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ROYAL MAIL GROUP SECURITY – PROCEDURES & STANDARDS

APPENDIX 1 to P&S 9.5 DISCLOSURE OF UNUSED MATERIAL & THE CRIMINAL PROCEDURE & INVESTIGATIONS ACT 1996		Version 1 Jul 10
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1. INTRODUCTION		
1.1	<p>The legislative basis for disclosure of unused material is the Criminal Procedure and Investigations Act 1996 (CP&IA 1996) as amended by the Criminal Justice Act 2003 (CJA 2003). A Code of Practice (CoP) is issued in accordance with Section 23(1) of the CP&IA 1996. Investigators must comply with the current version of the CoP, which came in to effect on the 4th April 2005 and can be found embedded below.</p> <div style="text-align: center;">  <p>CP&I 1996 Disclosure CoP.pdf</p> </div>	
1.2	<p>The CP&IA 1996 deals with the disclosure of unused material. The act applies to criminal investigations which are conducted with a view to it being ascertained whether a person should be charged with an offence or whether a person charged with an offence is guilty of it. This will include;</p> <ol style="list-style-type: none"> 1. Investigations into crimes that have been committed. 2. Investigations whose purpose is to ascertain whether a crime has been committed, with a view to the possible institution of criminal proceedings and 3. Investigations which begin in the belief that a crime may be committed, for example observations from the watching gallery, or by CCTV or covert camera with a view to the possible institution of criminal proceedings. 	
1.3	<p>This Appendix outlines the roles and responsibilities of Investigators and Disclosure officers and gives practical guidance on the completion of following "Disclosure" forms,</p> <ol style="list-style-type: none"> 1. GS006C Schedule of Non-Sensitive Unused Material, (see section 6 below). 2. GS006D Schedule of Sensitive Unused Material, (see section 7 below). 3. GS006E Disclosure Officers Report, (see section 8 below). 	
1.4	<p>The Guidelines relating to Prosecutors Criminal Law Team (CLT) and Prosecution Advocates are included to ensure Investigators understand the role played by both those parties in the "Disclosure" process.</p>	
1.5	<p>For the purposes of these instructions references to 'unused material' are to material that may be relevant to the investigation that has been retained but does not form part of the case for the prosecution against the accused.</p>	

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2 DEFINITIONS AND TERMINOLOGY

- 2.1 **Investigator.** An Investigator is a person involved in the conduct of a criminal investigation involving any part of our Business. All Investigators have a responsibility for carrying out the duties imposed on them under the CP&I Act 2005 CoP. The main responsibility of Investigator(s) is to ensure that any **relevant material** is **retained** and that **records** of such material are maintained.
- 2.2 **Disclosure Officer** is the person responsible for examining material retained during an investigation and revealing "relevant material" to the Prosecutor (CLT). In most Royal Mail Group cases the lead Investigator and the Disclosure Officer will be the same person. As such within these Procedures & Standards the responsibilities of the Disclosure Officer will be undertaken by the lead Investigator. (Should a Disclosure Officer be allocated in a large and complex case then both they and the lead Investigator should consult the CP&I Act 2005 CoP to ensure they are fully aware of their responsibilities).
- 2.3 **Material.** For the purpose of disclosure **material** is material of any kind, including information and objects, which is obtained in the course of a criminal investigation and which may be **relevant to the investigation**. This includes not only material coming into the possession of the Investigator (such as items seized on searches or documents recovered from Business records) it is also material generated by the investigation (such as schedules of losses and records of interview).
- 2.4 **Relevant material** is defined in the CoP as anything that appears to an investigator to have some bearing on any offence under investigation or any person being investigated or on the surrounding circumstances unless it is incapable of having any impact on the case. Investigators should note that forms generated and dealing with the correct administration of the case, such as a GS108 Submission of Tapes for Transcripts or Bail Notices, do not in themselves amount to "Relevant Material".

3. DUTIES FOR INVESTIGATORS (& DISCLOSURE OFFICERS)

- 3.1 The Investigator must inform the Prosecutor (normally the Criminal Law Team) as soon as practicable if they have any material which weakens the case against the accused. The Act envisages that some disclosure may have been made before the statutory duty to disclose arises.
- 3.2 **Reasonable Lines of Enquiry.** Investigators must pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances. For example where material is held on a computer, it is a matter for the Investigator to decide which material on the computer it is reasonable to enquire into and in what manner.
- 3.3 **Retain Record and Reveal.** Investigators must retain and record the existence of material relevant to the investigation. The material must be retained in a durable or retrievable form and as such notes should be made of material given verbally. A record should be made at the time the material is obtained or as soon as is practicable after that time. Case Progression Notes, Case Event Logs, Official Notebooks or Schedules of Unused Material (GS006C&D as appropriate) can be used for this purpose. Information relevant to the investigation, (if not already revealed) is **revealed** to the prosecutor (CLT) at the Committal/Trial Papers stage. Disclosure however does not end here, there is an ongoing responsibility to **retain, record and reveal** any relevant material to the Prosecutor (CLT). **This responsibility extends up to the time that the defendant is acquitted or convicted or when the decision is made not to proceed with the case.** Notwithstanding this should any information come to light after the conclusion of the proceedings which cast doubt on the safety of the conviction then the Prosecutor (CLT) must be informed immediately. Investigators must be fair and objective and must work together with prosecutors (CLT) to ensure that disclosure obligations are met.

