

Lord Advocate's Code of Practice on Disclosure of Evidence in Criminal Proceedings – DRAFT

25 Sept 2026

Introduction

1. This Code of Practice sets out the principles, standards, and procedures that govern the disclosure of evidence in criminal proceedings in Scotland. It is intended to be a practical resource for those involved in the investigation and prosecution of crime, and to assist other criminal justice practitioners and the public in understanding how disclosure works.
2. The Code is issued under Section 164 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#) (the 2010 Act). **investigating agencies** (Police Scotland and specialist reporting agencies) and **prosecutors** must have regard to the Code when exercising their functions.
3. **disclosure** is a fundamental element of a fair trial. It ensures that the **accused** is informed of the case against them and has access to information that may assist their defence. It also reflects the prosecutor's duty to take decisions fairly and in the interests of justice, rather than from a purely adversarial perspective.
4. Effective disclosure is not achieved by sharing all available information, nor by mere compliance with process. It requires investigators and prosecutors to identify, assess, and take decisions on the recording, processing, and sharing of information about a case on an ongoing basis. This includes information that may support the prosecution case and information that may assist the **accused**.
5. Investigating agencies and prosecutors are committed to trauma-informed practice. In carrying out their revelation and disclosure duties, they should seek to minimise unnecessary distress and intrusion for those affected by crime, while ensuring that all reasonable lines of enquiry are pursued and legal obligations are fulfilled.

6. Though not bound by this Code, the accused's legal representatives also play an integral role in ensuring effective disclosure. They, like the prosecutor, have a duty to seek the agreement of evidence that is unlikely to be disputed.¹ The exercise of that duty is supported by the early disclosure of information.
7. A defence statement must be submitted in solemn cases. It must set out the nature of the accused's defence.² This assists the prosecutor in their ongoing duty to review any undisclosed material. The accused's legal representative may also use the defence statement to seek further disclosure by setting out any further information sought, and why such disclosure is necessary.³ The defence statement is therefore a vital element of effective disclosure in solemn cases.
8. The accused's legal representatives are bound by the law in terms of the confidentiality of any disclosed information. They may only use, or disclose onwards, the information that has been disclosed to them if it is for the proper preparation and presentation of the accused's case.⁴
9. Details of the definitions of the terminology used in this code are included in Annex B.

Convention and Data Protection Rights

10. In addition to setting out the legal framework for disclosure under [the 2010 Act](#), this Code reflects investigators' and prosecutors' legal obligations under the European Convention on Human Rights (ECHR) and the Human Rights Act 1998, including the right to a fair trial ([Article 6](#)) and the right to privacy ([Article 8](#)).
11. The Code also reflects the requirements of the [Data Protection Act 2018](#). While accused persons have a right to a fair trial, witnesses do not forego their right to privacy by making a complaint against an accused or by participating in criminal proceedings. Excessive and unnecessary sharing of irrelevant private information in the context of disclosure is potentially unlawful and risks undermining confidence in the criminal justice system.

¹ Section 257 [Criminal Procedure \(Scotland\) Act 1995](#)

² Section 70A [Criminal Procedure \(Scotland\) Act 1995](#)

³ Section 128 [Criminal Justice and Licensing \(Scotland\) Act 2010](#)

⁴ Section 162 [Criminal Justice and Licensing \(Scotland\) Act 2010](#)

12. Private personal information should only be collected and processed when this is strictly necessary for a law enforcement purpose. Investigators and prosecutors must always consider if there is a less intrusive means of obtaining or presenting the required information.
13. Early sharing of information by prosecutors with the defence prior to the accused's first appearance in court (which is not covered by the 2010 Act) will also be justified where it is necessary to facilitate the early resolution of cases, including the early agreement of evidence and identification of issues in dispute.
14. A failure to comply with this Code may result in a miscarriage of justice.

