

Procedure for Disclosure of children's records under Annex C & E, CPIA v1.0, May 2021

Introduction

This procedure sets out the process for managing requests for disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings and should be read in conjunction with the TriX Children's Social Care procedures and the 'Protocol and Good Practice Model, 2013', provided by the Courts and Tribunals Judiciary and available on their website here <https://www.judiciary.uk/publications/protocol-good-practice-model-2013/>

Please read both sections as the guidance overlaps both forms of request.

Section A – Annex C. Requests from the Police for information from children's files.

- i) This procedure relates to:
 - (a) Data Protection Act 2018 Schedule 2 Part1 – Disclosure required for the:
 - i. prevention or detection of a crime,
 - ii. the apprehension of offenders
 - (b) 2013 Protocol for Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings
- ii) Common Law Duty of Confidentiality (CLDC)

Any Duty of Confidentiality **must be assessed on a case by case basis** and is not overridden by Data Protection Act 2018 and UK GDPR.

All staff working in the public sector should be aware that they are subject to a Common Law Duty of Confidentiality and must abide by this. The duty of confidence only applies to identifiable information i.e. where it is possible for anyone to link the information to a specified individual.

The legal obligation for confidentiality is one of common law, which means that it has developed through the courts making decisions in cases on legal points and creating binding precedents—in contrast to statutory law, which is determined by acts of parliament. This means as well, that it will change as case law evolves.

The so-called common law duty of confidentiality is complex: essentially it means that when someone shares personal information in confidence it must not be disclosed without some form of legal authority or justification. In practice this will often mean that the information cannot be disclosed without that person's explicit consent unless there is another valid legal basis. It is irrelevant whether the individual is young, old or has mental health issues or indeed lacks capacity: the duty still applies.

In order to override the duty, Common Law requires there to be a statutory requirement or a lawful basis for the use or disclosure of personal information that is held in confidence, for example:

- a) *A mandatory legal requirement or power* that enables the CLDC to be set aside, such as the Children Act 1989 which requires information to be shared in safeguarding cases, powers for Care Quality Commission inspections, reporting of food poisoning, reporting of infectious diseases such as measles, etc.
- b) *A court order*, where a judge has ordered that specific and relevant information must be provided, and to whom (or)
- c) *an overriding public interest*, where it is judged that the benefit of providing the information outweighs the rights to privacy for the patient concerned and the public good of maintaining trust in the confidentiality of the service (e.g., to protect others from harm, prevention or detection of a crime, the apprehension of offenders);
- d) explicit or implied *consent*.

In the instance of Annex C requests made by the Police it will generally be the case that the *overriding public interest* requirement will be applicable though in some circumstances a *court order* will have been made.

Making decision the decision to override CLDC can sometimes be a complex process. In difficult cases you should request advice and assistance from the Council's Data Protection Officer at dpo@bradford.gov.uk before making the decision. You should also clearly record the reasons for overruling the Duty of Confidence in the appropriate case recording format and authorisation should be given by Oliver Wiggins, the Single Point of Contact (SPOC) for Annex C & E requests.

- iii) Children's Executive Support (CES) shall process initial requests for Disclosure to the Police. Upon receipt of an Annex C application, the officer receiving will
 - (a) Check whether the child is a current or past Bradford Social Care Child.
 - i. If the request relates to Education records or EHCPs, applicants must be directed to the appropriate school and there will be no further involvement under this process.
 - ii. If the caseholding local authority is one other than CBMDC, the applicant must be directed to that local authority, even if records relate to a Bradford setting.
 - (b) Acknowledge the application by email
 - (c) Enter full initial details on the Annex C tracker spreadsheet (see below).
 - (d) Briefly inspect the case on LCS/EHM/Civica where this exists, and/or, make arrangements with Birksland archives for the digitisation of the case. Determining the size of the case in respect of the specific request will make it easier to optimise the allocation of a viewing time slot of the correct length.
- iv) Where a request relates to a child who is open to Children and Young People's Services or has been open within the last three months, the team manager will check whether there are

any court documents or other prohibited information. Examples of what is prohibited are noted below:

