**[Insert force logo]**

**Victim/witness FAQ**

Digital Processing Notice b (DPNb)

*Throughout this form the term ‘witness’ is used to include both victims and witnesses.*

This form contains important information. Please read the contents carefully and to the end of the document. If you have any questions, please ask the officer(s) you are in contact with for the purposes of the investigation.

We have begun an investigation into an allegation of crime and there is a need to examine a digital device in your possession or control. We must investigate to find all relevant material that could have a bearing on the case, whether it points towards or away from the suspect. This notice sets out the approach we will take.

We understand that requesting your personal or private information, either from your mobile phone or other digital device, has the potential to cause anxiety. Investigators need to balance ensuring a fair trial for the accused against any intrusion into the private life of a victim or witness. The purpose of this document is to explain:

* the legal basis upon which we can look at your device;
* when we will ask to look at your device;
* how we will look at it;
* what will happen to the data we copy, retain and review;
* what might happen if you do not agree to us looking at your device and data; and
* your information/privacy rights

**Can you explain the law that allows you to take my device?**

We will take possession of your device with your agreement. This agreement is often referred to as ‘common law consent’. Once we have possession of your device we will process the personal data on it in accordance with Part 3 of the Data Protection Act 2018. This section allows us to process personal data when it is necessary for a law enforcement purpose. There are conditions attached to this. As we expect to process sensitive personal data we will acquire material from your device only when it is proportionate and ‘strictly necessary’ to do so for that law enforcement purpose. We also need to meet one of the conditions set out in Schedule 8 DPA 2018. The most likely conditions that will be met are:

* necessary for judicial and statutory purposes – for reasons of substantial public interest;
* necessary for the administration of justice;
* necessary for the safeguarding of children and of individuals at risk;

It is possible that we will be in lawful possession of your device without your agreement. For example, it may have been seized under another power. In these circumstances we will always ask for your agreement before acquiring the data from the device. If you do not agree, we will not acquire the data unless there is an identifiable basis for believing that you, or another individual, is at risk of harm and we cannot manage that risk through less intrusive means. In these circumstances we may acquire the data from your device without your agreement. We will tell you when this happens unless to do so would increase the risk to you or others.

When we are not in possession of your device and you do not agree to provide it, we will not seek to acquire it through other powers unless there is an identifiable risk of harm to you or to others.

**Can I withdraw my agreement once I have provided my device to the police?**

If you have changed your mind, you should discuss this with the officer in the case and explain the reasons to him/her. Depending on your case circumstances, we may decide to proceed without your agreement where there is a risk of harm to you or others that cannot be managed through less intrusive means. The officer in the case will explain the reasons to you unless to do so would put you or others at an increased risk.

**Why do the police need my device?**

We have a legal duty to carry out all reasonable lines of enquiry when investigating a crime.

We must not seek to review a witness’s digital material without good cause. The request to inspect digital material must have a proper basis in every case. This means that there must be reasonable grounds to believe that it may reveal material relevant to the investigation or the likely issues at trial.

We should not routinely obtain devices from witnesses. We must have a properly identifiable basis for believing that relevant material will be found on your device. The officer who is with you will inform you of this basis and record it on a form called DPNa. That form will also tell you what material we are seeking from your device (see further below). You will be provided with a copy of this form.

Our request to review the material on your device must be proportionate. We will consider whether there are other ways to obtain the material we need before asking you to hand over your device. The alternative methods that have been considered and rejected will also be recorded in form DPNa.

**Do I have to give the police my device?**

No. We will ask you to agree to hand over your device but you do not have to. If you decide not to give us the device we will ask you to provide reasons and work with you to address your concerns. Our aim is to reassure you of the good reasons for extracting material and that the extracted material will be kept secure. However, the decision is yours and you do not have to provide your device. Should you decide not to provide your device, it is important that we understand your reasons because we may need to explain them if the case goes to trial.

