

Annex 1.

The law

- 1) There are, broadly, two types of relevant law - those that allow reporting of courts, with restrictions, and those that protect individual privacy and confidentiality but describe circumstances in which it can be breached.
- 2) The reporting of criminal proceedings is largely influenced by the Contempt of Court Act 1981, the Magistrates Court Act 1980, as amended, and laws covering children and young people, and victims of sexual offences.
- 3) For decisions on releasing images of individuals, laws on privacy and confidentiality are most relevant. The Data Protection Act is important. There are, of course, overlaps. The Human Rights Acts covers the right to privacy *and* the right to a fair trial.
- 4) The Data Protection and Human Rights Acts rely on key concepts - including a 'policing purpose' and the 'public interest', and tests of necessity, proportionality and justification - when outlining the grounds on which police can release material on individuals.
- 5) **Accurate record-keeping is vital. This should not mean a major bureaucratic burden. But forces will be able to explain and justify decisions more easily if they have a clear audit trail.**
- 6) The following is a summary of the key law covering the release by police of material to the media. Fuller explanations of the laws can be found at *Appendix 1*

- **Common Law.**

7) Police are used to acting within their powers for a lawful purpose – as required by common law.

8) Common law establishes the concept of a 'legitimate expectation' that when police receive information as part of their lawful investigations, they will generally treat it in confidence. Common law, however, provides exemptions which allow a breach of confidence. If police have an obligation under a specific law or statute to release information, that would be an obvious exception to the common law expectation of confidentiality. So, too, would the need to breach confidentiality in the over-riding public interest, such as the prevention and detection of crime.

- **Data Protection Act.**

9) This covers electronic records and 'structured manual files'. The Act contains eight Data Protection Principles which generally aim to protect personal data about individuals – in this context, police data. There are exemptions which allow police to release information to third parties, for the prevention and detection of crime or the apprehension or prosecution of offenders. Each case should be decided on its merits and decisions should be documented.

10) Material about unknown individuals is not considered 'personal data'. Once the identity becomes known, the material is immediately subject to the Act.

- **Policing Purposes.**

11) Data obtained and processed under the Data Protection Act must be for a specified and lawful purpose, which is registered by the data controller with the Information Commissioner.

- 12) In the case of the police this is for a 'policing purpose', which is defined as: 'The prevention and detection of crime, apprehension and prosecution of offenders, protection of life and property, maintenance of law and order, and rendering assistance to the public in accordance with force policies and procedures'. To this should be added 'reducing the unwarranted fear of crime.'
- 13) Information can also be released and justified under the Act, if release involves a policing purpose. This definition is used throughout these notes for the guidance of forces when determining the balance between protecting a person's right to privacy and acting to achieve a 'policing purpose'.

- **Human Rights Act**

- 14) The Act incorporates the 1950 European Convention for Human Rights into UK domestic law and places considerations of an individual's rights at the heart of law enforcement. The Act also requires that each police officer and member of the civilian support staff as a 'Public Authority' must act in a way which is at all times consistent with the ECHR.
- 15) The Act directly affects issues surrounding the release of information by police to the media. These include Article 3, which provides protection against inhuman and degrading treatment; Article 6, which establishes the right to a fair trial; Article 8, which concerns the right to respect for private and family life; and Article 10, concerning the right to the freedom of expression.
- 16) The principles of proportionality, legality and necessity must all be considered in making decisions where questions of human rights are involved. In practice, the release of information must be for a lawful/legal purpose, it must be necessary to protect

individuals or communities from crime or harm, and it must be proportionate – in other words, the harm used as a justification must be clear.

- **Public Interest**

17) There is no one single definition of the public interest. The Code of Practice adopted by the UK newspaper and periodical industry and ratified by the Press Complaints Commission, defines the public interest as:

- detecting or exposing crime or a serious misdemeanour;
- protecting public health or safety;
- preventing the public from being misled by some statement or action of an individual or organisation.
-

18) In its Fairness and Privacy Code of 1998, the Broadcasting Standards Commission said that “the line to be drawn between the public’s right to information and the citizen’s right to privacy can sometimes be a fine one..... An infringement of privacy has to be justified by an overriding public interest in the disclosure of information.” Its Code broadly follows the PCC-ratified definition:

- revealing or detecting crime or disreputable behaviour;
- protecting public health or safety;
- exposing misleading claims made by individuals or organisations;
- disclosing significant incompetence in public office.

- **The Contempt of Court Act, 1981, the Magistrates Court Act (?), the Children and Young Persons Act 1939 (as amended) and the Sex Offences Act**

19) These laws shape the way the media cover court cases. They do not, of themselves, control what police can release but they are highly relevant when police are reaching agreements with the media on the use of released material.

20) In essence, these laws have the following important effects:

- Only certain 'who, what, where, when' facts can be published about someone who faces a criminal trial.
- Only material heard by the jury can be published during a jury trial. The reporting of other material can be 'postponed.'
- Juveniles facing criminal proceedings cannot be identified. The exception is when a juvenile is convicted of a serious offence in an adult court and a judge allows identification. Children and juveniles who are witnesses and victims in criminal proceedings cannot be identified, other than in very limited circumstances sanctioned by a judge.
- Nothing can be reported that would identify the victim of a sexual offence, or an offence of blackmail.

