



NAVY COMMAND

Headquarters Provost Marshal (Navy)
Building 25
Whale Island
Portsmouth
Hampshire
PO2 8ER

Tel: [REDACTED]
Mil: [REDACTED]
Fax: [REDACTED]
DII(F): [REDACTED]
Email: [REDACTED]

See Distribution

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**PROVOST MARSHAL (NAVY) TECHNICAL INSTRUCTION NUMBER 33
DISCLOSURE – CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (CPIA)**

References:

- A. CPIA (as amended by the Criminal Justice Act 2003).
- B. CPIA (Code of Practice)(Armed Forces) Order 2009.
- C. JSP 830 – Manual of Service Law.
- D. Armed Forces Act 2006.

Introduction

1. Reference A introduced a formal disclosure procedure applicable to all criminal trials in England and Wales. Its purpose is to ensure that every person receives a fair trial, as is their right under Article 6 European Convention on Human Rights (ECHR)¹. It requires the Police and the Prosecution to record, retain and reveal all relevant unused material to the defence prior to a trial. It also added a responsibility to remain transparent and disclose any unused material held by either the police or Prosecutor which could strengthen the case for the Defence, or weaken the case for the prosecution as well as identifying third-party agencies who hold pertinent information.
2. It is the duty of all police officers, be they civilian or military, to carry out all investigations in a professional, honest and impartial manner. Disclosure under CPIA is also designed to prevent fishing expeditions by introducing the requirement for a Defence Statement to be produced, allowing the Prosecutor to make an informed decision about what unused material might assist in either weakening the prosecution case or strengthening the Defence case.
3. The introduction of Reference B made CPIA mandatory to the Armed Forces and whilst similar; it is tailored for the Service Justice System (SJS).

Purpose

4. The purpose of this TI is to inform RNP personnel of their mandatory duty to disclose unused material to the Service Prosecution Authority (SPA) prior to a Court Martial or Service Civilian Court. In addition, the duty to review disclosure on receipt of a Defence Statement.

Background

5. The duty of disclosure continues as long as proceedings exist; from the point where enquiries that might lead to a formal investigation are undertaken up to and including any appeal. The interests of justice will mean that where material emerges after the conclusion of the

¹ Enacted in UK law by Human Rights Act 1998.

proceedings that might cast doubt upon the safety of the conviction, there is a duty to consider disclosure. Any such material should be brought immediately to the attention of the SPA.

6. The provisions of the Code and CPIA only apply in those cases that have been investigated by the Service Police and/or those that are to be dealt with either at Courts Martial or at Standing Civilian Court. They do not apply to summary cases as AFA 06 does not recognise a Summary Hearing as a trial.

7. The Service Police must at all times be fair and objective and must work closely with the SPA to ensure that disclosure obligations are met. A failure by the Prosecutor or the Service Police to comply with their respective obligations under the Act or the Code could have the following consequences:

- a. The accused might raise a successful abuse of process argument at Courts Martial.
- b. The accused might be released from the duty to make Defence disclosure.
- c. A Courts Martial may decide to exclude evidence because of a breach of the Act or Code, and the accused may be acquitted as a result.
- d. The Courts Martial Appeal Court may find a conviction to be unsafe.
- e. Disciplinary proceedings might be instituted against the Prosecutor or a member of the Service Police.

8. Under CPIA, the accused also has responsibilities and failure to comply with them might also have consequences, including:

- a. Loss of entitlement to make an application for disclosure of additional material.
- b. The Court can draw inferences from any failure in deciding whether the accused is guilty of an offence.

9. If CPIA and the Code are properly applied, then only material required to be disclosed by the Act will be disclosed and there will be no question of 'blanket disclosure' taking place. In some instances, this will remove a considerable administrative burden from the Service Police and possibly reduce prosecution time and expense. It will most certainly limit the opportunity for 'ambush defences' to be provided at trial.

Definitions

10. **Unused Material.** Unused material is that which may be relevant to the investigation and that has been retained but does not form part of the case for the prosecution against the accused.

11. **Relevant Material.** Relevant material refers to unused material and is defined in the Code as anything that appears to an Investigator, or the Officer in Charge of an investigation or the DO to have some bearing on any offence under investigation or any person being investigated or on the surrounding circumstances unless it is incapable of having any impact on the Prosecution or Defence case.

12. **Non Relevant Material.** Material which is considered incapable of having an impact is most likely to be non-relevant and thereby the Service Police are under no obligation to reveal this to the Prosecutor. However, non-relevant material may become relevant as an enquiry progresses, possibly post charge or even post-conviction, so great care should be taken not to destroy anything that has the potential of changing status. Retained material that is considered non relevant should be kept in a clearly marked folder at the rear of the case file.

13. **Revelation.** Revelation refers to the police alerting the Prosecutor to the existence of relevant unused material that has been retained in the investigation. This is achieved by means of the completion of the relevant forms (6C). Revelation to the Prosecutor does not mean automatic disclosure to the Defence.

