

Policy:

Information Requests from Third Parties

Policy Code:

INF 1

Effective Date:

April 16, 2019

Cross-references:

[CHI 1](#) [MED 1](#) [POL 1](#)
[RES 1](#) [STA 1](#) [VIC 1](#)

The BC Prosecution Service (BCPS) has a statutory obligation to provide information to the media and affected members of the public about the approval and conduct of prosecutions of offences and related appeals. This obligation is limited by privacy, confidentiality, privilege, legal obligations, and policy considerations. The purpose of this policy is to provide guidance as to the scope of information that may be provided. This policy recognizes the risk that information provided to individuals outside the criminal justice system (third parties) may find its way into the public domain.

General Principles

Principle of Openness

Public confidence in the administration of justice depends on access to accurate and timely information on court proceedings. By providing appropriate information in a timely fashion, the BCPS can help ensure that citizens have a reasonable opportunity to assess whether the justice system is functioning effectively.

Duty of Confidentiality

As members of the public service, BC Prosecution Service employees must abide by both the BC Public Service Agency “*Standards of Conduct*” and BCPS policy, *Standards of Conduct for BC Prosecution Service Employees* ([STA 1](#)). These standards of conduct are intended to ensure that employees conduct themselves in a manner that serves to instill public confidence and trust in the criminal justice system. They include a duty of confidentiality with respect to information that comes into BCPS employees’ possession through their employment:

Confidential information, in any form, that employees receive through their employment must not be disclosed, released, or transmitted to anyone other than persons who are authorized to receive the information (Standards of Conduct, BC Public Service Agency)

When considering whether information is confidential, it is important to remember that information provided by a law enforcement agency, including information in a Report to Crown Counsel, is provided to the BCPS for the limited purpose of conducting charge assessments, prosecutions, and appeals, and it belongs to the agency that provides it.

The BCPS maintains confidentiality over prosecution files in order to:

- ensure there is no prejudice to ongoing prosecutions
- protect public safety, including the safety of witnesses or other individuals involved in prosecutions
- protect third-party and accused privacy interests
- protect material to which a privilege is attached, such as solicitor-client privilege, prosecutorial discretion privilege, or a public interest privilege
- avoid infringing the rule against commenting on matters that are before the court

Providing Information

Information to members of the media, members of the public, or other third parties

Crown Counsel and administrative staff are frequently approached by third parties, at different stages of proceedings, seeking information on specific prosecutions. The BCPS recognizes that third parties, including witnesses or victims, members of the media, or members of the general public, may have legitimate interests in, and may have legal rights to obtain, information about prosecution files. Crown Counsel may respond directly to such enquiries by providing basic information about the general status of a prosecution or appeal, including:

- date and location of upcoming court proceedings
- stage of proceedings (first appearance, arraignment, sentencing, etc.)
- file progress and outcome (within a reasonable period of time after all proceedings in relation to the prosecution have been completed)
- information about the operation of the criminal justice process in order to enhance the public's level of understanding, including correct terminology for the various stages of that process, or reference to the specific policy that applies to the matter in issue

In responding to enquiries from third parties, Crown Counsel and administrative staff should be mindful of the privacy rights of victims and accused persons. In all cases,

BCPS employees should recognize and safeguard the confidential nature of personal information and the need to maintain the integrity of the prosecution process.

Crown Counsel should also consider whether another agency is the more appropriate source of the information sought. Many records are more properly obtained from the court registry (e.g., release documents, probation terms, restitution orders) or the investigative agency (e.g., file information, criminal record).

When Crown Counsel becomes aware that a case is likely to attract significant media or public attention, Crown Counsel should consult a Regional Crown Counsel, Director, or their respective deputy, and the Communications Counsel as soon as possible in order to facilitate the appropriate and timely release of information.

All requests to BCPS employees for comment upon or information about the initiation and management of a prosecution, the evidence adduced, or other substantive issues involving policies or law reform, including the implications of court decisions which may have broad ramifications for the BCPS, should be referred to the Communications Counsel, who will prepare a response in consultation with counsel and an appropriate member of the BCPS Management Committee (*Media – Guidelines for Crown Counsel* ([MED 1](#))).

Information to Victims

Additional considerations apply to the provision of information to victims of crime. Crown Counsel and administrative staff should be mindful of their obligations under the BC [Victims of Crime Act](#) and federal [Canadian Victims Bill of Rights](#) (*Victims of Crime* ([VIC 1](#))).

