

Giving Evidence or Information about Suspected Crimes

A Guide for Crown Servants

NOTICE TO ALL STAFF

GIVING EVIDENCE OR INFORMATION ABOUT SUSPECTED CRIMES: A NEW BOOKLET OF GUIDANCE FOR CROWN SERVANTS

Introduction

As a Crown Servant, you have a general professional duty to draw official information which you believe may be relevant to the investigation or prosecution of a criminal offence to the attention of your Department (for example, your line manager or Offence Enquiry Point). You also have a duty to support the administration of justice, by ensuring that you give investigators, prosecutors and defendants full and proper assistance in their search for information about the alleged offence.

The purpose of this notice is to alert staff to the availability of new guidance in the form of a booklet . *Giving Evidence or Information about Suspected Crimes: A Guide for Crown Servants*, and to provide advice on the procedures to be followed should anyone find themselves in this position. A short guide to the booklet, and the procedures to follow should you ever need help, is appended to this notice.

Departmental Contact Point/Offence Enquiry Point

Each Department has been asked to appoint a nominated officer to advise any member of staff who believes they have evidence or information about a suspected crime, and to handle requests for information received by the department from investigators, prosecutors or the defence. This post will be known as the Offence Enquiry Point (GEP) [or the Criminal Investigation Contact Point (CICP)]. Your GEP [CICP] is [name, address, telephone and *fax* number]. If you need advice please contact [name of OEP/CICP].

Conclusion

For the vast majority of Crown Servants, the need to refer to the booklets or seek advice will never arise. However, it is important that you are aware of the existence of the booklets, and the procedures to follow should you ever find yourself in this position. You might, therefore, wish to keep the guide attached to this near to hand.

'Official information means any information or documents which you obtain as a result of your work, whatever the source of the information or document.

GIVING EVIDENCE OR INFORMATION ABOUT SUSPECTED CRIMES: A NEW BOOKLET OF GUIDANCE FOR CROWN SERVANTS

As a Crown Servant, you have a general professional duty to draw official information¹ which you believe may be relevant to the investigation or prosecution of a criminal offence to the attention of your Department (your line manager or your Offence Enquiry Point). You also have a duty to support the administration of justice, by ensuring that you give investigators, prosecutors and defendants full and proper assistance in their search for information about the alleged offence.

So, if you believe you have information which may relate to:

- . a crime being planned or a crime which has been committed, or
- . the investigation or prosecution of a criminal offence

you should ask your Offence Enquiry Point for a copy of the booklet *Giving Evidence or information about Suspected Crimes: A Guide for Crown Servants*. You should read the whole of **Chapter 2**, and follow the procedures set out in it.

If you are asked for information or documents by a person investigating or prosecuting a crime, or by someone representing a defendant, you should read and follow the procedures in **Chapter 3**. If you are in doubt about whether a request you have received is covered by this guidance, you should consult **Annex B** to the booklet which will tell you more about the identities of investigating and prosecuting authorities.

If you are asked to give formal evidence involving the disclosure of official information in an interview, in a written statement, or in court, you should read Chapter 4 and follow the procedures designed to help you comply with the legal requirements involved in giving evidence as a witness, which must be as accurate and as complete as possible.

Some official information is protected in law and some must be protected in the public interest. It may be that the information in your possession is protected in this way. It is important that you read Chapter 5 to check, and if necessary, follow the procedures set out in 5.5-5.7.

DON'T FORGET YOUR DEPARTMENT'S CONTACT POINT IS AVAILABLE TO HELP YOU.

¹Official information means any information or document which you obtain as a result of your work, whatever the source of information or document.

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1. GENERAL INTRODUCTION

Introduction

1.1 Crown servants who believe that they have information (including documents) which may be germane to the planning or commission of a criminal offence, or to the investigation or prosecution of a criminal offence or to the defence have a general professional duty to draw this fact to the attention of the appropriate authorities. The purpose of this booklet is to give guidance on the procedures you should follow when declaring such information, and on your responsibilities if you are asked to respond to a formal request for information from an investigator, from a prosecutor or from the defence in England and Wales. The booklet also explains your legal responsibilities when giving oral or written evidence as a witness, and offers advice to help you ensure that your evidence is as accurate and as complete as possible.