Standards

Primary duty

15. The primary duty of investigating agencies under the Criminal Justice and Licensing (Scotland) Act 2010 is to tell prosecutors about the existence of information that may be relevant to the case for or against the accused and thereafter, if requested to do so, provide that information (sections 117 -119). Investigators should avoid routinely submitting all relevant material without prior request, and instead ensure that its existence is clearly and accurately revealed.
16. The primary duty of prosecutors is to disclose to the accused information which meets **The materiality test**, i.e. it is information which:
 - (a) would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused,
 - (b) would materially strengthen the accused's case, or
 - (c) is likely to form part of the evidence to be led by the prosecutor in the proceedings against the accused.

Standards

To ensure that these duties can be complied with consistently and in line with their wider [Convention and Data Protection obligations](#), investigating agencies and prosecutors must meet the following standards:

Standard 1 - Investigate

Investigating agencies must pursue all reasonable lines of enquiry that may assist in establishing the guilt or innocence of an accused person, ensuring that the investigation is carried out to the extent that is necessary and proportionate.

Prosecutors have an obligation to ensure that all reasonable lines of enquiry are pursued and may instruct investigators to carry out further lines of enquiry.

Standard 2 - Assess

Investigating agencies must assess:

- the relevancy of the information they have gathered,
- whether it should be recorded on a disclosure schedule (and which schedule)
- whether there is manifestly irrelevant information which should not be shared.

Prosecutors must assess:

- whether the information provided meets the materiality test,
- in solemn cases whether it is recorded on the appropriate schedule,
- whether there is any irrelevant sensitive information which requires to be redacted before it is disclosed.

Standard 3 - Record

Investigating agencies and prosecutors must provide a clear audit trail of decisions taken and the rationale for those decisions. Details of information shared with prosecutors and the defence must be accurately recorded.

Standard 4 - Timeliness

Specific deadlines apply under the 2010 Act for the revelation and disclosure of information, but broadly:

- Investigating agencies must inform the Crown of the existence of relevant evidence when the case is reported

- Prosecutors must disclose material information at the outset of proceedings (and in some cases before proceedings commence).

Standard 5 - Review

The duty of disclosure is ongoing, and disclosure decisions must be kept under review in light of new evidence or lines of enquiry.

Standard 1 - Investigate

Investigating agencies must pursue all reasonable lines of enquiry that may assist in establishing the guilt or innocence of an accused person, ensuring that the investigation is carried out to the extent that is necessary and proportionate.

Prosecutors have an obligation to ensure that all reasonable lines of enquiry are pursued and may instruct investigators to carry out further lines of enquiry.

Reasonable lines of enquiry

17. Investigators must identify and pursue all reasonable lines of enquiry, including those that may exculpate the accused.
18. A line of enquiry is reasonable where it may yield relevant information.
19. What constitutes a reasonable line of enquiry depends on the facts and circumstances of the case, however it should always be capable of being justified.
20. Speculative, unfocused enquiries or fishing expeditions are not reasonable lines of enquiry.
21. Prosecutors must take necessary and proportionate steps in pursuing reasonable lines of enquiry.
22. Defence representations may inform what is reasonable, but there is no duty on the Crown to undertake a list of speculative enquiries.
23. Decisions about what is necessary to pursue a reasonable line of enquiry may be reconsidered at any stage in proceedings.

Investigators

24. Investigators must actively consider all lines of enquiry that may support or undermine the case, including those that point away from the accused. This includes, but is not limited to, alibi information, alternative suspects, digital or

CCTV evidence, forensic results, background interactions, and material held by other agencies.

25. Investigators must not overlook or disregard **exculpatory information**, including:
 - indications that no crime occurred, or occurred at a different time or place;
 - evidence contradicting a Crown witness or undermining credibility or reliability;
 - scientific or expert evidence inconsistent with the Crown's position;
 - information pointing to another person;
 - material reducing the seriousness of the alleged offence.
26. Investigators must maintain clear records of lines of enquiry identified, those pursued or not pursued, and the reasons for those decisions.
27. There is no requirement to obtain a complainant's mobile phone (and/or extract information from it) in every case. A decision on whether to do so must be recorded.

Witness previous convictions

28. It is always a reasonable line of enquiry to obtain the previous convictions of Crown witnesses. Police must provide prosecutors with relevant UK criminal history information. When notified that the defence intends to call a witness, investigators must supply that individual's criminal history on request. Prosecutors must disclose this if it is material.