- (a) Legal advice which is confidential and may not be disclosed;
 - (b) Documents relating to Family Court proceedings.
- v) An Annex C form should accompany all requests for information from the Police where the request relates to a child who is or was at the time of the alleged offence under the age of 17. CES will ask the Police to provide a completed Annex C form before progressing the request.
- vi) If the Police state that they have the individual data subject's consent they must provide evidence of the person's signed authority to disclose the information. This may be in the format of a DP7 or DP9 form or another such document (See Glossary for further information on Annex C, DP7 and DP9).
- vii) As noted above about the Common Law Duty of Confidentiality (CLDC), consent from the person to whom the information relates (DP9) to share the information is not required if there is an overriding reason to provide the data. It is though, useful to seek at this point because it will be needed should the case go to trial and the Police need to request onwards disclosure. Relevant consent at this stage will reduce the risk of delay later on. The CES team will inform the Police of this requirement.
- viii) If in exceptional circumstances an Annex C cannot be provided by the Police at the time of the request, details of the reasons why must be obtained and the request referred to Oliver Wiggins, Programme Manager, Children's Performance & Quality Assurance, who will make a decision as to whether to release the information requested without an Annex C form.
- ix) Emailed Annex C applications will be forwarded to childrens.foi@bradford.gov.uk if they have not already arrived in this box. All email communications in respect of Annex C applications will be made from this mailbox and not that of individuals. This is to provide robustness and contingency if individual members of staff are unavailable and queries need to be resolved later on.
- x) All Annex C requests shall be logged promptly and fully on the Annex C tracker spreadsheet <\\bradford.gov.uk\datavault\cyp\FOI - Childrens\Annex C Requests Merged.xlsx>, and these shall be updated promptly once viewing dates are offered and accepted so that at any time, the state of play regarding any Annex C will be evident to any officer interrogating this tracker. In particular, the full name email and telephone contact details of reviewing officers will be obtained and recorded in case a viewing needs to be rearranged at short notice.
- xi) 'Fishing expeditions' are not allowed and requests should be specific about the type of information required, and include details such as charge sheets where available. The Annex C should provide sufficient information for CES to assess whether the request for Disclosure is necessary for the pursuit of reasonable lines of enquiry. The CPS describe 'reasonable lines of enquiry' as

In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances. For example, where material is held on computer, it is a matter for the investigator to decide which material on the computer it is reasonable to inquire into, and in what manner." Relevant material is defined (at para.2.1) as: "...it has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case".

- xii) CES will check with Business Support in Legal whether there have been any Family Court proceedings.
- xiii) **Documents relating to Family Court proceedings must not be included in the files to be examined by the Police. Information' relating to the proceedings' includes documents prepared for the purpose of the proceedings.**
- xiv) Where there have been Family Court proceedings the Police may be provided with a list (e.g. copy of a redacted court index) of the court documents without describing what it is. Also, the text or summary of a Judgement given in the Family Court proceedings can be included. These documents should only be provided with the agreement and oversight of Legal Services.
- xv) CBMDC will offer up to 2 different viewing dates to Applicants. If no response is received from the applicant within 10 calendar days of the second offer, the Annex C application will be closed by CBMDC. Pre-notice of this action will be contained in the second response.
- xvi) The Police will be provided with access to LCS, EHM and CIVICA as appropriate. Children's executive support staff will supervise this access in person, which will be provided using pool laptops and generic read-only account logins separate from those used by Bradford Council officers. CES staff will have oversight of the officer as they search the system and will ensure compliance with point ix) above. Required documents will be identified by the Police and sent to them electronically as.pdf files wherever possible. Paper copies should be avoided unless in exceptional circumstances.
- xvii) CES staff will upload both the Annex C application and the signed Confidentiality Agreement Form to the appropriate case file in LCS/EHM where the case exists on those systems. It will be uploaded into Documents with a Document Category of 'Annex C Request'.
- xviii) CES staff shall complete a Casenote on LCS/EHM where the case exists on these systems, with a Casenote Type of 'Annex C Request'. The Casenote will detail the date and time the file was viewed, the police officer reviewing the file and the CES staff member supervising them.
- xix) All Police Officers or others viewing a file under Annex C must first sign the Confidentiality Agreement (attached as an Appendix to this procedure) Where documents are provided to them, the Police will be reminded that they must not be used or shared without our further specific consent or court order.
- xx) CBMDC service standards for completing Annex C requests are that they are to be completed, with requested documents returned to the Police, within one calendar month of the original application.
- xxi) CES will notify the Corporate Information Governance team of the number of Annex C requests received in the previous calendar month. This report will be provided to them on the first working day of the next month.

