

London Borough of Islington Children's Social Care Procedure

Version	Owner	Updated by	Date	Procedure No
1.0	Ida Cohen	Ida Cohen	22 February 2012	(for upload to Tri-X)

Protocol for handling access to social care records requests from the Metropolitan Police

1.0 Introduction

1.1 This procedure applies to only those circumstances where CSC has received a request for information from the Police. Disclosure of documentation on CSC files is covered by various Statutes, Statutory Instruments, Guidance and Protocols including amongst others the following:

- Data Protection Act 1998
- Common law of confidentiality
- Freedom of Information Act 2000
- Human Rights Act 1998 and the European Convention on Human Rights
- Public Interest Immunity
- Sections 10, 11 and 13 of the Children Act 2004
- Islington Local Safeguarding Children Board
- London Child Protection Procedures
- Criminal Justice Act 2003

1.2 Whilst there is a complex interplay between all of the above Islington CSC will have regard to the following guiding considerations in dealing with any request for disclosure:

- a) Whenever a request for disclosure is made by police both the Local Authority and the police must observe their duties of confidentiality
- b) Consent of the individuals (or persons with parental responsibility in the case of children) referred to in the information or documentation should always be considered in the first instance and sought where possible unless it is inappropriate to do so.
- c) A decision in relation to disclosure depends on the facts of each individual case.
- d) Only material and documents relevant to a criminal investigation should be disclosed.
- e) The Police or Crown Prosecution Service (CPS) should be specific and clear about what information or documentation is sought. This should be clearly set out in their written request for disclosure.

London Borough of Islington Children's Social Care Procedure

- f) Information and documentation may be covered by the principles of Public Interest Immunity (PUBLIC INTEREST IMMUNITY). This means that information must not be disclosed if as a matter of public policy, the public interest requires that it should not be disclosed.
 - g) Public Interest Immunity must be considered by the court after criminal proceedings have been instituted.
 - h) Prior to criminal proceedings Islington's legal department will seek an undertaking from police not to disclose any information or documents to the defence once proceedings are issued unless and until a public interest immunity hearing has taken place.
 - i) The court will perform a balancing exercise weighing up the various competing public interests, which will include the interests of the child, respect for family life and the need for social workers to maintain a working relationship with that child and his/her family and the wider interest in maintaining the confidentiality of the child protection system against the need for a fair hearing, the need to protect the liberty of an individual, the need for the effective administration and prosecution of justice.
- 1.3 Appendix A shows a standard template which should be used to gather the required information from the Police. Use of the Pro Forma will enable Islington CSC to deal with requests expeditiously.

2.0 Guidance for CSC Staff

- 2.1 Requests for access by the police must be managed by qualified social work staff, administrators can be asked support the process administratively but they cannot make decisions about what information may be disclosed.
- 2.2 There will be occasions when CSC will receive a request from the Police for disclosure of material held on CSC files and records for the purposes of assisting them in their investigation into a criminal offence.
- 2.3 When faced with such a request the social worker should forward the completed Pro-forma Request Form (see Appendix A) to the Islington Legal Team for a Lawyer to be appointed to case. If the request for disclosure has not been made on the Pro-forma Request form advise the police officer to resubmit the request in the correct format.

3.0 Guidance for Legal Services

3.1 The allocated Lawyer must check that the following matters have been addressed in the request for disclosure **before** considering the files:

- Has the request been completed using the appropriate form?
- Is the request specific in that you can identify what information and documents are sought by the Police as opposed to a generalised request for all material in relation to a named child/individual? In particular have the Police addressed the following:
 - Name and details of child in which information is requested including date of birth, school, etc
 - The alleged offence being investigated including names and details of alleged victims and perpetrators. The circumstances of the alleged offence.
 - The stage in the investigation i.e. pre or post charge?
 - Reasons why material is being sought and relevance to investigation
 - Likely effect on the criminal investigation if the request for disclosure is refused?
 - Has consent been sought by the Police from the individual who is the subject of the social work files? If not, why not?
 - Is there a reason why the subject or if a child, the person(s) with PR should not be notified of the Police's request for disclosure?

