



SCOTTISH EXECUTIVE

Police and Community Safety
Police Division 2

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Identity No: Police Circular No: 4/2007

**Title: NOTIFIABLE OCCUPATIONS SCHEME AND THE
RELEASE OF SENSITIVE POLICE INFORMATION TO
THIRD PARTIES**

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Addressed to: Chief Constables

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Topic: Release of Information

Implementation: Immediate

Impact: Cancels and replaces Police Circular 4/1989

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Dear Chief Constable

Purpose of the Circular: To advise Scottish police forces of the cancellation of Police Circular 4/1989. To replace that Circular with guidance addressed to both police officers and support staff in relation to the release of information by Scottish police forces to third parties where a legitimate aim such as public safety, the prevention of disorder or crime, or the protection of the rights and freedoms of others makes the release of the information appropriate. The Association of Chief Police Officers in Scotland (ACPOS) has agreed to provide guidelines to forces to cover the handling of the release of information.

Summary of contents: The Circular suggests the framework that should underpin any consideration of the release of police information to third parties including the need for a risk assessment to be carried out in all cases and the need for decision-making to be documented.

Yours faithfully

ELIZABETH SADLER

NOTIFIABLE OCCUPATIONS SCHEME AND THE RELEASE OF SENSITIVE POLICE INFORMATION TO THIRD PARTIES

1 INTRODUCTION

1.1 Over the years, the police (in practice the Scottish Criminal Record Office (SCRO)) carried out criminal record checks for employment and other purposes. In addition (where possible) SCRO have notified certain employers and regulatory bodies of subsequent convictions. The most recent arrangements for both functions were set out in Police Circular 4/1989 which is now cancelled.

1.2 The arrangements for criminal record checks under Circular 4/1989 have been superseded by the introduction of the service provided by Disclosure Scotland under Part 5 of the Police Act 1997. Circumstances will, however, continue to arise where Scottish police forces might be asked by a third party for information about an individual. Instances may also arise where a police force receives information about an individual the nature of which would cause that force to consider sharing it with a third party.

1.3 This Circular sets out a framework around which police forces should put in place Force Instructions to handle the disclosure of sensitive personal information to third parties either at their own initiative or in response to a request. The Circular is addressed to both police officers and force support staff.

2 GENERAL

2.1 The supply of police information will continue to be governed by the principle that no information should be given to anyone, however responsible, unless there are important considerations of public interest which would justify a departure from the usual rules of confidentiality and the right of an individual to respect for his private and family life. There are, however, instances where departure from these factors would be justified. In all cases (that is both where information is disclosed and where it is not disclosed) Chief Constables must act in accordance with their common law duties of care, the common law of confidentiality and relevant statute law. Because of that, a risk assessment must be carried out and the decision-making documented in all cases and that includes assessing how the recipients of the information will use the information they receive. In all cases where information is released to a third party, the Chief Constable should remind the recipients of the legal restrictions on the use of this type of information.

2.2 This Circular, the terms of which have been agreed with ACPOS:

- (i) Cancels and replaces the existing guidance on the supply of police reports of convictions and related information contained in Police Circular No 4/1989;
- (ii) Takes account of the arrangements for the disclosure of information under Part 5 of the Police Act 1997;
- (iii) Covers those employed and volunteering in the private, public and voluntary sectors; it is not restricted to any particular sector of employment; and

(iv) Suggests a framework for Chief Constables to use when making decisions about whether or not to disclose relevant information, either voluntarily or as a result of a report received, where such information is in the public interest, for example, for the protection of vulnerable groups, or to prevent or detect crime.

2.3 This Circular is not concerned with the arrangements which exist for the supply of information to prosecutors, the security services, for national security checks or the arrangements for disclosure of information concerning sex offenders.

2.4 The identity of the person to whom the information relates might be difficult to determine in some instances. The responsibility for ensuring that data supplied about a subject is accurate rests with the organisation providing the information. This could mean that a police force will have to consult with another criminal justice organisation or a third party before any action is taken and also before any information is released. It might also be appropriate for the force to consult the Scottish Police Services Authority (SPSA) which from 1 April 2007 will take over responsibility for providing the criminal history system and/or Disclosure Scotland.