14. **Disclosure Test.** Disclosure refers to providing the Defence with copies of, or access to, any material which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused, and which has not previously been disclosed; this is known as 'the disclosure test'.

15. **Service Investigation.** A Service Investigation is an investigation conducted by the Service Police with a view to the Service ascertaining:

- a. Whether a person should be charged with an offence under Service Law, or
- b. Whether a person charged with such an offence is guilty of it.

16. **Investigator.** An Investigator is any member of the Service Police involved in the conduct of a Service investigation. All Investigators have a responsibility for carrying out the duties imposed on them under the Code, including in particular recording information, and retaining records of information and other material. They must also ensure that all reasonable lines of enquiry have been pursued; whether they point toward or away from the suspect.

17. **Investigation Manager (IM).** The IM is the senior Service Police officer in the unit responsible for directing a Service investigation. They are also responsible for ensuring procedures are in place for recording information and retaining records of information and other material in the investigation.

18. **Disclosure Officer (DO).** The DO is the individual responsible for examining material retained by the Service Police during the investigation; revealing material to the Prosecutor during the Service investigation and any proceedings in a Service court resulting from it, and certifying that he or she has done this.

19. **Prosecutor.** The Prosecutor is the authority responsible for the conduct, on behalf of the Crown, of proceedings resulting from a Service investigation.

20. **Material.** Material is material of any kind, including information and objects, which is obtained in the course of a Service investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the Investigator (such as documents seized in the course of searching premises) but also material generated by him or her (such as interview records). Material may be relevant to an investigation if it appears to an Investigator, or to the IM, or to the DO, that it has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case.

21. **Sensitive Material.** Material is sensitive if disclosure would, in the opinion of the DO and those organisations involved with its protection, give rise to a real risk of serious prejudice to an important public interest. CPIA Codes of Practice provides an example list of material that, dependant on the circumstances, may qualify²:

- a. Material relating to national security;
- b. Material received from the intelligence and security agencies;

² CPIA Codes of Practice para 6.12 refers.

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- c. Material relating to intelligence from foreign sources which reveals sensitive intelligence gathering methods;
 - d. Material given in confidence;
 - e. Material relating to the identity or activities of informants, or undercover police officers, or witnesses, or other persons supplying information to the police who may be in danger if their identities are revealed;
 - f. Material revealing the location of any premises or other place used for police surveillance, or the identity of any person allowing a police officer to use them for surveillance;
 - g. Material revealing, either directly or indirectly, techniques and methods relied upon by a police officer in the course of a criminal investigation, for example covert surveillance techniques, or other methods of detecting crime;
 - h. Material whose disclosure might facilitate the commission of other offences or hinder the prevention and detection of crime;
 - i. Material upon the strength of which search warrants were obtained;
 - j. Material containing details of persons taking part in identification parades;
 - k. Material supplied to an investigator during a criminal investigation which has been generated by an official of a body concerned with the regulation or supervision of bodies corporate or of persons engaged in financial activities, or which has been generated by a person retained by such a body;
 - l. Material supplied to an investigator during a criminal investigation which relates to a child or young person and which has been generated by a local authority social services department, an Area Child Protection Committee or other party contacted by an investigator during the investigation;
 - m. Material relating to the private life of a witness.

22. **Prosecution Disclosure.** Prosecution Disclosure refers to the duty of the Prosecutor under CPIA to disclose material which is in his or her possession or which he or she has inspected in pursuance of this Code, and which might reasonably be considered capable of undermining the Prosecution case, or of assisting the case for the accused. References to the disclosure of material to a person accused of a Service offence include disclosure of material to his or her legal representative.

Sequence of Events

23. CPIA as amended by the CJA 2003 has marked differences to both Common Law and the original CPIA. The basic sequence of events is:

- a. Investigation commences.
- b. Investigator recovers evidence during the investigation.
- c. DO is appointed from the outset of the enquiry and is briefed on the investigation.
- d. DO examines all material in the case file and compiles a Service Police Disclosure Form 6A - List of Unused Material -Non-Sensitive for use when submitting a file to SPCB for

electronic archiving on REDCAP or in summary dealings to reveal material to a Commanding Officer under our AFA 06 and common law disclosure obligations.

e. DO draws up the Schedules of Unused Material (comprising Service Police Disclosure Form 6C - Schedule of Non-Sensitive Unused Material and Service Police Disclosure Form 6D - Schedule of Sensitive Unused Material) and signs them together with the Service Police Disclosure Form 6E - DO's Report.

f. Case papers and Schedules submitted for checking.

g. Service Police Form 6A is sent to SPCB with a complete copy of all material as detailed on the form. Service Police Form 6A without the material sent with case papers to the relevant CO.

h. SPCR's referred under Schedule 2 or committed under Prescribed Circumstances and therefore dispatched to the SPA, are to ensure that at the time of referral, all CPIA Disclosure Forms 6C-6H are also forwarded.

