758 638 1380 705"><b>If there are no grounds for withholding...</b></th> </tr> <tr> <td data-bbox="327 705 758 900">record the existence of the data and the grounds for withholding it on the Disclosure Index.</td> <td data-bbox="758 705 1380 900">advise the OC of the file to obtain the data.  (They will need to liaise with their district TASER co-ordinator to obtain the material and have it formatted in a digital form on a DVD).</td> </tr> </table>	<b>If there are grounds for withholding...</b>	<b>If there are no grounds for withholding...</b>	record the existence of the data and the grounds for withholding it on the Disclosure Index.	advise the OC of the file to obtain the data.  (They will need to liaise with their district TASER co-ordinator to obtain the material and have it formatted in a digital form on a DVD).
<b>If there are grounds for withholding...</b>	<b>If there are no grounds for withholding...</b>				
record the existence of the data and the grounds for withholding it on the Disclosure Index.	advise the OC of the file to obtain the data.  (They will need to liaise with their district TASER co-ordinator to obtain the material and have it formatted in a digital form on a DVD).				
3	<p>If you have determined the data should be disclosed, advise counsel for the defendant of the DVD's existence and invite them to view it at the Police station subject to appropriate conditions.</p> <p><b>Do not:</b></p> <ul style="list-style-type: none"> <li>• allow counsel to record the data by any means (e.g. camera phone)</li> <li>• give the lawyer a copy of the DVD.</li> </ul>				
4	<p>If counsel is not satisfied with viewing the footage at the station and requests a copy of the DVD, advise them to make an <a href="#">application for it under section 30</a> of the Act.</p>				
5	<p>Note that all <b>relevant</b> information must be recorded on the Disclosure Index, even if withheld.</p> <p>Data that is not relevant only needs to be included on the Disclosure Index when the defendant has specifically requested it as "additional disclosure". In these circumstances, the data should be withheld under section 14(2)(a) and recorded on the Index accordingly.</p>				

### Submissions on applications for disclosure under section 30

If an application under section [30](#) is made for the disclosure of TASER evidence, PPS must prepare and file submissions on behalf of Police, requesting that the DVD only be released subject to these conditions:

- a copy of the DVD is to be provided to counsel for the defendant only
- the DVD is to be held personally by counsel and not be released to any other person including the defendant
- the DVD is not to be shown to anyone except the defendant and other defence witnesses, and
- the DVD must be returned to Police at the conclusion of the case.  
(*R v Wainohu* [2010], DC Hamilton, CRI 2010-091-008782)

### Self-represented defendants

If defendants are self- represented, follow these steps.

Step	Action
------	--------



## Criminal disclosure, Continued...

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1	If you have determined the data should be disclosed, advise the defendant of the DVD's existence and invite them to view it at the Police station subject to appropriate conditions.
2	Ensure the defendant is adequately supervised during the viewing of the DVD.  Do not allow the defendant to record it by any means (e.g. camera phone) and do not give them a copy of the DVD.
3	If the defendant is not satisfied with viewing the footage at the station and requests a copy of the DVD, advise them to seek legal advice and that they may apply to the Court for it to be disclosed under s 30 of the Act.
4	If the defendant makes a section 30 application, PPS must oppose this with written submissions filed in support of the opposition. The submissions should include information about the risk of the DVD entering the public domain, and the inability to impose appropriate conditions in line with <i>R v Wainohu</i> when the defendant is self-represented.  Seek assistance from the PPS legal adviser if required.
5	If the defendant's application is successful and the court orders the DVD be released, contact a legal adviser and request that consideration be given to appealing the decision. Do not release the DVD unless all appeal options have been exhausted.

### Downloading TASER evidence

See "Operational post-incident procedures> Evidential downloads" in the [TASER \(Electronic Control Devices\)](#) Police Manual chapter for information about downloading and formatting TASER evidence.





