



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: 55340-00	EFFECTIVE DATE: November 18, 2005	POLICY CODE: DIS 1.1
SUBJECT: Disclosure of Information to Parties other than the Accused		CROSS-REFERENCE: CHI 1 DIS 1 FRE 1 MED 1 PRO 1 VIC 2

POLICY

Subject to this policy and the requirements of the *Freedom of Information and Protection of Privacy Act*, Criminal Justice Branch files are generally confidential in order to:

- ensure that there is no prejudice to ongoing prosecutions
- protect public safety, including the safety of witnesses or other individuals involved in prosecutions
- protect third party privacy interests
- satisfy privilege or public interest immunity where it applies

Requests for release of information should be in writing and, except for applications under the *Freedom of Information and Protection of Privacy Act*, should state the reasons for seeking the information.

Information Created by Law Enforcement Agencies

Information provided by law enforcement agencies, including information in a Report to Crown Counsel, is provided to Crown Counsel for the limited purpose of prosecution, and it belongs to those agencies.

Where Crown Counsel is requested by a person other than the accused or defence counsel to provide a record of information relating to a prosecution (including evidence) which has originated with the police or another law enforcement agency, the request should be referred to that agency. This does not apply to records created by the Criminal Justice Branch (such as memoranda to file).

Information Regarding Witnesses

Crown Counsel should not release information concerning the identity or location of a witness or a witness statement, unless the request for the information is in the public interest and:

- there is no ban on publication which would prohibit the release;
- the witness consents to the release;
- there would be no prejudice to the prosecution;
- there is no other means by which the information can be obtained by the person requesting it; and
- Regional or Deputy Regional Crown Counsel is consulted if the witness has requested or is in need of protection.

Examples of situations where release may be in the public interest, subject to the above, include requests by Government agencies, Crown Corporations, or bodies which regulate professionals, especially where the request relates to a statutory mandate.

Civil Litigation

Crown Counsel should consult the Director, Policy and Legislation or designate when information is requested for the purposes of civil litigation, including where the provincial government is involved as a potential litigant. Where a request for information for the purposes of civil litigation is made by an application under the *Freedom of Information and Protection of Privacy Act*, the Headquarters lawyer responsible should consult the Director, Policy and Legislation. Issues relating to privilege or public interest immunity may arise in the case of copies of Reports to Crown Counsel, opinions concerning charge assessment, witness statements, Crown Counsel work product, or medical, technical or scientific reports.

Requests by Victims' Assistance Organizations

Branch policy VIC 2 applies to requests by victims' assistance organizations for information on behalf of victims.

Requests by the Crime Victim Assistance Program (Ministry of Public Safety and Solicitor General)

On request by the Crime Victim Assistance Program, Crown Counsel should provide an objective explanation of the reasons for the outcome of a prosecution. That explanation

should take into account that the information provided may be considered by the program in its adjudication on the merits of the victim's application for assistance.

Requests under the *Child, Family and Community Service Act*

Under section 96 of the *Child, Family and Community Service Act*, Crown Counsel have a responsibility to provide information to delegates of the Director (child protection workers) which is requested for the purpose of child protection. Requests for information under this Act should be referred to Administrative Crown Counsel. Further advice is provided under "Discussion".

Research Requests

Access to Crown Counsel files for research purposes should not be granted unless a research agreement has been approved by the Assistant Deputy Attorney General in accordance with s.35 of the *Freedom of Information and Protection of Privacy Act*.

DISCUSSION

Generally, the release of information is governed by this policy, the requirements of the *Freedom of Information and Protection of Privacy Act*, and Crown Counsel's responsibilities relating under the *Criminal Code* (deleted) to the protection of informants, witnesses and third parties.

The *Freedom of Information and Protection of Privacy Act* does not apply to ongoing prosecutions.

Investigative agencies, other organizations, and parties both within and outside government may request information from Crown Counsel files for a variety of purposes. It is recognized that Crown Counsel have a professional responsibility to protect confidential and privileged information, but it must also be recognized that organizations and agencies may have valid interests in obtaining information.