Annex 2.

Taking the media on operations/raids - Agreement

Appendix A: Media Indemnity Agreement

Agreement between the Chief Constable of [FORCE NAME] ('The Chief Constable') and the [NAME] Police Authority ('The Police Authority') of the first part and the undersigned of the second part.

In consideration of my use of [FORCE NAME] premises, vehicles, river craft, helicopters or other property ('[FORCE NAME] property') and/or in consideration of my being allowed to accompany [FORCE NAME] Police officers or civil staff on operational and/or non-operational duties on/between (date(s))

I.....

duly authorised to sign for and on behalf of

.....

hereby agree as follows:

- 1) To indemnify the Chief Constable and/or the Police Authority and/or their constables, officers, servants and/or agents against any expense, liability, loss, claim, proceedings, damages or costs arising from my said use of [FORCE NAME] property, save that I shall not be responsible for any expenses, losses, claims, proceedings, damages or costs attributed to events outside my control and not caused by my negligent acts or omission or the negligent acts or omissions of my staff.
- 2) To compensate the Police Authority in respect of any loss of and/or damage to [FORCE NAME] property caused or occasioned by my wrongful or negligent act or omission.
- 3) To indemnify the Chief Constable and/or the Police Authority and/or their constables, officers, servants and/or agents against any expense, liability, loss, claim, proceedings, damages or costs arising by statute (particularly the European Convention on Human Rights), common law and/or tort in relation to a third party caused or occasioned by my wrongful or negligent act or omission in connection with entry of my media representative at:

.....on

.....on

.....on

upon premises known as and situated at

.....on

.....on

.....on

whereat it shall, for the avoidance of doubt, be my sole responsibility to obtain the consent of the occupier before entry of myself, photographer or film crew upon said premises.

[FORCE LOGO]
continued over

4) That I shall not, whether by myself, my servants, agents or any of the media representatives ask any Police constable or other member of police staff to obtain on my behalf the consent referred to in paragraph 3 herein nor shall I, whether by myself, my servants, agents or any of the media representatives ask any Police constable or other member of police staff for any variation to this Indemnity Agreement unless the same be in writing and signed by the parties to this indemnity agreement.

Signed

Date 20

Name:

Position:

Organisation:

Contact Telephone Number:

Annex 3.

Taking the media on operations/raids - Note to Media Representative(s)

You are reminded that under European Convention on Human Rights:

- that entering private property without permission could interfere with a person's rights;
- that taking film or photographs on private property without permission could interfere with a person's rights;
- that the broadcasting or publishing of any material, photographs or film of an individual, their family and private life, their home or correspondence could interfere with a person's rights.

You are reminded that no material, photographs or film must be published or broadcast that would interfere with an individual's rights, particularly the right to a fair trial.

Lawful entry on to private premises by media representative/s cannot be authorised by [FORCE NAME].

Entry on to private premises is a matter between media representative/s and the adult householder, owner or lawful keyholder and not the [FORCE NAME]. Police will not seek permission on behalf of the media.

If police visit private property whilst media representative/s are with them it is the responsibility of the media representative/s to seek permission from the owner to enter the property before doing so. If permission is not obtained for any reason or is refused by the owner then the media representative/s must not enter. Consent should be in a form which is capable of proof, i.e. in writing, filmed or taped verbal comment.

Media representative/s should be mindful of trespass. If they are asked by the adult householder, owner or lawful keyholder to leave private premises, they should do so immediately.

[FORCE NAME] reserves the right to request a media representative/s to leave premises; for example, where preservation of a scene of crime is necessary, or where Police officers believe consent to enter was not obtained or consent has been withdrawn, or for any other reason at the discretion of the senior officer present.

[FORCE NAME] cannot confer the rights to media representative/s to film, record or interview scenes or individuals.

Media representative/s are reminded that any material created or obtained by them, including their written notes, photographs, sound, film or other recordings may become subject to the laws relating to disclosure. Newsgatherers/Production Teams need to be aware of these laws; for example, the possibility of an Application under Schedule 1 to the Police and Criminal Evidence Act 1984 for a Judge's Order that material be disclosed to Police.

I acknowledge that I have received and read a copy of the [FORCE NAME] 'Notes to Media Representatives'.

Signed Date 20.....

Annexes 4 and 5.

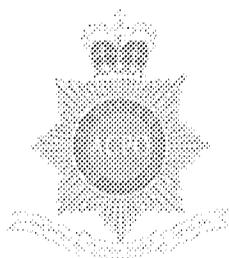
CPS court material release documents

ACPO/Met release documents

Annex 6.

Agreement on images

Security Classification:		NOT PROTECTIVELY MARKED	
Disclosable under FOIA 2000:		Yes	
Author:	T/CI Nick Barker	Force / Organisation:	BTP
Date Created:	May 2009	Telephone:	0207 830 8930



**Association of Chief Police Officer of England,
Wales & Northern Ireland**

**GUIDANCE ON THE RELEASE
OF IMAGES OF SUSPECTS
AND DEFENDANTS**

Status: This Presidential Business Area Guidance has been produced jointly by ACPO, CPS and the Office for Criminal Justice Reform to provide guidance to prosecutors and force media officers in the release of images of suspects and defendants to the media. It has been agreed by ACPO Cabinet. It is disclosable under the FOIA 2000 and has been registered and audited in line with ACPO requirements and is subject to Copyright.