i. Prosecutor examines Schedules and decides what if any of the material detailed on the schedules and the DO's Report is to be disclosed to the Defence.

j. Defence receives copy of the Schedule of Non-Sensitive Unused Material and any item the Prosecutor feels it appropriate to disclose.

k. Defence submits Defence Statement.

l. Prosecutor passes a copy of the Defence Statement to the DO via the OC of the Service Police unit investigating.

m. DO examines the case papers once more in view of the Defence Statement and if further material has become relevant a revised Schedule of Non-Sensitive Unused Material and the DO's Report are completed. If there is material that might now meet the 'Disclosure Test' this is annotated on the DO's Report accordingly. If there is no further material to pass to the Prosecutor, the DO makes a certificate to this effect on the DO's Report which is then returned to the Prosecutor.

n. The DO via the management chain has a duty to continually review the case papers and reveal relevant material to the Prosecutor if new information is forthcoming or new evidence is obtained.

The Disclosure Process Key Roles

24. The Code identifies four key roles in the disclosure process:

- a. The Investigator.
- b. The DO.
- c. The Investigation Manager.
- d. The Prosecutor.

Case File Information

25. Every case file must show the name of:

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- a. The Investigator (should the Investigator change during the enquiry, the name(s) of any subsequent Investigators).
 - b. The Investigation Manager of an investigation.
 - c. The DO.
 - d. Any deputy DO employed in the case.

Division of Roles

26. An Investigator, DO and IM perform different functions. The three roles may be performed by different people or by one person. Under normal circumstances, the three Service Police roles will be held by three different individuals. Only in exceptional circumstances, will the roles be shared although there is no legislative reason why all three roles cannot be fulfilled by the same person.

27. Where the three roles are undertaken by more than one person, close consultation between them will be essential to ensure compliance with the statutory duties imposed by the Act and the Code.

General Duties of the Service Police

28. Under the CPIA Code, the Service Police have a duty to record and retain material obtained in a criminal investigation which might be relevant to the investigation. All members of the Service Police have a responsibility to record and retain relevant material obtained or generated by them during the course of the investigation. The material might be photographed, video recorded, captured digitally or otherwise retained in the form of a copy rather than the original, if the original is perishable, or the retention of a copy rather than the original is reasonable in all the circumstances. This recorded and retained material must then be made available for scrutiny by the appointed DO.

Duties of Disclosure Officer

29. **General.** The Code creates the roles of DO and Deputy DO, with specific responsibilities for examining material, revealing it to the Prosecutor, disclosing it to the accused where appropriate, and certifying to the Prosecutor that action has been taken in accordance with the Code.

30. **Duty to draw up schedules.** The DO is required to create schedules of relevant unused material retained during an investigation and submit them to the Prosecutor together with certain categories of material. Material which the DO does not believe is sensitive must be listed on a schedule of non-sensitive material. The schedule must include a statement that the DO does not believe the material is sensitive. Any material which is believed to be sensitive must be either listed on a schedule of sensitive material or, in exceptional circumstances, revealed to the Prosecutor separately. If there is no sensitive material, the DO must record this fact on a schedule of sensitive material.

31. **Conflict of Interests.** An individual must not be appointed as DO, or continue in that role, if it is likely to result in a conflict of interest, for instance, if he or she is the victim of the alleged crime which is the subject of investigation. In such cases the IM must always be consulted and when reaching a decision about whether to retain or employ an individual in the post, the likelihood of adverse comment at Courts Martial should always be kept in mind.

32. **Appointment of DO's.** Officers and Senior Rates appointed as a DO must have the requisite experience, skills, competence and resources to undertake their vital role. The Act does not set out mandatory qualifications for this and so it should be assessed by the IM on a case by case basis.

33. **Statutory Duties.** The DO and any Deputy DO (DDO) have a statutory duty to discharge disclosure responsibilities throughout a service investigation, namely to:

- a. Examine, inspect, view or listen to all relevant material that has been retained by the Investigator and that does not form part of the prosecution case.
- b. Create schedules that fully describe the material.
- c. Identify all material which satisfies the disclosure test using the DO's Report.
- d. Submit the schedules and copies of disclosable material to the Prosecutor and at the same time provide a copy of any material which falls into the following categories:
 - (1) Information provided by an accused person which indicates an explanation for the offence with which he has been charged.
 - (2) Any material casting doubt on the reliability of a confession/admission.
 - (3) Any material casting doubt on the reliability of a prosecution witness.
 - (4) Any other material which the Investigator believes may fall within the test for prosecution disclosure in the Order.
 - (5) Provide copies of all documents required to be routinely revealed and which have not previously been revealed to the Prosecutor.
 - (6) Consult with and allow the Prosecutor to inspect the retained material.
 - (7) Review the schedules and the retained material continually, particularly after the Defence Statement has been received, identify to the Prosecutor material that satisfies the disclosure test using the DO's Report and supply a copy of any such material not already provided.
 - (8) Schedule and reveal to the Prosecutor any relevant additional unused material pursuant to the continuing duty of disclosure.
 - (9) Certify that all retained material has been revealed to the Prosecutor in accordance with the Code.
 - (10) Where the Prosecutor requests the DO to disclose any material to the accused, give the accused a copy of the material or allow the accused to inspect it.