As explained above, however, if there is a risk of harm to you or others we may use other lawful powers to take possession of your device.

**What will happen if I do not agree to give the police my device?**

It is your decision whether you want to provide your device to us. If you decide not to allow us to examine material on your device then you will be asked not to delete any material on it, as this risks preventing a fair investigation of the case.

There are potential consequences if you do not provide your device. These include:

1. it may not be possible to pursue the investigation;
2. a witness summons may be issued – this is a document issued by the court that will require you to give evidence at court or provide your device to the court; or
3. a prosecution may be unable to proceed.

This is because the court needs to be sure that the suspect will still be able to have a fair trial if they are charged with any offences. We will explore other options to follow the reasonable line of enquiry. For example, it may be possible to recover material from the suspect’s device or there could be other ways to prove a particular point, such as examining CCTV, to find evidence that a person was present at a scene of the crime. If, because the material on your device has not been examined, it is not possible to follow a particular reasonable line of enquiry, any review of the case will take this into account. Whether a fair trial is still possible will depend on the circumstances of each case.

**How long will the police keep my device for?**

We will keep your device for the minimum amount of time necessary. The length of time will be determined by a number of factors and the officer to whom you give your device will give you an indication of how long this will be. If, for any reason, this length of time changes then you will be kept informed.

**Will the police look at everything on my device?**

The investigator will look only at the material they deem relevant to the investigation.

If possible we will obtain the material we need without taking your device from you.

If that is not possible then the device may need to be downloaded or copied. The investigator will take your device away to do this. The contents should be acquired with minimum inconvenience to you and your device returned without unnecessary delay.

Wherever possible we will acquire only the material we believe may be relevant so that we can review it. The investigator will make it clear in form DPNa what material they are looking for and why. You will be provided with a copy.

If technology does not allow us to target only the relevant material, we may have to copy more material than we need. If this happens, the investigator will set clear parameters to satisfy the reasonable line of enquiry and review material only within those parameters. This could include reviewing within specific dates, focused enquiries using search terms or only reviewing particular message threads. The investigator will make a record of the parameters they have set and why they have set them. Material outside of those parameters will not be looked at.

**What will the police do with the material they take from my device? Who will they give it to?**

Before the suspect is charged with an offence.

The suspect does not have a general right to examine the contents of your device. They are, however, likely to be told about or shown material from your device that is evidence of the offence. This is so they have an opportunity to respond to this evidence and will usually take place in a recorded suspect interview.

In certain cases, material will be provided to the Crown Prosecution Service in order for them to decide whether the suspect should be charged with an offence. Only relevant material is provided to the prosecutor for this purpose.

After the suspect is charged with an offence.

Once the suspect has been charged to court they are referred to as the defendant. The defendant does not have a general right to examine the contents of your device. The circumstances in which a defendant will see material from your phone or other digital device is explained below.

When we recover material from your phone it will fall into one of three categories:

Evidence

This is the material that the prosecution will use in Court in order to prove the offence. The defendant will see this material. You will be told which material from this category has been, or will be, disclosed to the defendant. It will be disclosed in a suitably edited form to ensure that personal details or other irrelevant information are not unnecessarily revealed (e.g. photographs, addresses or full telephone numbers).

Unused material

This is material that is relevant to the investigation, any person being investigated or the surrounding circumstances of the case but not being relied upon to prove the offence in court. There is a duty on prosecutors to disclose material from this category to the defendant if it assists their defence or undermines the prosecution case. A Crown Prosecution Service lawyer will make a decision about whether to disclose unused material and you will be told which material from this category has been, or will be, disclosed to the defendant. It will be edited to ensure that personal details or other irrelevant information are not unnecessarily revealed (e.g. photographs, addresses or full telephone numbers).

