



The Attorney General Falkland Islands

AGG8

The Attorney General's Guidance on Joint Disclosure for Government Departments

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**The Law and Regulation Directorate
The Attorney General's Chambers
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1. Introduction

1. The Falkland Islands Government is a unitary authority for which the Attorney General acts in all legal matters. Although information and data is held by the Falkland Islands Government as a unitary authority, the Government takes data control and confidentiality seriously. As a result information and data is managed so as to ensure that it is accessed only by those needing to use the data and information for the specific purpose for which it was obtained.
2. This Guidance applies to all cases involving criminal investigations where there is a need to access data or information held by a Government Department. The aim of this Guidance is to ensure that information and data is accessed in a proportionate and appropriate manner whilst ensuring that those conducting criminal investigations have access to all relevant material in order to investigate criminal offending fully and fulfil the duties of disclosure.
3. This Guidance has the following aims:
 - (a) To provide early notification to FIG departments with a possible interest that a criminal investigation has commenced.
 - (b) To provide early notification to FIG departments with a possible interest that a family proceedings investigation has commenced.
 - (c) To facilitate timely and consistent disclosure of information and documents from the police and prosecution into the Family Court System.
 - (d) To facilitate timely and consistent disclosure of information and documents from the Family Court System to the police and prosecution.
 - (e) To provide a timely and expeditious process for FIG departments to respond to a request from the police for material held by the department which would assist a criminal investigation.
 - (f) To provide for timely consultation between prosecution and the relevant FIG Department Head where the department holds material which satisfies the test in the Ordinance for disclosure to the defence.
 - (g) To provide a standard process for applications by the police and/or prosecution for the permission of the Family Court for disclosure of material relating to Family Court Proceedings.
 - (h) To provide a standard process for applications for disclosure of material relating to criminal proceedings into the Family Court System.

2. Family Court Proceedings

Notification

4. As soon as reasonably practicable the Social Work Department (SWD) and/or Child Protection will notify the police and/or Prosecution in writing of the contemplation or existence of Family Proceedings. Form A can be used for this purpose (see Annex A).
5. Where criminal proceedings have been commenced (or are contemplated), the police will immediately inform the prosecution that there are concurrent Family Court Proceedings taking place. The Prosecution will give due priority to making charging decisions in cases involving Family Court Proceedings.

Disclosure

6. Where the information or documents sought does not relate to an ongoing criminal investigation, the police will ensure the provision of information to the SWD and/or Child Protection as appropriate; the reply section of Form A can be used for this purpose.
7. It is to be understood by all Parties that the Protocol should be used proportionately and is designed to facilitate only requests for material held by the police relevant to the central issues in the case. Requests for disclosure should not be drawn any wider than is absolutely necessary and only relevant material should be disclosed. The disclosure request to the police must be focussed and identify the documents which are really needed.
8. Where a criminal investigation has commenced, the police will, subject to the Guidance below, provide to the SWD details of the criminal investigation. The second part of Form A can be used for this.
9. If a suspect, who is involved in Family Court Proceedings, is charged with a relevant criminal offence, the police will contact the SWD at the point of charge, providing details of offences, custody status of defendants, bail conditions and court timescales.
10. In the event that the suspect(s) is/are not charged, the police in consultation with Prosecution will provide the SWD and/or Child Protection with reasons why there will be no prosecution.
11. If criminal proceedings continue, Prosecution will, as soon as reasonably practicable, provide to SWD and/or Child Protection details of each case management hearing in the criminal court together with details of the future timetable of the criminal proceedings and details of any directions relevant to the SWD or to concurrent Family Proceedings. Child Protection will forward the details to the Family Court where applicable.