34. **Notifying the Prosecutor.** The DO must specifically draw material to the attention of the Prosecutor for consideration if there are any doubts at all about whether it might reasonably be considered capable of undermining the prosecution case or of assisting the case for the accused.

35. If the Prosecutor asks to inspect material which has not already been copied to him, the DO must allow him to inspect it. If the Prosecutor asks for a copy of material which has not already been copied to him, the DO must give him a copy. However, this does not apply where the DO believes, having consulted the IM that the material is too sensitive to be copied and can only be inspected.

36. DO's must treat requests by the Prosecutor for further information on material which may lead to disclosure with importance and give them the highest of priorities.

37. **Extent of DO's Examination.** Material held in the case file and not submitted with the prosecution papers is by its nature; unused material. It must be examined in detail by the DO or the DDO, but exceptionally the extent and manner of inspecting, viewing or listening will depend on the nature of material and its form. For example, it might be reasonable to examine digital material by using software search tools, or to establish the contents of large volumes of material by dip sampling. If such material is not examined in detail, it must nonetheless be described on the disclosure schedules accurately and as clearly as possible. The extent and manner of its examination must also be described together with justification for such action.

Amending Schedules

38. On occasions it may be necessary to amend the schedules. When the schedules are first submitted with a full file, the DO may not know exactly what material the Prosecutor intends to use as part of the prosecution case. The Prosecutor may create unused material by extracting statements or documents from the evidence, but should advise the DO accordingly. Ref B places the responsibility for creating the schedules and keeping them accurate and up to date on the DO. Consequently, the Prosecutor will not amend them. In these circumstances the Prosecutor will inform the DO of the changes required and will return the schedules for amendment where appropriate. The DO should effect the amendments promptly and return the revised Schedules to the Prosecutor as soon as practicable with a Service Police Disclosure Form 6E (DO's Report).

39. Where an SPA request has been received by an investigating unit, the processing of such requests will invariably generate additional unused evidence which is and **must** be disclosed to the Prosecution. All additional **relevant** material should be disclosed separately, continuing the consecutive numbering of the original disclosure form (6C/6D). There is no requirement to list items already disclosed. Where the additional unused evidence is not disclosable, there is clearly no requirement to produce further disclosure other than to update the 6A.

Duties of an Investigator

40. The Investigator has a number of general duties to discharge under the Code and the Act, but it is essential that they retain material that may be relevant to the investigation. If the Investigator has any doubts about the relevance of material, they should always err on the side of recording and retaining that material. It should always be remembered that if material with an evidential value is destroyed, there is a real danger that the case may be dismissed at Courts Martial for abuse of process.

41. **Drafting the Schedules.** Whilst it is the statutory duty of the DO to draw up and sign the schedules of unused material, the Investigator is to assist the DO by drafting the schedules before submitting the completed file. In a complex enquiry they may be completed by the DO as the enquiry progresses.

42. The Investigator must notify the DO of the existence and whereabouts of material that has been retained. All Investigators have a personal responsibility to reveal all relevant misconduct relating to themselves to the DO. If there are doubts about whether to reveal detail about certain misconduct, then the DO or IM must consult the SPA at the first opportunity.

43. **Reasonable Lines of Enquiry.** There is a duty under the Code for an Investigator to pursue all reasonable lines of enquiry, whether these point towards or away from a suspect. What is reasonable will depend upon the circumstances of a particular case.

44. **Oral Material.** Material includes information given orally. Where relevant material is not recorded in any way, it will need to be reduced into a suitable form. Examples may include details of a telephone conversation or with experts or other investigators relevant to the case annotated in the case file diary.

45. **Relevance of Material.** The issue of relevance is especially important where an Investigator is considering:

- a. Disposal of something.
- b. To return an item to the owner.
- c. Not to record information.
- d. Where not keeping material or recording information would result in the permanent loss or alteration of the material (as with reusable control room tapes, shop videos etc).

46. In all cases the Investigator must err to the side of caution and retain the material or at the very least discuss the matter with either the DO or the chain of command. Any decision to dispose of material, by whatever means, must be fully accounted for in the case file diary and the Prosecutor subsequently notified.