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- 3.4 Where it is not practicable to retain possession of material relevant to the case, for example it forms part of a larger record, then the custodian of the material should be informed of the existence of the investigation and alerted of the need to retain the material in case they receive a request to disclose it. Details of the material in possession of a third party should be recorded and revealed to the Prosecutor (CLT). If the relevant material forms part of a larger record which is to be destroyed then the relevant material should be transferred as a true record to a durable and more easily stored form before that happens.
- 3.5 **If in Doubt Record.** If there is any doubt about the relevance of material Investigators should err on the side of retaining, recording and revealing.
- 3.6 **Negative Information.** Negative information is often relevant to an investigation and as such must be retained recorded and revealed. Negative information may include;
1. GS024 Record of Test Items for tests which were dealt with correctly.
 2. A CCTV camera that did not record the crime in a manner consistent with the prosecution case. (The fact that a CCTV camera did not function or have a videotape loaded will not usually be considered relevant negative information).
 3. Finger-marks on postal packets that cannot be identified as belonging to the suspect.
- 3.7 **Inspecting Material.** Investigators or their deputies, must inspect, view or listen to all material that has been retained and they must provide a personal declaration to that effect on the Disclosure Officers Report GS006E. The obligation does not apply, however, in circumstances where Investigators seize large volumes of material, which may not, because of its source, general nature or other reasons, seem likely ever to be relevant. In such circumstances, the Investigator may consider that it is not an appropriate use of resources to examine such large volumes of material seized on a precautionary basis. If such material is not examined by the Investigator and it is not intended to examine it, but the material is nevertheless retained, its existence should be revealed to the Prosecutor (CLT) in order that they can deal with Disclosure.
- 3.8 **Revealing Unused Material & Identifying Material Which Meets the Disclosure Test.** All material relevant to the investigation, which does not form part of the evidence in the case or is not otherwise disclosed, must be revealed to the Prosecutor (CLT) by producing schedules. The "Unused Relevant Material" should be described on either a "Schedule of Non-Sensitive Unused Material a GS006C", (See section 6 below) or a "Schedule of Sensitive Unused Material a GS006D", (See section 7 below). In addition to completing schedules GS006C & GS006D Investigators should also complete the "Disclosure Officers Report GS006E" (see section 9 below). This requires the Investigator to detail on the form any relevant material which they believe meets the "Disclosure Test". The Disclosure Test is; **could the material be reasonably considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused.** Investigators should note that all relevant material must be revealed to the Prosecutor, however not all relevant material will meet the disclosure test, which ultimately is decided upon by the prosecutor (CLT).
- 3.9 In making an objective assessment as to whether the relevant material meets the "Disclosure Test" the Investigator can use the following as a guide;
1. What has the defendant said by way of a defence in interview, or by way of prepared statement or latterly in a defence statement.
 2. Could use be made of the material in cross examination.
 3. Has it the capacity to support submissions that could lead to:
 - a. The exclusion of evidence; or
 - b. A stay of proceedings; or
 4. Does it suggest an explanation or partial explanation of the accused's actions.
- 3.10 Investigators must seek the advice and assistance of the CLT when in doubt as to their responsibility and must deal expeditiously with requests by the Prosecutor (CLT) for further information on material, which may lead to disclosure.

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4. PROSECUTOR (CLT) GUIDELINES

- 4.1 The Prosecutor (CLT) must do all they can to facilitate proper disclosure and be alert to the need to provide advice to Investigators on disclosure issues and advise on disclosure procedure generally. They also apply the disclosure test to the unused material.
- 4.2 The Prosecutor (CLT) must review schedules prepared by Investigators thoroughly and be alert to the possibility that material may exist which has not been revealed to them. Where the CLT have reason to believe the Investigator has not discharged his/her obligation to inspect, view or listen to material they must request that it be done.
- 4.3 Where a Prosecutor (CLT) believes that material meets the disclosure test they must always inspect, view or listen to the material and satisfy themselves that the Prosecution can properly be continued. The Prosecutor (CLT) should inform the Investigator if in their view reasonable and relevant lines of enquiry still exist.
- 4.4 Prosecutors (CLT) must ensure they record in writing all actions and decisions they make in discharging their disclosure responsibilities. Any doubts about what should be disclosed should be resolved in favour of disclosure.
- 4.5 **Disclosure of Sensitive Material.** Where the prosecutor decides:
1. That sensitive material requires disclosure to the accused because it satisfies the disclosure test, and
 2. In consultation with the investigator, that it is not possible to disclose in a way that does not compromise the public interest in question, and
 3. That disclosure should be withheld on public interest grounds,
- The ruling of the court must be sought or the case abandoned.