Implementation

May 2009

Date:

Review Date:

May 2012

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1. Objectives

This document has been produced jointly by ACPO, CPS and the Office for Criminal Justice Reform to provide guidance to prosecutors and force media officers in the release of images of suspects and defendants to the media. This guidance aims to ensure consistent practices across police forces, however, it remains the responsibility of each force to justify the release of images. Each case should be reviewed on its individual merits.

Images include CCTV, photographs and other similar media.

The objectives of this guidance are:

- to encourage the release of images to the media where appropriate and at the earliest opportunity
- to ensure greater openness in the reporting of criminal investigations and proceedings.
- to encourage joint decision making between forces and the CPS as appropriate
- to ensure a more uniform approach across forces

Data Protection Act and Human Rights Act considerations will be relevant to any decision to release an image and appendix A provides an outline of the of the legal context. Appendix B contains a check list of questions that should help to ensure that any decisions are defensible and compliant with the requirements of the Human Rights Act.

2. General considerations

As with any issues which impact on Human Rights, there must be a balance between the rights of an individual suspect and those of the wider community. Any decision to release an image must be for a legitimate purpose, be necessary, and proportionate.

The risk to the public from a dangerous or prolific offender will almost always support the release of images in certain circumstances.

Any decision to release an image must take into account any impact on victims or witnesses.

a) Legitimate purpose

The release of images to the media must be necessary for a legitimate purpose. Each Force/CPS Area will need to make a decision on a case by case basis, and early consultation with criminal justice partners, where appropriate, is encouraged.

A legitimate purpose will include, but is not limited to:

- The prevention and detection of crime
- The apprehension of suspects
- Encouraging witnesses and/or victims to come forward
- Discouraging offenders
- Reassuring and informing the public
- Reinforcing confidence in the criminal justice system
- The apprehension of people unlawfully at large

b) Necessity

The release of the image must be necessary in pursuit of the legitimate purpose (ie in order to apprehend a suspect the image needs to be released as other means of tracing the purpose have failed or are not viable)

Another relevant factor is that the details released must be the minimum necessary to achieve the intended purpose (for example, releasing a photograph of person, but not of them and their family).

c) Proportionality

Any decision to release an image must also be proportionate. All the circumstances of the case may be relevant in deciding whether it is proportionate to release an image. In particular, the nature of the offence will be highly relevant. The more serious the offence, the easier it will be to show that any decision to release an image is proportionate, but it does not follow that the offence, in itself, needs to be a serious one. Where the offence is not serious, any decision to release may still be proportionate if one of the following factors is present:

- National interest, or,
- Vulnerable victims, or,
- Prevalent local crime, or,
- Community interest.

3. Specific scenarios

a) Wanted Suspects

Police forces can release images of both known and unknown suspects to the media.

An image of a person police want to interview in relation to a particular incident or crime can be issued prior to arrest or charge. Care must be taken when releasing images of unknown people to ensure that the wording accompanying the image is accurate. With known people other means of tracing the person should have first been tried where practical. Where an image has been released and a suspect has been subsequently arrested the media should be notified.

With known people other means of tracing the person should have first been tried where practical.

Where identification issues exist (Code D Police and Criminal Evidence Act 1984) the CPS should be consulted prior to the release of an image.

b) Unlawfully at large

People who have escaped or absconded from custody can have their images released to the media.

People wanted on warrant for an offence or for failing to appear can have their image released to the media but other means of tracing the person should have first been tried where practical.

c) Pre-trial or pre-verdict briefings

A Force may decide to issue images of individuals as part of planned, pre-verdict briefings in important cases. This must always be done in liaison with the CPS. This is the subject of separate ACPO Media Advisory Group (MAG) guidance.

d) Post Conviction

Post conviction there is likely to be much demand from the media and from the public for information and this may include releasing an image. Forces are encouraged to engage with the media and be as open as possible. The release of images at this stage in the criminal justice process could assist with deterring potential criminals and preventing subsequent crime as well as encouraging other victims and witnesses to come forward.

e) Anti-social behaviour orders

Where an Anti-social Behaviour Order (ASBO) is issued and no court order or reporting restrictions exist in relation to the subject of that order, the police may consider issuing an image. There are no automatic reporting restrictions on ASBOs made in court and the presumption is that an ASBO can be reported.

In general, a decision about how and where an image is issued should reflect the need to protect and inform the public as well as prevent further offences. The Home Office have issued guidance in relation to publicising anti-social behaviour orders. This is available at:

www.respect.gov.uk/members/article.aspx?id=7844&terms=publicity&searchtype=2&fragment=False

f) People Under 18

People under 18 are not usually identified during the court process and therefore images should not normally be released. However, for those aged between 15 and 18 the court may allow them to be identified once they are convicted for a serious crime, such as murder. In these circumstances, the same criteria listed above will apply.

Images of juveniles, where there is no Section 39 order, may be issued where there are concerns for their safety. E.g. missing people.

4. Record Keeping

All decisions, including the reasons, to release images should be recorded. Where appropriate any risk assessment should also be recorded. Care should be taken to ensure any image released and accompanying details are as accurate and up to date as possible. Rationales and other records relating to the release of images as part of an investigation may be subject to disclosure under the Criminal Procedures and Investigations Act.