47. **Negative Information.** Negative information can sometimes be as significant to an investigation as positive information. It is impossible to define precisely when negative information may be significant, as every case is different. However, it will include the result of any enquiry that differs from what might have been expected, given the prevailing circumstances. Not only must material or information that points towards a fact or an individual be retained, but also that which casts doubt on the suspect's guilt, or implicates another person. Examples of negative information include:

- a. A CCTV camera that did not record the crime/location/suspect in a manner which is consistent with the prosecution case. The fact that a CCTV camera did not function or have videotape loaded will not usually be considered relevant negative information.
- b. Where a number of people present at a particular location at the particular time that an offence is alleged to have taken place state that they saw nothing unusual.
- c. Where a finger-mark from a crime scene cannot be identified as belonging to a known suspect.
- d. Any other failure to match a crime scene sample with one taken from the accused.

48. **Communicating with Experts.** IMs, DOs and Investigators must be aware that those witnesses classed as expert, are required under regulations other than CPIA to disclose information to which they have had access and that might have assisted in drawing conclusions. The effect of this is that there could be occasions when the expert having been made aware of information, deliberately or otherwise, that the DO and the Prosecutor consider sensitive is then obliged to disclose to the Defence. Considerable care must therefore be taken with verbal and written briefs to experts.

Duties of the IM

49. **General.** The IM is to ensure that the duties under the Code are carried out by all those involved in the investigation, and that all reasonable lines of enquiry are pursued, irrespective of whether the resultant evidence is more likely to assist the prosecution or the accused.

50. **Examination of Schedules.** Whilst it is the duty of the DO to compile and sign the disclosure schedules, in order to avoid unnecessary delay, the IM is to ensure that all schedules are properly completed, and signed before dispatch to the Prosecutor. It is of particular importance that entries on the Non-Sensitive Schedule are examined to ensure that they are of sufficient detail to allow the Prosecutor to make an informed decision about the material.

51. **IM Duties during the Investigation.** The IM is responsible for ensuring that an investigation is properly directed. They may be assisted in this duty by suitably trained and experienced personnel. The IM has overall responsibility to:

- a. Account for any general policies followed in the investigation.
- b. Ensure that all reasonable steps are taken for the purposes of the investigation and, in particular, that all reasonable lines of enquiry are pursued.
- c. Ensure that proper procedures are in place for recording and retention of material obtained in the course of the investigation.
- d. Appoint the DO.
- e. Ensure that where there is more than one DO, that one is appointed as the lead DO who is the focus for enquiries and who is responsible for ensuring that the Investigators' disclosure obligations are complied with.
- f. Ensure that an individual is not appointed as DO, or allowed to continue in that role, if that is likely to result in a conflict of interest, for instance, if the DO is the victim of the alleged crime which is the subject of the investigation.
- g. Ensure that material which may be relevant to an investigation is retained and recorded in a durable and retrievable form.
- h. Ensure that all retained material is either made available to the DO, or in exceptional circumstances revealed directly to the Prosecutor.
- i. Ensure that all practicable steps are taken to recover any material that was inspected and not retained, if as a result of developments in the case it later becomes relevant.

Material to be Retained

52. The duty to retain material includes, in particular, the duty to retain material falling into the following categories, where it may be relevant to the investigation:

- a. Crime reporting records such as COPSERS entries, Daily Occurrence Books or Service Police Officer's notebooks.
- b. Arrest and custody records (including all written records produced by Service Police and other service personnel who are not Service Police in relation to custody).
- c. Final versions of witness statements (and draft versions where their content differs from the final version), including any exhibits mentioned (unless these have been returned to their owner on the understanding that they will be produced in court if required).
- d. Interview records (written records, or audio or video tapes, of interviews with actual or potential witnesses or suspects).
- e. Communications between the Service Police and experts, such as forensic scientists, reports of work carried out by experts and schedules of scientific material prepared by the expert for the Investigator, for the purposes of criminal or disciplinary proceedings.
- f. Records of the first description of a suspect by each potential witness who purports to identify or describe the suspect, whether or not the description differs from that of subsequent descriptions by that or other witnesses.

Material of Particular Importance

53. The duty to retain material which may be relevant to the investigation also includes in particular the duty to retain the following categories of material, which may satisfy the test for prosecution disclosure:

- a. Information provided by an accused person which indicates an explanation for the offence with which he has been charged.
- b. Any material casting doubt on the reliability of a confession.
- c. Any material casting doubt on the reliability of a witness.

Material Not Required to be Retained

54. The duty to retain material falling into these categories does not extend to items which are purely ancillary to such material and possess no independent significance (for example, duplicate copies of records or reports such as those contained within the IMS, Inreps, Progreps, back page of SOW etc). As a general rule, pure opinion or speculation, for example police officers' theories about who committed the crime is not unused material. However, if the opinion or speculation is based on some other information or fact, not otherwise notified or apparent to the Prosecutor, that information or fact might well be relevant to the investigation and should be notified to the Prosecutor in accordance with these instructions.

Retention Times

55. All material which may be relevant to the service investigation must be retained in accordance with the policy governing the Management of Service Police Information.