5. PROSECUTION ADVOCATES GUIDELINES

- 5.1 Prosecution Advocates must place themselves in a fully informed position to enable them to make decisions on disclosure. Upon receipt of instructions Prosecution Advocates should consider as priority all information provided regarding disclosure.
- 5.2 Prosecution Advocate must continue to keep under review until the conclusion of the trial decisions regarding disclosure. Prior to commencement of a trial the Prosecuting Advocate should always make decisions on disclosure in consultation with those instructing him/her and it is desirable that the Investigator should also be consulted.
- 5.3 It is anticipated the Prosecuting Advocate will in future take a far more robust approach to disclosure and Investigators should be aware of the Prosecutors (CLT) and Prosecution Advocates role in disclosure to enable them to anticipate and prepare full schedules of disclosable material.

6. GUIDANCE ON COMPLETION OF THE SCHEDULE OF NON-SENSITIVE UNUSED MATERIAL GS006C

- 6.1 All non-sensitive unused material which may be relevant material (see paragraph 2.4 above) should be listed on the form GS006C. Each item should be scheduled separately and numbered consecutively Investigators must not detail on this schedule items containing sensitive information. For full details of information which is sensitive see section 7 below.
- 6.2 Descriptions on the schedule should be **detailed clear and accurate**. It is not sufficient to generalise and use descriptions like "Various Documents". Each description should include a summary of the contents to allow the
- Prosecutor (CLT) to make an informed decision as to whether the item satisfies the "Disclosure Test". In cases where there are many items of a similar nature, such as Horizon Transaction Logs it is permissible to describe them by quantity and generic title. However any items of a "Similar Nature" which meet the disclosure test must be scheduled and described separately.
- 6.3 In normal circumstances and as long as the items satisfy the requirements of the paragraph above the Prosecutor (CLT) would expect to see the following

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types of items on the "Non Sensitive Schedule";

1. Records which give the first descriptions of suspects, such as the initial telephone call, SIMS report, crime reports or in rough notes prior to producing a statement.
2. Letters of Complaint.
3. Copies of Investigators/Police Officers notebooks.
4. CCTV and Observation Logs.
5. Loss Schedules
6. Absence & Access analysis.
7. Enquiry correspondence such as e-mails.
8. Non sensitive applications for Search Warrants, Production and other Orders.
9. Any rough notes and sketch plans made whilst preparing witness statements.
10. Final witness statements (and draft versions where their content differs to the final version), including any exhibits mentioned. (It is accepted that some such exhibits may have been returned to its owner on the understanding that it will be produced in court if required).
11. Records of any testing operations which were not acted on (including the GS024 records).
12. Relevant RIPA & PORA documentation which is not sensitive (Contact info should be blanked out)
13. Search records where nothing of an evidential nature was found.
14. Details and interview records of any potential witnesses or suspects in the case.
15. Communications between Investigators and experts such as forensic scientists, including reports of works carried out by experts and any schedules prepared by them as part of the case.
16. Any information given by the suspect which indicates an explanation for the offence.
17. Any information casting doubt on the reliability of a confession.
18. Any material casting doubt on the reliability of a witness.
19. Any relevant documentation in the hands of a third party.

This list is not exhaustive.

- 6.4 Investigators should remember that the purpose of the unused schedules is to disclose relevant material, which is not otherwise disclosed. As such items like working tapes, which are merely copies of the master tape, should not be on the schedule, as it is the master tape that is relevant and inevitably it will be produced as part of the evidence, (If a master tape has not been disclosed as part of the evidence it is the master tape that should be disclosed on the unused material schedule). The same principle applies to copies of witness statements; it is the original that needs to be disclosed, either in the witness statement bundle or on an unused schedule. Finally correspondence between the Investigator and the Prosecutor (CLT) is protected by "Legal Privilege" and should not be disclosed at all.