5. Review

This guidance will be reviewed annually, or more often if deemed necessary (for example following a relevant stated case). It has been agreed that ACPO, through the Media Advisory Group, will be responsible for managing the review process.

6. Further Guidance

There is further guidance on media issues available in the ACPO/CPS/Media Protocol – *Publicity and the Criminal Justice System Protocol for Working Together*.
<http://www.cps.gov.uk/Publications/agencies/mediaprotocol.html>

7. Agreement of Joint Guidance

(Title & Name)

For and On Behalf of the Association of Chief Police Officers

(Title & Name)

For and On Behalf of the Crown Prosecution Service

Appendix A - Legal Context

European Convention on Human Rights

Article 6

Article 6 of the ECHR governs the right to a fair trial. Article 6 considerations are most likely to arise where identification is thought to be an issue. The publication of an image, however, will not necessarily undermine a fair trial or breach the individual's Article 6 rights. It should still be possible to bring a successful prosecution where public protection has necessitated the release of an image.

Article 8

Article 8 of the ECHR covers the right to respect for private and family life and is relevant in any decision to release a person's details, including a photograph. Article 8(2) allows the state to interfere with that right if it is necessary and proportionate to do so in the interests of public safety or for the prevention of crime or disorder. In considering the HRA, it is necessary in each case to balance the rights of the individual, including his or her immediate family, to privacy with the right of the community to be protected. In doing so, the following principles apply:

- Is the reason for releasing the photograph the prevention or detection of crime or the apprehension or prosecution of offenders?
- Is the release of the photograph necessary? For example, are more conventional methods inappropriate or ineffective or have been tried and failed? Is it likely to really assist in the prevention or detection of crime or prosecution or apprehension of offenders?
- Is publishing the photograph proportionate to the aim being pursued, bearing mind any risk to the public and/or the seriousness of the crime? Are the details to be released the minimum necessary to achieve the intended purpose?

Where the public is clearly at risk from a dangerous offender, the balance between the rights of the individual and the rights of the general public to be protected will almost always justify release of the photograph.

Article 10

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This right does not place any specific obligation on forces to provide particular information, and will be of relevance for the media rather than the police or CPS.

The Human Rights Act needs to be considered but, provided the questions in the checklist at appendix (ii) are addressed satisfactorily, should not prevent the issuing of an image.

Data Protection Act 1998

Images of people in the possession of the police are classed as personal data under the Data Protection Act (DPA). The Act must therefore be complied with unless an exemption applies. This may be, for example, where this is necessary for the administration of justice or other grounds under Schedule 3 (See DPA Schedule 3 paragraph 7 and other grounds under the Processing of Sensitive Data Order 2000) or where complying with the Act would prejudice the prevention or detection of crime or the apprehension or prosecution of offenders (DPA Section 29).

Appendix B - Checklist

Below are the questions that a decision maker will need to consider when deciding whether an image should be released. In any particular case, there may be other relevant questions or factors depending upon the circumstances, but the questions below will always be central to any decision to release the image. If the steps below are followed, then any decision to release an image will normally be lawful and comply with the relevant legislation.

1. Purpose in releasing image

- a) What is the purpose in releasing the image?
- b) Is it for a legitimate purpose such as the prevention or detection of crime or the prosecution or apprehension of offenders? or
- c) Does it reinforce confidence in the Criminal Justice System or reassure the law abiding public?

2. Necessity

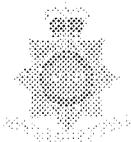
- a) Have alternatives ways of achieving this purpose been tried?
 - If not have they been considered?
 - If considered but not tried, why have they been rejected? Are they not viable or unlikely to be effective?
- b) Are the details to be released the minimum necessary to achieve its intended purpose (are the details accurate and up to date) ?
- c) Would the release of the image be likely to achieve the legitimate purpose?

3. Proportionality

Taking into account all the relevant factors is releasing the image proportionate.
Relevant factors will include (but are not limited to)

- nature of the offence
- potential risk to the public
- any relevant victim or witness issues
- potential impact on the person to be identified (and their immediate family).

Appendix C – ACPO Workbook



WORKBOOK FOR THE CREATION OF ACPO GUIDANCE/PRACTICE ADVICE

No new work to develop Guidance etc. can be commenced unless a Workbook, with the first page completed and accompanied by a completed Appendix 'A' is first submitted, through the Head of the Business Area, to the ACPO Programme Support Office for approval. This workbook, with all sections completed, must be included in the final document as an Appendix and submitted, through the Head of the Business Area, to the Programme Support Office for quality assurance prior to submission to Cabinet for approval as ACPO Doctrine.