Completion and Submission of CPIA Disclosure Forms

56. Disclosure in respect of investigations that commenced on or after 1 Apr 08, must be recorded on the Service Police Disclosure Forms below:

- a. Service Police Disclosure Form 6C - Schedule of Non-Sensitive Unused Material.
- b. Service Police Disclosure Form 6D - Schedule of Sensitive Unused Material.
- c. Service Police Disclosure Form 6E - DO's Report
- d. Service Police Disclosure Form 6H - Service Police Officer's Disciplinary Record

57. Wherever possible, all forms should be completed electronically, printed off and signed by the DO and submitted to SPA when required.

58. The DO is to ensure that a copy of each of the forms sent to the Prosecutor is retained in the case file and any forms signed by the Prosecutor are likewise retained.

59. Submission of Forms 6C – 6H to SPA will generate a written request for the unused material. Independently, at the time of distribution of the SPCR, all unused material must have been recorded on a List of Unused Material - Non Sensitive and that forwarded/uploaded together with a copy of all the material to SPCB for recording purposes.

60. **Defence Access to Form 6C.** In all cases being heard at Courts Martial, the Schedule of Non-Sensitive Unused Material will be disclosed to the Defence as completed by the Service Police; the Prosecutor will not alter or amend it in any way. It must therefore be completed with considerable care and diligence. Material that must be listed on the schedule covers almost all

material recorded, retained or generated during the course of an investigation; any of that material which passes the disclosure test might also be disclosed to the Defence.

61. **Description of Material.** It is crucial that descriptions by DO's in non-sensitive schedules are detailed, clear and accurate. The descriptions may require a summary of the contents of the retained material to assist the Prosecutor to make an informed decision on disclosure. For example, it is not sufficient merely to refer to a document by way of a form number or function which may be meaningless outside the Service Police. In the description column of every schedule, each item should be individually described and consecutively numbered. Where continuation sheets are used or additional schedules sent in later submissions, item numbering must be consecutive to all items on earlier schedules.

62. **Material falling outside of CPIA requirements.** It should be noted that material seized during the course of a major investigation, which has not been examined due to its lack of immediate and apparent relevance to the investigation falls outside the CPIA. It is not 'unused material' but its existence must be recorded and brought to the attention of the Prosecutor.

63. **Inspection of Unseen Material.** If the Prosecutor asks to inspect material which has not already been copied to him, the DO must allow him to inspect it.

Sensitive Schedules

64. If suitable to be recorded, the DO must list on a Schedule of Sensitive Unused Material any material; the disclosure of which he believes would give rise to a real risk of serious prejudice to an important public interest, and the reason for that belief. The schedule must include a statement that the DO believes the material is sensitive.

65. The DO must discuss with the IM or SIO if appropriate, the requirement to enter details of material on the Schedule of Sensitive Unused Material before the decision is taken to enter information.

66. Sensitive schedules must contain sufficient information to enable the Prosecutor to make an informed decision as to whether or not the material itself should be viewed, without compromising the confidentiality of the information. Simply stating that a document, like an Intelligence Report, exists is not sufficient. Sensitive material will always be listed on the appropriate sensitive material schedule. Where the material is so sensitive that, if it were to be compromised it would be likely that it would lead to the loss of life or threaten national security³, consultation with a senior SPA prosecutor (SO1 level) is to take place regarding disclosure. That material will remain on file without being sent to SPCB.

67. In exceptional circumstances, where an Investigator considers that material is so sensitive that its revelation to the Prosecutor by means of an entry on the sensitive schedule is inappropriate, the existence of the material must be revealed to the Prosecutor separately. This will apply only where compromising the material would be likely to lead directly to the loss of life, or directly threaten national security.

68. Where there is material that is very sensitive, such as information from a Covert Human Intelligence Source (CHIS), the DO must inform the SPA at the earliest opportunity.

69. The Schedule of Sensitive Unused Material will not be disclosed to the Defence because it is not in the public interest to do so. You must state the reason why the item should not be disclosed to the Defence. For example, details that identify an observation post must not be disclosed to the Defence.

70. If there is no sensitive material in a case, the Schedule of Sensitive Unused Material is to be endorsed to that effect and submitted with the Schedule of Non-Sensitive Unused Material and the DO's Report.

71. If a Judge Advocate concludes that an item of sensitive material satisfies the prosecution disclosure test and that the interests of the Defence outweigh the public interest in withholding disclosure, it will be necessary to disclose the material if the case is to proceed. This does not mean that sensitive documents must always be disclosed in their original form, but it might be possible to edit the material thereby protecting the sensitive information whilst meeting the direction of the Judge Advocate.

72. **Editing Sensitive Material.** If an item of unused material contains both sensitive and non-sensitive material, it must be listed on the Schedule of Non-Sensitive Unused Material as being an 'edited version' or 'edited', for example a notebook entry containing both the personal details of a witness and the circumstances of the arrest. The sensitive material is to be redacted on a copy of the original with a dark marker pen. The original must never be marked. The unedited version is not to be listed on the Schedule of Sensitive Unused Material.

