



The Attorney General of the
Falkland Islands

AGG22

**PROSECUTION TEAM
DISCLOSURE DESKTOP
GUIDE**

Law and Regulation Directorate
Attorney General's Chambers
PO Box 587, Stanley, Falkland Islands, FIQQ 1ZZ

PROSECUTION DESKTOP GUIDE TO DISCLOSURE

A SUMMARY OVERVIEW OF DISCLOSURE IN CRIMINAL PROCEEDINGS

Principal disclosure responsibilities of parties in the Criminal Justice System
The Criminal Procedure and Evidence Ordinance 2014 ('the Ordinance') imposes a number of duties upon the parties to ensure that the process is conducted correctly. The duty to comply with relevant disclosure obligations arise as soon as a criminal investigation begins, as set out in section 241(3) of the Ordinance.

1. Prosecution

(a) Police

The police must record, retain and reveal to the Prosecutor, material relevant to the criminal investigation and related matters. This obligation is set out in the Code of Practice which also provides guidance as to what constitutes 'relevant' material.

There are three distinct roles in the investigation, which may or may not be carried out by the same officer (depending on the size of the investigation):

- The investigator – all investigators have a responsibility for adhering to their disclosure duties as imposed on them by the Code;
- The officer in charge of the investigation – who directs and oversees procedures to ensure that the correct process is being followed;
- The Disclosure Officer – has the responsibility of checking and providing material to the Prosecutor, he must confirm that the correct test has been applied.

Further key duties:

- All reasonable lines of enquiry must be pursued. This must include all reasonable lines of enquiry which may point away from the possible guilt of the suspect.
- Any known material which may undermine the prosecution or assist the defence must be provided to the Prosecutor prior to a charging decision being taken.
- Post-charge, the disclosure officer must examine all relevant unused material and detail it in a schedule which is provided to the Prosecutor, ideally when the file containing the material for the case is sent to the Prosecutor. Items that satisfy the test should be identified, together with copies where possible.

- There is an ongoing duty to keep schedules up to date and provide them to the Prosecutor on a timely basis. This will also be important after receipt of any defence case statement, which may lead to further disclosure being made.

There are of course other practical steps that must be taken to ensure that the process operates correctly, in terms of keeping records and allowing the defence to inspect material where necessary.

(b) The Prosecutor

The law and guidance setting out the Prosecutor's responsibilities is found in the Ordinance from section 216..

The Prosecutor must work with investigators and disclosure officers to ensure that their obligations are met. They must be proactive in seeking answers if descriptions are unclear, or provision of material delayed.

Further key duties:

- Common law duties: prior to their obligation to consider disclosure arising under the Ordinance, the Prosecutor must ensure that they have complied with their common law duties and disclose any relevant material. This should be considered at the earliest stage and may include material which will assist the defendant in making an application for bail, or in identifying possible witnesses.
- Section 216 and 217 the Ordinance: to disclose to the defence material that satisfies the disclosure test, as soon as reasonably practicable. This is relevant material which is reasonably capable of undermining the prosecution case or assisting the defence, or providing a statement to confirm that there is no such material.
- Section 224 the Ordinance: when a defence statement is provided, the Prosecutor must provide this to the disclosure officer and answer any defence requests for disclosure as appropriate, provided that the requested items satisfy the test. There is a continuing duty to keep disclosure under review and disclose items as necessary until the conclusion of the trial, but only if they satisfy the test.

2. Defence

There are disclosure obligations on the defence set out at sections 218 to 220 of the Ordinance. The defence role may essentially be considered a reactive one, although there are specific obligations which they must adhere to within the Ordinance and Criminal Procedure Rules.

In line with the duty of the parties actively to assist the court by active case management, it is best practice for them to identify the issues as soon as possible.

Defence statements should therefore be sufficiently detailed and respond to the prosecution case. Provision of a defence statement will enable the Prosecutor to make informed decisions as to whether further material falls to be disclosed. If required, the defence should then make focused and proportionate applications to the court for material to be disclosed under section 225 of the Ordinance.

3. Court

The primary duty of the court is to actively manage a case following the entering of a not guilty plea/sending for trial. This requires close scrutiny of the information set out in the effective trial preparation form. The prosecution's compliance with its disclosure obligations must be considered and the defence must be encouraged to provide sufficient information to progress the case at the first hearing, including the provision of a defence statement.

Following service of a defence statement, an application by the defence under section 225 of the Ordinance is permitted. The Court is expected to reject any application for material which is not relevant (or that does not to any issue as identified in the defence statement) and does not satisfy the test. As stated above, defence requests must be focused and proportionate and the court should be alive to this.

Prosecution disclosure process and legislative/guidance source

The table sets out in chronological order – as far as possible - the process of disclosure undertaken by the prosecution team. It sets out the source documents which govern processes and procedures and some commonly arising issues.