1.2 As a Crown servant you have a duty to support the administration of justice by ensuring that you give investigators and the parties to a prosecution full and proper assistance in their search for information about the alleged offence. You must therefore be as helpful and open as you reasonably can. However, you must always seek advice through your Offence Enquiry Point, or other established channels of communication for such matters in your department, before revealing official information, as some information is protected in law, and some will need to be protected in the public interest. This is explained more fully in Chapter 5.

The Criminal Procedure and Investigations Act 1996

1.3 This booklet reflects the current law on the disclosure of material, and on the means used to secure the attendance of witnesses or the production of documents, in criminal proceedings. Certain provisions of the Criminal Procedure and Investigations Act 1996 ("the 1996 Act"), which are expected to take effect later this year, change the law in a number of ways. Where the changes affect the procedures set out in this booklet, it provides guidance on the new as well as the current procedures.

Offence Enquiry Points

1.4 In each Government department and in certain other Crown bodies there are procedures in place and a nominated office to handle enquiries relating to alleged or possible criminal offences.

In many departments this office will be known as the Offence Enquiry Point. However, some departments will have different arrangements. For simplicity, this booklet refers to all such points of contact as Offence Enquiry Points, but you will be notified of the particular arrangements established in your department ¹. The functions of the Offence Enquiry Point are:

- (a) to give advice and guidance to officers of the department or Crown body who believe that they may have information concerning a possible or alleged criminal offence which should be passed on to an investigating authority, to the prosecution team (when the relevant provisions of the 1996 Act take effect, the prosecutor) or to the defence;
- (b) to provide a single contact point for all external enquiries concerning that department or Crown body which relate to an alleged offence, including all requests for information, documents or interviews;
- (c) to identify the individuals or sections best placed to respond to requests for information, documents or interviews;
- (d) where necessary, or at the request of the individual or section responding, to seek clarification of a request for information or documents or a narrowing of its scope;
- (e) to give advice and guidance to officers of the department or Crown body on their response to requests for information, including advice on the withholding of information which must be protected in the public interest or which it would be otherwise unlawful to reveal; and
- (f) to check and forward responses to requests for information and witness statements to the originators of such requests and to co-ordinate and advise on

¹ Your department should provide you with the details of your Offence Enquiry Point, including a contact name and telephone number. If you have any difficulties, your Principal Establishment Officer will hold this information.

departmental responses or representations.

1.5 The aim of the Offence Enquiry Point in carrying out these functions is to facilitate the proper transmission of documents and information, and to assist Crown servants to fulfil their responsibilities described in paragraphs 1.1 and 1.2 above.

Members of the Prosecution Team

1.6 The advice in this Booklet is intended for those who are third parties to a prosecution as different rules apply to members of the prosecution team. If you work for a department or other Crown body which investigates or prosecutes criminal offences, or if your department or Crown body has provided or may provide "expert witnesses" you should seek advice from your Offence Enquiry Point on whether or not you are regarded as a member of the prosecution team. Anyone who provides information or opinion about how other evidence should be interpreted, who provides specialist information to enable others to interpret evidence, or who conducts a specialist examination of persons, materials or data connected with the case may be an expert witness.

1.7 When the relevant provisions of the 1996 Act take effect, the concept of the Prosecution Team will no longer apply. The Act places certain duties on the prosecutor, defined as any person acting as a prosecutor, and also on persons charged with the duty of conducting a criminal investigation. Other persons who currently form part of the prosecution team will, in future, be third parties.

Private Prosecutions

1.8 The guidance in this booklet only covers cases where the prosecution is being brought by a Crown body, and does not cover prosecutions brought by a private individual. If you receive a request for information from a party involved in a private prosecution you should consult your Offence Enquiry Point for assistance in handling the request.