Prosecutors

29. Prosecutors have an obligation to ensure that all reasonable lines of enquiry are pursued and accordingly, may instruct investigating agencies to carry out particular lines of enquiry where this has not already been identified.
30. In particular, prosecutors should consider whether the defence position, and, where relevant, the [defence statement](#), necessitates the instruction of new lines of enquiry.

Standard 2 - Assess

Investigating agencies must assess: (i) the relevancy of the information they have gathered, (ii) whether it should be recorded on a disclosure schedule (and which schedule) and (iii) whether there is manifestly irrelevant information which should not be shared.

Prosecutors must assess: (i) whether the information provided meets the materiality test, (ii) in solemn cases, whether it is recorded on the appropriate schedule, and (iii) whether there is any irrelevant sensitive information which requires to be redacted before it is disclosed.

Investigators

The duty of revelation

31. Investigators must reveal the existence (and in solemn cases the details) of information which may be relevant to prosecutors and provide the underlying material when requested.
32. Failure to reveal the existence or details of information which may be relevant should be considered as a significant breach of professional obligations of the investigating agency. Similarly, so is the provision of large amounts of irrelevant information.

The relevancy test

33. Investigators must only provide information to prosecutors where they consider that it meets the relevancy test:

‘Relevant’ means any information that appears to an investigator to have some bearing on the offence or offences under investigation, or any person being investigated or on the surrounding circumstances, unless it is incapable of having any impact on the case.

34. Although the definition of relevance is broad, investigators must exercise a power of selection.

35. Investigators must not simply hand over everything they have seized without considering its relevance. Prior to submission, investigating agencies must review the information seized and assess its relevancy.

36. They should extract the relevant information and submit only that to prosecutors. Revelation must not take the form of an unstructured or indiscriminate provision of material (“data dumps”). Information should be organised, described, and presented in a way that enables the prosecutor to understand its relevance to the case.

37. Sharing manifestly irrelevant information is likely to complicate and delay proceedings, and breach the investigating agency’s own data protection and Article 8 obligations.

38. Where relevance is uncertain, investigators may reveal the existence of the information but must be able to justify the decision.

39. Investigators must retain a record of information ingathered but not considered relevant.

40. Internal communications between investigators and prosecutors are not evidential material and should not be included on disclosure schedules. However, if such a communication contains information meeting the relevancy test, investigators must reveal it to prosecutors and include it in the schedules so that materiality can be assessed. Where an internal communication contains material information not recorded elsewhere, it must be listed on the appropriate schedule with a short summary explaining the potentially exculpatory content.

41. Relevance assessments must be kept under review, including in light of any defence statement.

Examples of relevant information

42. Examples of relevant information include, but are not limited to:
- all witness statements,
 - witnesses' criminal history,
 - police misconduct findings,
 - forensic results (including negative or mixed outcomes),
 - all material relating to identification of the accused, and
 - any information suggesting a witness may have given inaccurate or false accounts.

This list is illustrative rather than exhaustive.

Prosecutors

The materiality test

43. Prosecutors must only share information with the defence that meets the “materiality test”:

Information will be material if:

- (a) It would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused;
- (b) It would materially strengthen the accused's case; or
- (c) The information is likely to form part of the evidence to be led by the prosecutor in the proceedings against the accused. (Section 121 of the Criminal Proceedings (Scotland) Act 2010)

44. All material information is relevant, but not all relevant information is material.
45. Where materiality is uncertain, prosecutors should err in favour of disclosure and must be able to justify their decision. Before disclosing, however,

consideration should be given to whether any information engages public interest immunity, requires a non-disclosure order or is otherwise subject to a legal basis for withholding disclosure. Depending on the nature of the information, it may be necessary to obtain approval from senior prosecutors.

Examples of material information

46. Examples include (but are not limited to):
- a) Information that undermines the Crown case
 - b) Information that supports or strengthens the defence case
 - c) Information the Crown intends to lead as evidence

Witness statements

47. The Crown must routinely and proactively provide the defence with copies of all witness statements for anyone who may be called at trial by the prosecution, and this includes every witness statement where multiple statements have been taken.