## Court ordered disclosure and obligations to record information

### Obligation to record information

Police have always had to record all information relevant to an investigation and associated police activities. Section 15 CDA provides that a prosecutor is not required to disclose information, if the prosecutor:

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

Notwithstanding this limitation, Police must still record all information relevant to an investigation and associated police activities. If relevant information was retained in unwritten form for the purposes of avoiding disclosure this would likely constitute a breach of the Code of Conduct.

The [Public Records Act 2005](#) requires the Police to create and maintain full, accurate records of its affairs, in accordance with normal prudent business practice. Prosecutions are based on written material. Information that is not recorded cannot be used in the prosecution. Recording all information relevant to the case against the defendant ensures Police puts its best foot forward.

### Court-ordered disclosure

In addition to the rules established for initial, full and additional disclosure, courts are empowered to provide direction on disclosure where appropriate. This table outlines some of the orders courts may make.

Courts may order...	Notes /authority
disclosure of relevant information from non-parties to the prosecution.	This disclosure is made only on: <ul style="list-style-type: none"> <li>• the defence’s application after a not guilty plea</li> <li>• the first appearance of a child or young person in a Youth Court.</li> </ul> (ss24–29)
particular information to be disclosed.	when a prosecutor has failed to disclose that information or has purposefully withheld that information under section 14, section 16, section 17 or section 18. (s30)
timetabling orders for the production of disclosable information within specific timeframes.	These orders may arise as a punitive measure for failed performance or where the timing for the delivery of specific evidence/information is integral to the preparation of the defence. (s32)
the provision of a witness or informant’s address which has been withheld under section 17(1).	The defendant can make an application under section 17(2) to the District Court for such an order.
set conditions for the inspection of exhibits.	Refer to <a href="#">Court exhibit orders</a> .



### Other non-party disclosure

#### Non-party disclosure

Duties of disclosure under the CDA are imposed on the prosecutor and the defence. All other categories of person are to be treated as non-parties.

Section [24\(2\)](#) enables the defence to apply for disclosure of information from a non-party. Applications will be lodged with the District (Youth) Court registry after full disclosure requirements arise (this will be after first appearance for Youth Court). A copy of the application must be provided to the prosecutor (section [24\(4\)](#)). The prosecutor has a reasonable period in which to prepare a submission on the application. This information 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.

If the court decides to proceed with the application, a summons is served on the non-party ([s26\(1\)\(a\)](#)) and the prosecutor is advised that a hearing will take place ([s 26\(1\)\(b\)](#)). The defendant, prosecutor and non-party may make submissions or call evidence at the hearing ([s27\(1\)](#)). The hearing will be closed ([s 27\(5\)](#)) and the judge may order or refuse to order a disclosure of material request ([s29\(1\)](#) and (2)). The result of the hearing will be updated in NIA.