"Disclosure" and "Relevance"

1.9 The terms "disclosure" and "relevance" have a particular meaning when used in relation to legal proceedings, and these terms have been avoided in this booklet except where their narrower legal meaning is intended.

1.10 The legal duty to disclose to the defence material which is relevant to a prosecution falls on the prosecutor, not on those who simply supply information to the prosecution team. When the relevant provisions of the 1996 Act take effect, the duty to disclose will be limited to material which is in the possession of the prosecutor or which he has inspected pursuant to the code of practice in criminal investigations, and which either might in his opinion undermine the prosecution case, or might reasonably assist the defence disclosed by the accused in a defence statement given under the Act.

1.11 Where this guidance discusses disclosing information to investigators, or prosecutors or to the defence (whether in response to a request or as a voluntary act), your obligation will be to pass such information to your Offence Enquiry Point, who will arrange for onward transmission to the correct parties, and ensure that all those entitled to the information receive it.

Civil Litigation

1.12 The guidance in this booklet is intended to apply only to the provision of information germane to criminal investigations and prosecutions. Different considerations may apply to the provision of information in relation to civil cases. You should only provide information or documents to civil litigants if one or more of the following circumstances apply:

- (a) you have been specifically authorised to reveal the information for use in civil litigation;
- (b) the information or documents requested are freely available to the public;
- (c) the information or documents requested are of a kind which would normally be made available to the individual or company requesting them (eg certain details of tax or social security payments); or
- (d) the information has been requested under the openness initiative and does not fall within any of the exceptions applicable to that initiative.

1.13 If you have a problem which involves the provision of information in a civil litigation context, you should seek legal advice from your department. Your Offence Enquiry Point will be able to assist you in finding this advice.

2. DUTY TO VOLUNTEER INFORMATION

Introduction

2.1 Crown servants who believe that they have information (including documents) which may be germane to the planning or commission of a criminal offence, or to the investigation or prosecution of a criminal offence, or to the defence have a professional duty to draw this fact to the attention of the appropriate authorities. This applies irrespective of whether the information appears to be helpful to the suspect or defendant or to support the case against him. That principle flows from the overriding requirement that the prosecution team (when the relevant provisions of the 1996 Act take effect, the prosecutor) has as much evidence as possible on which to decide whether charges should be made or continued with, and that any prosecution which may follow should be conducted fairly.

Suspicious and Beliefs

2.2 The guidance in this Chapter draws a distinction between suspicions and beliefs, and proposes slightly different courses of action in response to each. For the purposes of this guidance, a **suspicion** is a reasonable but unsubstantiated doubt or concern, whilst a **belief** will be based on some solid grounds or evidence (though not necessarily conclusive grounds).

Suspicious about Criminal Offences

2.3 If in the course of your duties you come to **suspect** that you may have information about the planning or commission of a criminal offence, or information which is germane to the investigation, prosecution or defence of a criminal offence, you have a general professional duty to take any appropriate initial steps to confirm or deny your suspicion, and then (if your suspicion is not resolved) to seek advice from your Offence Enquiry Point on whether an investigating authority should be informed. Where the information concerns an existing prosecution the Offence Enquiry Point will be alive to the fact that only the prosecutor is likely to know how a point on the fringe of a case may impinge on it. Therefore, you will need advice about informing the prosecuting authorities.

2.4 It is impossible to lay down hard and fast rules about what initial steps it would be appropriate for you to take to confirm or deny your suspicions - though see below for steps which you must **not** take. Normally it would be sufficient to discuss the matter with a line manager and to obtain any documents which may throw light on the issue, if this can be done without undue difficulty.

If necessary you should then contact your Offence Enquiry Point and discuss the matter with them. They will be able to advise on any legal questions and may be able to suggest further steps which could or should be taken to try to resolve the matter internally. Once any internal steps have been taken they will also advise on whether an investigating authority should be informed, and if so will do this on your behalf.