3 DISCLOSURE SCOTLAND

3.1 Scottish Ministers have the power under Part 5 of the Police Act 1997 (“the 1997 Act”) to supply information to individuals about their own criminal record or state that no such information is held. The day-to-day work to discharge Ministers’ functions is carried out by Disclosure Scotland. As such, Disclosure Scotland has taken over the previous arrangements for criminal record checks that were set out in Circular 4/1989. Disclosure Scotland does not, however, notify subsequent convictions. This work was done previously by SCRO but police forces will perform that task from now on. Lastly, other than is set out in the 1997 Act, Disclosure Scotland has no role to play in disclosing police information to third parties and this Circular gives guidance on how Chief Constables should approach that matter.

3.2 Disclosure Scotland offers three levels of check:

- Basic Disclosure (Criminal Conviction Certificate)
- Standard Disclosure (Criminal Record Certificate) and
- Enhanced Disclosure (Enhanced Criminal Record Certificate)

The Standard and Enhanced Disclosures are higher level disclosures. The Standard Disclosure is applicable to questions asked in circumstances covered by Schedule 3 of the *Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003* (as amended) and in relation to professions, offices, employments or occupations covered by Schedule 4 of that Order. To obtain an Enhanced Disclosure, the questions must also relate to particular prescribed positions, matters or individuals which are set out in regulations 9 to 12 of the *Police Act 1997 (Criminal Records)(Scotland) Regulations 2006*. For the Enhanced Disclosure, a Chief Constable can decide to include on the face of the Certificate non-conviction information if it might be relevant to the post being sought and ought to be included in the certificate. In addition, the Chief Constable can also release to a registered person non-conviction information which might be relevant, but which will not be shown on the face of the Certificate if that information ought not to be included in the certificate in the interests of the prevention or detection of crime and if it can, without harming those interests, be disclosed to the registered person.

4 DISCLOSURE OF SENSITIVE PERSONAL INFORMATION

4.1 In disclosing information, Chief Constables should have regard in particular to the implications of the:

- (i) Data Protection Act 1998,
- (ii) Human Rights Act 1998,
- (iii) Rehabilitation of Offenders Act 1974 and
- (iv) the common law duty of confidentiality.

The Human Rights Act 1998 enshrines in statute the principle of a person's right to respect for his or her private and family life. Any interference with that right must be reasonable, proportionate, in accordance with the law and in pursuit of one of the aims specified in Article 8 of the Convention. There is some case law about police disclosure of sensitive personal information (and that includes criminal history information). In *R v Chief Constable of North Wales Police, ex parte AB [1999] QB 396* the court supported a decision of the Chief Constable to release information to a third party before consulting the subject. The court added however that, where practical, consideration should be given to whether or not the subject should be given the opportunity to comment prior to the information being released. This latter issue arose in *M v Chief Constable Strathclyde Police, 2003 S.L.T. 1007* where the court ruled in favour of the Chief Constable who had released information about a pending case to a third party. Chief Constables are invited to take account of this and any subsequent case law during the risk assessment and decision-making process.

4.2 There may be various circumstances in which the service offered by Disclosure Scotland is not appropriate. For example, applications to Disclosure Scotland must be initiated by the individual to whom the completed Disclosure is issued, and the issue of the Certificate takes time. It is clear that the need to release information might be more urgent than can be achieved by a Disclosure application. Equally there might be cases when a Chief Constable has to consider releasing information without the subject's knowledge or consent. Such cases will however be rare and in the absence of an urgent duty of care, for example to vulnerable persons, or in circumstances in which seeking such consent might be impractical, procedural fairness requires that, in each instance of disclosure, proper consideration should be given to making individuals aware of the intention to release information about them to a third party and of the nature of that information.

4.3 In the course of their normal duties, the police may become aware that a person whose behaviour gives cause for concern is already employed or involved in an activity that is incompatible with that behaviour. The information could relate to any person and any type of employment or activity.

4.4 Chief Constables must retain the freedom to use their judgement about when to disclose information in the public interest to prevent harm and/or to prevent or detect crime. In all cases, the decision must be informed by a risk assessment to ensure the response is relevant and proportionate, and that it is the correct response.

