

## **Chapter 29: Redaction of Productions**

### **29.1 General Principles**

29.1.1 Prior to disclosing any production, considered to be material evidence, it must be checked and where appropriate redacted. Section 161 of the Criminal Justice and Licensing (Scotland) Act 2010 allows the prosecutor to redact information prior to disclosure. Non-disclosable information, namely that which does not meet the materiality test and therefore is information which is not likely to materially weaken or undermine the evidence that is likely to be led by the prosecutor; materially strengthen the defence case; or form part of the evidence to be led by the prosecutor in the proceedings against the accused, may be obscured by the prosecutor prior to disclosure.

29.1.2 The Crown may redact any production to obscure information of a confidential nature contained within the production, provided that the information redacted is not material.

29.1.3 Any such redaction of a production must be obvious on the face of the production. The relevant text should be blacked out. Under **no** circumstances should the text simply be deleted from the disclosable copy of the production so that the redaction is not apparent on the face of the production.

29.1.4 There are various types of information within a production that may require to be redacted. These are considered further below. However, the question of redaction must always be considered in light of and subject to the Crown's obligation of disclosure in terms of the materiality test outlined at paragraph 29.1.1 above.

29.1.5 In any case of doubt, staff should consult the appropriate legal manager.

29.1.6 Care must be taken to check the entirety of the production to ensure that only appropriate information is disclosed.

29.1.7 Where productions have been obtained from defence witnesses and these are being disclosed to the defence, the same principles of redaction apply.

### **29.2 Personal Details**

29.2.1 Before disclosing any production, any personal data that is not relevant to the case should be redacted.

29.2.2 If a production states the address of a witness it should be redacted if:

- (i) The witness is the victim of an offence of a sexual nature;
- (ii) Where the witness fears reprisals or intimidation;
- (iii) Where the witness is speaking to matters arising from his/her employment (such witnesses should be designated and cited at their places of employment); or
- (iv) The witness otherwise indicates that their address should not be disclosed.

### **29.3 Witness Telephone Numbers**

29.3.1 If these are present in a production they should always be redacted unless:

- (i) The information is already known to the accused, for example in a domestic matter; or
- (ii) It is essential to proving the charge.

#### **29.4 Witness Occupation & Place of Work**

29.4.1 If this is mentioned in a production it should not be redacted unless:

- (i) Redaction is considered necessary in order to ensure the safety of a witness, for example where the complainer is the victim of a housebreaking (thus the accused knows their address) and their occupation is a police officer, COPFS employee, prison officer etc.;
- (ii) Disclosure of the occupation may lead to the location of the workplace and that information is irrelevant to the offence.

29.4.2 Similarly, if the witness's place of work is mentioned in a production it should be redacted unless it is relevant to the offence.

#### **29.5 Witness Next of Kin/ Family History Details**

29.5.1 There is a presumption that this information should be redacted if contained in a production and should not be disclosed unless the defence advance a case that is based upon such features in any way.

#### **29.6 Witness Medical Information**

29.6.1 This should be redacted unless it is directly material to the case, for example where there are injuries sustained by a complainer in an assault case, or where it is relevant to explaining the behaviour of a witness.

29.6.2 Again, this position should be reviewed if the defence advance a case that is based upon such features in any way.

#### **29.7 Security Information**

29.7.1 Occasionally information in a production could potentially reveal security aspects of domestic or business premises. This information may be relevant to the crime but very often it is not and disclosure would be inappropriate.

29.7.2 Where such information is contained within a production, and is irrelevant, it should be redacted. For example, information on where a witness stores valuables or keys or dates on which a property will be empty.

#### **29.8 Operational Information**

29.8.1 A production may sometimes reveal information about an ongoing investigating agency operation which, if it were to be known to the accused, may prejudice that operation.

29.8.2 An example would be a production that disclosed what the accused had said to a witness about his/her involvement in the crime, e.g. his/her movements or his/her involvement with a production. It may be necessary, prior to redaction, to check with the Reporting Officer whether or not the line of enquiry that this

information may have produced has been completed or whether it would be necessary to consider withholding or redacting the production until such time as that has been done.

