

CONSULTATION RESPONSE	
TO	Home Office
FROM	Independent Office for Police Conduct (IOPC)
REGARDING	Requests for Victim Information, Code of Practice V3

Our interest in this matter

1. The IOPC oversees the police complaints system in England and Wales and has a statutory duty to secure and maintain public confidence in it. We are independent and make decisions entirely independently of the police, government and interest groups.
2. We investigate the most serious and sensitive complaints and incidents involving the police and sets the standards by which the police should handle the complaints that they investigate. We also handle certain appeals / reviews from people who are not satisfied with the way police have dealt with their complaint. The IOPC also has a broader role in sharing learning to help the police service develop and improve. For further information about our role, see Annex A.
3. We have an interest in this consultation because this guidance will be used by IOPC investigators to manage requests for third party material. The code provides a framework for authorised persons to communicate with victims about how their personal data is used. Used effectively, this code can help facilitate victim engagement in our investigations, reviews and subsequent proceedings thereby providing better evidence and building trust and confidence in the police complaints system.
4. We have an additional interest in how this code provides guidance to authorised persons, such as police officers and staff, owing to our role in the oversight and scrutiny of policing.

General Feedback

5. We welcome the guidance provided in this code and the provisions around centring the needs of vulnerable people within the process. We think this will provide opportunities to develop public trust and confidence in policing and the wider criminal justice system.

6. Much of the guidance that centres the needs of vulnerable people is included as 'best practice'. We suggest that the Home Office communicates these areas of guidance as 'expected practice' of authorised persons, not best practice. We suggest this is considered for three reasons. Firstly, to build and develop the trust and confidence of the public. Secondly, to ensure the best evidence is secured throughout the investigative process. Thirdly, to increase the likelihood that victims are engaged until the point of prosecution.
7. We support the guidance around record keeping, as we often use police records to understand the rationale behind decisions made during a case. Clear, auditable decisions will assist with this.
8. We suggest the Home Office uses this code of practice as an opportunity to promote safeguards to protect victims' data from being processed in the same way as suspect and perpetrators' data. This suggestion is based on stakeholder feedback around how some victims have felt criminalised, despite not committing any crime, owing to the way data is processed by law enforcement agencies. This was highlighted in the Met overhaul of the Gangs Matrix.
9. In addition, we have identified small omissions of grammar, typos, incorrect paragraph references, words requiring hyperlinks and sentences which could be simplified. At times, the language strays towards a policing audience and we suggest further scrutiny should be applied to rectify this e.g. replacing '*police force*' or '*authorising officer*' with '*appropriate authority*' or '*authorised person*'. We are mindful that this is part of an ongoing consultation, and these areas will likely be changed and/or rectified throughout the process.
10. We are available to provide ongoing feedback and engagement in the development of the Victim Information Code.

Introduction

11. Paragraph 3, states '*working with vulnerable victims*'. We suggest that the inclusion of '*or intimidated victims*' could also be included here. This brings the guidance in line with the current CPS Victim's Code and recognises that an 'intimidated' victim may also require support to understand the request. Despite not being categorised as 'vulnerable' the impact of the crime and subsequent investigation may undermine a victim's trust and confidence. More information about the use of vulnerable and intimidated witnesses and victims can be found here: <https://centralchambers.co.uk/what-is-a-vulnerable-victim/>

Victim Information Request

12. Paragraph 9 lists examples of types of personal data that may be held by a third party, as '*medical, health, education and social services records*' We are mindful that this is not an exhaustive list, but we encourage the inclusion of '*financial information*' and '*immigration status*' as an additional example. This is to broaden

the scope of which victims might be impacted by a TPM request. Financial information may be used to evidence domestic abuse. We suggest the inclusion of immigration status owing to concerns raised in the ‘Safe to share’ super-complaint relating to the treatment of victims of crime and witnesses with insecure immigration status. [Safe to share? Liberty and Southall Black Sisters’ super-complaint on policing and immigration status - His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/hmipo/publications/safe-to-share-liberty-and-southall-black-sisters-super-complaint-on-policing-and-immigration-status/)