7. GUIDANCE ON COMPLETION OF THE SCHEDULE OF SENSITIVE UNUSED MATERIAL GS006D

- 7.1 This form is used for all sensitive material, which may be relevant to an investigation. Material should only be listed on the schedule if it is thought that disclosure would give rise to a real risk of serious prejudice to an important public interest. If there is no sensitive material in the case then the Investigator should endorse and sign a GS006D to this effect.
- 7.2 Investigators are required to describe any item thought to be sensitive and give a reason why. The description of the item and the reason why it is sensitive should be written in enough detail to allow the Prosecutor (CLT) to make an informed decision on whether it meets the "Disclosure Test". Items should be numbered

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	consecutively and described individually. If Investigators have any doubt if information is sensitive they should seek the advice of the Prosecutor (CLT).
7.3	<p>Examples of items that the Prosecutor (CLT) would expect to see on the "Sensitive Schedule" in Royal Mail Group cases are;</p> <ol style="list-style-type: none"> 1. Information or intelligence from which it would be possible to identify CHIS or Confidential sources. Such information could be on RIPA Authorisations, Search Warrant and Production Order applications. 2. Information which could reveal the location of Observation Posts where to reveal the location could lead to reprisals against the occupant and R v Johnson protection is appropriate. 3. Information or Intelligence from sources complying with legislation such as Suspicious Activity Reports submitted under POCA. 4. Material containing sensitive personal information about persons other than the suspect such as Credit Reference Agency checks. 5. Material relating to very sensitive investigative techniques. 6. Any material containing details of sensitive security procedures. 7. This list is not exhaustive.
7.4	De-Sensitising Material. Investigators should note that Sensitive Material can in effect become Non Sensitive by appropriate editing and by blanking out sensitive matters. Advice on this can always be sought from the Prosecutor (CLT) .
7.5	Highly Sensitive Material. Where the Investigator considers that the material is likely to lead to the loss of life to an informant, CHIS or their family if the material is compromised then the material can be considered as too sensitive to appear on a sensitive schedule . In these circumstances the Investigator must make contact with the Prosecutor (CLT) to discuss the material.
8. GUIDANCE ON THE COMPLETION OF THE DISCLOSURE OFFICERS REPORT GS006E	
8.1	The purpose of the Disclosure Officers Report GS006E is two fold. Firstly to identify to the Prosecutor (CLT) any relevant material which the Investigator thinks meets the "Disclosure Test". That is to say could the material be reasonably considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused. The second reason is to certify that all relevant material in the case has been revealed to the Prosecutor (CLT).
8.2	Meets The Disclosure Test. If any relevant material passes the disclosure test then it should be detailed on the Disclosure Officers Report. Items recorded on form GS006E must cross-refer to an entry on either form GS006C or GS006D. The first column of the form should identify which schedule the disclosable material is on by indicating GS006C or GS006D respectively. The second column should indicate the number of the item on the relevant unused schedule. Investigators should then detail the reason why they think the material could undermine the case for the prosecution or assist the case for the accused.
8.3	Copies of Disclosable Material. Investigators must provide the Prosecutor (CLT) with full copies of any item listed on the Disclosure Officers Report GS006E, if at all practicable.
8.4	Declaration of Revelation. The form must be completed even if there is no "Disclosable Material" as the Investigator must certify that they have revealed all relevant material to the Prosecutor (CLT).
9. ITEMS NOT USUALLY SCHEDULED ON THE GS006C OR GS006D	
9.1	Offender reports and correspondence with the Prosecutor (CLT) is usually regarded as subject to legal privilege, and should not appear on any schedule. However if the contents contain relevant material that is not recorded elsewhere then there will be a need to reveal the information in some format.
9.2	<p>Items that are either purely administrative (and as such not relevant material), or they are otherwise available to the defence should not be scheduled on the GS006C or GS006D. Examples of such material are;</p> <ol style="list-style-type: none"> 1. Charge Sheets and Bail Records 2. Custody Records (unless it contains something pertinent not already disclosed)

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3. Summonses
4. Schedules of Offences Taken into Consideration.
5. NPA forms and notification of proceedings to police.
6. Correspondence with witnesses requesting attendance at Court.
7. Antecedent history and list of the defendant's previous convictions.
8. Human resource employee printout.
9. Form GS018A (submission of tapes for transcription).

This list is not exhaustive

10. LENGTH OF TIME FOR WHICH MATERIAL IS TO BE RETAINED

- | | |
|------|--|
| 10.1 | All material which may be relevant to the investigation must be retained until a decision is taken whether to institute proceedings against a person for an offence. |
| 10.2 | If a criminal investigation results in proceedings being instituted, all material which may be relevant must be retained at least until the accused is acquitted or convicted or the Prosecutor (CLT) decides not to proceed with the case. |
| 10.3 | <p>Where the accused is convicted, all material which may be relevant must be retained at least until;</p> <ol style="list-style-type: none"> 1. The convicted person is released from custody, or 2. Six months from the date of conviction, in all other cases. <p>If the court imposes a custodial sentence and the convicted person is released from custody earlier than six months from the date of conviction, all material which may be relevant must be retained at least until six months from the date of conviction. (These rules apply to Hospital orders as well as terms in Custody).</p> |
| 10.4 | Should the case subject of an appeal or a review by the Criminal Cases Review Commission relevant material should be retained until the Review or Appeal is determined. |