

Chapter 32: Automatic Disclosure of Information

32.1 General Principles

32.1.1 The disclosure of material information in cases should be approached in line with the guidance within this manual and the Best Practice Guide for summary cases.

32.1.2 While some of the information that is submitted by the reporting agency must be carefully considered prior to disclosure (e.g. witness statements, criminal history records), certain categories of information can be disclosed automatically, i.e. without being considered first by a member of staff to confirm:

- (a) That the information should be disclosed,
- (b) Whether the information or any part of it is sensitive; or
- (c) Whether the information requires to be redacted prior to disclosure.

32.1.3 This chapter contains a guide on the information that **may** be automatically disclosed. **For the avoidance of doubt, if material is not listed here, decisions on whether or to what extent the material should be disclosed must be taken by a legal member of staff in summary cases or by the Case Preparer in solemn cases, in consultation (as needed) with the Solemn Legal Manager.**

32.1.4 This guidance is the maximum amount of information that can be subject to automatic disclosure. It is a matter for local discretion, however, whether the material listed here is considered prior to disclosure.

32.1.5 **Under no circumstances should any information ever be automatically disclosed to an unrepresented accused.** Further guidance in relation to a case where there is an unrepresented accused is contained in Chapter 23 of this Manual, in particular, at section 23.20.

32.2 Summary Cases

32.2.1 Guidance on various timelines and requirements for disclosure of evidence is contained in COPFS Best Practice Guide in Summary Cases. Disclosure of any of the information listed below at paragraph 32.4 and 32.5 is subject to the standards, timescales and procedures contained in that guidance.

32.3 Solemn Cases

32.3.1 It is anticipated that it is less likely that information will fall to be disclosed automatically in a solemn case. It is the responsibility of the solemn legal manager to ensure that staff comply with local guidance in relation to automatic disclosure in solemn cases. The examples listed below at paragraph 32.4 may be considered for automatic disclosure in accordance with local systems where solemn proceedings have been initiated.

32.4 Information Suitable for Automatic Disclosure

32.4.1 In general, and where appropriate according to the type of case, copies of the following information can be automatically disclosed to the defence where proceedings have been commenced against the relevant accused:

- Device print-outs in relation to contraventions of Section 5(1)(a) or (b) of the Road Traffic Act 1988 ('drink driving' or 'drunk in charge' cases) – although

this only needs to be disclosed/served where the accused/defence did not accept service of a copy of the print-out from the investigating agency at the time of the procedure;

- Drink driving forms (Forms 4:8:1 and 4:8:2);
- Tachograph Charts;
- Certificates of analysis of blood and urine for drugs and alcohol and related doctor's certificates;
- Identification parade forms (**note:** VIPER DVDs must not be copied and disclosed);
- Arrest forms;
- Detention forms (both parts A & B);
- Voluntary Attendance Forms;
- Video operator's certificate (Section 283 Certificate) in relation to video/digital evidence;
- Certificates of accuracy in speeding cases and other related documentation including photos and videos/DVDs;
- Investigating agency interview tapes/DVDs – the tapes/DVDs of an accused's interview can be automatically disclosed to that accused/defence only. *Where it relates to a person who is now a witness or a co-accused, the tape must be considered by a legal member of staff prior to disclosure as there may be redaction considerations that must be taken into account;*
- Transcripts of investigating agency interviews – again only where they relate to accused persons against whom proceedings have been taken;

32.4.2 For the avoidance of doubt, **information listed above should only be disclosed automatically to a defence agent if it relates to the accused whom they are representing**. Where the information relates to a witness or an accused who was not proceeded against it must be considered by a legal member of staff or the Case Preparer in consultation with the Solemn Legal Manager in order to determine whether it meets the disclosure test.

32.5 Additional Information suitable for Automatic Disclosure in Summary Cases

32.5.1 In addition to the information listed at 32.4 above, search warrants relating to the premises for which proceedings are being taken can be automatically disclosed in summary proceedings.

32.5.2 Where the investigating agency provides details of any other search warrant that is relevant to the proceedings, then a legal member of staff **must** consider the search warrant and consider whether it should be disclosed to the defence in terms of the materiality test, namely information which:-

- Would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused,
- Would materially strengthen the accused's case, or
- Is likely to form part of the evidence to be led by the prosecutor

32.6 CCTV/ Video/DVD Evidence

32.6.1 CCTV, video and DVD evidence should **never** be disclosed automatically and **must always** be considered by a legal member of staff or the case preparer to determine whether:

- (a) It should be disclosed; and
- (b) To what extent, (where only certain parts of the CCTV etc. evidence is *material*, then only that part of it should be disclosed);

32.6.2 It is essential that, in order to comply with the data protection principles and the article 8 rights of individuals, only relevant and material CCTV etc footage is disclosed.

32.7 Witness Statements and Criminal History Records

32.7.1 Witness statements should never be disclosed without being checked. The only exception to this rule is where the case is being prosecuted summarily and there are only police witnesses involved in the case.

32.7.2 Where the case is proceeding summarily and there are civilian witnesses, a member of staff (legal or administrative) should consider the statements prior to disclosure to ensure that there is no sensitive/personal information that should be redacted in terms of Chapter 15 of this Manual.

32.7.3 Where the case is proceeding under solemn procedures all statements must be considered by a legal member of staff, usually the solemn legal manager to ensure that there is no sensitive/personal information that should be redacted in terms of Chapter 15 of the Manual.

32.7.4 There is further detailed guidance about disclosure of statements and Criminal History Records in Chapters 13 - 20 of this Manual.

32.7.5 Similarly, criminal history records must never be disclosed automatically. Where the case is proceeding summarily, a member of staff (legal or an experienced member of administrative staff who has attended the Disclosure Training) should consider the criminal history record prior to disclosure to ensure that all immaterial convictions/pending cases are appropriately redacted.

32.7.6 In all High Court cases, the Case Preparer, in consultation with the legal manager, should consider the record and make recommendations in the Disclosure Page of the precognition as to what information should be disclosed. Disclosure should then be carried out in terms of Crown Counsel's instructions at the stage the indictment is served.

32.7.7 In all Sheriff and Jury cases, the Case Preparer, in consultation with the legal manager, should seek Crown Counsel's instructions in the Disclosure Page of the precognition where you are seeking to withhold material information. Disclosure should then be carried out in terms of Crown Counsel's instructions at the stage the indictment is served.

32.7.8 In any case where there is a serious issue or concern surrounding disclosure then a report should be submitted to Crown Counsel seeking instructions in relation to this before disclosure is made.