Title of Guidance

Guidance Notes on the Release of Images of Suspects and Defendants to the Media

ACPO Reference Number

Unique reference number: 2008/11

ACPO Commissioning

Name of ACPO Business Area:	Presidential
Head of Business Area commissioning the work:	Sir Ken Jones
Date Authorised:	16.04.08
Projected date of completion:	20.03.08

Person Completing Work Book

Name:	Force Address:
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Date the first page of this Workbook was completed and forwarded to the Programme Support Office:

25.04.08

For ACPO use only

Date QA check completed:	25 March 2009
Date referred to HBA:	25 March 2009
Date Guidelines/Practice Advice signed off by HBA:	25 March 2009

SECTION A - FOR USE ONLY WHERE AN EXISTING GUIDANCE OR PRACTICE ADVICE DOCUMENT IS BEING AMENDED AS THE RESULT OF A REVIEW

A.1 Title of original document:

Photographs of Named People

A.2 Date of publication of original document:

21 October 2003

SECTION B – IMPACT UPON OTHER ACPO BUSINESS AREAS

B.1 Give details of the impact on/dependencies with other ACPO Business Areas and existing Guidance/Advice

Nil

If B.1 applies, please inform the relevant ACPO Policy Officer who will consult across other business areas

SECTION C - ACPO EQUALITY IMPACT ASSESSMENT TEMPLATE (DIVERSITY AUDIT) AS AGREED WITH THE CRE

C1. Identify all aims of the guidance/advice

C.1.1 Identify the aims and projected outcomes of the guidance/advice:
Provide advice to Force Press offices in their dealings with the media in relation to when images can be released.
C.1.2 Which individuals and organisations are likely to have an interest in or likely to be affected by the proposal?
Media, CPS, Force press offices

C2. Consider the evidence

C.2.1 What relevant quantitative data has been considered?	
Age	N/A
Disability	N/A

Gender	N/A
Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A
C.2.2 What relevant qualitative information has been considered?	
Age	N/A
Disability	N/A
Gender	N/A
Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A
C.2.3 What gaps in data/information were identified?	
Age	N/A
Disability	N/A
Gender	N/A
Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A
C.2.4 What consideration has been given to commissioning research?	
Age	N/A
Disability	N/A
Gender	N/A
Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A

C3. Assess likely impact

C.3.1 From the analysis of data and information has any potential for differential/adverse impact been identified?	
Age	N/A
Disability	N/A
Gender	N/A
Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A
C.3.2 If yes explain any intentional impact:	
Age	N/A
Disability	N/A
Gender	N/A
Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A
C.3.3 If yes explain what impact was discovered which you feel is justifiable in order to achieve the overall proposal aims. Please provide examples:	
Age	N/A
Disability	N/A
Gender	N/A
Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A
C.3.4 Are there any other factors that might help to explain differential /adverse impact?	
Age	N/A

Disability	N/A
Gender	N/A
Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A

C4. Consider alternatives

C.4.1 Summarise what changes have been made to the proposal to remove or reduce the potential for differential/adverse impact:
N/A
C.4.2 Summarise changes to the proposal to remove or reduce the potential for differential/adverse impact that were considered but not implemented and explain why this was the case:
N/A
C.4.3 If potential for differential/adverse impact remains explain why implementation is justifiable in order to meet the wider proposal aims:
N/A

C5. Consult formally

C.5.1 Has the proposal been subject to consultation? If no, please state why not. If yes, state which individuals and organisations were consulted and what form the consultation took:	
Age	N/A
Disability	N/A
Gender	N/A

Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A
C.5.2 What was the outcome of the consultation?	
Age	N/A
Disability	N/A
Gender	N/A
Race	N/A
Religion / Belief	N/A
Sexual Orientation	N/A
C.5.3 Has the proposal been reviewed and/or amended in light of the outcomes of consultation?	
N/A	
C.5.4 Have the results of the consultation been fed back to the consultees?	
N/A	

C6. Decide whether to adopt the proposal

C.6.1 Provide a statement outlining the findings of the impact assessment process. If the proposal has been identified as having a possibility to adversely impact upon diverse communities, the statement should include justification for the implementation:
N/A

C7. Make Monitoring Arrangements

C.7.1 What consideration has been given to piloting the proposal?
N/A
C.7.2 What monitoring will be implemented at a national level by the proposal owning agency and/or other national agency?
The Guidance will be monitored by the ACPO Media Advisory Group in consultation with Force Press Offices
C.7.3 Is this proposal intended to be implemented by local agencies that have a statutory duty to impact assess policies? If so, what monitoring requirements are you placing on that agency?
N/A

C8. Publish Assessment Results

C.8.1 What form will the publication of the impact assessment take?
<i>It is recommended that for publication on the ACPO website, the impact assessment be attached to the completed document as the first appendix. On the ACPO Intranet, the whole workbook will be attached to assist in the preparation of local audits.</i>

SECTION D - HUMAN RIGHTS REVIEW

D1. Does the proposal have significant human rights implications, either for the public or for the Police Service? Answer YES or NO:

No

If NO, go straight to Section E

If YES, answer the following questions and consider seeking legal advice

D.1.1. Who will be affected by this proposal?

- *Consider not only the direct subject of the proposal, but also other people who may be affected (e.g. bystanders, victims, general public, police staff, subject's family)*

D.1.2 Which of their rights are being protected?

- *E.g. the right to life; right to security; freedom of belief, expression or assembly; right to family life; right to privacy; right to property*

D.1.3 For each person or group of people, which of their Convention rights may the proposal potentially interfere with and how?

- *E.g. right to life; prohibition of degrading treatment; right to liberty; right to fair trial; right to due process; right to privacy; freedom of belief, expression, assembly and association*

Answer the following questions in respect of each interference with a right.