Purpose of these duties

13. The final sentence of paragraph 15 states, ‘*Victims should be notified of what information is being sought, why it is being sought, and how the information will be dealt with*’ we recommend two other factors be considered here:

- a. ‘*The victim’s representations on the matter should also be sought at this point.*’ This factor features later in the document, and we suggest it is introduced at the same time as other victim contact. This is to reinforce the importance of hearing the victim’s voice within an investigation, something that stakeholders have told us can assist with supporting a victim to stay engaged with the process.
- b. ‘*Victims should be consulted on who may hold the relevant information and ask for authorised authorities and named professionals.*’ Operation Linden was a wide ranging and detailed series of investigations into historic child sexual abuse. Through the IOPC investigations, we found that the victims we contacted were able to assist the investigator as they had a better understanding of where their personal data was held. We found these stakeholders were more engaged and felt more empowered within the investigation, as they had a greater role in the control of their data.

Existing legislative framework

Human Rights Act 1998 (HRA) and European Convention on Human Rights (ECHR)

14. Paragraphs 28 – 30 outline how Article 8 ‘*the right to respect for their private and family life, home and correspondence*’ of the ECHR are addressed in the code. It may be appropriate to include reference to Article 10 of the ECHR ‘*Everyone has the right to freedom of expression*’ due to requesting representations from the victims. Article 10 includes limitations to this freedom where there is ‘*a duty and responsibility to prevent disorder or crime*’. See https://www.echr.coe.int/documents/d/echr/guide_art_10_eng (pg.10)

Data Protection Act 2018 (DPA) and UK GDPR (pg. 9)

15. Paragraph 36 states that of the six data protection principles, Principle 1 ‘*Processing must be lawful and fair*’ and Principle 3 ‘*Personal data processed for*

any of the law enforcement purposes must be adequate, relevant, and not excessive in relation to the purpose for which it is processed' are of particular relevance to TPM requests.

16. We suggest the Home Office considers emphasising the importance of Principle 6 *'Personal data processed for any of the law enforcement purposes must be so processed in a manner that ensures appropriate security of the personal data, using appropriate technical or organisational measures (and, in this principle, "appropriate security" includes protection against unauthorised or unlawful processing and against accidental loss, destruction or damage).'* We suggest this, due to a number of factors, including:
 - IOPC investigations finding personal data had been shared with the wrong parties, compromising the safety of victims.
 - In Operation Linden, stakeholders told us they were nervous about how their data was handled. They felt they have no control over the amount of people, from different agencies, who have reviewed personal information such as care records.
 - Stakeholders from LGBTQ+ groups have expressed the risks of being 'outed', punished or subjected to retaliation due to the nature of the data. We suggest that further assurances could be given to vulnerable victims that their data is processed securely.
17. We therefore suggest the Code provides guidance for authorised persons to reassure victims about the secure processing of their data, to assist with maintaining and improving trust and confidence.
18. We are pleased to see paragraph 37 emphasises the complexities associated in *'relying upon the consent of the victim in justifying the processing of their data'*. In particular *'...because of the perceived power imbalance between the police and a victim, that the high threshold of fully informed and freely given consent can be achieved.'* We suggest an addition at the end of the paragraph that recommends ways to mitigate the effects of this power imbalance, in that it is particularly important to explain everything to the victim and give them time to process it. In our experience of supporting vulnerable witnesses and victims throughout IOPC investigations, we find that clearly managing expectations where a witness or victim is not able to influence the outcome of a decision is of utmost importance in trying to build and maintain trust and confidence.

Duties under Section 44A

Necessity and proportionality

19. Paragraph 54 states *'Key considerations when deciding if the TPM request is necessary and proportionate are the impact on the right to privacy of the victim*

and collateral intrusion on the right to privacy of third parties whose information may also be requested.’ We feel it may be appropriate to include examples of third parties who may be impacted by this collateral intrusion so users of the code can be mindful of this. For example, dependents and family members.