Section B – Annex E: Annex E Requests are from the Police or CPS to share information contained in Council files to the Criminal Defence.

A request from the Police or CPS to share the material must be via an **Annex E** (see Glossary), which CES will forward to Oliver Wiggins for consideration.

- i) The appropriate Annex E form must accompany an Annex E application. It must list the documents required for Disclosure and the rationale for so disclosing them.
- ii) The application must also contain supporting case summary evidence from the Police and the pre-redacted copies of the documents for Disclosure to enable the Council officer assessing the Annex E application to make a rounded judgement about what is appropriate for Disclosure.
- iii) If Police or CPS state that they have the consent of the individual data subject then they must provide evidence of this on the required form (see Section A – Annex C guidance, (ii) – Common Law Duty of Confidentiality, above for further information on the need for consent).
- iv) Emailed Annex E applications will be forwarded to childrens.foi@bradford.gov.uk if they have not already arrived in this box. All email communications regarding Annex E applications will be made from this mailbox and not that of individuals. This will ensure robustness and contingency if individual staff members are unavailable and queries need to be resolved later on.
- v) Children's Executive Support (CES) shall process Annex E applications; upon receipt, the officer receiving will
 - a. Check whether the child is a current or past Bradford Social Care Child.
 - i. If the request relates to Education records or EHCPs, applicants must be directed to the appropriate school and there will be no further involvement under this process.
 - ii. If the caseholding local authority is one other than CBMDC, the applicant must be directed to that local authority, even if records relate to a Bradford setting.
 - b. Acknowledge the application immediately by email
 - c. Enter full initial details on the Annex C tracker spreadsheet (see below).
- vi) All Annex E requests received are to be logged promptly on the Annex E tracker spreadsheet <\\bradford.gov.uk\datavault\cyp\FOI - Childrens\Annex E 2020.xlsx>. All fields are to be fully completed and updated promptly as the application progresses so that the state of play regarding any Annex E will be evident to any officer interrogating this tracker. In particular, the full name, email and telephone contact details of the officer requesting the Annex E will be obtained and recorded in case a problem arises in fulfilling the Annex E request. The unique court reference number will also be used wherever possible to aid the identification of relevant paperwork.
- vii) Oliver Wiggins, or his appointed deputy, will review all Annex E applications and record their judgements on an Annex F form which shall be emailed to the Annex E Applicant.
- viii) The Annex E request (only, and not any police or court documents) will be uploaded to LCS/EHM if the relevant Person and Case exists on those systems. Where this is not yet the case, the Person must be created and linked to the relevant CIVICA documents and the Annex E attached to that Person once they have been created. A document category of 'Annex E CPIA request' will be used. A casenote of type 'Annex E request' will also be completed. The

applicant's name and the officer reviewing the Annex E will be entered, along with the date that the application was completed.

- ix) CBMDC service standards for the completion of Annex E requests are that they are to be completed, with Annex F form returned to the CPS, within 5 working days of the Annex E application being received in the childrens.foi@bradford.gov.uk mailbox.

Glossary of terms

Annex C - the request from the Police requesting sight of documents to help them investigating/prosecuting a crime.

Annex E - this is the form where the CPS have read the material and have identified key documents they need to release to the defence.

Annex F – this is the form where the local authority responds to an Annex E application and states its rationale as to whether the disclosure is agreed, agreed subject to editing, or not agreed.

DP7 - request for Disclosure signed by a police officer of the rank of Inspector or above.

DP9 - Consent form signed by the data subject agreeing to the release of their records to the Police concerning their complaint.