2.5 In following the procedures described above there are a number of things which you must avoid doing:

- (a) You must not approach anyone who you suspect may be involved in the commission or planning of a criminal offence unless you are asked to do so by your Offence Enquiry Point or an investigating authority;
- (b) Any preliminary steps you take to test the validity or foundation of your suspicions must not amount to a formal investigation, i.e. under departmental procedures. You should always seek advice from your Offence Enquiry Point before committing significant resources to any checks or searches;
- (d) You must not do anything which might put you or others at risk, or prejudice a subsequent investigation or prosecution; and
- (e) You must not reveal your suspicions to anyone outside your department or Crown body without first seeking the advice of your Offence Enquiry Point.

Action if you Believe you have Germane Information

2.6 Unless you are specifically asked to do so by your Offence Enquiry Point (for which, see Chapter 3), you are under no obligation to seek out information which may be germane to a criminal offence, investigation, prosecution or defence. However, you should contact your Offence Enquiry Point straight away if at any time you come to believe that you hold or are likely to hold such information. They will then normally inform the investigator or prosecutor on your behalf.

2.7 The most likely situation in which Crown servants may find themselves in possession of information which may be germane to a criminal investigation, prosecution or defence is where they, or their section or division, have had official dealings with an individual or company known to be under investigation. Not all such dealings will be germane, but it is important not to take too narrow a view about this. The investigating authority will usually be able to advise quite readily whether your information is likely to be of interest to them and would prefer to be given the opportunity of doing so. Information which throws light on the background or context of suspected offences may also be of interest, and should be brought to the investigator's attention. As explained above, contact with investigators or prosecutors should be made through your Offence Enquiry Point.

Action if you have an Opinion to Express

2.8 Occasionally, Crown servants may have views about the strength or validity of the evidence on which a criminal investigation or prosecution is based; on the credibility of a suspect, defendant or potential witness; or on the fairness of a prosecution (for example, because they are aware of mitigating circumstances). If you have such views, you should not hesitate to contact your Offence Enquiry Point and discuss the matter with them. They will need to consider whether these views should be passed to the investigator or the prosecutor (who will in turn be obliged to consider the relevance of such views to the defence), and on whether this should be done individually or as part of a departmental submission.

Discovery of Information after a Prosecution has concluded

2.9 Where new information comes to light after a prosecution has been completed, you must notify your Offence Enquiry Point at once. This information may be required for a fresh investigation or, if the defendant was convicted, for an appeal.

Decision not to Inform an Investigator or Prosecutor

2.10 Offence Enquiry Points may decide that it is not necessary to advise investigators or prosecutors of the existence of certain information or they may decide not to pass on views of the type described in paragraph 2.8 above. If you are not satisfied with their decision, you should discuss the matter with your Offence Enquiry Point and ask them to explain their reasons more fully. If you are still not satisfied you should consider using your department's internal procedures established under the Civil

Service Code for dealing with concerns of this sort. This will probably mean referring the matter to your Principal Establishment Officer, who will have procedures to ensure your concerns are fully and fairly considered. Ultimately, you may take the matter to the Civil Service Commissioners, under Article 12 of the Code, if your department does not resolve your concerns.

Revealing Sensitive Information

2.11 When making any decisions about revealing information which you suspect or believe is germane to a criminal offence, you must make sure you have considered the advice in Chapter 5 of this guidance on information which is protected in law or which should be protected in the public interest. Your Offence Enquiry Point will assist you in this task.

3. REQUESTS FOR DOCUMENTS AND OTHER INFORMATION

The Importance Of Documentary Evidence

3.1 It is essential that investigators and the parties to a prosecution have access to as much information as possible which is germane to the issues. Documentary evidence, particularly where the documents are contemporaneous to the events in question, may be crucial. Requests for documents may be received from either the prosecution team (when the relevant provisions of the 1996 Act take effect, the prosecutor)² or the defence and your response in either case must be both thorough and careful.