20. The final sentence in paragraph 56 states *‘For example, it may be proportionate to request specific information for serious crimes, such as murder or kidnap, but not for lower-level crime, such as anti-social behaviour or minor damage.’* While we agree with the necessity to request specific information for serious crimes, our work around VAWG has found that over requesting victim data when investigating serious crimes such as domestic abuse and serious sexual assault, can shift the focus from the perpetrator onto the credibility of the victim.
21. The Home Office may wish to consider highlighting some of the risks associated with over-requesting TPM, and that a focus on the victim’s data may lead to an investigation that over-exposes the victim and distracts from the perpetrator’s actions. We have identified learning for police forces to shift the focus back to the perpetrator actions, for example considering victimless prosecutions.
22. Paragraph 58 states that *‘Authorised persons should consider periodically reviewing their written notice to ensure it remains fit for purpose.’* We support this and suggest including that authorised persons should seek opportunities for a supervisor or colleague independent of an investigation, to be requested to input into this review. We also recommend that these reviews are recorded to allow for scrutiny.

Risk of obtaining other information

23. Paragraph 63, states *‘the authorised person...should minimise the risk of obtaining other information as far as is practically possible’*. We recommend that the steps taken to minimise this risk should be recorded to allow for scrutiny.

Duties under Section 44B

Provision of information to the victim about whom the information is being requested

Written Notice

24. Paragraph 67 states that *‘the written notice should be carefully explained to the victim to ensure they have understood it’*. We appreciate that communication is covered in more detail later in the code but recommend that there should be clarity included here about the style of the notice so that it meets the gov.uk content design guidance standard and is accessible, personable and easy to understand.

25. In paragraph 67, emphasis is placed on the victim understanding the notice, *'Where there is any doubt as to their understanding, additional support should be provided to the victim to assist their decision making.'* This is covered in more depth, further in the vulnerabilities section of the document, however, it may be an appropriate point to remind authorised persons to demonstrate empathy to the situation of the vulnerable or intimidated witness and consider how the TPM request may be received and understood. We suggest this as stakeholders have expressed to us the importance of unconscious bias, diversity and cultural sensitivity training, and having a trauma informed approach to all communications with a victim.
26. In the same paragraph, *'additional support'* is rightly suggested as assisting the victim in their understanding and decision making. This is covered in more detail later in the document, however we feel examples could be included as guidance in this paragraph. We recommend these examples be provided as a non-exhaustive list e.g., augmentative communication aids – PECS, large print, interpreters, and translators. This is also an opportunity to reinforce that every victim may have different, hidden needs and the authorised person must work to understand these needs.
27. Paragraph 68 explains actions an authorised person can take if it is not reasonably practicable to provide the notice to the victim on the day the TPM request is made. We recommend that any delay needs to be explained to the victim and a record made of the length, reason for the delay and any representations from the victim about the delay for further scrutiny.

Seeking the views, objections and concerns of a victim

28. We welcome the inclusion of this area in the code. We also believe there is an opportunity to emphasise the importance and significance of this interaction in instilling and building trust and confidence in victims exposed to the criminal justice system.
29. Paragraph 70 states *'It is best practice to encourage and support victims to share and record their views, concerns, or objections regarding the request.'* We recommend that this is not considered *'best practice'* but is an expectation that all authorised persons will attempt these conversations with sensitivity, whenever a victim may be approached.
30. The final sentences of paragraph 70 explore objections the victim may make to some, or all, of the material being requested. It states *'It may be appropriate to review and adjust the parameters of the request'*. We find this may cause confusion as the Code states the TPM request can be submitted before the victim is informed. We recommend that the guidance is amended to include how to retrospectively address a victim's concerns when they have not been able to raise objections or concerns before a TPM request has been submitted. This is to

allow for those representations to be recorded for further scrutiny and learning purposes.