CONFIDENTIALITY AGREEMENT

Viewing and provision of content of Casefiles under the provisions of Annex C, CPIA

Interpretation

Confidential Information means all confidential information relating to the principal purposes for which collaborative working arrangements have been put in place under which the Individual has been granted access to Council premises, systems, or data

This includes information relating to the principal purposes which the Council, its officers or employees directly or indirectly discloses, or makes available, to the Individual before, on or after the date of this agreement. This includes:

- i. the fact that discussions and negotiations are taking place concerning matters connected to the principal purposes and the status of those discussions and negotiations.
- ii. the existence and terms of this agreement.
- iii. all confidential or proprietary information relating to:
- iv. the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the Council; and
- v. the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Council.
- vi. any information, findings, data, or analysis derived from Confidential Information.
- vii. any Shared Personal Data.
- viii. any other information that is identified as being of a confidential or proprietary nature

Information is not Confidential Information if:

- it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Individual in breach of this agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
- it was available to the Individual on a non-confidential basis prior to disclosure by the Council, its officers, or employees.
- it was, is, or becomes available to the Individual on a non-confidential basis from a person who, to the Individual, is not under any confidentiality obligation in respect of that information.
- it was lawfully in the possession of the Individual before the information was disclosed by the Council, its officers, or employees.
- it is developed by or for the Individual independently of the information disclosed by the Council; or
- the parties agree in writing that the information is not confidential.

Data Protection means all duties and obligations imposed on the Council as a data controller under the UK Data Protection Legislation. Personal Data and Sensitive Personal Data shall have the meaning set out in the said UK Data Protection Legislation.

UK Data Protection Legislation means the UK General Data Protection Regulation, Data Protection Act 2018 and all Regulations made under that legislation.

The Individual means the person named in this Agreement who has been granted access to the Council's premises, systems or data under the terms of collaborative working arrangements agreed between the Council and the Individual and/or the organisation which employs or otherwise engages the Individual to do work or provide services on their behalf.

The Agreement

1. It is recognised by the parties that by virtue of the purpose of the collaborative working arrangement in question or the location within which this work is done, that the Individual may be the recipient of disclosures of Confidential Information or information protected by UK Data Protection Legislation. Such may also occur indirectly because of work being carried out in the shared locations.
2. The Individual shall not, except in the proper course of his/her duties, as authorised or required by law or as authorised by the Council during the period of collaborative working or at any time after the termination of such arrangements:
 - i. use any Confidential Information or information protected by UK Data Protection Legislation; or
 - ii. make or use any copies of Confidential Information or information protected by UK Data Protection Legislation; or
 - iii. disclose or otherwise publish any Confidential Information or information protected by UK Data Protection Legislation to any person, company, or other organisation whatsoever.
3. The Individual shall at all times during the period of collaborative working endeavour to ensure that the Council as data controller as defined by UK Data Protection Legislation is able to meet its obligations as data controller and shall do nothing to undermine the Council's ability to discharge those obligations. Specifically, when dealing with personal data the Individual shall ensure that the said data is:
 - used fairly, lawfully, and transparently
 - used for specified, explicit purposes
 - used in a way that is adequate, relevant, and limited to only what is necessary
 - accurate and, where necessary, kept up to date
 - kept for no longer than is necessary
 - handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction, or damage
4. The Individual shall notify the Council without undue delay on becoming aware of any breach of the UK Data Protection Legislation and shall co-operate in the reporting of any personal data breaches.
5. The Individual may disclose Confidential Information to the minimum extent required by an order of any court of competent jurisdiction or any regulatory, judicial, governmental, or similar body or any taxation authority of competent jurisdiction.
6. Casefile information provided under Annex C may only be shared with the Crown Prosecution Service for the specific purpose of determining whether such information is required to be disclosed by the CPS to Court. If it is determined that such a disclosure is required, arrangements must be made for the CPS to make a separate Annex E application to the council as per the 2013 Protocol and Good Practice Model.

Signed by the Individual	
Print Name and provide collar number if a Police Officer	
Organisation	
Date:	
Signed by and on behalf of City of Bradford MDC	
Name:	
Position:	
Date:	