48. While the Crown is not required to create a statement where none exists, it must make existing statements from listed witnesses available, either by providing a copy or allowing the defence to inspect it. Before any statement is shared, personal and sensitive information must be appropriately redacted, with those redactions clearly visible.
49. Statements from witnesses not on the witness list may also need to be disclosed if they contain material information, e.g., which would support the accused's case.
50. The existence of private information in a statement, e.g. medical information, does not mean it needs to be on a sensitive schedule.

Neutral information

51. Neither neutral information, nor inculpatory information which does not form part of the Crown case, needs to be disclosed.

Sensitive and highly sensitive information

52. Investigators and prosecutors must handle all evidence, particularly sensitive and highly sensitive information, with care.
53. Sensitive material in this context refers to information that must be recorded and reviewed but requires restricted handling because its disclosure, if compromised, would risk:
- causing serious injury, or death, to any person,
 - obstructing or preventing the prevention, detection, investigation or prosecution of crime; or
 - causing serious prejudice to the public interest.
54. Investigators and prosecutors must store such information securely, limit access strictly to those with a clear operational need.
55. This category of material is formally managed through dedicated sensitive schedules to ensure it is identified, controlled, and reviewed appropriately. The sensitive schedule(s) will not be disclosed to the defence, but depending on the nature of the information, items listed within it may be.

56. The definition of sensitive material is different from the definition of “sensitive processing” under the Data Protection Act 2018, i.e. the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership; genetic data or biometric data, for the purpose of uniquely identifying an individual health data or data concerning sex life or sexual orientation, data concerning an individual’s change in gender.

57. These categories are often referred to as “sensitive personal” information and must be processed only where strictly necessary to do so. Where there is a

requirement to reveal or disclose this type of information, it will naturally be considered as strictly necessary. Care must be taken to ensure irrelevant or immaterial information is not disclosed where it is not strictly necessary to do so.

58. **highly sensitive** information is sensitive information which, if compromised, is likely to:
- a) Lead directly to the loss of life;
 - b) Directly threaten national security; or
 - c) Lead to the exposure of a **CHIS**
59. These will only be revealed to staff within COPFS with the appropriate security clearance level. The highly sensitive schedule(s) will not be disclosed to the defence, though depending on the nature of the information, items listed within it may be.
60. Where a disclosure issue involves UK-held national security or sensitive public-interest material, COPFS may need to liaise with the appropriate UK department on a case-by-case basis, typically via departmental legal advisers within the Scottish Government Legal Department.

Investigators

61. Investigators must identify and clearly Standard **3 - Record** which category the information falls into as soon as it is encountered.
62. On any disclosure schedule, investigators must explain why material has been categorised as sensitive or highly sensitive.

Prosecutors

63. Prosecutors must assess whether the information provided to them is sensitive or highly sensitive.

64. If information of a sensitive or highly sensitive nature meets the materiality test it cannot be withheld from the accused.
65. The only options available to the prosecutors where this information is present is to:
- disclose the information, notwithstanding the prejudice to the public interest,
 - not use the information at trial (where the information is not information that might weaken the Crown case or strengthen the defence case), or
 - discontinue the prosecution.
66. Where sensitive or highly sensitive evidence meets the materiality test, prosecutors must determine the appropriate course of action, in line with COPFS policy and with senior approval where required.

Non- provision and removal of irrelevant or immaterial information

67. Investigators and prosecutors do not fulfil their disclosure obligations by providing everything that is ingathered or provided to them. Particularly in the context of digital evidence, there is the potential for a large amount of collateral evidence which is irrelevant and sharing of which will not be justified. Investigators must assess all evidence for relevance before passing it to prosecutors, and prosecutors must assess all evidence for materiality before it is disclosed.

Investigators

68. Manifestly irrelevant information should not be provided and should be removed by the investigating agency.
69. Where it cannot be removed, its presence, particularly if it is private personal information, must be highlighted by the investigating agency.
70. The original source of the information should be retained.
71. The Lord Advocate's Guidelines on Body Worn Video are the primary source of direction for the use of Body Worn Video (BWV) footage.