31. Paragraph 71 describes the support that may be provided to victims to understand and share their views around a TPM request. A trauma informed practice is covered later in the 'Vulnerability' sections of the code. However, there is an opportunity to include a relevant paragraph that emphasises the importance of sensitivity in these matters here. We suggest this to allow the concept of 'trauma informed practice' to be represented throughout the code. Based on our work with stakeholders, in particular victims of VAWG, we hear about the importance of reducing interactions where victims recount traumatic incidents.
32. Paragraph 74 covers situations where the TPM may be shared. The code states '*victims will be informed if this is shared with anyone outside of the CPS*'. We suggest an amendment to this of '*where possible*' as we believe this will impose a significant ongoing duty on authorised persons and goes beyond the statutory duty to inform victims of the TPM request. We recommend the inclusion of a sentence that explains victims must be made aware of the possibility of this disclosure to anyone outside the CPS from the outset, when TPM is first discussed.
33. Paragraph 74 also states that '*Authorised persons are responsible for redacting personal and sensitive data*'. We agree that the responsibility should sit with the authorised persons. However, we recommend they have a conversation with the victim about the data being shared, and if there are any further concerns around the inclusion or exclusion of information. This may assist with identifying the most relevant data for an investigation, include the victim's voice, with the aim to empower victims within the process. We recommend that any representations from the victim should be recorded.

Requesting third party material when not informing a victim

34. In paragraph 77, the code explains that if the victim is not informed before the request for TPM '*this should be recorded in writing, and signed off by the appropriate authority*'. We recommend that the efforts made to meet the victim should also be recorded. For example, if the victim doesn't respond to a letter, email or uniformed officer, what other methods of contact were considered by the authorised authority. We suggest this in order to provide further accountability of this area and, if needed, opportunity for scrutiny and learning.

Sign-off for a TPM request

35. Paragraph 78 states that: '*All TPM requests should be reviewed and signed off by an appropriate authority. This can include; an Inspector, an Authorising Service Police Officer is to be of or above the rank of Lieutenant (Royal Navy), Captain (Army or Royal Marines) or Flight Lieutenant (Royal Air Force). The*

Inspector rank reflects the level of consideration that is required when considering a request for personal data that may feel intrusive to the victim, particularly where concerns or objections are raised.'

36. We suggest that this paragraph is amended to also reference the IOPC / other non-policing bodies. For example: *'This can include; an Inspector, an Authorising Service Police Officer is to be of or above the rank of Lieutenant (Royal Navy), Captain (Army or Royal Marines) or Flight Lieutenant (Royal Air Force). For other bodies, the seniority of the appropriate authority should reflect the level of consideration that is required when considering a request for personal data.'*
37. Paragraph 79, Part A states *'(A)ll information contained within has been completed accurately, and the rationale for its request recorded;'* We suggest this is further clarified as follows *'All information contained within has been completed accurately, and the reasons for its request are rational and have been recorded;'*

The complaints process for the handling of a TPM request

38. Paragraph 81 states that *'Victims must be made aware of the complaints process should they have any concerns with the handling of their request'*. We support the inclusion of the complaints process in the code. We suggest this section includes further expectation on the authorised persons to explain that a victim will not be treated differently or prejudiced if they decide to make a complaint.
39. We recommend that third party organisations are included in this section and the complaints procedure is also available to them.

Duties under Section 44C

Third party response to the request

40. Drawing on learning from our investigations and insights from stakeholder engagement, we find that colleagues working in voluntary, or charity organisations have differing levels of knowledge of, and exposure to processes within the criminal justice system. Smaller organisations may not have access to sufficient resources or legal advice to respond to a TPM request. We suggest that this area of the code includes guidance to authorised persons to support third party organisations who haven't received a TPM request before, or have limited capacity or resourcing to respond to the request. For example
- Paragraph 89 states the third party *'has no obligation under CPIA to release the material to an authorised persons.'* We recommend the inclusion of *'and should be informed of this, if they aren't already aware.'*
 - Paragraph 93 states that *'Third parties are obligated to consider the lawful basis for sharing information with the police and must determine this themselves.'* We suggest that authorised persons should be able to provide

guidance or signpost resources to third parties in order to support them in decision making.