4.0 Guidance on perusing CSC files for information sought by the Police

- 4.1 Islington Legal Services will appoint a lawyer to deal with any requests for disclosure and that lawyer will liaise with the police or CPS officer involved both before criminal proceedings are issued and after wards.
- 4.2 The in-house lawyer will provide such assistance and advice as is required at both stages.
- 4.3 It is good practice for a social worker to ask the police officer to indicate which documents are of particular importance to the police and to keep a record of those documents for future reference in any Public Interest Immunity application.

Documents and Information from court proceedings

- 4.4 Disclosure of such documents is governed by the Family Proceedings (Amendment No 4) Rules 2005. These Rules provide an exception to the law of contempt in respect of information relating to court proceedings in certain circumstances i.e. disclosure permitted by permission of the court, Police Officers exercising powers under s46 of Children Act 1989 or serving in Child Protection or Paedophile Unit of Police Force, specified circumstances where the judgement can be disclosed. The Police may therefore need to apply to the relevant Family Court for disclosure of these documents.

Ongoing section 47 Children Act 1989 investigation

- 4.5 If there is an ongoing section 47 CA 1989 investigation, information can be shared with Police and other agencies under s10 and s11 of the Children Act 2004 and in accordance with guidance such as Working Together to Safeguard Children (2006) and Information Sharing. CSC must be satisfied that the information is being disclosed in order to protect the child from harm and neglect or is in the best interests of the welfare of the child. If the Police wish to disclose this information or documents in criminal proceedings – the Local Authority may need to consider if the material is subject to Public Interest Immunity. If that is the case then it is a matter for the criminal court to weight up the public interest in protecting the individual and or the confidentiality of the information against the public interest of administering justice.

Confidential information/documents

- 4.6 This is a class of documents where 4.4 or 4.5 above don't apply - information or documents recording for e.g. confidential conversations between a Child and a professional i.e. social worker, counsellor etc or between professionals
- 4.7 The local authority can disclose if there is (i) consent from child or person with PR (ii) if no consent, is there a public interest of sufficient force to justify disclosing this information or documents despite the interests of the child. Once again this is a balancing exercise to be done by the court.

Sensitive information

- 4.8 This includes material and documents with personal identifying details or information about the child or other persons.
- 4.9 Information can be disclosed under the Data Protection Act 1998 if individual consents to disclosure; or it is relevant to criminal investigation and if necessary for the administration of justice. Public Interest Immunity may need to be asserted and resolved by the courts.
- 4.10 Once the information/documentation is divided into the above categories, consideration can then be given as to whether or not the

London Borough of Islington Children's Social Care Procedure

Local Authority can lawfully disclose the material to the Police in accordance with their request.

Consent

- 4.11 If the person who is the subject of this information **consents** to sensitive and confidential material about him being disclosed, the local authority can disclose the material and documents to the Police.
- 4.12 If there is **no consent**, the local authority will have to consider whether any of the sensitive or confidential or court material can be lawfully disclosed by them under statute or common law or local authority protocols and guidance; or whether Public Interest Immunity is attached to this information.
- 4.13 If the stage of the investigation is pre-charge [i.e. no one has been charged with an offence] and the local authority is not prepared to disclose the documentation, it is then a matter for the Police to consider what if any applications they might be entitled to make against Islington under the Police & Criminal Evidence Act 1984. The Local Authority will refer the matter to their Legal Department and can make representations to the court.
- 4.14 If the Police have already charged the defendant the Local Authority is obliged to claim Public Interest Immunity. The Prosecution can then seek a witness summons against Islington pursuant to section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965 and the court will rule on disclosure. An advocate from Legal Services will represent the Local Authority at any hearing together with a representative from CSC.
- 4.15 The allocated Lawyer will respond to the Police in writing. In order to assist the Police and CPS in their decision making and to minimise delay the letter will set out whether or not there is relevant information on a file, identify the categories of information and the reasons for granting or refusing the request.