Voluntary disclosure by police to the SWD

12. Where criminal proceedings have been commenced (or are contemplated), in relevant cases, the police will consult with Prosecution as soon as possible before a decision is made on whether to disclose police material to the SWD and/or Child Protection.
13. Within any timescale specified by the SWD/Child Protection, the police/Prosecution will provide the material which can be disclosed to the SWD and/or Child Protection. A completed copy of the second part of Form A can be used for this purpose.
14. SWD and/or Child Protection will agree that the police material will only be disclosed to the professionals and parties in the Family Proceedings (unless the permission of the court is obtained to disclose material to others).
15. Visually recorded interviews (Achieving Best Evidence interviews) will not be released to SWD and/or Child Protection except against a written undertaking in order to prevent the unauthorised use of the evidence and only where there is a specific need for the video recordings, as opposed to the transcripts of recordings, to be disclosed. In the majority of cases a transcript or written summary of the interview will be sufficient. Form F (at Annex F) can be used for this purpose.
16. Unless disclosure is required to ensure the immediate safety of a child, the police will not disclose material where to do so might prejudice the investigation and/or prosecution (or where on the grounds of confidentiality it is necessary to obtain the consent of persons providing statements). However, redacted disclosure should be made wherever possible. The police will indicate the approximate date on which disclosure can be made and the police (in consultation with Prosecution) must provide reasons as to why any material is being withheld.
17. Alternatively, Prosecution can indicate that disclosure will be made in the event that Child Protection obtains a Family Court order stating that the material is not to be disclosed to named individual(s) (typically, suspects and/or witnesses in the criminal proceedings). Such a court order should also be obtained where possible in the event that disclosure is made to ensure the immediate safety of a child.
18. The Family Court may request disclosure from SWD of material held by them and relating to the criminal case. Again, SWD will notify Prosecution (or the police if criminal proceedings have not commenced) as soon as reasonably practicable. Where the police and/or Prosecution object to disclosure, they will make appropriate and timely representations to the Family Court explaining why such disclosure might be capable of prejudicing the criminal proceedings.

Orders for disclosure against the police/Prosecution

19. SWD and/or Child Protection will notify as soon as possible the police and Prosecution of any application to the Family Court (whether by SWD or any other party) for disclosure of prosecution material. SWD and/or Child Protection will notify the police and/or Prosecution of the date and time of the Family Court hearing at which disclosure will be determined.
20. Where directed, Prosecution will attend the Family Court hearing to explain the implications for a criminal trial when orders for disclosure are being considered by the court. In any event, Prosecution will provide written representations to the Family Court and to Child Protection where disclosure is opposed (explaining why disclosure might reasonably be considered capable of prejudicing the investigation and/or prosecution). Prosecution may request that the Family Court hear representations in the absence of the parties to the family proceedings if to do otherwise may prejudice the police investigation or prosecution.).
21. Child Protection will ensure that any order against the police and/or Prosecution is served within 2 working days of the date of the order on the police and/or Prosecution.
22. The police and Prosecution will comply with any court order.

3. Criminal Proceedings

Notification

23. Following the commencement of an investigation, in appropriate cases, the police will notify any Government Department from which disclosure will be required of the commencement of proceedings.
24. In cases where there is an overlap with ongoing, or contemplated, Family court proceedings the police will inform SWD. SWD will confirm this with police/Prosecution the status of Family court proceedings and give details of all parties (and legal representatives where known).
25. Prosecution will give due priority to making charging decisions in cases where Family court proceedings are being/have been commenced.

Police request for disclosure

26. Following the commencement of the investigation, the police will provide to the Government Department from which disclosure is required a written Request for Disclosure. The request should be sent to the Head of the Department. Form B (at Annex B) can be used for this purpose.
27. The request must be as prescriptive and detailed as possible and necessary for the pursuit of reasonable lines of enquiry. The form will include reasonable timescales for the police to be given access to relevant material, but the presumption will be that the FIG department will deal with any request from the police as expeditiously as possible so as to not to jeopardise the criminal investigation. Timescales will be case-specific taking account of the stage/nature of the investigation and/or prosecution. The Request Form must list
 - (a) what material it is believed the department holds
 - (b) the reasons why access to the material is sought
 - (c) the known or suspected issues in the case
 - (d) what will happen to the material if it is released
 - (e) that the Department Head should indicate whether they consider the material to be sensitive and the reasons for that view
 - (f) what will happen if the material is not released

Disclosure to the police

28. Upon receipt of the request, the Department Head will, as expeditiously as possible, designate an officer to identify and collate relevant material as appropriate to assist the criminal investigation.
29. A schedule will be prepared listing the material in the possession of the department, and indicating whether or not the department considers the material to be sensitive. If the department is in possession of material which it does not intend to release this must also be listed with the reason why it is not being made available to the police. Such a course should be **exceptional** because all FIG departments recognise that the material will be regarded as sensitive by the police and Prosecution and that it will not be disclosed to the defence without further consultation with the department or order of the court.
30. Within the timescales agreed between the department and the police, the police will examine and review the material collated. The venue of the review will be determined by agreement. The police may make notes and/or take copies of the material. The material will not be disclosed to the defence without further consultation with the department or order of the court.
31. Where further relevant material comes to light after the police examination of the material, the Department Head will contact the police and/or Prosecution to arrange an examination of the new material by the police.
32. Similarly, where new issues arise in the criminal case (e.g. following the receipt of the defence statement), the police/Prosecution will submit a further = request to the department requesting access to material not previously examined.