72. BWV footage can be an essential part of a prosecution: providing a rich source of real evidence including exculpatory evidence, but it can also capture a large amount of information which is (i) not relevant to the case, or (ii) which whilst relevant and which prosecutors should be told about, does not need to be submitted unless and until requested. There is a risk that officers could make the processes of revelation and disclosure more complicated and time-consuming, if for example, hours of footage are indiscriminately provided.
73. Whenever footage is provided to the prosecutor, officers must clip any footage provided to remove any irrelevant footage, for example:
- pre incident arrival at scene footage, particularly if it includes personal discussions, radio exchange about unrelated incidents.
 - footage relating to other unrelated incidents
 - post incident footage
 - victim welfare information (not relevant to the case)
 - reference to addresses which are not relevant to the offence
74. An example would be if the accused makes an admission in a reply to caution and charge. The clip of that footage should include the caution and charge, the reply and the immediate events leading up to this. The footage of the transfer to the police station and the custody procedures is not required if there is nothing else of evidential significance within that footage.

Prosecutors

75. Prosecutors are entitled to redact information prior to disclosure in terms of [section 161 of the 2010 Act](#) . Redactions must be visible.
76. Prosecutors may redact any witness statement or production to obscure information of a non-disclosable and private/ confidential nature. Information will be non-disclosable where it does not meet the [materiality test](#).

Standard 3 - Record

Investigating agencies and prosecutors must provide a clear audit trail of decisions taken and the rationale for those decisions. Details of information shared with prosecutors and the defence must be accurately recorded.

- 77. Both investigators and prosecutors must maintain a clear audit trail that records the decisions taken, the reasons for them, and any subsequent changes. The reasoning need not be lengthy, but must allow the decision to be justified and reviewed. This supports compliance with ss.117–121 of the 2010 Act.
- 78. All information contained in case-related correspondence received by COPFS must be recorded in the relevant case directory, brought to the attention of the appropriate case preparation team, and considered in relation to materiality.
- 79. Records must allow later review of relevance and materiality decisions.

Investigators

Decisions

- 80. Investigators must record all decisions made during the investigation, including lines of enquiry pursued or not pursued and the reasons for each decision.

Provision of information

- 81. The details of relevant information must be accurately recorded and provided to prosecutors (s.117(2) (solemn) and 118(2) summary) of the 2010 Act).

Summary proceedings

- 82. In **Summary** cases, the primary mechanism for revealing the existence of information to prosecutors is the **Standard Prosecution Report (SPR)**.
- 83. The “summary of events” section (which is automatically disclosed to the defence subject to necessary redactions) should provide a concise account of

events, identify all relevant witnesses and evidence, and incorporate any known exculpatory material.

84. Relevant confidential information must also be included within the SPR where required.

Solemn proceedings

85. Where a case proceeds solemnly, investigators must prepare schedules of information that may be relevant (ss.117–123, 2010 Act)
86. Each item must be categorised as non-sensitive, sensitive, or highly sensitive and include a brief reason for the assessment.
87. Schedules must be updated when new information is obtained or earlier assessments change

Rolled-up cases

88. In consolidated/rolled-up cases, investigators must ensure that all relevant information is submitted under the lead case reference once notified by prosecutors.
89. Investigators must provide prosecutors with the full record of relevance assessments and schedules

Prosecutors

Decisions

90. Prosecutors must keep a clear record of all materiality assessments and disclosure decisions, noting why information is or is not material and any public interest considerations affecting disclosure.
91. Prosecutors must similarly record instructions to investigators, particularly where further enquiries are required (or not) or where earlier relevance decisions should be revisited.

Summary proceedings

92. In summary proceedings, prosecutors must ensure that information received from investigators, including evidence provided under [Summary Case Management](#) arrangements, is reviewed promptly and disclosed via the **Defence Agent Service (DAS)**.

