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<http://hub.unlock.org.uk/knowledgebase/local-police-information-2/>

## Disclosure of police intelligence on enhanced checks (approved information)

### Introduction

Each Police Force maintains a local record of information, which *can* be used to disclose information referred to on a disclosure in the 'other relevant information' section on an enhanced check. This is formally known as 'approved information'. It is often more commonly referred to as 'non-conviction information' or 'police intelligence'.

It normally relates to somebody who has never actually been convicted for the offence involved, but can also sometimes include additional information relating to a conviction.

### What 'local police information' means

For the purposes of this page, local police information can include:

- Fixed Penalty Notices (FPN's)
- Penalty Notices for Disorder (PND's)
- Findings of innocence
- Acquittals
- Cautions and convictions of those that you live with
- Other Police intelligence (including allegations)

It does **not** include information held on the Police National Computer, including:

- Cautions
- Reprimands
- Final warnings
- Convictions

Cautions, reprimands and final warnings are not criminal convictions. However, in terms of disclosure, they are covered by the Rehabilitation of Offenders Act (which means, once spent, they do not need to be disclosed and you are protected by the ROA) and are also included in the Police Act 1997 as being disclosed on standard and enhanced checks as these are carried out for positions exempt from the ROA.

### Who decides whether to disclose this information?

The decision as to whether to disclose local police information is made by the Chief Police Officer in the relevant

police force area. Following the Protection of Freedoms Act 2012, this 'decision-making process' has two main guidance documents. These are the Statutory Disclosure Guidance, and the Quality Assurance Framework.

Guidance on how the police make the decision to include locally held information can be found [here](#).

## Statutory disclosure guidance

The [statutory disclosure guidance](#) follows on from a review of the criminal records regime conducted by Mrs Sunita Mason, the Government's Independent Advisor for Criminality Information in February 2011. The guidance comes as a result of the Protection of Freedoms Act 2012.

The guidance came into force on 10 September 2012 and is designed to assist chief officers of police in making decisions in providing information from local police records for inclusion in enhanced criminal record certificates.

## Quality Assurance Framework

The latest version the QAF is available to download from the [DBS website](#).

Within this framework, there is detailed information available in relation to making representations against the disclosure of local police information.

## How often is police information disclosed?

	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014
Number of enhanced checks issued	4,005,873	4,125,295	3,813,114	3,801,064	3,715,222
Number of PLX** hits as part of an enhanced check	930,057	1,107,948	1,080,571	1,137,772	1,153,353
Approved Information released on an enhanced check	24,147	23,862	16,288	11,484	9,626

\*\* Shows the number of applications where there was a match against local police records. This is known as the police local cross referencing system or PLX system.

The above figures show that, since the statutory disclosure guidance (mentioned above) came into force in 2012, the amount of 'approved information' disclosed on enhanced checks has decreased significantly. In the year 2013/14, information was disclosed in only 0.83% of cases where there was a match against local police records.

## Trying to stop it from being disclosed on an enhanced check

While there is no real hope of getting local police information deleted from police records, there are steps you can take to try and stop it from being disclosed on an enhanced check.

## If you've not yet applied for a job involving an enhanced check

We suggest that you make sure that you have a full understanding about the information that is held on you by the Police. If you don't know this already, you should look to do a [Police Subject Access request](#) and ask to see any local records held. This will give you details of any local information held on you. You should also contact your local police force and ask to see a copy of their policy/process for dealing with whether to disclose

information of this type. It's unlikely that the police will tell you at this stage whether they would be likely to disclose information on a particular enhanced check.

## **If you've applied for a job involving an enhanced check**

Most police forces will normally contact you if they are thinking of disclosing information in the 'other relevant information' section, giving you the chance to make representations. However, this doesn't always happen, so if you think that you might have information held about you and you're worried that it might be disclosed, you should contact your local police force. You should ask them to give you the chance to make representations if they feel the need to disclose any information. Whilst there is no guarantee that they will do this, there have been reports that asking the police to do this will lead them to doing it through fear of being challenged legally for failing to do so. If/when the police get in touch, you should make sure that you make strong representations why the information is no longer relevant.

## **Independent monitor**

If the police decide to disclose information, you will be sent this certificate to give to the employer. At this point, if you disagree with the decision to disclose 'other relevant information', you can challenge this through the [Independent Monitor](#).

If you wish to make a referral to the independent monitor, you can [complete a form on the DBS website](#) or write to: Customer services (disputes), Disclosure and Barring Service, 1st Floor West, P.O. Box 165, Liverpool, L69 3JD. Tel: 0151 676 1953

The DBS will refer your application to the relevant police service on behalf of the independent monitor to give the chief officer the opportunity to consider your dispute first.

If you are not satisfied with the police dispute response, your case will be referred to the independent monitor.