#### **Flowchart: Process for a non-party disclosure application**

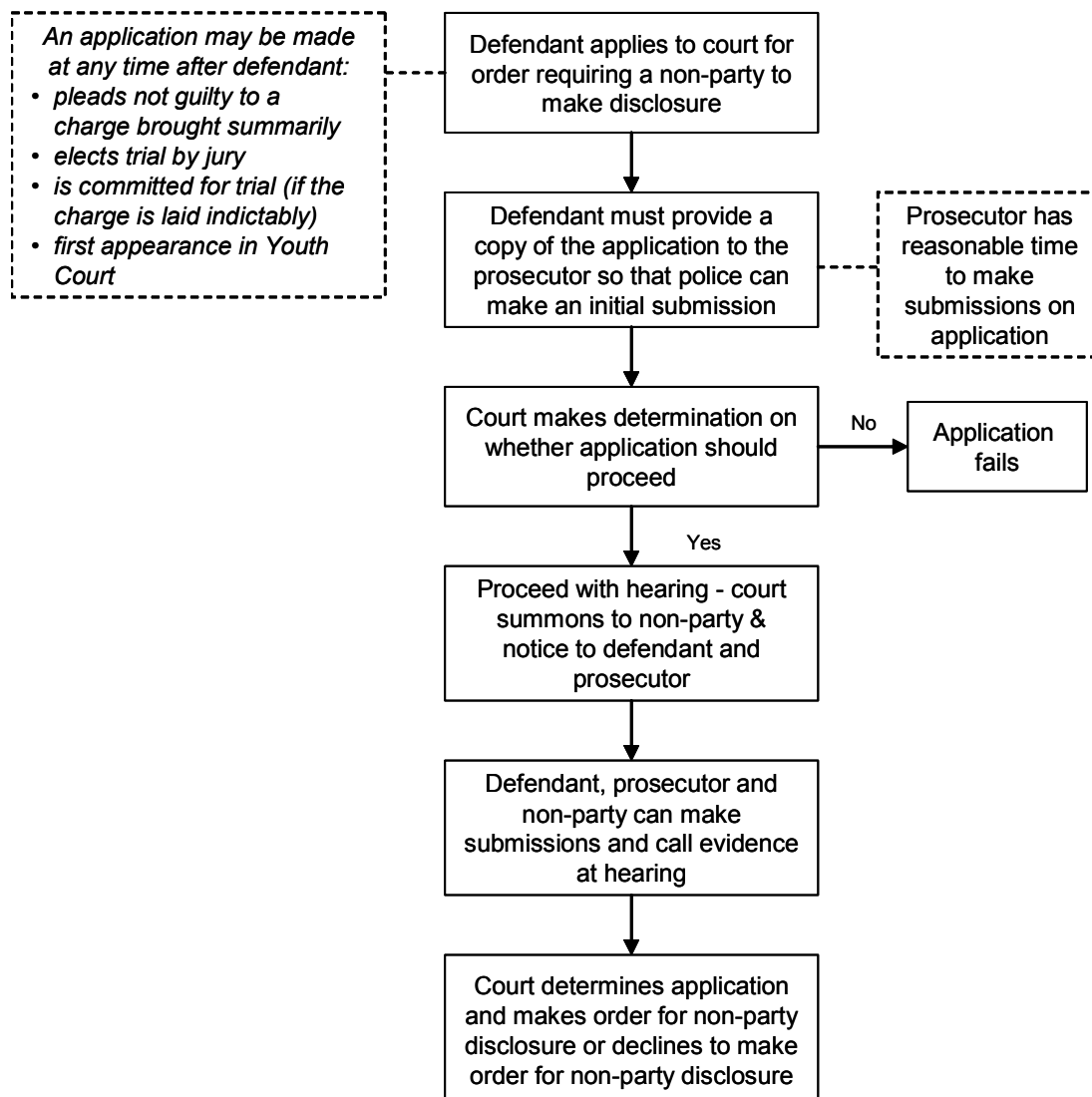
This flowchart shows the process for disclosure by non-parties to the defendant.



## Criminal disclosure, Continued...

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### Disclosure by non-parties to the defendant



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## **Defence disclosure**

### **Alibi**

The defendant must provide the prosecutor with the particulars of any alibi witness they intend to use in court (s22(1)).

For proceedings commenced:

- **up to 30 June 2013**, the notice must be given within 14 days after the defendant has:
  - entered a not guilty plea for an offence being proceeded against summarily (includes denying a charge in the Youth Court)
  - elected trial by jury, or
  - been committed for trial where an information has been laid indictably
- **from 1 July 2013**, the notice must be given within 10 working days after the defendant has:
  - entered a not guilty plea for an offence, or
  - as a child or young person, makes a first appearance in the Youth Court.

The particulars must include the witness's name and address or any information that might provide material assistance in finding that witness.

If this information is not provided to the prosecutor within the required timeframe, the prosecutor should ensure this fact is recorded in the Case Management Memorandum.