Solemn proceedings

93. In solemn cases, prosecutors must review each schedule entry for materiality and record their assessment. Schedules must be kept accurate throughout the case.
94. Where cases are rolled up, prosecutors must reconcile all entries from the contributing cases into a single set of schedules and check whether previously disclosed material remains adequate.
95. When a **defence statement** is received, prosecutors must reassess disclosure decisions, give instructions as required, and record any changes.
96. Where a defence statement is inadequate, this should be recorded and, if required, drawn to the court's attention.
97. Prosecutors must record decisions relating to examination or disclosure of digital devices.
98. Where disclosure is withheld on public interest grounds, prosecutors must document the basis for that decision.

Views of the child

99. Where investigating agencies or prosecutors obtain and take into account the views and best interests of a child witness or accused, this should be clearly recorded, along with details of any relevant discussions with other agencies, the child's representatives, or the child themselves.
100. Any new information provided to the investigator or prosecutor must be considered for revelation or disclosure.

Standard 4 - Timeliness

Specific deadlines apply under the 2010 Act for the revelation and disclosure of information, but more broadly:

- Investigating agencies must pass details of relevant evidence to the Crown when the case is reported
- Prosecutors must disclose material information at the outset of proceedings (and in some cases before proceedings commence).

Investigators

101. Investigators must provide all relevant information to the Crown as soon as it is obtained, enabling early assessment and disclosure. This includes evidential items, statements, forensic results, and updates on outstanding enquiries, all supplied promptly and with clear explanations where delay is unavoidable.

Legislative deadlines

102. The 2010 Act requires that investigating agencies provide the prosecutor with details of all information that may be relevant as soon as practicable after the accused's first appearance in court.
103. If prosecutors require the underlying material, investigators must provide it as soon as practicable (Section 117 of the 2010 Act)
104. After first appearance (solemn) or plea of not guilty (summary), prosecutors must review relevant information and disclose material information as soon as practicable (s.121, 2010 Act)

Sharing before the accused enters a plea

105. Early sharing of information by prosecutors with the defence, prior to the accused's first appearance in court, will be justified where it is strictly necessary to facilitate the early resolution of cases, including the early agreement of evidence and identification of issues in dispute.

106. In assessing this, prosecutors should consider whether disclosure at this stage is likely to meaningfully support early resolution. They must assess whether the information will genuinely advance case progression more effectively now than at the first calling and weigh this against any sensitivity or proportionality concerns.

Agreed deadlines

Disclosure schedule submission

107. Disclosure schedules should be submitted within 21 days after committal for further examination unless the scale of the case renders this impractical.

Additional schedules must be submitted:

- 14 days before the case is reported to Crown Office;
- 14 days before the preliminary hearing or first diet;
- 14 days before the trial diet or sitting; and
- As soon as reasonably practicable thereafter where additional information is identified after that date.

Method and form of disclosure

108. Prosecutors may disclose information by any lawful means (s.160(2), 2010 Act). The Crown satisfies its obligation by providing the material information, even if not the document or item from which that information is derived.
109. Statements for witnesses to be called at trial must be provided in statement form.
110. Prosecutors may disclose by providing access or copies. Investigators must not grant access without prosecutor instruction.
111. Prosecutors should consider what conditions may be applied to the viewing of evidence, including digital material, to prevent unnecessary intrusion into private or unrelated information.
112. The Crown's disclosure obligations apply equally to represented and unrepresented accused. For digital devices in particular, prosecutors may meet

their duties by giving unrepresented accused supervised access to relevant extracted material.

Standard 5 - Review

The duty of disclosure is ongoing, and disclosure decisions must be kept under review in light of new evidence or lines of enquiry.

Investigators

113. Investigators must keep relevance assessments and disclosure decisions under review and reassess them when new information arises, for example:

- defence positions or defence statements
- new or revised witness evidence
- forensic or digital results
- changes to charges or locus
- new information from third parties
- instructions from prosecutors

114. Where previously irrelevant information may now be relevant, investigators must record the reassessment and reveal the information promptly. Investigators must complete outstanding enquiries, review whether new enquiries are required, and act on instructions from prosecutors. Investigators must maintain accurate records to support review of disclosure decisions.

Prosecutors

115. Prosecutors must regularly reassess disclosure decisions, particularly following a defence statement

116. Prosecutors must review and disclose any new material information they identify (s. 123 (2) of the 2010 Act).

117. Information may be disclosable even where the document containing it is inadmissible (e.g. information obtained during a **precognition**).