5.0 Public Interest Immunity Hearings

- 5.1 Public Interest Immunity hearings are commenced by the CPS applying for and issuing a witness summons to the Local Authority requiring attendance at the Crown Court with the relevant files.
- 5.2 CPS case workers usually liaise directly with legal services in these matters. However should a witness summons be served direct on CSC it is imperative that the summons is referred to legal services without delay.
- 5.3 Once a summons is received legal services will:
 - Ask for all of the relevant CSC files

London Borough of Islington Children's Social Care Procedure

- Obtain a copy of the indictment and defence case statement from CPS
- The allocated advocate solicitor will flag up any relevant materials on the files and prepare a skeleton argument making the case for Public Interest Immunity.
- Attend the Crown Court and present the local authority's argument.
- Deal with the other advocates in reviewing the papers to comply with the disclosure decision of the judge (if any)

5.4 It is unusual for the allocated social worker or a manager to have to accompany the advocate to court although the lawyer will discuss the background to the case with the allocated social worker.

If you are in any doubt about the application of this Protocol always refer the matter to Legal Services.

Appendix A – This is an example only the actual template form in Word can be downloaded from the Council's intranet (Izzi)

Date of request:	
[NAME OF POLICE FORCE] requests disclosure of material held by the London Borough of Islington CSC in respect of the following:	
[CHILD/REN NAME/S] & DOB	
ADDRESS:	
The [NAME OF POLICE FORCE] are conducting a criminal investigation into allegations	
MADE BY: :	
AGAINST:	
Consent	
Have you sought the consent of the NAMED CHILD OR INDIVIDUAL or their parents/carer to the disclosure of this material?	
If not, why?	
Do you object to Authority notifying the NAMED CHILD OR INDIVIDUAL or their parents/cared about this request for information?	

London Borough of Islington Children's Social Care Procedure

If yes, why?	
Pre or Post Charge	
Has an individual been charged in respect of this criminal investigation?	
Details of Offence	
The allegations being investigated are <ul style="list-style-type: none"> - alleged offence - relevant dates - alleged victim and perpetrator - circumstances of incident - stage in investigation 	
Details of the alleged victim	
The following child is alleged victim of the offence/s <ul style="list-style-type: none"> - Name of child - Address - Date of Birth - Social Worker (if applicable) - Relationship to the Offender - Name of school or educational facility attended - Other children in the family 	
Details of the alleged perpetrator, if known	
<ul style="list-style-type: none"> - Name - Address - Date of Birth - Social Worker (if applicable) - Relationship if any to the victim 	
Details of the any identified witnesses	
In addition, we have obtained evidence from the following child/children/ adults <ul style="list-style-type: none"> - Name - Address - Date of Birth - Social Worker (if 	

London Borough of Islington Children's Social Care Procedure

applicable) - Relationship to the Offender - Any other relevant information	
Relevance of material sought?	
I believe that the Authority may hold material relating to the alleged offender and/ or perpetrator and /or children listed above which may be relevant to our investigation and I therefore request:	
- Specify nature of material sought	
- Any specific Reports or Documents	
- Reasons why this material is relevant to the criminal investigation	
Reasons why any delay in disclosing or any refusal to disclose the documents requested may delay or prejudice your investigation	
Conclusion	
Please can you confirm if your Authority holds any such material as described above?	
We confirm that any material obtained by us in the course of our investigation will be treated as sensitive and dealt with in accordance with the Criminal Procedure and Investigations Act 1996.	
Please reply by:	
Please specify the reason for this deadline:	
If you require any further information or wish to discuss this request, please contact me:	
Name of Officer:	
Email:	
Telephone:	
Fax:	