Whenever a defendant puts forward an alibi under section 22(1), the O/C case must ensure a prosecution report (QHA) and an active charges report are prepared on the witness. The O/C 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 alibi witnesses are interviewed**

The O/C case should not interview an alibi witness unless the prosecutor requests them to do so. If an interview is requested, follow this procedure.

<b>Step</b>	<b>Action</b>
1	Advise the defence counsel of the proposed interview and give them a reasonable opportunity to be present.
2	If the accused is not represented, endeavour to ensure the witness is interviewed in the presence of some independent person not being a member of the Police.
3	Make a copy of a witness's signed statement taken at any such interview available to defence counsel through the prosecutor. Any information that reflects on the credibility of the alibi witness can be withheld under s16(1)(o).

### **Expert evidence**

If the defendant intends to call an expert witness during proceedings, they must disclose to the prosecutor:

- any brief of evidence to be given or any report provided by that witness, or
- if that brief or any such report is not 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 14 days (for proceedings commenced up to 30 June 2013) or 10 working days (for those commenced from 1 July 2013) before the date fixed for the defendants hearing or trial, or within any further time that the court may allow.  
(s23(1))

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### **Failure to disclose**

#### **Consequences**

Consequences for failing to disclose information appropriately under the CDA relate to the level of impact the failure has, 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 using defence applications to court for:

- leave to disclose an informant or witness's address (s17(2))
- provision of initial or full disclosure if not received (disclosure order) (s30(1)(a)(i))
- registrar or court order setting conditions for inspection of an exhibit (s31(1))
- timetabling directions relating to full disclosure material (timetabling order) (s32(1)).

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

- exclude the evidence
- 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 major failure could see:

- evidence being excluded
- the case being dismissed (under the court's inherent jurisdiction), or
- a retrial ordered.

Failure to disclose may also negatively affect the perception of a professional police service.

Section 364 of the Criminal Procedure Act 2011 makes provision for costs orders against the Prosecution if there has been a procedural failure deemed 'significant'.

#### **Personal responsibility**

Under sections 32(4) and 34(4) the prosecutor or other Police employees may personally be held to account for failing to disclose information through powers under any other enactment or rule of law (this includes being held in contempt of court).

The Code of Conduct may also have implications for Police employees. The code requires employees to:

- obey all lawful and reasonable instructions unless there is good and sufficient cause to do otherwise
- abide by the provisions of all New Zealand legislation, together with instructions, standards, policies and procedures set by Police.

Prosecutors who are lawyers may also be held to account for poor disclosure practices under the [Lawyers and Conveyancers Act \(Lawyers: Conduct and Client Care\) Rules 2008](#), rule 13.12. This requires a prosecuting lawyer to act fairly and impartially at all times and in doing so, to comply with all obligations concerning disclosure to the defence of evidence material to the prosecution and the defence.



### **Managing exhibits**

#### **Allowing inspection of exhibits**

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

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

This means the requirement to allow inspections can arise only after full disclosure requirements have been triggered and lists of the exhibits Police are holding (exhibit schedule) and/or intend to use during prosecution (exhibit list) have been disclosed to the defence.

This requirement is not an absolute obligation. Police may place conditions on the inspection of exhibits if they are necessary to ensure:

- the security and integrity of the exhibit or otherwise maintain its evidential value, and
- in the case of an exhibit needed for use on an ongoing basis for law enforcement purposes, the exhibit can be used for an ongoing law enforcement purposes, or
- compliance with any conditions the court imposes under section 31.

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

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

#### **Responsibility for exhibits**

In most cases, the O/C case is responsible for managing exhibits. When the O/C case receives a request from the defence to inspect an eligible exhibit, they should:

- notify the defence of when and how this may take place as soon as reasonably practicable
- copy and disclose to the defence any exhibits that can reasonably be reproduced.