Procedures For Handling Requests

3.2 Requests for documents and other information should be received initially by Offence Enquiry Points who will copy the request to those they consider best placed to respond, together with any necessary guidance on preparing the response. If you receive requests from any other source, you should inform your Offence Enquiry Point. Responses to requests should also be made through your Offence Enquiry Point, not directly to investigators, prosecutors or the defence. If you consider that you are not the right person to respond, or that others may also have documents germane to the request, you should inform your Offence Enquiry Point.

3.3 Your Offence Enquiry Point will query with the originator any obvious deficiencies in a request before forwarding it to you. However, it is your responsibility to ensure that you fully understand the terms of the request before responding. If you do not fully understand the request, or if you think you will have difficulties in complying with it, you should contact your Offence Enquiry Point. If necessary, they will get clarification of the request from the originator or a narrowing of its scope. If they are unable to obtain sufficient clarification or reduction in scope, you will not be required to make a formal response to the request. If, from your knowledge of the work of your department you know that the material sought is not available in the particular form requested but could be accessed in a different way, you should suggest this to the Office Enquiry Point who can advise the originator accordingly. However, you will remain under an obligation to **volunteer** any information you have, or which subsequently comes to light, which you believe to be germane (see Chapter 2 above).

² Annex A gives examples of the wide range of public bodies who have prosecution powers, and who may make requests for information.

Deciding What Documents Are Germane

3.4 In deciding what documents may be germane you should be guided by the terms of the request - but not bunkered by them. You should not confine your attention to documents which support any particular version of events, even if this is what the request asks you to do: a document which suggests that a given event did not happen is clearly as germane as one suggesting that it did. Usually the request will give brief details of the offence being investigated and, where known, of likely defences. If you are aware of **any** information or documents which may be germane to the offence or to any known lines of defence, or if such information or documents subsequently come to light, this should be reported to the prosecution team (when the relevant provisions of the 1996 Act take effect, the prosecutor) through your Offence Enquiry Point. You should also bear in mind the possibility that germane information may exist in non-written form, eg in a computer database.

Locating Documents or Other Information

3.5 Wherever possible, you should as a first step discuss the request for documents with any colleagues who were directly involved in the matters to which it relates. Even if they only have a hazy recollection of these matters, they may be able to help you narrow down the range of files which may contain germane material or alert you to search in files which might otherwise have been overlooked. You must search for any documents which you know, believe or expect to exist, and if any of these cannot be found you must tell the originator of the request, via your Offence Enquiry Point, why you believe or would expect these documents to exist and what you know about their contents. You must also examine those files which, by reason of their title or your knowledge of their content, you would expect to be the ones to contain any germane material. Loose documents as yet unregistered should be located and checked. In addition individual colleagues likely to have been in receipt of documents within the search parameters should be asked whether they have unregistered loose documents. Cupboards and drawers in which loose documents might be stored should also be investigated. However, you are not required to trawl through all the files from the period covered by the request in case something germane might turn up.

Responding to Requests

3.6 The request for documents may suggest (or prescribe) the form which your response should take, and it may be convenient for you to respond in this way. However, this is a matter for you to agree with your Offence Enquiry Point. Whilst you should be as helpful as you can to the originator of the request, there may be good reasons why the response cannot take the form he suggests. Possible forms of response include:

- (a) Sending copies of all the documents which you have identified as being germane to the request or to the matters under investigation;
- (b) Inviting the originator of the request to examine the documents you have identified, if necessary, subject to certain conditions (eg security measures) being satisfied; or
- (c) Describing any information and/or documents you have identified so that the originator of the request can assess whether or not it is likely to be germane.

3.7 In all cases it will be for your Offence Enquiry Point to organise the transmission of the reply to the originator of the request, including sending copies of any documents or arranging access to examine them, as appropriate.

Revealing Sensitive Information

3.8 When deciding how to respond to any request for information you must make sure you have considered the advice in Chapter 5 of this guidance on information which is protected in law or which should be protected in the public interest. Your Offence Enquiry Point will assist you in this task.