4.5 In assessing whether or not to disclose information, the following considerations ought to be made:

- (i) Is the disclosure necessary? Are there important considerations of public interest to justify departure from the principle of confidentiality?
- (ii) Is the information to be disclosed relevant? This is an assessment of whether or not there is a clear reason to believe that the information might be relevant to an activity performed by an individual. For example, you could ask, does the information suggest that the person might pose a risk to the individual or group with which he or she will have contact?
- (iii) Is the infringement of someone's right to privacy justifiable on the grounds of proportionality and necessity? In other words, is the disclosure proportionate to the objective sought to be achieved by the proposed action? To that end, the objective must also have a legitimate aim such as public safety, the prevention of disorder or crime, or the protection of the rights and freedoms of others.
- (iv) Is the proposed disclosure non-discriminatory?
- (v) Has consideration been given to the risks posed to the subject of the disclosure? Should the subject of the information be approached before the police approach a third party?
- (vi) Considerations concerning the source of information are particularly relevant in cases where the information was given to the police in confidence. That person will have an expectation that information given to the police in confidence will be treated as such. Is there a risk to the source if the information is released to a third party?
- (vii) Give proper consideration to how the recipient of the information will react and how it will be handled. It might therefore be appropriate for the police to give guidance to the recipient, as a responsibility will be passed to any third party who receives information of this type. The police must therefore stress the sensitive handling and use of the information, the fact that the recipient is bound by the need to respect the rights of the subject of the information, that the information is passed in confidence and that it should not be disclosed further unless the recipient is satisfied that to do so would not break the law.

5 EMERGENCY CHECKS

5.1 On occasions (for example, the emergency fostering of children) a check on a person's criminal record may be needed urgently. In the past, such checks were carried out by SCRO. This practice is now seen as inappropriate as the information available to SCRO usually only details an individual's convictions. While the information held on the criminal history system might be relevant it is more likely that police forces will be able to identify local information which highlights the potential risks posed by the individual concerned. This information may take the form, for example, of an ongoing police investigation. SCRO are unlikely to have access to such detail. Police forces should therefore put in place the capacity to deal with requests for emergency checks.

5.2 This service should be restricted to Education, Health, Housing and Social Work Services. It is expected that the need for such checks will arise only in exceptional circumstances and where Disclosure Scotland is unable to meet the request in time. These checks must not be used to avoid using the process of obtaining Disclosures Certificates from Disclosure Scotland. They should be made in an approved written format by a senior official in the service concerned. The request should be directed to the nearest designated police station of the relevant force. On the basis of a risk assessment, and taking into account the factors mentioned at Paragraph 4 above, a decision should then be made about how to reply to the request and this should be documented. In all cases, whether or not information is released, the reply, also in an approved written format, must be sent to the official who made the request.

6 DISCLOSURE OF SUBSEQUENT CONVICTIONS

6.1 Previously, SCRO undertook the task of informing an employer or professional body about the subsequent conviction of a person employed in certain categories of work.

6.2 While SPSA is well placed to assist in this process, there is little doubt that police forces are best placed to judge the relevance of the conviction and to make an assessment about its possible disclosure.

6.3 For this reason, if a police force is aware of an individual's occupation or volunteering and it comes to the force's attention that the individual has been convicted, and that the conviction might have a bearing on the person's activities, an assessment of the risk posed by that person should be made. On the basis of that assessment, and taking into account the factors mentioned at Paragraph 4 above, a decision should then be made about whether or not notification should be made.

6.4 In all cases, forces should give consideration about whether or not to approach the subject first. That will allow the person the opportunity to consider their position with regard to the course of action proposed by the police.

6.5 If such an approach is felt not to be appropriate or does not work then forces should carry out the risk assessment before deciding whether to release the information to the person's employer, voluntary organisation or the relevant regulatory or professional body. The Annex to this Circular lists the regulatory or professional bodies to whom consideration of notification should be given. If cases occur elsewhere in the workforce it will fall to the Chief Constable for consideration in line with the guidance in this Circular.

6.6 The Scottish Executive will write to those listed in the Annex to this Circular once it is in force. In doing so, we will highlight that status of the Circular, namely that it is guidance and that responsibility for implementation will rest with Chief Constables.

7 PENDING CASES

7.1 The period of time between the beginning of a police investigation and the subsequent court disposal can vary. It is difficult to put a time scale on this. During that period, a police force may be put in the position of having to consider the disclosure of information. The presumption of innocence must not be forgotten and the decision-making process should take account of the guidance in Paragraph 4.5 above.

7.2 For that reason, forces must put in place a means of dealing with pending case information. For the purpose of the Circular, a pending case should be regarded as: a case the details of which have been entered in the criminal history system and which is the subject to a report to the procurator fiscal **OR** a case the details of which have been entered on the criminal history system and which may not yet have been the subject of a report to the procurator fiscal.

7.3 It is not possible to be prescriptive about the occupations, professions or posts which would be considered for pending case disclosure; work with vulnerable groups would be one example but that does not mean that other employment sectors should be excluded.

7.4 Again, it must be stressed that each case should be assessed on its merits, and that notification should not be restricted to particular spheres of activity. For example, people from all walks of life and background are involved in volunteer work with vulnerable groups.