If inspection conditions or the withholding of an exhibit are necessary, advise the defence as soon as reasonably practicable, first by phone and then confirming by mail. This will ensure the defence is aware of the circumstances relating to their request for an exhibit, and a written record confirms what was communicated.

#### **Defence access to ESR examinations**

##### **Requests for information in reports**

All requests from the defence for details of ESR analysts' reports should be dealt with in the course of normal criminal disclosure rules under the CDA.

##### **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 section [74](#)(5) of the Land Transport Act 1998. ESR will refer any requests made directly to them to PNHQ for referral to the 'authorised person'.

##### **Accessing ESR examinations in criminal cases**

Formal requests for access to exhibits will be made by defendants under sections [19](#) or [31](#) of the CDA. Police can refuse or restrict access to the relevant exhibit in certain circumstances under the Act and the defence is not permitted as of right to test the actual Police exhibit, e.g. a blood-stained shirt. These requests require careful consideration to ensure Police obligations under the CDA are met and that adequate

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safeguards to any examination are applied for under the Act. Reasons for applying conditions or withholding access to exhibits must always be recorded.

Refer to the O/C case, all requests by the defence:

- to discuss a 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 O/C case will discuss and determine defence requests in consultation with the Crown prosecutor, district CSM and the ESR as required. Where any doubt exists as to the handling of any defence requests in terms of the impact on the Police case, Police policy, or the CDA, seek advice from the National Crime Manager at PNHQ or a Police legal advisor as appropriate.

### **Non party orders for disclosure by ESR**

Under section [24](#) CDA a person or agency other than the prosecutor may be ordered to disclose information to the defence. This may be used by the defence to obtain information directly from ESR. Refer any requests under section 24 for an order ([non party order](#)) granting a hearing to determine whether information held by the ESR should be disclosed to the defendant, to the O/C case. The O/C case will consult with the CSM, ESR, prosecutor, Crown solicitor or Police legal advisor as necessary.

If disclosure is ordered, conditions may be placed on the disclosure to protect the public interest and the privacy interests of the person to whom the information relates. Appropriate submissions should be prepared for consideration on the application.

### **Court exhibit orders**

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

- whether the defendant may inspect a particular exhibit(s) under the CDA or in accordance with an order under the Act
- the conditions that will apply to the defendant's inspection of a particular exhibit(s).

The court or 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. The abilities enabled under section 19 are substantial, so it is only likely to be in rare circumstances that prosecutors will apply for these types of orders on behalf of police.

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 section 31.



### **Working with the Police Infringement Bureau (PIB)**

#### **Disclosure not usually required in PIB cases**

Most of the cases the Police Infringement Bureau (PIB) handle do not give rise to disclosure obligations because they deal with infringement offences that are largely uncontested.

#### **Infringement offences defined**

An "infringement offence" is any offence under any Act in respect of which a person may be issued with an infringement notice.

(s2(1) Summary Proceedings Act 1957).

#### **Disclosure responsibilities for PIB initiated prosecutions**

Proceedings are deemed to have been commenced under section 9(d) once PIB receives a request from a defendant for a hearing or for mitigating factors to be heard at court. Full disclosure must then be provided in accordance with section [13](#). As a general rule, all information specified for mandatory initial disclosure should also be provided to the defendant. Initial disclosure timelines do not apply to infringement offences ([s12\(3\)](#)).

When PIB receive the request for hearing, they enter the charge in NIA and create the SP10A which is posted to the Court. PIB send a copy of the SP10A (with nominal hearing date) and any other relevant information available (e.g., copy of the ticket, speed camera photographs, 'red light' photographs) to the defendant. The PIB send a copy of this disclosure pack to the OC Case who will prepare the prosecution file (including the prosecution cover sheet). The OC Case must disclose any other relevant information on the file to the defendant prior to the nominal hearing date. The OC Case completes a prosecution file, and forwards to the Prosecution office at least one week prior to the nominal hearing date.