118. Materiality may change as a case develops.

Appeals

119. On appeal, prosecutors must review disclosure where:

- new material information emerges;
- previously undisclosed information is identified;
- information becomes material due to the grounds of appeal; or
- material that should have been disclosed at trial is identified.

120. Where new information emerges and it is unclear whether it is material, prosecutors should generally err on the side of disclosure.

121. The Crown must always be able to demonstrate that disclosure decisions have been reviewed conscientiously and with reference to the specific grounds of appeal.

122. Materiality must be assessed in light of the issues raised on appeal

Disclosure obligations where no appeal has been lodged

123. After conviction, prosecutors must review earlier disclosure decisions where new material information emerges or material information that should have been disclosed is identified.

Annex A – Roles and responsibilities

Role	Who/where	Core responsibilities (revelation & disclosure)	Key points on timing
Investigators	Police Scotland / other	• Record, retain, and review all information; - pursue reasonable lines of	As soon as practicable after first appearance

	investigating agencies	enquiry including exculpatory leads. • Reveal to COPFS details (and, when asked, the material itself) of all information that may be relevant for or against the accused. • Use a reviewing officer and prepare a complete Standard Prosecution Report with disclosure-ready content (e.g., productions, VRE/CCTV) and schedules.	(solemn) or plea of not guilty (summary); revelation continues throughout case lifecycle.
Specialist Reporting Agencies (SRAs) (e.g., HSE, local authorities)	Non-police investigating agencies reporting to COPFS	• Apply the same revelation duties as police: provide details (and on request, the material) of all potentially relevant information; understand relevance vs. materiality.	As soon as practicable on report; continuous.
Procurator Fiscal (PF)	COPFS	• Review all information for relevance/materiality; disclose to the defence all information that undermines the Crown case or assists the	Initial disclosure as soon as practicable after first appearance/plea; ongoing duty through trial,

		defence, consistent with Article 6 ECHR. • Ensure consistent national practice per COPFS Disclosure Manual; maintain continuing disclosure duties post-conviction and on appeal.	appeal, and even post-final disposal where applicable.
Solemn Legal Manager (COPFS)	COPFS solemn teams	• Quality-assure police statements; direct further investigation; identify witness vulnerabilities; ensure case prep and precognition address disclosure-critical issues.	Early case allocation; continues through preparation until indictment/trial.
Case preparers / precognoscers (COPFS)	COPFS	• Conduct precognitions, organise productions/schedules, chase missing or inadequate material, and flag disclosure issues to PF/Crown Counsel.	During case preparation; iterative as new information emerges.
Crown Counsel	COPFS (High Court)	• Oversee major/complex cases, advise on sensitive material and PII, and ensure disclosure	Throughout solemn High Court proceedings.

		decisions are lawful and robust.	
Defence agents (solicitors, advocates and solicitor advocates)	Defence	• Prepare and lodge defence statements (mandatory in solemn; optional in summary) setting out: (i) defence nature/special defences, (ii) facts in dispute and reasons, (iii) defence facts, (iv) points of law/authority, (v) disclosure sought, (vi) reasons disclosure is necessary. • Use defence statements to focus issues and prompt further Crown disclosure if needed.	Solemn: at least 14 days before first diet/preliminary hearing; and ≥ 7 days before trial either update or confirm no material change; further updates on any material change. Summary: may lodge during the relevant period; not mandatory.
Reviewing officer (police)	Police Scotland	• Ensure investigative material is correctly recorded/retained, reviewed, and revealed to COPFS.	At report and throughout investigation.

Annex B – Glossary

accused

The person who has been charged with a crime. They are presumed innocent unless and until convicted in court.

audit trail

A clear written record of decisions and the reasons for them. In disclosure, this helps show how evidence was identified, reviewed, and shared.

Body Worn Video (BWV)

Footage captured by a camera worn by a police officer. Some of this footage may become evidence, though not all recorded material will be relevant to the case.

case marking

The process where a Procurator Fiscal reviews the police report and decides what charges, if any, should be brought.