Disclosure by SWD

33. In addition to the above in the case of SWD/Child Protection will ensure that documents and information relating to Family Court proceedings are not included in the files to be examined by the police. Where there are documents and information relating to Family Court proceedings, the SWD/Child Protection will provide a list of that material without describing what it is, in order for Prosecution, if appropriate, to apply to the Family Court for disclosure (e.g. by providing a copy of the redacted court index).
34. SWD can disclose to the police documents which are lodged at court, or used in the proceedings, which already existed (e.g. pre-existing medical reports). Similarly, the text or summary of the whole or part of an approved judgment given in the Family Court proceedings can be included in the files to be examined by the police, if for the purposes of criminal investigation.

35. This does not prevent SWD providing to the police documents or information relating to Family Court proceedings where disclosure is for the purposes of child protection and not for the purposes of the criminal investigation.
36. Where such material is disclosed the police cannot make onward disclosure of any documentation or information contained therein for the purpose of the investigation or prosecution without the express permission of the Family Court (for the avoidance of doubt, this will include disclosure to Prosecution).
37. Where, in exceptional circumstances, the SWD is not able to include other material (not relating to Family Court proceedings) in the files to be examined by the police, it will notify the police in writing of the existence of this material.

Applications by Prosecution to the family court for disclosure

38. All such applications (including those pre-charge on behalf of the police) will be made by Prosecution.
39. Applications by Prosecution must specify the purpose and use to which the material is intended to be put and should seek leave to share the material with the police and with the defence and to use the material in evidence at the criminal proceedings.
40. The application must be served on all parties to the Family Proceedings.
41. The application will be determined at a hearing at the Family Court.
42. Where it is practicable to seek prior written consent to disclosure from all parties to the Family Proceedings, Prosecution should do so. Application should then be made in writing to the Family Court seeking a consent order.
43. Alternatively (and whenever this is possible), Prosecution will ask Child Protection to request that the Family Court considers the issue of disclosure to the Prosecution at the next hearing. In this way, the Family Court will be in a position to make any orders as appear appropriate without the need for Prosecution to make application.
44. When requesting the Family Court to make an order in accordance with this paragraph, Child Protection will put the other parties to the proceedings on notice; and will provide the court with details of the officer to whom disclosure is to be made and the purpose for which it is to be made.

Text or summary of judgment in family proceedings

45. Where there is in existence a judgment of the Family Court which appears to be relevant to concurrent criminal proceedings (e.g. a fact-finding judgment) Child Protection will forward to Prosecution copies. The judgments may be appropriately redacted.
46. Where Child Protection is not in possession of such a judgment s/he will notify Prosecution in order that the judgment can be obtained directly from the Family Court.
47. Where it appears to Child Protection during a hearing that the judgment will be relevant to the criminal proceedings, Child Protection will request that the Family Court expedites the preparation of the judgment for release to Prosecution.

Disclosure by Prosecution to the defence

48. The Ordinance requires the prosecution to disclose to the defence any relevant material (including sensitive material) that could reasonably be considered capable of undermining the prosecution case against the accused or of assisting the case for the accused (the "disclosure test"). Where appropriate, application can be made to the criminal court to withhold sensitive material which satisfies the disclosure test on the grounds of public interest immunity (PII application).
49. PII applications to the criminal court for the withholding of sensitive material should be rare. Fairness ordinarily requires that all relevant material which weakens the prosecution case or strengthens that of the defence should be disclosed. There is no basis for making a PII application except where the prosecutor has identified material that fulfils the disclosure test, disclosure of which would create a real risk of serious prejudice to an important public interest.
50. All sensitive material obtained from a department will be listed by the police on the sensitive disclosure schedule MG6D. The lists of material not disclosed by the department to the police will also be included.
51. In the case of material obtained by the police in accordance with the above must not be disclosed to Prosecution. The police will reveal the existence of the material on the MG6D (without describing it). As appropriate, Prosecution will seek the permission of the Family Court to access such material.
52. Prosecution will review the material in accordance with its statutory duties and under the Attorney General's Guidelines on Disclosure. Only relevant material which might undermine the prosecution case or might reasonably assist the defence case will fall to be disclosed. There will in no circumstances be "blanket" disclosure to the defence.