4. GIVING EVIDENCE- INTERVIEWS & WITNESS STATEMENTS

Introduction

4.1 Where Crown servants have been personally involved in events or procedures germane to a criminal investigation, they may be asked to give personal accounts of these events or procedures in an interview, in a witness statement or in court. Requests for interviews (which may come from an investigator, the prosecution team (when the relevant provisions of the 1996 Act take effect, the prosecutor) or the defence team) should normally come to you via your Offence Enquiry Point, and you should refer all such requests to them if you are approached directly. This is important as the evidence you give in a witness statement will be legal testimony in the same way as evidence given under oath in court, and deficiencies in such evidence may be regarded as a criminal offence. At present, draft statements are disclosed by the prosecutor to the defence as unused material and any differences between these and your signed statement(s) may be explored if you are cross-examined in Court. When the relevant provisions of the 1996 Act take effect, draft statements, as other unused material, will not have to be disclosed to the accused unless they fall within the tests for disclosure in the Act. Nevertheless, you should continue to refer all requests for interviews to your Offence Enquiry Point.

4.2 Your Offence Enquiry Point will give advice on the legal requirements (and constraints) you must comply with in giving evidence: however, there are two overriding considerations which you should bear in mind:

- (a) that it is **your** evidence not that of the department, the investigators, the prosecution team (when the relevant provisions of the 1996 Act take effect, the prosecutor) or anyone else; and
- (b) that you must be truthful and not mislead by omission.

Legal Advice for Potential Witnesses

4.3 You are strongly recommended to seek legal advice through your Offence Enquiry Point before being interviewed or signing a witness statement. This is particularly important if for any reason you have doubts about your ability to tell the whole story surrounding the

matters under investigation. In the case of requests for interviews by the defence or the prosecution there are additional considerations, such as the need to ensure that the prosecutor is aware of a defence request. Therefore, you may need advice on matters other than the content of your interview. You must seek advice before revealing any information which is protected in law or which it may be contrary to the public interest to reveal. In such cases, and in cases which are particularly sensitive or difficult, you may wish to raise with a legal adviser the question of whether it might not be a prudent precaution for the legal adviser to be present during your interview. More information on dealing with sensitive information is set Out in Chapter 5 below.

Witness Summons

4.4 If you are served with a witness summons you will be placed under a legal obligation to supply any information which is not otherwise protected. You should obtain legal advice through your Offence Enquiry Point as soon as you become aware that a witness summons is to be served (or immediately afterwards if it is served without notice). In certain circumstances you may wish to challenge a witness summons on the grounds that it is not directed at obtaining relevant evidence and that you are unable to give relevant evidence. Your Offence Enquiry Point will advise you on this and obtain legal assistance to have the summons set aside if this is the case.

Giving Your Own Evidence

4.5 It is common practice for a member of the investigation team to interview a witness and then to draw up a draft statement based upon the answers given. This can be a convenient method of assembling and structuring the evidence and of ensuring that everything is covered. However, you are entirely free to reject the draft statement in whole or in part, or to have amendments made. You can also ask for the material to be presented differently, for example, you may prefer to have an initial draft which shows both questions and answers. The important point to bear in mind at all times is that, whoever may have drafted the statement initially, at the end of the day it will be your statement. Therefore under no circumstances should you sign the statement unless you are absolutely satisfied that the contents are true to the best of your knowledge and belief.

4.6 Care is needed in answering an interviewer's questions and in checking the completeness and accuracy of any statement produced from them. Usually the interviewer will try to ask mainly "open" questions - ones which allow you to answer how you think best. However, some at least are likely to be "closed" questions - ones which limit the range of possible answers, often to either a "yes" or a "no". This is fine where an unqualified "yes" or "no" tells the whole story, but if you feel that you need to qualify your answer in any way (eg. "yes but", "no except" or "sometimes") then you should get the interviewer to ask you an open question instead, or otherwise make it clear that an unqualified answer will necessarily be incomplete or even misleading.