CHIS

Covert Human Intelligence Source (CHIS) is a person who covertly provides information or assists the police or another public authority by establishing or maintaining a relationship for the covert purpose of obtaining intelligence.

consolidated/rolled-up case

When several related cases are combined into one for efficiency. All relevant information from the individual cases is transferred into a single disclosure process.

The Crown

The prosecuting authority in Scotland—the Crown Office and Procurator Fiscal Service (COPFS)—acting on behalf of the public.

Crown Counsel

Crown Counsel are advocates or solicitor advocates appointed by the Lord Advocate to act on behalf of the Crown in the prosecution of criminal cases in the High Court of Justiciary. They are independent of COPFS. They provide legal direction on significant or complex prosecutions and may issue instructions to prosecutors on behalf of the Lord Advocate. They are consulted when difficult or sensitive disclosure questions arise, or where prosecutors need guidance on how to proceed in complex cases.

defence statement

A written document (usually provided by the accused's lawyer) explaining the issues they dispute, the basis of their defence, and what information they believe may be relevant. It helps prosecutors identify whether further disclosure or investigation is required.

disclosure

The process of providing the accused with information that could help their case or undermine the prosecution. This ensures a fair trial.

disclosure schedule

A list prepared by police or COPFS describing information gathered in the investigation. There are separate schedules for non-sensitive, sensitive, and highly sensitive material.

exculpatory evidence

Information that may help the accused, cast doubt on their involvement, or support their defence.

highly sensitive information

Information that is exceptionally sensitive and could, if wrongly disclosed, directly threaten life, public safety, or national security. Access is tightly restricted.

inculpatory evidence

Information that may support the prosecution's case or indicate that the accused is responsible for the crime.

investigating agencies

Any organisation responsible for carrying out a criminal investigation and gathering information (e.g., Police Scotland).

material evidence/material information

Information that has a direct impact on the issues in the case. It includes anything that could weaken the Crown case, assist the defence, or form part of the evidence presented at trial.

personal data

Any information that identifies a person, such as their address, date of birth, or medical details. It must be handled carefully and only shared when necessary and lawful.

precognition

A written account of the evidence which a witness may be expected to give if or when cited. It is usually paraphrased after interview with the witness and prepared in the first person. It is not signed, and is not binding.

productions

Physical or digital items gathered as evidence—for example, clothing, photographs, phones, documents, or CCTV.

procurator fiscal

A public prosecutor in Scotland responsible for directing investigations, making charging decisions, and presenting cases in court.

prosecutors

Legally qualified members of staff of the Crown Office and Procurator Fiscal Service responsible for assessing evidence, making decisions about criminal proceedings, and representing the public interest in court

public interest

The wider interests of society. Decisions about handling sensitive information take into account public safety, fairness, and maintaining confidence in the justice system.

reasonable line of enquiry

Any sensible, proportionate step that may help determine whether the accused is guilty or not guilty. This can include enquiries that support the defence as well as the prosecution.

relevant information

Information that passes the relevancy test. Not all relevant information must be disclosed, but the existence of information that may be relevant must always be revealed to COPFS for assessment.

Relevancy/relevance

‘Relevant’ means any information that appears to an investigator to have some bearing on the offence or offences under investigation, or any person being investigated or on the surrounding circumstances, unless it is incapable of having any impact on the case.

revelation

The duty on investigators to tell COPFS about all relevant information they have identified, even if they think it is unlikely to be shared with the defence.

sensitive information

Information that requires special handling because disclosing it could put people at risk, reveal protected investigative techniques, or harm wider public interests. It is managed through secure processes and separate schedules.

solemn cases

Solemn proceedings are criminal cases which will be prosecuted in a court before a judge and a jury and used for more serious offences likely to attract a sentence of imprisonment of over 12 months.

Standard Prosecution Report (SPR)

The formal report the police submit to COPFS outlining the circumstances of the case, the evidence, and any recommended charges. It forms the foundation of prosecutorial decision-making.

Summary cases

Summary proceedings are criminal cases handled using a simpler, faster procedure, heard before a judge sitting without a jury.

Unrepresented accused

An accused person who does not have a legal representative.