PIB is also responsible for commencing proceedings for a small number of traffic offence notices (TONs). Once PIB receives the notice from district staff, PIB enters it into NIA which generates the SP1 (i.e., information/ summons), and forwards the SP1 to the designated District Court. The PIB send the file back to the OC Case who will prepare the prosecution file (including the prosecution cover sheet, diversion reports, Victim Impact Statements). The OC Case must disclose any other relevant information on the file to the defendant prior to the first appearance. The OC Case completes a prosecution file, and forwards to the Prosecution office at least one week prior to the first appearance.





### Role of Police Prosecution Service

#### General responsibilities of prosecutors

Prosecutors have a general obligation to review all cases before going to court. This is generally done to apply the [evidential and public interest tests](#), and check that the charges have been laid appropriately. It is appropriate for prosecutors to also review disclosure as part of the case review process.

Sometimes other Police staff (including the O/C case and supervisors) will approach prosecutors for advice on matters relating to specific cases such as procedural issues, submissions and applications. Where possible, prosecutors should endeavour to offer this type of mentoring assistance, as it will aid the prosecution of cases more generally.

Local PPS offices are also responsible for processing disclosure requirements on [PIB case files](#).

#### Challenges to disclosure

Prosecutors have a key role in managing challenges to disclosure, including:

- out of court – advising defence about delays in getting disclosure out, intentions to withhold information, conditions on viewing exhibits and so on
- in court – making applications for court-ordered disclosure and appealing court decisions
- advocating the Police position by conveying police disclosure decisions and reasons to the defence and the court.

#### Receiving and actioning disclosure requests

Prosecutors must play an active role in ensuring disclosure for each case operates smoothly and effectively by:

- providing initial disclosure to defence counsel at first appearance, when necessary
- ensuring any disclosure requests received from the defence are forwarded to the O/C case (via a NIA Task)
- providing notice of delays and estimate of time for disclosure delivery to the defence when necessary, and
- checking whether previously withheld information has become disclosable after any change in circumstances.

#### Defence disclosure

The CDA requires the defence to disclose specific information in certain circumstances, so the 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.

#### Applications and submissions

Prosecutors have a key role in making applications and submissions that are necessary to ensure Police mount the best possible prosecution, including providing:

- service of applications for extensions to initial disclosure delivery and conditions on access to exhibits
- submissions on [non-party disclosure](#), requests for disclosure, timetabling orders, challenges to non-disclosure or [access to exhibits](#).

Where 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 those documents on the defence.

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## **Criminal disclosure, Continued...**

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### **Undisclosed information adduced in court**

Section 34(3) prohibits the court from excluding evidence 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 prosecution so requests.

Prosecutors should actively seek an adjournment when the evidence adduced is significant enough to require the prosecutor to have time to review the material and prepare to challenge it.



### **Working with Crown solicitors**

#### **Good working relationships are necessary**

The relationship between Police and Crown prosecutors (within Crown solicitor's offices) is important to the effective management of disclosure. Police cases that are prosecuted by Crown prosecutors are generally serious in nature. The effective prosecution of these cases is important not only because of the public interest in bringing serious offenders to justice but also because of the significant amount of work that Police put into investigating these types of offences.

Police and Crown prosecutors must foster a good working relationship to ensure that the disclosure requirements under the CDA are met appropriately. Failure to meet disclosure requirements will probably result in negative consequences for the case being prosecuted and possibly for the Police and Crown solicitors themselves (including cost orders). Getting it right is important.

#### **Responsibility for disclosure**

The O/C case retains disclosure responsibilities beyond the point at which a Crown prosecutor takes responsibility for the prosecution of a case. This is important because the O/C case will:

- have the best relationship with case file material that attracts disclosure obligations
- possibly continue to investigate the case and create new material
- be responsible for management of exhibits, and
- have control over the disclosure index (see Police Forms> Prosecutions> Criminal Disclosure Act) that will require regular updating and disclosure in accordance with the provisions in the CDA.