73. Whilst the responsibility to edit rests with the Service Police, the Prosecutor is to be consulted where editing or separating is other than straightforward. Sensitive material should never be copied and therefore will always require inspection.

DO's Report

74. The DO must certify to the Prosecutor that, to the best of his knowledge and belief, all material which has been retained and made available to him has been revealed to the Prosecutor in accordance with this code. He must sign and date the certificate. Certification is necessary when:

- a. The Schedule and accompanying material is submitted to the Prosecutor.
- b. When material which has been retained is reconsidered after the accused has given a Defence statement.
- c. Whenever a Schedule is otherwise given.
- d. Whenever material is otherwise revealed to the Prosecutor.

75. It is a requirement for the DO to reveal to the Prosecutor information which might undermine the prosecution case or assist the case for the Defence, including:

- a. Information provided by an accused person which indicates an explanation for the offence with which he has been charged.
- b. Any material casting doubt on the reliability of a confession.
- c. Any material casting doubt on the reliability of a prosecution witness.
- d. Any other material which the Investigator believes may fall within the test for prosecution disclosure in the Order.
- e. Material which contains a first description of an offender. Briefly, the reason for the information being recorded on the DO's Report, for example, '*Contains ambiguities regarding first description of suspect*', or '*May cast doubt on reliability of witness*'.

Disclosing Material to the Accused

76. If material has not already been copied to the Prosecutor, and he requests its disclosure to the accused on the ground that it falls within the test for prosecution disclosure, or a Judge Advocate has ordered its disclosure after considering an application from the accused, the DO must cause it to be disclosed to the accused.

77. If material has been copied to the Prosecutor and it is to be disclosed, whether it is disclosed by the Prosecutor or the DO is a matter of agreement between the two of them although it is envisaged that in most cases disclosure will be completed by the SPA.

78. The DO must disclose material to the accused either by giving him a copy or by allowing him to inspect it. If the accused person asks for a copy of any material which he has been allowed to inspect, the DO must give it to him, unless in the opinion of the DO that is either not practicable (for example because the material consists of an object which cannot be copied, or because the volume of material is so great), or not desirable (for example because the material is a statement by a child witness in relation to a sexual offence).

79. If material which the accused has been allowed to inspect consists of information which is recorded other than in writing, whether it should be given to the accused in its original form or in the form of a transcript is a matter for the discretion of the DO. If the material is transcribed, the DO must ensure that the transcript is certified to the accused as a true record of the material.

Antecedents

80. **Previous Convictions of Prosecution Witnesses.** It is current policy that the RNP will reveal to the prosecutor **all** previous convictions, cautions and JPA disciplinary records of witnesses and complainants (other than convictions for certain minor road traffic offences, i.e. speeding etc). This TI defines the test of relevance under the CPIA and provides that all items of material, which may be relevant, must be described on the SPDF 6C or SPDF 6D. Although it is possible that in a few cases, previous convictions and cautions etc might not be relevant, it is very likely that in the vast majority of cases the previous convictions and cautions etc will meet the relevant test. Therefore, to ensure consistency and to avoid any mistakes in the process of revealing previous convictions etc, the Disclosure Officers must indicate the previous convictions, cautions etc on the SPDF 6C. for example; **Item 5 – Previous Convictions/JPA Disciplinary Record of A.N.Other.** The DO should not list the details of the convictions or cautions on the SPDF 6C other than to identify that they exist.

81. The SPDF 6G is an administrative document utilised by the SP to obtain details of the previous convictions or cautions etc from the Criminal Justice Office at SPCB, it is not a disclosure form and should not now be sent to the SPA. The details of the previous convictions, cautions etc should then be annotated onto the SPDF 6E for each individual, and the resultant PNC printouts attached so that the prosecutor can assess whether they meet the disclosure test. There is an established requirement to notify the Prosecutor of any previous convictions in relation to the suspect. This will be included as part of the case papers and as such is not unused material.

82. **Service Police.** Under CPIA any Service Police witness in a case are required to notify the prosecution of any criminal or discipline related matters in relation to themselves and this will take the form of a self-certification using Service Police Disclosure Form 6H - Service Police Officer's Disciplinary Record. In most cases the Service Police officer will hand the completed Form 6H to the DO whose responsibility it is to ensure that the completed forms are received by the SPA. In the event that the Service Police officer does not wish to reveal the contents of the Form 6H to the DO he may complete the form and forward it direct to the Prosecutor. In such cases the DO must be aware of the occurrence and ensure the Prosecutor has received the document. The Service Police witness is to notify of any:

- a. Criminal convictions.

- b. Criminal cautions.
- c. Disciplinary findings of guilt/failure to meet the appropriate standard of conduct.
- d. Any ongoing discipline or administrative cases.
- e. Any case where an adverse judicial comment was made against them.