Non-relevant material

This is everything else that does not fit in the first two categories. The defendant will not see this material. In some cases where we have been able precisely to target only the relevant material, there will not be anything in this category. Where we have had to acquire more than we need, we will delete this material wherever possible and as soon as possible. This includes material that has not been looked at because it was not within the parameters set by the officer.

There may be occasions when it is impossible to separate this material from material that falls into the first two categories. If this is the case, it will be dealt with as highlighted within (insert force) Sensitive Processing Appropriate Policy Document. \*\*Force to insert a link to this document\*\*.

In the event that we identify unrelated criminal activity on your device, we will deal with this in a proportionate way. It is most unlikely to be proportionate, for example, to investigate references in messages to drug use, when you have been the victim of a serious offence. When deciding whether further investigation is necessary officers will consider:

* 1. The seriousness of the offence being investigated set against the seriousness of the unrelated criminal activity;
  2. Whether there is risk of harm to any person as a result of the unrelated criminality;
  3. Whether the information about the unrelated criminal activity is capable of having a bearing on the initial offence being investigated. If so, this information must be revealed to the prosecutor. It will not be disclosed to the defence unless the disclosure test is met.

**How will I know what has been shared and with whom?**

We will tell you. The investigator to whom you hand your device will agree a contact plan with you. This will include how often you wish to be kept informed and at what stages of the investigation. If you would like to know what material has been retained and when it is shared, this will form part of that plan.

**How will my data be kept secure?**

You may be particularly concerned about the security of any data which is copied and stored whilst the criminal investigation is ongoing. Here we briefly explain our commitment to keeping your data secure but you can find further details in the Sensitive Processing Appropriate Policy Document referenced above, and in the Management of Police Information (MoPI) Authorised Professional Practice (APP) policy document issued by the College of Policing and available on their website (the link is included below).

Any data that is downloaded from your device is kept on the [INSERT NAME OF FORCE] (insert how the material is stored – secure database, DVDs, encrypted USBs etc)]. It will be handled, stored and retained securely in accordance with the provisions of the Management of Police Information (MoPI) APP and, in the case of sensitive data, the Sensitive Processing Appropriate Policy Document. It will not be stored for any longer than necessary.

Further details regarding privacy information, including your rights under data protection legislation, are set out in the Sensitive Processing Appropriate Policy Document

The Sensitive Processing Appropriate Policy Document can be found at http://www.INSERT.

The Management of Police Information (MoPI) APP can be found at the College of Policing website <http://www.college.police.uk>.

**Data Protection – what are my rights?**

The Data Protection Act 2018 affords you certain rights. It also mandates that we tell you certain things, which we have set out below.

The Data Controller for this force is \*\**force to enter data controller*\*\*

The Data Protection Officer for this force is \*\**force to enter Data Protection Officer\*\**

Under Section 45 Data Protection Act 2018, you are able to make data protection requests (also known as subject access requests or SARS). More information can be found on the ICO website [Your right of access | ICO](https://ico.org.uk/your-data-matters/your-right-to-get-copies-of-your-data/)

You can make a data protection request by \*\**force to insert contact details\*\**

**Further questions or complaints**

If you have any further questions or you have a complaint, please speak to the officer in charge of your case.

Alternatively, you can contact our Professional Standards Department (insert force details).

If you have a complaint regarding how the police have handled your data from your device

device(s), you have the right to complain to the Information Commissioners Office, who are the UK's independent body set up to uphold information rights. They can be contacted

through their website on <https://ico.org.uk/make-a-complaint/> or 0303 123 1113.

National Support Agencies

* Victim Support 0808 1689 111/0808 1689 293 or www.victimsupport.org.uk
* Rape Crisis 0808 802 9999 or www.rapecrisis.org.uk
* SAMM 0845 782 3440 or 0121 472 2912 www.samm.org.uk
* Citizens Advice Bureau www.citizensadvice.org.uk
* UK Government Website [www.gov.uk/find-a-community-support-group-or-organisation](http://www.gov.uk/find-a-community-support-group-or-organisation)