D.1.4 Is the interference legal? Explain in full:

- *e.g. European legislation, Act of Parliament, statutory instrument, statutory codes, common law*

D.1.5. Is the interference necessary? Explain in full:

- *It may for example be justified if it protects others' rights, e.g. right to life; right to security; freedom of belief, expression or assembly; right to family life; right to privacy; right to property*
- *What "legitimate aims" under the Convention are being pursued in interfering with the right?*

D.1.6 Is the interference proportionate? Explain in full:

- *What practical alternative actions are available? Will any of these not interfere or interfere less with a right? If they will, why are they not being used?*
- *Is the interference the least intrusive means available?*

D.1.7 Having considered the above points, do you consider that the proposal -

(a) Breaches a Convention right? YES or NO:

(b) Is vulnerable to challenge? YES or NO

Note: interference with a right does not equal a breach – if an interference is justified, there is no breach.

SECTION E - DATA PROTECTION REVIEW

E.1 Does this proposal relate in any way to the processing of personal data? Answer YES or NO. If NO, go straight to Section F.

If YES, outline how it complies with the Data Protection Act, listing the principles summarised below. The ACPO Data Protection and FOI Portfolio Group will provide assistance in identifying and addressing compliance:

No

The Principles:

a) Personal data shall be processed fairly and lawfully ...

b) Personal data shall be obtained only for one or more lawful purposes ...

c) Personal data shall be adequate, relevant and not excessive in relation to the purpose for which it is processed

- d) *Personal data shall be accurate and, where necessary, kept up to date*
- e) *Personal data processed for any purpose shall not be kept longer than is necessary for that purpose*
- f) *Personal data shall be processed in accordance with the rights of data subjects under the Act*
- g) *Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data ...*
- h) *Personal data shall not be transferred to any country outside the European Economic Area (EEA) unless the country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to processing of personal data*

SECTION F - HEALTH & SAFETY REVIEW

F.1 Does this proposal have significant health and safety implications for the public or for police staff? Answer YES or NO.

No

If YES, answer questions F.2. & F.3. If NO, go straight to Section G1.

F.2 Explain how the risks to health and safety have been assessed and what control measures have been put in place:

F.3 What are the health and safety duties and who is responsible for them? Explain in full:

SECTION G - BUREAUCRACY REVIEW

G.1 List the forms or databases that police staff will be required to complete as part of this proposal:

N/A

G.2 Give details of how you have reviewed the need for, content of and appropriateness of the forms or databases. Have you reduced their quantity or content?

Factors to consider:

- *Whether the benefit of gathering the information exceeds the effort*
- *The cumulative impact – especially when there is repeated entry of the same information*
- *Retention period – is the information disposed of at the optimum time?*

SECTION H - FREEDOM OF INFORMATION REVIEW

H.1 Is this reviewed proposal exempt from publication under the FOIA? Answer YES or NO:

No

IF NO, go straight to Section I. If YES, give full details of the exemptions that apply and the reasons for them at H.2.1 – 2.3 below:

H.2 Reasons for Non- or Partial Disclosure under Freedom of Information Act 2000

H.2.1 Is this document completely non-disclosable? Answer YES or NO

NO

H.2.2 If yes, why? Which exemptions apply?

Section	Description and Type of Exemption	Evidence / Rationale for Application

H.2.3 Is this document partially disclosable? Answer YES or NO

--

H.2.4 If yes, which parts of the document are not disclosable and why? Which exemptions apply?

Part of the Document	Section	Description and Type of Exemption	Evidence / Rationale for Application

SECTION I – IMPLEMENTATION AND EVALUATION

I.1 Now that the audit is complete the Guidance/Advice document should be prepared for consideration by the Head of Business Area - either for approval and sign-off or, in some cases, referral to ACPO Cabinet or Council. Please follow the attached ACPO Practice Guidance/Advice Template.

I.2 Please ensure that a full consultation on the content of the final draft document is conducted with stakeholders, both internal and external

and ensure that their views are fully considered. Please detail below the organisations/individuals consulted:

Police Media professionals, Crown Prosecution Service, Ministry of Justice, Representatives from Media including Society of Editors

I.3 Full consideration should be given to the following:

- **Financial implications/benefits**
- **Resource implications/benefits**
- **Potential performance/service improvements**
- **Risks**
- **Learning requirement**

Monitoring and Review

I.4 Detail below the on-going effects of this proposal:

The Guidance will provide structure and clarity to the release of images to the media.

I.5 How will it be monitored?

The Guidance will be reviewed regularly on the impact on Force Media Departments and the Guidance will be fully reviewed in two years.

I.6 By whom?

ACPO Lead for Media Advisory Group

I.7 At what intervals?

The Guidance will be reviewed in two years. The impact on force press offices will be monitored at the quarterly ACPO MAG meetings.

I.8 When is the next review of this proposal planned?

1 April 2011

Annex 7.

Guidance from the Office for Criminal Justice Reform on 'Publicising Sentencing Outcomes' is found at

[http://frontline.cjonline.gov.uk/ includes/downloads/guidance/general/Publicising_Sentencing_Outcomes.pdf](http://frontline.cjonline.gov.uk/includes/downloads/guidance/general/Publicising_Sentencing_Outcomes.pdf)

Annex 8.