Furtherance's of Enquiry

83. Furtherance's of Enquiry (FOE) are commonplace within a Service Police investigation. In all cases the receiving unit will list all items of original material generated by them on a Service Police Disclosure Form 6F – Furtherance of Enquiry - Index of Material. The index together with all generated material will be submitted to the sending unit's DO for them to apply the relevancy and disclosure tests. A copy of the material will be kept on file by the receiving unit and where appropriate a digital image retained where there is no other ability to copy the material. For example, where a car or weapon is recovered.

Transfer of Investigation

84. When an investigation case file is transferred from one unit to another, responsibility for the lead DO is also transferred. In these circumstances, the initiating unit's DO will take on the role of Deputy DO and submit the signed schedules to the receiving unit's DO who will in turn pass all the schedules to the Prosecutor. It is incumbent on the receiving unit's DO to ensure that he is fully conversant with the details of the case and associated revelation/disclosure issues.

Specialist Unit Disclosure Procedures

85. Specialist Units are to appoint a Deputy DO upon receipt of the case for action. The appointed Deputy DO will then produce the relevant schedules and DO's Report which will be forwarded to the case DO upon completion of the specialist team action. Liaison should be maintained between the DO for the case and the appointed Deputy DO to ensure both are aware of all issues relevant to their task and responsibility.

86. The Covert Operations Team (COT) and Dedicated Source Unit (DSU) are to return all non-sensitive unused material to the DO on the List of Unused Material - Non Sensitive in order for the case DO to apply the 'Disclosure Test'. These departments will however produce their own schedules of sensitive material, the content of which will be discussed with the case DO, IM or Prosecutor as appropriate to the sensitivity of the material involved.

Third Party Disclosure

87. This Code of Practice applies in respect of Service investigations conducted by members of the Service Police, which began on or after 1 Apr 08. The Code essentially creates two groups of persons, the Investigators and the Prosecutors. Those not within either of these groups constitutes third parties. Third parties frequently encountered will include:

- a. Owners of CCTV material.
- b. Social services departments.
- c. Forensic experts.
- d. Police surgeons.
- e. GPs and hospital authorities.

88. If the Investigator believes that third parties may be in possession of material which has not been obtained as part of the enquiry, he should ask the DO to inform them of the existence of the investigation and to invite them to retain the material in case they receive a request for its disclosure. The DO should inform the Prosecutor that they may have such material. However, the IM of an investigation is not required to make speculative enquiries of other persons; there must be some reason to believe that they may have relevant material. That reason may come from information provided to the police by the accused or from other inquiries made or from some other source. A third party has no obligation under the Act to reveal material to the Investigator or to the Prosecutor, nor is there any duty on the third party to retain material which may be relevant to the investigation. In some circumstances, the third party may not be aware of the investigation or prosecution.

Joint Enquiries

89. Where the Service Police and another investigating agency, such as the HOPF or the Immigration Service undertake a joint investigation, material obtained within the remit of that joint investigation should be treated as prosecution material and dealt with in accordance the code.

Summary Hearing

90. Summary Hearing's are not subject to the code and therefore, the accused is entitled to access all unused non-sensitive material⁴. When preparing a case for Summary Hearing, the IM is to:

- a. Provide as an annex to the Service Police Charge Referral (SPCR) a list of (non-written) non-sensitive material indicating where it may be inspected.
- b. Indicate within the SPCR that unused sensitive material exists but before a list of the material can be released; the CO must seek advice from the legal branch.

91. **Summary Hearings and Sensitive Material.** Under no circumstances should any sensitive material that is generated during the course of an enquiry, that is eventually dealt with summarily, be disclosed to the CO or the legal advisory branch. The Service Police Disclosure Form 6B - List of Unused Material - Sensitive should be completed and retained on the file having notified the IM. In the event the case is later referred for trial by Courts Martial, CPIA will apply and the Schedule of Sensitive Unused Material completed and revealed to the Prosecutor in the normal manner.

Provision of Case Documentation to SPCB

92. There is a requirement for a copy of all case related material, both the evidence and unused material to SPCB for microfiche storage as per the requirement prior to CPIA implementation. This information MUST be provided at the time of distribution of the SPCR and not delayed until referral for trial; be it summarily or by Courts Martial. The material is to be listed on the relevant List of Unused Material (be that Sensitive or Non-Sensitive).

Summary

93. RNP are to ensure that where disclosure under Ref B is required, all unused evidence is recovered, retained and revealed to the Prosecutor. The importance of CPIA and disclosure should not be underestimated. Failure to get it right may result in the loss of an otherwise 'robust' case and the potential resulting legal implications. This TI is designed to signpost personnel in disclosure under CPIA however, it is subordinate to Ref B and for that reason; RNP are to ensure that they have a comprehensive understanding of both documents.

⁴ EU Directive/2012/13/EU.

94. All enquiries regarding this TI should be directed to [REDACTED] or
e-mail: [REDACTED]

[REDACTED]

[REDACTED]

Distribution:

[REDACTED]