53. Where a department document has not been made available to the police on the basis of confidentiality (e.g. consent has not been obtained from the person to whom the document relates), Prosecution will consider whether it is appropriate to seek access to such material by means of a witness summons in the criminal court.
54. Where in these circumstances application is made by Prosecution for a witness summons, Prosecution will serve the application on the criminal court and the Department Head, identifying the Department Head as the person who is required to produce the document(s). In addition, Prosecution will serve the application on the person to whom the confidential document relates.
55. Where any material reviewed by Prosecution falls within the statutory disclosure test Prosecution will notify in writing the Department Head, setting out the reasons why the material falls to be disclosed. Form C (at Annex C) can be used for this purpose. The Prosecution will provide proposals for the editing or summarising of the material for the purposes of disclosure to the defence.
56. The Department Head has the opportunity to make any representations in writing to Prosecution on the issues of disclosure; Form D (at Annex D) can be used for this purpose. This will include objections to disclosure on the basis that the person to whom the material relates has not consented.

4. Public Interest Immunity

57. If the Department Head does not agree to disclosure of material to the defence, Prosecution must negotiate with the Department Head to explore whether disclosure can be made in edited form or by summarising in another document the issues arising in the material. Whilst recognising that the prosecution must always comply with its statutory duty of disclosure, the sensitivity can often be removed in this way.
58. PII applications in the criminal court will be rare. Departmental material relating to a child is not automatically a "class" of material to which PII applies. Depending on the sensitivity of the material, it may be that the public interest in the prosecution of crime overrides the interests of confidentiality. In highly exceptional cases, Prosecution may need to make disclosure to the defence of the edited/summarised document without the consent of Department Head.
59. If a PII application is appropriate, Prosecution will make a PII application to the criminal court as soon as reasonably practicable. Prosecution will notify the Department Head of the date and venue of the PII application and inform them of their right to make representations to the criminal court.
60. Where PII is sought on the basis of lack of consent from the person to whom the confidential document relates, Prosecution must in accordance with the Criminal Procedure Rules notify the person to whom the document relates (as above, notification of date and venue of PII application and the interested person's right to make representations to the court).

Annex A: Form A

Notification of Family Investigation/Proceedings: request for disclosure of police information

<u>FORM A</u> <u>NOTIFICATION OF FAMILY INVESTIGATION/PROCEEDINGS:</u> <u>REQUEST FOR DISCLOSURE OF POLICE INFORMATION</u>	
REQUEST FOR INFORMATION	
Person Requesting Information	Name: Job Title: Telephone Number: Email:
Date of Request	
Court name:	
Case No:	
Name of all parties to Proceedings and legal representatives:	
Next hearing date:	
Advance notice of family proceedings and any request [for information][to indicate availability of] information should be made as soon as possible and at least 10 working days before the relevant directions hearing date	
Date Information is required by:	
	Information should be received at least 5 clear working days before the hearing date
Purpose of the Information	

INFORMATION REQUESTED ABOUT THE FOLLOWING PERSON(S):		
1. Name (Alleged perpetrator/s):	DoB:	Address:
2. Name of other party/parent (if applicable):	DoB:	Address:
3. Names(s) of relevant child(ren):	DoB:	Relationship to alleged perpetrator:
1.	1.	1.
2.	2.	2.
3.	3.	3.
4. Brief details (including date and place) of the circumstances of the incident(s) in respect of which family proceedings are being taken /contemplated:		
Brief Details (Including Date And Place) Of The Specific Incident(S) Upon Which Information Is Sought:		
Nature of the documents, records or other evidential material requested and its relevance to the civil/family proceedings (List documents with as much particularity as possible e.g. father's interview, mother's statement, sister's video interview, etc)		
Proposed directions for disclosure likely to be made including the date by which actual documents will be required): (list directions or attach draft order for directions)		

<p>Has a date has be fixed for a full hearing?</p> <p>Officer(s) likely to be required to give evidence? if so please list which officers</p>
<p style="text-align: center;"><u>POLICE REPLY</u></p> <p>[This form should be completed in accordance with the FIG protocol on disclosure]</p> <p>Police information will not be disclosed unless there are important considerations of public interest to justify departure from the general rule of confidentiality. These considerations include the protection of vulnerable members of society. The information below is provided on the strict understanding that such information is only for the current proceedings. It will be treated as confidential and will not be used for any other purpose.</p>
<p>Disclosure available? (Police list each above)</p> <p><i>Police to mark each one that is available now and for those that are not give date when will be available</i></p>
<p>Disclosure not available? (Police list each above)</p> <p><i>Police to mark each one that is available now and for those that are not give date when will be available or reason it is not available</i></p>
<p>Name/Rank of Officer/Prosecutor completing:</p> <p>Email:</p> <p>Date:</p>