Stage	Disclosure activity (from investigation to trial)	Source of requirement for this activity and comments on issues arising
Pre-charge Police investigation	The police to pursue all reasonable lines of enquiry, whether these point towards or away from the suspect.	Disclosure Code
Pre-charge Police investigation	The police should record and retain material which may be relevant to the investigation.	Disclosure Code
Pre-charge Police investigation	Where the investigation reveals a reasonable suspicion of guilt and it may be in the public interest to prosecute, the police investigator should identify the likely charges, likely plea(s) and other relevant circumstances as part of the pre-charge report to be sent to the Prosecutor	AG’s Guidance on Charging
Pre-charge Police investigation	In addition to the key evidence in the case, as part of the pre-charge report, the investigator should provide the Prosecutor with any material which may undermine the prosecution case or assist the defence.	AG’s Guidance on Charging. If possible disclosure schedules should be supplied

<p>Charge</p>	<p>A decision is made to prosecute the accused.</p>	
<p>Charge</p>	<p>The Prosecutor should identify the likely plea. Correct identification of the likely plea allows for a prosecution file to be built which is proportionate to the requirements of the first hearing.</p>	<p>Prosecution Team Agreed File Standard (the File Standard) provides for a staged and proportionate approach to the preparation of case files.</p>
<p>Charge</p>	<p>Upon charge, where the likely plea is not guilty, the disclosure officer should compile the disclosure schedule/s. The schedules should be provided to the Prosecutor at this stage wherever practicable and in any event as soon as practicable after a plea of Not Guilty has been entered or the case has been sent to the Supreme Court.</p> <p><i>The Prosecutor will notify the disclosure officer of the entry of the plea or sending and will fix a date by which the schedules must be served. The disclosure officer will comply with this date unless there is good reason not to, in which case s/he will notify the Prosecutor accordingly and agree a date for service.</i></p>	<p>Disclosure Code.</p> <p>The File Standard</p>
<p>Post charge</p>	<p>The investigator should also identify any material which may be disclosable under the common law principles</p>	<p>Attorney General’s Guidelines on Disclosure 2014.</p> <p>There is rarely any such material. The officer certifies the position on form MG6E. If there is such material it should be provided to the Prosecutor who will assess it and where appropriate provide it to the defence.</p>

<p>Post charge police file build</p>	<p>The investigator must build a proportionate first hearing file for submission to the Prosecutor in accordance with the File Standard and must submit it to the Prosecutor, as soon as practicable and not less than 4 days in advance of the first court hearing in a bail case together with IDPC bundles for the court and defence in a custody case.</p> <p>In relation to unused material, the file should at this stage contain any material which may undermine the prosecution case or assist the defence, plus any material which may be disclosable under the common law provisions.</p>	<p>The File Standard sets out the required contents.</p>
<p>The Prosecutor receives the file</p>	<p>The Prosecutor receives the file for first court hearing, prepares the Initial Details of the Prosecution Case (IDPC) and serves the IDPC on the defence and court at least 2 days in advance in a bail case.</p> <p>The material supplied to the Prosecutor at this stage should be as per The File Standard for either:</p> <p><i>(a) Anticipated guilty plea cases</i> <i>Or</i> <i>(b) Anticipated not guilty plea cases</i></p>	<p>The File Standard</p>
<p>First Hearing – NG plea cases</p>	<p>If the defendant enters a not guilty plea, the case is set down for trial. If disclosure and IDPC have been served, the court may, if practicable, hold a Preliminary Hearing and the parties and court complete the ‘Preliminary Hearing Advocates Questionnaire’. If this is not practicable the court directs a date by which initial duty of disclosure, (namely, disclosure of unused material, in accordance with</p>	<p>There is no statutory time limit for service of initial disclosure. The Court therefore sets directions.</p>

	the requirements of the Ordinance must be completed and fixes a date for the Preliminary Hearing.	
The Prosecutor action following first hearing	The Prosecutor requests from the police an upgraded file for summary trial. The request should be made within 48 hours after the hearing at which the plea was entered.	The File Standard directs that the upgraded file must include the unused material schedules & the disclosure officer’s report required by the Code of Practice.
Police action	The police receive the request, compile schedules, where these have yet to be completed and submit the upgraded file to the Prosecutor.	Disclosure Code.
The Prosecutors pre-trial preparation	Together with general trial preparation and ancillary matters such as special measures and bad character applications/notices, the Prosecutor considers the unused material/schedules submitted and completes the initial duty of disclosure by serving the schedules and any relevant material on the defence	Sections 216 the Ordinance; Disclosure Code.
Defence pre-trial preparation	The defence must serve a defence Statement	Section 218 the Ordinance

<p>The Prosecutor’s consideration of defence statement (if provided)</p>	<p>The Prosecutor should consider the content of any defence statement; send it to the investigator with any observations if relevant and a timeframe for response; the police should revisit the material retained and respond to the Prosecutor.</p> <p>The Prosecutor should consider the response and write to the defence setting out their position. The defence may request a section 225 hearing if dissatisfied, and the court may make a ruling and directions on further disclosure.</p>	<p>Section 225 the Ordinance</p>
<p>Trial</p>	<p>The trial should take place on the day it was scheduled</p>	<p>Section 227 the Ordinance provides the court with limited sanctions if the prosecution fails to comply with its obligations</p>

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Attorney General’s Chambers

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Stanley

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Document Control

Document Reference: AGG22: Prosecution Team Disclosure Desktop Guide

Edition and Issue Date: 2nd Edition, June 2018

Ownership and Review: The Attorney General is the document owner for this document and the next scheduled review date is June 2019

Simon Young
Attorney General