29.8.3 Another common example is where the investigating agency have been engaged in surveillance operations that implicate the accused but are not necessarily needed to prove the case against the accused. In those circumstances, the revelation of the existence of the details of the surveillance may prejudice a larger operation of which the case in point may only be a small part.

29.8.4 It is also relevant to consider whether or not disclosure of operational information might place a member of the public, who is not a witness, at risk, e.g. disclosure of an observation point in a member of the public's home.

29.8.5 If the information is not relevant to the case against the accused, then it is not disclosable under the test and the information may properly be redacted. If it is relevant to the case against the accused but does not fall within the Crown's obligation of disclosure (e.g. because any relevance which it might have would be wholly incriminatory of the accused), the Crown may redact the production to obscure that information. If there is any doubt about what information should be redacted the appropriate legal manager should be consulted.

29.8.6 If the information would fall to be disclosed in terms of the materiality test, the Crown has two options:-

- (i) to discontinue proceedings; or
- (ii) to seek a non-disclosure/non-notification/exclusion order as appropriate. Full guidance on these orders can be found in Chapter 25 of this Manual.

29.8.7 If the Crown is not prepared to discontinue proceedings, it is not entitled unilaterally to withhold the information from the defence. The question of whether the information is disclosable i.e. material can be ruled upon by the Court. However if the summary/solemn legal manager deems the information to be disclosable but considers that disclosure would not be in the public interest the matter should be referred initially to the Federation Head or the functional lead (High Court/Sheriff and Jury/Summary). Thereafter the matter should be reported to the Director of Serious Casework for the attention of Crown Counsel, with an appropriate recommendation, for a decision as to how the issue should be addressed.

## **29.9 Issues of Materiality and Admissibility**

29.9.1 Issues of materiality and admissibility should not be considered as part of the redaction process. Thus potentially irrelevant material such as hearsay evidence or statement of opinion should be disclosed unless there is any other reason to withhold or redact it. **In no case should information which is likely to materially weaken the Crown case or materially strengthen the defence case be redacted.**

## **29.10 Criminal History Records**

29.10.1 Care must be taken to check for references in a production to a witness's CHR. CHR information in a production must be redacted if it has been redacted in the copy of the witness's CHR, disclosed to the defence. **(Information on the redaction of Criminal History Records is in Chapter 19 of the Manual).**

## **29.11 Review of Decisions**

29.11.1 Any decision to redact information should be reviewed: (a) if the defence request access to the redacted information by way of a defence statement or otherwise; or (b) if it becomes apparent, in light of any new information or other developments in the case, that the appropriateness of the redaction should be revisited.

29.11.2 Any such review of a decision to redact information should be taken by the appropriate Legal Manager, depending on the type of case. If there is any doubt about what information should be redacted / disclosed, the matter should be reported to the Director of Serious Casework for Crown Counsel's instructions.

## **29.12 Compelling Reason Not to Disclose**

29.12.1 If a particular production contains material information, i.e. information which is likely to materially weaken or undermine the evidence that is likely to be led by the prosecutor; materially strengthen the defence case; or form part of the evidence to be led by the prosecutor in the proceedings against the accused, and there is a compelling reason why it should not be disclosed, the Crown has two options:-

(i) to discontinue proceedings; or

(ii) to seek a non-disclosure/non-notification/exclusion order as appropriate. Full guidance on these orders can be found in Chapter 25 of this Manual.

29.12.2 If the Crown is not prepared to discontinue proceedings, it is not entitled unilaterally to withhold the production from the defence. The question of whether the production is disclosable i.e. material can be ruled upon by the Court. However if the summary/solemn legal manager deems the production to be disclosable but considers that disclosure would not be in the public interest the matter should be referred initially to the Federation Head or the functional lead (High Court/Sheriff and Jury/Summary) . Thereafter the matter should be reported to the Director of Serious Casework for the attention of Crown Counsel with an appropriate recommendation, for a decision as to how the issue should be addressed.

## **29.13 Copies of Redacted Productions**

29.13.1 Where a statement has been redacted the case preparer should consider whether, due to the nature of the information being redacted, a copy of the redacted version is placed behind the full statement in the precognition. Full guidance is contained in Chapter 21.