Testing the Accuracy and Reliability of your Statement

4.7 When checking your draft statement you should actively test its accuracy and reliability rather than just responding to those passages which immediately strike you as wrong:

- (a) Are the particular incidents covered by the statement placed in their proper context? E.g. If the Statement says that the defendants told you something, did they write, telephone or meet you specifically to pass on this information, or was it just mentioned in passing whilst some other matter was being discussed?
- (b) Are you being open and honest about your own role and that of your Section? e.g. Where procedures are described in the statement, were these always strictly adhered to, or were they ideals rarely achieved in practice?
- (c) How sure are you of the matters covered in your statement; are any uncertainties clearly indicated? Has your recollection of events been influenced by what other people told you at the time or by what you have learnt subsequently? or
- (d) If the defendants have offered explanations of their behaviour, then, leaving aside the question of whether these explanations are true or not, are they credible? Think about the reasons for your answer to this question. Are these reflected in the Statement?

Giving a Balanced Account

4.8 It is also important that you ensure that the Statement taken as a whole gives a properly **balanced** account and tells the **whole** story so far as it is known to you. In an extreme case it is possible for every answer you give to be true when taken in isolation but for the statement produced from these answers to be misleading or even false when viewed in totality. This may happen because parts of the story are missing or because too great an emphasis is placed on some issues, too little emphasis on others. After checking that each individual answer or topic is accurate and complete, you should consider the impact of the statement as a whole.

- * Does it provide a true and fair account overall?

- * If some parts of the statement are damaging to or critical of the defendant and other parts are helpful or supportive, is the balance between these parts right?

When Your Statement cannot tell the Whole Story

4.9 There may be some occasions where you are unable to tell the whole story in your statement. This may happen where:

- * You cannot remember what happened; or

- * You are unable to distinguish between what you remember and what you have learnt since.

4.10 Whilst statements should always be as complete as possible, the emphasis must be on accuracy and reliability. However, it is essential that any gaps or deficiencies in the statement are clearly indicated as failure to do so will in itself make the statement inaccurate or unreliable or both. You are strongly recommended to get advice on this through your Offence Enquiry Point as it is often very difficult to indicate the extent of any gaps or deficiencies without either diminishing their importance or, at the other extreme, casting doubt on the validity of those matters which you are confident about.

4.11 In certain cases telling your story may involve:

- * Information which on an initial view should not be revealed on the grounds of sensitivity or otherwise; or

- * Information which is protected in law.

Particular care needs to be taken with these two types of information. Before making any decision about disclosure you must get legal advice, because it may be you are required to disclose the fact that the information exists even if you do not provide the actual information. More help on identifying and dealing with these types of information is contained in Chapter 5.

5. REVEALING SENSITIVE INFORMATION

Introduction

5.1 Crown servants have a general professional duty to be as forthcoming as possible in revealing information (including documents) which they believe to be germane to a prosecution, and the fact that such material exists must always be brought to the prosecutor's attention as it may be important in deciding whether the evidential and public interest tests for a prosecution are satisfied and whether it is fair to proceed. At present, if a prosecution is commenced, the prosecutor can only withhold such material from the defence if it is not relevant (see paragraph 5.2), or if it is protected from disclosure by statute or common law e.g. a claim for public interest immunity (and this claim is upheld by the trial judge) (see paragraphs 5.3 and 5.4). When the relevant provisions of the 1996 Act take effect, it will be possible to withhold from the accused material which is currently considered relevant but which falls outside the narrower tests for disclosure in the 1996 Act. Nevertheless, it should still be brought to the prosecutor's attention.

Relevance

5.2 It is the responsibility of the prosecutor to determine the relevance of any material revealed to him, and it would not be appropriate for others to make representations on this issue to him or otherwise to seek to influence his decision. This does not preclude discussions with the prosecutor to clarify the issues. Crown servants have a general professional duty to reveal to the prosecutor the existence of any information (including documents) which they believe may be germane to the case and, unless the information is protected in law or will be the subject of a claim for Public Interest Immunity, to supply him with copies of any documents which he determines to be relevant.