Crown Prosecutors will forward any material they generate, that falls within the ambit of the CDA (e.g. expert briefs of evidence or documents relating to the briefing of a witness), to the O/C case so it can be:

- reviewed for disclosure purposes (tested for relevance)
- logged in the disclosure index, and
- disclosed, if required.



### **Field guidance**

#### **Role of supervisors**

Supervisors, O/C stations and senior sergeants have an integral field guidance role in the disclosure system (refer to the flowchart [disclosure role clarification](#)). Using supervisors as coaches means an essential support and mentoring facility is available to all staff at the most crucial developmental and practical stages. These senior staff need to have a strong working knowledge of good disclosure practices, comprising both knowledge in this manual and knowledge gained from practical experience.

To maintain a high standard of disclosure practice, senior operational staff must take ownership and responsibility for the standard of prosecution files and the disclosure delivered by staff operating under them. This includes ensuring that the rules regarding electronic disclosure are complied with (see [Electronic redaction and disclosure](#) (Part 10 of the 'Information Management, Privacy and Assurance' chapter).

The best way to ensure staff maintain the high standard is by providing effective field guidance.

#### **Field guidance**

Reviewing disclosure materials will provide the most common opportunity to coach and mentor and is the essential check within the disclosure system. Without this check, relevant information could be inappropriately withheld or overlooked and used to undermine the prosecution case at court. Reviewing materials also provides an opportunity to identify and remedy any gaps or further lines of inquiry not adequately followed up, which can bolster the prosecution case.

The [Disclosure Index](#) is an essential tool to assist supervisors with their field guidance role. The index is a complete record of all relevant materials on a case file and all disclosure decisions made about those materials. Supervisors should use both the index and the original materials on the case file when reviewing.

Supervisors should remind staff about statutory timeframe requirements when preparing disclosure materials. Materials should be prepared with enough time for the sign-off processes to be conducted effectively.

Supervisors need to take a practical approach to reviewing disclosure materials prepared by their staff. All materials must be signed off by a supervisor before being delivered to defence counsel. To sign the materials off, the supervisor must sign the disclosure index. It is also critical that supervisors ensure that procedures for electronic disclosure and redaction are followed — see [Electronic redaction and disclosure](#) (Part 10 of the 'Information Management, Privacy and Assurance' chapter). Non-compliance, particularly in relation to sensitive or informant information, may seriously jeopardise an individual's personal safety and privacy, leading to an employment investigation for the employees concerned.

However, reviewing all materials before signing them off may be difficult, particularly in areas with high case loads. Supervisors should prioritise the review of disclosure materials for complex cases or where materials have been prepared by inexperienced staff. Effective staff mentoring practices will aid supervisors in determining and improving the disclosure preparation skill levels of their staff.

Opportunities for proactive coaching should also be explored. This may include advice about improving general problematic areas of disclosure for all staff delivered through



## **Criminal disclosure, Continued...**

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line-up training. However, dealing with specific areas of performance with staff members through one-on-one coaching sessions may be useful as well.



### **General overview of disclosure flowchart**

Download the [general overview of disclosure flowchart](#) (pdf, 18 KB).



### **Disclosure role clarification**

Download the [disclosure role clarification](#) (word document, 64KB).



### **NIA disclosure module**

The Disclosure module in NIA is used to record information relating to disclosure documents released to defence counsel during the prosecution process. Download the [NIA disclosure: Quick reference guide](#) (word document, 832 KB).





**Form - Response to a request for a Victim Impact Statement: section 25 decision pending**

Download the [Response to a request for a Victim Impact Statement – section 25 decision pending form](#) (word document, 39 KB).



**Form - Response to a request for a Victim Impact Statement: delivery of document**

Download the [Response to a request for a Victim Impact Statement – delivery of document](#) form (word document, 40 KB).