## **Who can help**

If you wish to challenge the disclosure of local police information, you should be able to go through a number of steps yourself. However, you may find the contacts below useful.

[Liberty](#) were involved in the case of L (above) and have a strong interest in the civil liberties argument surrounding the disclosure of non-conviction information on a disclosure.

The legal contacts below are detailed because they have been involved in dealing with these types of cases in one way or another. It is not our aim to promote the services of legal advisors, but we do want to be able to provide information on contacts who may be able to help. You may also find the general section on legal advice in our Information Hub helpful.

[John Ford Solicitors](#) instructed Stephen Cragg and Charlotte Kilroy (of Doughty Street Chambers) to represent L in the case detailed on this page.

[Goodmans Law](#) have offered their services to people in these situations on a number of online forums, and so you may be able to source some help from them.

## **Trying to get it deleted**

Under the [ACPO Retention Guidelines](#), there is an Exceptional Case Procedure for the removal of DNA, fingerprints and PNC records. As each Chief Police Officer is the Data Controller of their PNC, they have the discretion to authorise the deletion of any specific data entry on the PNC owned by them. However, this discretion is only ever exercised in exceptional cases.

Exceptional cases will, by definition, be rare. They might include cases where it can be proved that the arrest

was unlawful, or where it is established beyond doubt that no offence existed. A library of circumstances have been collected by the DNA and Fingerprint Retention Project (DNAFRP) that have been viewed as exceptional cases, and this is used to assist Chief Officers by providing a bank of precedents when considering requests to remove records.

To request removal:

1. Write to your local police force. Ask for the record to be deleted. Ask for their policy on deletion, including what types of cases they will regard as exceptional.
2. You should be sent a letter informing you that the record is held lawfully and that your request is being refused unless you believe it should be regarded as exceptional. You will be invited to state the grounds upon which you believe your case is exceptional.
3. Write back outlining the reasons why you believe it should be deleted.
4. The Chief Officer should then consider your response and either reply directly refusing your request, or refer the case papers to the DNAFRP to ensure a consistent national approach. If referring to the DNAFRP, the Chief Officer will receive an informed response. He/she will then notify you of their decision.

Some forces have published their policies publically. One example is by [Thames Valley Police](#).

## Background

### Is this kind of disclosure legal?

The simple answer is yes. However, the disclosure of such information has been challenged a number of times by the courts (as discussed below) which has influenced the process that is used to decide whether information should or should be disclosed.

There is a very good article written by Barrister [Timothy Pitt-Payne](#) covering a recent case which looked at, amongst other things, the legality and process of disclosing non-conviction information.

## History

Guidance was previously covered in Home Office Circular 05/2005 Criminal Records Bureau: local checks by police forces, but since 24th September 2010 this has no longer been in force.

However, the impact of the case of L ( [R \(on the application of L\) v Commissioner of Police of the Metropolis \[2009\] UKSC 3](#) ) (also, see the submission by Liberty) as described by Mr Pitt-Payne, is a more cautious approach by the Police regarding the disclosure of local police information.

In once case which demonstrates the process that South Yorkshire adopted, they contacted the individual concerned, notifying them of the their intention to disclose non-conviction information. The letter explained the legal powers supporting the disclosure of such information, stated that they are minded to disclose the information, and then provided details of the proposed wording. The letter went on to state that the purpose of the letter was to afford the individual the right to make any representations that they consider relevant to the Chief Officers decision. The letter set a relatively tight time limit to reply (2 weeks from the date the letter was sent).

In response to this, the individual Unlock member wrote some rather detailed representations. The result was that he received a response back from the police stating that “on this occasion it has been decided not to proceed with the disclosure” and, when his check was issued, no non-conviction information was disclosed. However, it is important to note that the convictions that he had from many years ago were still disclosed, as currently this process doesn't apply to cautions/convictions.

If you receive a similar letter proposing disclosure, or you simply want to make representations in advance of disclosure of non-conviction information, it would be sensible to look to get a copy of the Police Forces decision making process regarding non-conviction information, as well as using the statutory guidance and QAF process

above, so that you are able to target your representations at elements which may affect the Chief Officers decision.

## **The process following L**

Following the L case, many police forces have given individuals an opportunity to comment on the disclosure that the Police intend to make. As the Court in L was clear that there is no presumption in favour of disclosure, you could argue that the disclosure was not relevant to the new post/job you are seeking or that it is so old, vague, misleading or inappropriate that it ought not be disclosed at all.

If an inappropriate disclosure is made, you can challenge the quality of the information with the criminal records bureau or you can bring a judicial review in the High Court to have disclosure looked at afresh by a Judge. Time limits are tight and both steps must be taken within 3 months from the date of the certificate.

If disclosure affects your reputation, personal feelings or causes you to lose earnings (for example, if you lose your job or a promotion opportunity) you can seek damages as part of a judicial review application. Legal aid may be available.

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