Information Protected in Law

5.3 Certain kinds of official information are protected by statute and such information must not be revealed to anyone who is not authorised to see it. For example, where a statute provides compulsory powers to obtain information it frequently also provides for restrictions on the wider revelation of that information, see, for example section 118 of the Medicines Act 1968, or section 38 of the Legal Aid Act 1988. If you are asked to respond to a request for information, your Offence Enquiry Point should offer guidance on any legal restrictions which may apply to the information you hold, and will check your response before forwarding it to the originator of the request. However, you must also bear in

mind the possibility of legal restrictions in any interviews with investigators or the defence and in any witness statements you may produce (see Chapter 4 above). If you reveal, without the proper authority, information which is protected in law you may be committing a criminal offence.

Public Interest Immunity

5.4 Particular care needs to be taken where it is believed that the revealing of information in interviews, oral evidence, written statements, or in the supply of documents would cause real damage to the public interest. Such damage may arise directly and immediately from disclosure. For example, where revealing information will adversely affect national security or international relations; threaten the safety or well-being of an individual; harm the ability of the Government to manage the economy; or assist the commission or hamper the prevention or investigation of a crime, or prejudice a fair trial. In other cases the proposed disclosure may contribute to real damage to the public interest arising indirectly or in the longer term, for example where the information concerns the regulatory process.

5.5 It is impossible to list types or categories of document or information which will cause real damage if revealed, and which, therefore, could attract a public interest immunity claim.

Therefore, each case must be appraised on its own merits, and an assessment made of whether disclosure would cause real harm to the public interest.

What you should do if asked for Sensitive Information

5.6 If you believe that you have information which falls to be revealed to an investigator or prosecutor or to the defence, but which may cause real damage to the public interest if so revealed, you should seek advice from your Offence Enquiry Point. Normally you will be authorised through your Office Enquiry Point to give this information to an investigator or prosecutor (though not at this stage to the defence), and there can then be consideration with the prosecutor as to the nature and extent of any representations to the court which may be appropriate and who should be responsible for making them. They will advise you of any special measures you should take when revealing this information:- for example, on recording the details of any sensitive documents which you pass on. Exceptionally, where the information is of particular sensitivity, you may be instructed not to reveal the information to anyone. In this case, special arrangements will be made by the Offence Enquiry Point to ensure that the prosecutor is made aware that the information exists, and to enable him to assess its potential impact on the case.

5.7 If you are questioned about a highly sensitive matter before you have had the opportunity to consult your Offence Enquiry Point, you should decline to answer any questions on that matter - even in guarded terms. There is a danger that evidence which is or which has been given in guarded terms may be misleading, so any evidence on matters about which you cannot be completely open must be very carefully considered and based on proper legal advice.

Representations on Disclosure

5.8 Crown servants are entitled to make representations to the prosecutor about the disclosure of information supplied by them or which refers to them. You should normally ask your Offence Enquiry Point to make such representations on your behalf. However, you are free to make your own representations on matters which affect you personally if you wish to do so.

ANNEX A

Most people know about the powers of the POLICE and the CROWN PROSECUTION SERVICE to investigate and prosecute criminal offences. The vast majority of criminal cases which come to court will be the result of the work of the CPS and the Police.

However, you should be aware that a number of central government departments, as well as other public bodies, have powers to investigate and prosecute crimes. The list set out below, whilst not comprehensive, will give you an idea of the range of organisations which have such powers.

BANK OF ENGLAND

BRITISH TELECOM

DEPARTMENT OF ENVIRONMENT

DEPARTMENT OF TRADE & INDUSTRY

DEPARTMENT OF SOCIAL SECURITY

ENVIRONMENT AGENCY

HEALTH & SAFETY EXECUTIVE

HM CUSTOMS & EXCISE

INLAND REVENUE

LOCAL AUTHORITIES

MINISTRY OF AGRICULTURE, FISHERIES & FOOD

SERIOUS FRAUD OFFICE

THE POST OFFICE