Annex B: Form B

Notification of Police investigation/Criminal proceedings: request for disclosure

FORM B <u>NOTIFICATION OF POLICE INVESTIGATION/ CRIMINAL PROCEEDINGS:</u> <u>REQUEST FOR DISCLOSURE</u>			
1. The Police are conducting a criminal investigation into allegations made against the following individuals:-			
NAME:			
ADDRESS:			
DATE OF BIRTH:			
2. The circumstances of the allegations are as follows: (Attach case summary, key witness statements, expert reports as appropriate)			
3. Details of child/ children involved in the allegations			
Name			
Address			
Date of Birth			
Relationship to offenders(s)			
Victim or Witness			
Social Worker			
Schools Attended (with dates)			
4. I believe that your Department may hold the following material relating to the alleged offender(s) or the above child/ children which may be relevant to my investigation. [Describe material in precise detail, specify relevant time periods, relevant addresses, schools attended etc]			

Any material obtained by us will be treated as sensitive and dealt with in accordance with Criminal Procedure and Evidence Ordinance 2014. In accordance with paragraph 3.5 of the Disclosure Code, we are under a duty to pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. Such lines of enquiry include seeking access to the above material which you may hold. Our investigation might be prejudiced or delayed if we are not allowed access to the material. In accordance with the FIG Disclosure Protocol we request that arrangements are made for us to examine the above material. Any material relating to Family Court Proceedings must not be made available except with consent of the court or in accordance with Family Procedure Rules 2010.

5. In the circumstances of this investigation, it is important that arrangements are made for us to examine the material by:
[Date]

Stage reached in investigation:

Contact details for Prosecutor:

Officer:

Date:

Email:

DEPARTMENT HEAD REPLY

[This form should be completed in accordance with the FIG protocol on disclosure]
If the department is in possession of material which it does not intend to release this must also be listed with the reason why it is not being made available to the police. Such a course should be exceptional; all FIG departments recognise that the material will be regarded as sensitive and that it will not be disclosed to the defence without further consultation with the department or an order of the court.

The Department is in possession of the following material which can be examined:
(List)

The Department is in possession of the following material which cannot be examined: (List separately stating the reason for withholding disclosure)

Arrangements for the examination of the material can be made by contacting:

Name:

Tel:

Email:

Completed by :

Date:

Tel:

Email:

Annex C: Form C

Notice to FIG Department from Prosecutor that material satisfies disclosure test

NOTICE TO FIG DEPARTMENT FROM PROSECUTION THAT MATERIAL SATISFIES DISCLOSURE TEST		
You will be aware that the police have recently examined material held by the(<i>insert department name</i>)Department in the following proceedings:-		
	NAME	DATE OF BIRTH
Lead Defendant		
Lead Child		
I have received the material in accordance with Part 14 of the Criminal Procedure and Evidence Ordinance 2014. Please note that in accordance with section 216, the following material falls for disclosure to the defence because it is capable of undermining the prosecution case or assisting the case for the accused.		
Document Reference	Description	Reason why disclosable
I would be grateful if you would indicate in respect of each item listed above whether a) you have no objections to disclosure, b) you have no objections to disclosure subject to appropriate editing, c) you object to disclosure (in which case I will not make disclosure subject to any Court order).		
I would be grateful if you could reply by:		
Prosecutor:	Name: Telephone: Fax: Email:	
Date:		

Annex D: Form D

Notice from FIG Department: representations on disclosure

NOTICE TO PROSECUTOR FROM FIG DEPARTMENT: REPRESENTATIONS ON DISCLOSURE	
I thank you for your notice datedindicating that certain (<i>insert Department name</i>) Department material satisfies the test for disclosure in section 216 Criminal Procedure and Evidence Ordinance 2014.	
I have the following representations in respect of proposed disclosure to the defence. (Indicate in respect of each item a) that disclosure is agreed b) that disclosure is agreed subject to editing (specify where appropriate) c) that disclosure is not agreed, with reasons e.g. absence of consent from person to whom document relates)	
a) Disclosure is agreed	
Item	Comment
b) Disclosure is agreed subject to editing	
Item	Comment
c) Disclosure is not agreed	
Item	Comment
Name: Telephone: Email	

Document Control

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