The Requirement to Provide Reasons for a Decision not to Prosecute

Section 15(4) of the *Freedom of Information and Protection of Privacy Act* provides that:

The Head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute;

- i. to a person who knew of, and was significantly interested in the investigation, including a victim or a relative, or friend of a victim; or*
- ii. to any other member of the public, if the fact, of the investigation was made public.*

Under the above-noted provision, Crown Counsel are required to provide reasons for a decision not to prosecute to any person who knew of or was significantly interested in the investigation or to any other member of the public after the investigation has been made public. The following guidelines apply:

1. Crown Counsel should take care to provide reasons which have a minimal impact on the privacy interests of third parties and do not breach any legal requirements.
2. Only summaries or extracts of police reports or other sensitive documents should be made public.
3. Legal opinions, charge assessment opinions, work product and other internal or potentially privileged documents should not be made public.
4. Information concerning young persons may be disclosed only to those persons who are authorized under the *Youth Criminal Justice Act* to have access to records concerning young persons (see sections 110 – 129).
5. The responsibility for making announcements in high profile cases should be determined by the Assistant Deputy Attorney General in consultation with Regional Crown Counsel and the Communications Counsel.

Requests under the *Child, Family and Community Service Act*

By arrangement between the Criminal Justice Branch and the Director, Family and Child Services, the standard request letter exempts the following material from the request: any information which is protected from disclosure by the *Criminal Code* or *Youth Criminal Justice Act*, inter-office correspondence, legal opinions, and reports or records which can be obtained directly from the author of the report or record.

Where a child protection worker or their counsel is requesting information from a Crown Counsel file which originated with another “public body” as defined by the *Child, Family and Community Service Act* (incorporating the definition from the *Freedom of Information and Protection of Privacy Act*), the child protection worker or their counsel should obtain the information directly from the public body that created it.

A municipal police force is a “public body”; however, the RCMP is not. Therefore, where the information is contained in records which originated with the RCMP, Crown Counsel are under an obligation to provide that information to the child protection worker or their counsel, subject to the exemptions noted above.

Information Sharing Protocols with Justice Partner Agencies

The Criminal Justice Branch is a party to or is directly affected by a number of information-sharing agreements/arrangements with other agencies, branches, ministries or other

organizations. If Crown Counsel require information about any of these protocols, they may contact the Information and Privacy Coordinator Crown Counsel at Headquarters. Included in these agreements/arrangements are the following:

- Agreement between the Government of Canada and the Government of the Province of British Columbia (for information sharing for law enforcement purposes), July, 1983.
- Protocols for the Inter-Ministerial Coordination of Services for Persons with a Mental Disorder, November, 1992 between the ministries of Attorney General, Health and Social Services (now the Ministry of Human Resources and the Ministry of Child and Family Development).
- The Inter-Ministerial Coordination Services for Adults with a Mental Disorder or Mental Handicap Involved in the Criminal Justice System: a protocol for the sharing of information across ministries and agencies, September, 1995, between the Ministries of Health, Social Services (now the Ministry of Human Resources and the Ministry of Child and Family Development) and Attorney General.
- Memorandum of Understanding on information sharing concerning offenders, November, 1997 between the Government of Canada and the Government of the Province of British Columbia.
- Section 96 of the *Child, Family and Community Service Act* – memorandum from Hal Yacowar dated May 7, 2002 advising Crown Counsel of the requirements to provide information to the “Director” for child protection purposes under the Act.
- Electronic Access Agreement (CORNET), February, 2005 between the Corrections Branch, Ministry for Children and Family Development and the Criminal Justice Branch.
- Electronic Access Agreement (JUSTIN), February, 2005, between the Court Services Branch, Criminal Justice Branch, the Corrections Branch, Youth Services Division (now the Ministry for Children and Family Development).
- Memorandum of Understanding on Disclosure between the Crown and Police in British Columbia, February 10, 2005.