- Paragraph 94 covers *'handling instructions specified by the third party'* and states that *'The third party may also attach conditions to the treatment of the data, and these should be described alongside the return of the information.'* This should be explained to the third-party organisation at the point of request and representations for handling the information recorded.

41. In some IOPC investigations, we find third party organisations are more willing to provide information to IOPC investigators where they are able to redact data before sharing e.g., unrelated data within the record and staff names. If the authorised person needs reassurance that redacted data is not of evidential value, they could speak to the agency about the redactions or see the original in person. Any such conversations should be recorded to account for any redactions made.

Use of the Code of Practice with vulnerable victims

What does vulnerable mean?

42. In paragraph 113, the code states *'if a person is vulnerable due to a protected characteristic'* we suggest including *'one or more protected characteristics'* may be a useful addition here to emphasise intersectionality.
43. In paragraph 114, the code states: *'Many victims experience stress and fear during the investigation of a crime'* We think it may be appropriate to develop this sentence to reflect how the impact of the crime itself can leave victims vulnerable. For example *'Many victims experience stress and fear from the impact of the crime and in the additional investigation of a crime'*
44. The last sentence in paragraph 114 states *'Authorised persons should be mindful of hidden vulnerabilities caused through disability, shock or trauma'*. We agree this is an important point to make and, from IOPC investigations, we often find that the victims themselves are unaware of their vulnerabilities. We suggest the Home Office may wish to include content to address this and guide authorised persons in how they address a victim who is unaware of their own vulnerabilities.
45. Paragraph 115 explains that *'authorised persons should make (vulnerable victims) aware that they can have additional support to help them understand the TPM request'*. We recommend further elaboration here, that the victim won't be judged or disadvantaged by receiving additional support.
46. The last sentence in paragraph 115 concerns sources of support for a victim. It names various professionals such as IDVAs. We recommend that the sentence finishes with *'or any trusted professional working with that person.'*

47. Paragraph 116 states '*Where a victim is from a minority community, they should be offered to be referred to a specialist organisation...*' We suggest that the Home Office may include a recommendation to the authorised person to research these support organisations in advance of any discussion, including understanding referral processes, waiting lists and identifying a named member of staff, in order to answer questions and alleviate doubts the victim may have.
48. Paragraph 117 states '*Where the person does not speak English.*' We suggest adding '*or English is not their first language*'.
49. We suggest that further clarification and emphasis is provided when explaining and encouraging the use of interpreters as we find that language barriers are a significant reason for disengagement. We also suggest adding a paragraph that encourages best practice such as the use of an appropriate approved interpreter, rather than a friend or family member. This will not only mitigate potential conflicts of interest within families or communities, but also reassures the authorised person that the victim is being told the correct information and any representations received are correct.
50. Paragraph 119 provides examples of people who may be vulnerable. In this context:
 - b. '*Someone who has been a victim of domestic abuse*'

Given that the new definition of domestic abuse gives a defined list of behaviours that fall under this, (e.g., controlling coercive behaviour, economic abuse) we suggest including a footnote listing these behaviours in full.
 - d. '*Someone who has been the victim of people*'

We suggest further clarification.
 - e. '*Someone who is an asylum seeker or undocumented person*'

We suggest including '*or of insecure immigration status*'
 - i. '*Someone who has difficulty with social functioning*'

We suggest further clarification, if this is to be related to executive functioning and neurodiversity which could be combined with point k. 'someone on the autistic spectrum'.
51. Paragraph 119 is an illustrative list of examples. We suggest including the following to broaden the scope of who may be considered vulnerable:
 - Someone who struggles with substance misuse.
 - Someone living in temporary accommodation.

- Someone with experience of living in care.
- Someone who has been a victim of modern slavery or exploitation.