8 IMPLICATIONS OF THE DISCLOSURE OF INFORMATION

8.1 The failure to observe the relevant legislation and principles of good practice could leave forces open to legal challenge. It is imperative, therefore, that police officers and force support staff who are responsible for making decisions about the release of sensitive personal information to a third party clearly understand the law and the good practice. They must also observe them in all cases where the disclosure of information is being considered.

Scottish Executive Justice Department
Police Division 2

June 2007

**POLICE FORCES SHOULD ENSURE THAT NOTIFICATIONS ARE MARKED
'CONFIDENTIAL'**

1. Teaching
 - Registrar
General Teaching Council (Scotland)
Clerwood House
96 Clermiston Road
Edinburgh
EH12 6UT
 - Director
Scottish Council of Independent Schools
21 Melville Street
Edinburgh
EH3 7PE
 - The Registrar of Independent Schools
Scottish Executive, Schools Directorate
2BN
Victoria Quay
Edinburgh
EH6 6QQ
2. Child Care
 - Chief Executive
Care Commission Headquarters
Compass House
11 Riverside Drive
Dundee
DD1 4NY
3. Social Work
 - Chief Executive
Scottish Social Services Council
Compass House
11 Riverside Drive
Dundee
DD1 4NY
4. Nursing
 - Chief Executive Officer
National Board for Nursing
Midwifery and Health Visiting
for Scotland
22 Queen Street
Edinburgh
EH2 1JX
5. Medical
 - The Registrar
General Medical Council (GMC)
178 Great Portland Street
London
W1W 5JE

6. Dental
The Registrar
British Dental Association
37 Wimpole Street
London
W1G 8DQ
7. Solicitors
The Senior Deputy Secretary
The Law Society of Scotland
26 Drumsheugh Gardens
EDINBURGH
EH3 7YR
8. Civil Service
Departmental Security Officer
Scottish Executive
H Spur
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD
9. Health Professionals Council
Health Professions Council
Park House
184 Kennington Park Road
London
SE11 4BU
10. Nuclear Power Industry
Head of Vetting
Office for Civil Nuclear Security
Room 3
Building 146
Harwell
Didcot
Oxfordshire
OX11 0RA
11. Royal Navy
Royal Naval Service Police
Headquarters (Eastern)
HMS Nelson
Queen Street
Portsmouth
PO1 3LR
12. British Army
Central Criminal Records and Intelligence
Office (CCRIO)
Royal Military Police
Building 106
Roussillon Barracks
Chichester
PO19 6BN

13. Royal Air Force
Criminal and Security Records Office
HQ RAF Provost and Security Services (UK)
RAF Henlow
Bedfordshire
SG16 6DN
14. Pharmacists
Chairman
Pharmaceutical Society of Great Britain
(Scottish Department)
36 York Place
Edinburgh
15. Psychologists
British Psychological Society
Memberships & Qualifications Directorate
Manager
48 Princess Road East
Leicester
LE1 7DR
16. Opticians / Optometrists
The Registrar
General Optical Council
41 Harley Street
London
W1G 8DJ
17. Osteopaths
The Registrar
General Osteopathic Council
176 Tower Bridge Road
London
SE1 3LU
18. Chiropractors
The Registrar
The General Chiropractic Council
44 Wicklow Street
London
19. Royal Mail
Royal Mail Corporate Security
Battersea Delivery Office
Floor 2A
202 Lavender Hill
London
SW11 1AA
20. Private Security Industry
Deputy Chief Officer
The Security Industry Authority
50 Broadway
London
SW1H 0SA

21. PSV PCV Drivers
Head of Section
Police Liaison Office
D7
DVLA
SWANSEA
22. Aviation Industry
Chief Security Adviser
Civil Action Authority
CAA House
45-59 Kingsway
Holborn
London
WC2B 6TE
23. Gaming
Gaming Board for Great Britain
Berkshire House
168-173 High Holborn
London
WC1V 7AA
24. Veterinary Surgeons
Head of Professional Conduct
The Royal College of Veterinary Surgeons
Belgravia House
62- 64 Horseferry Road
London
SW1P 2AF
25. BT
Personnel Security Vetting Manager
BT Security (Government)
ppA6F
BT Centre
81 Newgate Street
London
EC1A 7AJ
26. Driving Instructors
Charles Morton
Registrar of Approved Driving Instructors
Driving Standards Agency
Stanley House
56 Talbot Street
Nottingham
NG1 5GU