Information under *Freedom of Information and Protection of Privacy Act*: Decision not to Prosecute

Individuals may request, in writing, information pursuant to section 15(4) of the *Freedom of Information and Protection of Privacy Act*, which 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

- (a) *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*
- (b) *to any other member of the public, if the fact of the investigation was made public.*

As the head of the BCPS, the Assistant Deputy Attorney General, or a designate, will generally be the person responsible for disclosing reasons for a decision not to prosecute under this provision. Strict statutory timelines apply so Crown Counsel should refer all written requests under this provision to the Information Access and Privacy Coordinator (IAPC) as soon as practicable. The IAPC will formulate a reply based on the following guidelines:

- minimize the impact on the privacy interests of third parties
- ensure that any legal requirements for the disclosure of information and the protection of privacy are complied with
- provide only summaries or relevant extracts of police reports or other sensitive documents
- not provide legal opinions, charge assessment opinions, work product, or other internal or potentially privileged documents
- provide information concerning young persons only to those persons who are authorized under the *Youth Criminal Justice Act* (YCJA, sections 110-129) to receive it

Limits to Information That Can Be Provided

Prosecutorial discretion is inextricably linked to the proper administration of justice. It serves to protect the quasi-judicial authority over prosecutions from political interference and judicial supervision. It is a constitutionally entrenched principle, and a principle of fundamental justice.

The protection of prosecutorial discretion underpins the independence of the prosecution service, and supports the rule of law. Routinely disclosing records related to the exercise of prosecutorial discretion would undermine both principles.

While decisions made in the course of conducting charge assessments, prosecutions, and appeals may ultimately become matters of public record, the reasoning behind these decisions may involve or implicate the exercise of prosecutorial discretion, or be confidential or privileged, and should not be disclosed. This includes the reasons for:

- a charge or “no charge” decision, or referral to alternative measures
- a decision to consent to release on bail
- a decision to accept a plea to a lesser offence, to stay proceedings in respect of certain charges, assuming conduct of a private prosecution, or to take a specific sentencing position
- proceeding summarily, by indictment or by direct indictment
- appealing an acquittal or sentence or the prospect of launching or succeeding upon such an appeal
- the position the Crown will take in response to a defence appeal or any interlocutory application connected to an appeal, including an application for bail

Exceptions

Clear Statements on High-Profile Cases

When the Assistant Deputy Attorney General determines that it is in the public interest to release a public statement about a decision in a case falling under *Police – Allegations Against Peace Officers* ([POL 1](#)) or another high-profile prosecution, a Clear Statement will be released by the Communications Counsel in consultation with the Assistant Deputy Attorney General. The statement will generally include a summary of the material facts and the reasons for the decision, unless including it could compromise the fair trial rights of any accused.

Cases Involving Serious Injury or Severe Psychological Harm

Resolution Discussions ([RES 1](#)) provides that in cases involving serious injury or severe psychological harm, before concluding a resolution discussion or directing a stay of proceedings, Crown Counsel should take reasonable steps to inform the victim, or the victims' representative, and the police or other investigative agency of the proposed resolution, provide an opportunity for concerns to be expressed to Crown Counsel, and advise them that any concerns they express will be made known to and considered by a Regional Crown Counsel, Director, or their respective deputy. In providing such information or addressing any concerns that may arise Crown Counsel, or a Regional Crown Counsel, Director, or their respective deputy, should not compromise confidentiality, trial fairness, public safety, third-party privacy interests, or privilege.

Written Requests for Information

All written requests from third parties for data or information should be referred to the IAPC, Headquarters, BCPS, including:

- requests under the *Freedom of Information and Protection of Privacy Act* (FOIPPA)
 - all information requests made by third parties with regards to FOIPPA should be referred to the IAPC without delay so the IAPC may reply within certain statutory time limits. Specifically, requests by the Crime Victim Assistance Program for reasons under section 15(4) should be referred to the IAPC
- requests arising from civil litigation
 - BCPS employees occasionally receive requests relating to or arising out of civil litigation to release information, including where the provincial government is involved as a potential litigant, or where such information is being requested pursuant to an application under FOIPPA

- requests by other public bodies or other independent Offices of the Legislature (e.g., Teacher Regulation Branch, Director of Civil Forfeiture, Security Programs, Privacy Commissioner, or the Representative for Children and Youth)
- research requests
 - access will not normally be granted unless a research agreement has been approved by the Assistant Deputy Attorney General in accordance with section 35 of FOIPPA
- requests under section 96 of the *Child, Family and Community Service Act* (CFCSA)
 - upon request, the BC Prosecution Service has a responsibility to provide information for the purpose of child protection to delegates of the Director (child protection workers). Requests under section 96 of the CFCSA should be referred to the IAPC without delay
- requests for statistics
- requests from correctional authorities
 - access to file information should be limited to redacted summaries prepared by the Crown Counsel concluding the matter. Materials that are covered by section 743.2 of the *Criminal Code* must not be disclosed.

As the ambit and scope of information requests cannot be predicted, whenever BCPS employees receive a request for information from a third party not described above or about which they have any concerns, they should consult with the IAPC or the Communications Counsel. This will make it possible for BCPS to address not only the specific request but also to identify any developments in this area that require a consistent response to the requesting parties.

Statutory Duty to Report

Nothing in this policy should be taken or interpreted as derogating from any statutory duty to report or disclose information, such as the duty to report child abuse or potential abuse as set out in section 14 of the *Child, Family and Community Service Act* (*Child Victims and Witnesses* ([CHI 1](#))).