Vulnerable people

52. Paragraph 123 states that *'authorised persons may need to wait until such a time that the shock or effects of it have receded sufficiently for the person to understand.'* We suggest going further to encourage authorised persons to consider adjusting their communication style and the volume of information to accommodate for incomplete processing due to shock. This practice is adopted by IOPC Survivor Engagement Managers and Family Liaison Officers. We recommend that there should be case by case consideration of the risks associated in delaying communications and seeking the representations of the victim.
53. Paragraph 127 highlights the importance of *'independent support'* for individuals who cannot understand the TPM request and written notice. It states *'the authorised body must offer the victim the option of having a person providing independent support (as referred to in paragraph 71 of this code) read the TPM request and notice out loud to the individual, if they are unable to read or comprehend the material on their own, and explain it to them in simple terms.'*
54. We agree with the importance of independent support and recommend the inclusion of additional guidance that explains why authorised persons may not rely on the carers of learning disabled and neurodivergent victims to facilitate these communications. Stakeholders have told us that without independent support, the victims voice can be lost when someone speaks on their behalf. There may also be a conflict of interest if the victim's carers are their abusers. With independent support, the victim is given a greater opportunity to express their own point of view and not from the carer's point of view. To address this, we recommend amending the paragraph to include reasons why independent support is important in hearing the voice of the victim and changing part of this paragraph to *'the authorised person **must ensure that the victim has been offered** the option of having a person providing independent support'*. We suggest this in order to develop and maintain trust and confidence in vulnerable groups.
55. The last sentence of paragraph 127 states: *'If the person providing support is unavailable to do so, then authorised persons may need to explain the contents of the form and read it out loud to the victim'*. We suggest including a link to guidance on the use of augmentative and alternative communications to assist authorised persons to select the most appropriate way to communicate with a victim with additional communication needs.

Privacy impact and vulnerable victims

56. Paragraph 132 states: *‘This is particularly important when there might be an acute privacy impact on a vulnerable victim’*. We recommend elaborating on what an acute privacy impact means and suggest considering the phrase *‘an acute adverse reaction on the vulnerable victim which may compromise their wellbeing and engagement in the investigation.’*

Children

57. Paragraph 138 states: *‘In all cases, authorised persons must satisfy themselves that there is no conflict of interest for the person who is required to represent the best interests of the child.’* We suggest this could be further defined as posing risk to any line of enquiry but also the safety of the child. Young people have told the IOPC that they do not report sexual assaults or hate crimes because they don’t want parents or carers to know personal information about them. Where possible, the child should be consulted about who they think could represent their best interests before automatically approaching a parent or carer. Judgement of this should be made by the authorised authority on a case-by-case basis.
58. Paragraph 140 states: *‘Authorised persons should be clear about and record the status of the parent or guardian who is making the decisions.’* In light of the paragraph above, we also suggest recording any decision not to approach a particular parent or guardian and clearly defining who should not be approached with regards to the TPM data to reduce the risk of data being shared in error.

A person representing a relevant authority of voluntary organisation

59. Paragraph 143 states *‘A responsible person, who must be 18 or over, should only be used as a last resort if a parent or guardian, or a person representing a relevant authority or voluntary organisation is unavailable to be notified of the request.’* Considering points 54 and 55 above, where young people have expressed concerns about personal data being shared with parents and carers, we suggest the inclusion of *‘unavailable or unsuitable’* in this paragraph. It may be beneficial to include examples of responsible persons known to a young person, who could support them with understanding a TPM request, for example teacher, medical professional, youth worker, social worker, support worker, therapist.

Obtaining the views of the child

60. We suggest including a direction for the authorised persons to record the steps taken to hear the views of the child, along with the views of the child as recommended for as directed for gathering representations from adult victims. This inclusion could be similar to paragraph 158, which directs authorised persons to record all relevant information in communicating a TPM request with an adult without capacity.

Adults without capacity

61. Paragraph 148 lists people who may be required to represent the best interests of the adult without capacity. We suggest a rephrase of the first point from ‘a *parent or guardian of the child*’ to ‘a *parent or guardian of the adult*.’

Independent Office for Police Conduct

22 August 2023