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PRINCIPLES OF DISCLOSURE

AN INTRODUCTION

Disclosure is one of the most important - as well as one of the most abused - of the procedures relating to criminal trials.

The overarching principle is that unused prosecution material will fall to be disclosed if, and only if, it satisfies the test for disclosure. Even then, it may not be disclosed under certain circumstances.

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The Test for Disclosure



Material which might reasonably be considered capable of either undermining the case for the prosecution against the accused, or of assisting the case for the accused.

Criminal Procedure and Investigations Act 1996, s3

The Test for Disclosure

IF THE TEST IS NOT MET, NO DISCLOSURE!!



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If the test is met, then disclosure
unless the material is sensitive and
Judge rules we need not disclose (PII).

What are we looking for ?



1. Any material which may cast doubt on the accuracy of any prosecution evidence.
2. Any material which may point to another person, whether charged or not (including a co-accused) having involvement in the commission of the offence.
3. Any material which may cast doubt upon the reliability of a confession.

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4. Any material that might go to the credibility of a prosecution witness.
5. Any material that might support a defence that is either raised by the defence or apparent from the prosecution papers.
6. Any material which may have a bearing on the admissibility of any prosecution evidence, e.g. unlawfully obtained etc.

Disclosure Officers

DUTIES

There must be a Disclosure Officer.

The investigator must pass to the Disclosure Officer all material obtained in a criminal investigation and which may be relevant to the investigation.

The Disclosure Officer must retain that material.

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The duty to retain material includes material falling into the following categories:

Crime reports (including search records, incident report books or police officer's notebooks);

custody records;

records taken from tapes of telephone messages (for example, 999 calls) containing descriptions of an alleged offence or offender;

final versions of witness statements (and draft versions where their content differs from the final version), including any exhibits mentioned;

interview records (written records, or audio or video tapes, of interviews with actual or potential witnesses or suspects);

communications between the investigators and experts, reports of work carried out by experts, and schedules of scientific material prepared by the expert for the investigator, for the purposes of criminal proceedings;

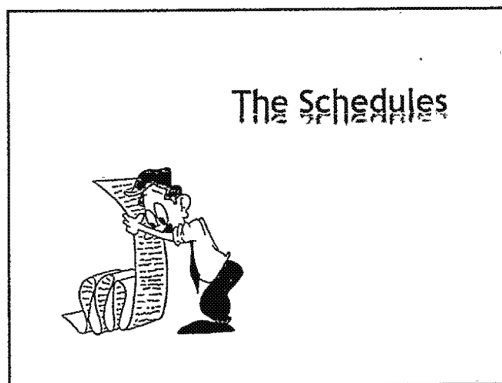
any material casting doubt on the reliability of a witness;

information provided by an accused person which indicates an explanation for the offence with which he has been charged;

any material casting doubt on the reliability of a confession;

any material casting doubt on the reliability of a prosecution witness.

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TWO SCHEDULES:

Material which has been retained and which the disclosure officer believes will not form part of the prosecution case, must be listed on one of the two schedules.

The description of each item on the schedule should make clear the nature of the item and should contain sufficient detail to enable the prosecutor to decide whether he needs to inspect the material before deciding whether or not it should be disclosed.

1. Schedule of Non-sensitive Unused Material
2. Schedule of Sensitive Unused Material

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Depending on the circumstances, examples of sensitive material may include the following material:

Communications between the investigators and solicitors, other investigators, experts, other agencies (e.g. Police etc)

relating to national security; or otherwise received from the intelligence and security agencies; given in confidence, e.g. by informants, anonymous reports etc ;

relating to the identity or activities of informants, or undercover officers, or witnesses, or other persons supplying information to the police who may be in danger if their identities are revealed;

which reveals the location of any premises or other place used for surveillance, or the identity of any person allowing an officer to use them for surveillance;

which directly or indirectly reveals techniques and investigatory methods, or which might facilitate the commission of other offences or hinder the prevention and detection of crime, e.g.

Covert surveillance techniques;
Concealed CCTV systems used to detect crime;
Covert tracking devices;
Financial inquiry methods and organisations (Experian etc);
Personnel records;
RIPA applications and authorisations.

relating to the private life of an investigator, witness etc.

The disclosure officer must give the schedules to the prosecutor.