Suggested protocol for forces to agree with local media about coverage of sex offenders in the community, and set of frequently asked questions:

Suggested Protocol for a joint media, police and probation framework:

The police and probation services in the (force name) area share the media's fundamental belief in public accountability and public safety:

Managing sex offenders in the community is not new and the police, through Multi Agency Public Protection Panels, devise risk management strategies for every known high risk offender, with the protection of the public as the overriding factor.

Under the Sex Offenders Act 1997 the police have powers to inform communities of any convicted sex offender deemed to pose a risk high enough to warrant public exposure. However, in many cases, for the protection of the public and especially children, the police and probation service assess that individuals should retain anonymity.

While we share the media's interest in community safety, we believe that publicity may increase the risk to the public, heighten the threat of the offender disappearing, and raise the chance of vigilante action. In order to minimise such risks, the following guidance is proposed:

In the interests of public accountability and safety the police and probation services agree:

- All media enquiries will receive a response and, wherever possible, questions will be answered.

- Where this is not possible for safety or similar reasons, or within the given time constraints, this may be clearly stated in a confidential briefing with the Editor, or their deputy.
- Such enquiries will be handled by the senior Media Relations Officer in each organisation.
- Police, probation, health and housing authorities continue to share information relating to individuals assessed to present a risk by holding regular public protection meetings and taking agreed action.
- Public protection meetings will continue to notify key organisations e.g. Education Departments, where appropriate when individuals are believed to present a particular risk.

In the interests of public accountability and safety the media agree:

- A reporter with sensitive information involving sex offenders should routinely be required to consult with a nominated senior member of editorial staff before publishing or broadcasting the information.
- Sensitive information about an individual will not be published or broadcast without consultation with police or probation over its accuracy and whether disclosure would threaten supervision or public order.
- Any case involving sex offences against a child will be considered in terms of its impact on victims and families.
- In some instances the media will consider delaying publication or broadcast to ensure that publicity doesn't jeopardise existing security arrangements.
- If a photograph or the address of an offender is obtained, the media will consider, in the interests of public protection, whether they need to use this information in any story.

The application of the protocol will be reviewed at regular intervals or at the request of the force/media after its application. Reporting staff should be appraised of the protocol and reminded of it on a regular basis

Frequently Asked Questions

Q. How many people are on the Sex Offenders Register? How many sex offenders live in a particular area?

A. Annual reports published by Multi Agency Public Protection Panels include figures for the number of people on the register in each police/probation area. The reports also detail dangerous offenders who pose a risk of serious harm to the public and offenders who have been convicted of a violent or sexual offence and were sentenced to 12 months or more imprisonment.

The reports inform the public about the nature of risk posed by a small number of offenders in our communities and how statutory agencies are joining with others in minimising the possibility of them re-offending.

Q. Why don't the police identify all people on the Sex Offenders Register.

A. The Sex Offenders Act 1997 and the Data Protection Act 1998 only allow the disclosure of information about an individual where

* failure to disclose would be likely to prejudice the prevention or detection of a crime or

* disclosure is urgently needed to prevent injury or damage to the health of any person.

The purpose of the register is to enable the police to monitor the whereabouts of offenders and carry out risk assessments, where appropriate, in relation to convicted sex offenders.

General notification can cause a number of problems that decrease rather than increase public safety. Recent cases have illustrated the potential for vigilante action, panic and unwarranted violence. A case of mistaken identity could have devastating consequences.

An offender who is forced out of a community could disappear, severing contact with the police and probation services. Without monitoring or supervision, no stable address and no clue to his behaviour, the likelihood of reoffending is far greater than with someone closely monitored by the authorities.

Q. Why are the police protecting sex offenders in this way?

A. The priority of the police service is to protect the public and any arrangements concerning sex offenders are always done with this in mind. In cases where we believe that it is in the public interest to name or identify an individual who could pose a serious risk to the community, we might, in consultation with the relevant authorities, issue details to appropriate audiences.

Q. How do the police keep track of sex offenders?

A. Registered sex offenders are required to report to their local police station within three days of being convicted, or on release from prison, to provide details of their address and to allow police to take an up-to-date photograph. Subsequently offenders have to re-register annually and any change of address has to be notified

to police within 3 days. Anyone convicted of a sex offence abroad must register if they come to the UK.

Q What monitoring is there of sex offenders?

A. Multi Agency Public Protection Panels, set up in every police force/probation area as a consequence of the Section 67(4) Criminal Justice and Court Services Act 2000, ensure there are systems in place in each area to deal with known dangerous offenders, including sex offenders. The police work with other agencies, including prison and probation services, local authorities, health authorities and youth offending teams, through the panels and hold pre-release risk assessment meetings to evaluate the risk and to make action plans on the release of particular offenders.

Police monitor the whereabouts of offenders for the duration of their registration period with a frequency determined by their level of assessed risk. Where offenders are being supervised by probation, this police monitoring is done in conjunction with them. The arrangements may include their living in a probation service hostel or attending a treatment programme.

By working in partnership and drawing up protocols between the various agencies, police are able to monitor these offenders effectively. Although no guarantees can be made about an offender's future actions, the public is far better protected where he/she is in stable accommodation, in contact with the probation services and complying with any conditions that may apply.

Q. What else can be done to protect the public?

A. The Crime and Disorder Act 1998 gives the police power to apply to the courts for Sex Offender Orders against offenders who appear to pose a **serious** risk, whether or not they are registered under the Sex Offenders Act. The orders impose restrictions on the offender's behaviour such as requiring them to keep away from certain schools or areas. Once an order is made the offender must comply with the requirements of the Sex Offenders Act 1997. ie register name and address. The court also has powers to impose lengthy periods of post-release supervision for sexual and violent offenders, which in the case of sexual offences can last up to 10 years.

Q. Why does the police service not support a Sarah's Law which would inform parents if a sex offender moved into their area?

A. The police service and government do not support this type of disclosure. It is agreed by all agencies that granting such 'controlled access' is likely to hinder rather than help measures to protect children.

The public identification of alleged offenders following the death of Sarah Payne in Sussex showed the potential this had for vigilante action and for undermining the monitoring of offenders in the community, thereby reducing public protection. Individuals who were mistaken for sex offenders and their families were subjected to assault and harassment. In one case, a paediatrician's home was attacked as this word was confused with paedophile.

Sex offenders who had been subject to monitoring left their addresses and went into hiding for fear of their safety with the result that their whereabouts were no longer known to the police.

Q. MAPPP annual reports detail the people you know about. How many more offenders are out there?

A. That's impossible to say. We can never eliminate the risks posed by dangerous offenders, but we can do a huge amount to minimise them and protect our communities. That's why multi agency working arrangements exist.

Q. What can parents do to protect their children?

A. While teaching the 'stranger/danger' message is important, experience shows that very few children are targeted by strangers and that most abuse takes place within the family or by someone known to the child. Parents should not over-react but it is sensible to know where their children are, who they are with and agree a time when they will be home. Parents should also listen to their children if they raise any concerns about the way anyone is behaving towards them.

Q. What charges are likely if someone accesses indecent images of children on the internet?

A. There are currently three offences which may be committed (a fourth, 'grooming' is proposed):

1) Possession of indecent photographs of children

Relevant where someone holds images in any format (such as computer files, photographs, videos, DVDs, disks etc) but also includes where indecent images of children have been viewed on the internet and a record has been held in the computer's temporary internet files.

2) Making indecent images of children

The action of downloading material onto a computer constitutes 'making' an image as well as small or large scale reproduction of such images in the form of photographs, videos, DVDs, disks etc.

3) Distribution of indecent images of children

Circulation, by whatever means, of indecent images of children, for example via email, sharing of files, in magazines, newsletters, videos, DVDs, disks etc.

Q. Is it illegal to possess adult pornography or view indecent images of adults on the internet?

A. No.

Annex 9.

CSOR information

H. Convicted sex offenders in the community

In June 2007, a review into the protection of children from sex offenders was published. Action point four of the review was to:

‘Pilot a process where members of the public can register their child protection interest in a named individual. Where this individual has convictions for child sexual offences and is considered a risk, there is a presumption that this information will be disclosed to the relevant member of the public’.

In September 2008, a pilot Disclosure Scheme was launched in four police force areas within Hampshire, Cambridgeshire, Cleveland, and across all of Warwickshire. In the pilot, members of the public were given a formal mechanism to make enquiries about an individual they were concerned about who had contact with children. If an individual was found to have convictions for sexual offences against children and there was reasonable cause to believe that the individual posed a risk of causing serious harm to the child or children concerned, the police may disclose this information to the person best placed to protect the child or children. This is usually the parent, carer or guardian and not necessarily the person who made the enquiry.

In March 2009, the Scheme was rolled out across all four forces after being successfully implemented in the first six months of the pilot.

The Scheme is now being rolled out across a further 20 forces between 1 August and October 2010. Those forces are:

- Bedfordshire
- Cheshire
- Dorset
- Durham
- Essex
- Gloucestershire
- Leicestershire
- Lincolnshire
- Norfolk
- Northamptonshire
- North Yorkshire
- Northumbria
- Staffordshire

- Suffolk
- Surrey
- Sussex
- Thames Valley
- West Mercia
- West Midlands
- Wiltshire

The Home Office is inviting the remaining police forces in England and Wales to consider introducing the scheme by March 2011.

Further information on Child Sex Offender Disclosure Scheme is available on the National Archives website.

<http://webarchive.nationalarchives.gov.uk/20100413151441/http://crimereduction.homeoffice.gov.uk/violentcrime/violentcrime015.htm>

Communications guidance

The Home Office produced a communications guidance pack, based on the communications lessons learned by the four pilot areas, to help participating forces to increase awareness and understanding of the Child Sex Offender Disclosure Scheme. This pack is aimed at the Single Points of Contact within participating forces who may be unfamiliar with developing and delivering a communications strategy and provides them with basic information and suggestions on the most effective media, key messages and evaluation.

Alongside this, the Home Office has also produced a range of communications materials which forces and partners can use to raise awareness and understanding of the disclosure scheme with the public. They are:

- A7 roll fold keeping children safe leaflet
- A3/A4 single sided disclosure poster
- A5 disclosure process booklet
- A5 general booklet – keeping children safe

The Communications Guidance and supporting materials are available to download from the Home Office website.

<http://www.homeoffice.gov.uk/publications/crime/communications-guidance>

Annex 10.

Police/IPCC protocol