

# Applicant Guidance (Representations)

This guidance is approved by the police and issued by the Disclosure and Barring Service (DBS) on their behalf. It accompanies the police 'Offer of Representations' letter and directly relates to Enhanced Criminal Record Checks processed by the DBS.

**Please read all of this guidance - carefully. It helps explain the reason for contacting you. You have a part to play in the Representations process and this guidance will help you to understand what you need to do next.**

You have received a letter from police inviting you to make written representations about certain information that the chief officer is either considering for disclosure on a DBS certificate or that needs some clarification. Here's what you should do:

- Carefully consider the question(s) asked and/or the information that police are proposing to disclose
- Make a decision: which option you will take? Will you **make representations** or **make no representations**?
- If you choose to make representations, consider whether or not a professional person/body or organisation needs to provide supporting evidence on your behalf i.e. doctor, Social Services, previous employer etc.
- Whatever your decision, you must return your response (with the original letter from the police) along with any written representations/evidence to the address provided, within 14 days of receipt. Please reply in 14 days even if only to inform police that you have asked someone else to provide supporting evidence. Please keep a copy of your response for your own records
- If police do not receive a response within 14 days, they will have to reach a decision without your input and it is likely that the information will be disclosed on the face of your Enhanced DBS certificate

## What is meant by 'Representations'?

"The Oxford Dictionary: (**representations**) formal statements made to an authority, especially so as to communicate an opinion or register a protest"

## You have a real opportunity to influence a police disclosure decision.

In October 2009, the Supreme Court considered the impact that the release of information could have on an applicant and their private life. Judgments from later cases added to the Supreme Court's judgment and led to the creation of guidance that police should take into account before making a final disclosure decision.

The Courts ruled that unless the facts are both clear and are known not to be in dispute (i.e. the individual has not challenged the truth or accuracy of the information), police should offer those concerned the opportunity to make their case (to make **representations**) against the proposed disclosure.

Representation would be offered in cases where police believe that there is a possibility that the information which they are considering disclosing may be:

- *false, unreliable or out of date or where the outcome is not known or*
- *where the applicant is unaware of the existence of information held by the police and has never had opportunity to challenge it or*
- *where the information is in dispute (challenged by the applicant)*

In such circumstance, those concerned should be given the chance to review the information or answer certain questions, with the answers having a direct influence on the final disclosure decision.

Offering representations gives those concerned a chance to put their case to police, helping them reach a decision on whether the information ought to be disclosed to an employer in a revised form of words or not disclosed at all.

A process for representations, developed jointly by the CRB and the Association of Chief Police Officers (ACPO) remains in place across all forces. The process standardises the way in which those concerned, in applicable circumstances, will have early sight of the information that police are considering for release. The process is now used by all police forces when considering the release of information as part of the Enhanced DBS process.

### **Must police always offer Representations before disclosing?**

No. Representations are not mandatory; they are not required in every case. The following are examples of reasons why representation before disclosure *might* not be offered:

- Where the information is background detail to a PNC conviction
- Notice of an Impending Prosecution (for a relevant offence)
- Repeat of information disclosed previously, where previous representations did not satisfy police that disclosure should not be made
- Where the facts of the matter are clear and are not in dispute

### **What does this ‘opportunity to make representations’ mean for me?**

It means that you have a real opportunity to influence the police decision-making process. You may be able to help the police understand why information should not be disclosed or you may influence the wording of the disclosure (as the information held by police may require update, correction or clarification).

### **What sort of information do I need to provide?**

This will depend upon the content of the letter that you have received but if you are being asked specific questions, in order to clarify something, please answer the questions. If you are aware of evidence that can support your answer, you are advised to obtain and provide it; if you are not reasonably able to obtain it, state where it may be found.

If you are presented with details of a specific incident that police are considering for disclosure, and you can provide evidence to show that it is incorrect/inaccurate/out of date etc., you should do so.

You may already have a letter from the DBS Barring Service (formerly the ISA), informing you of a barring decision, stating that they considered information relating to you and decided not to bar you from working in certain regulated activity. Please be aware that **such a letter can have no bearing on the ability of police to consider and disclose this same information**. The legislation gives police the ability to consider '**any information**' and to disclose it if they believe it to be relevant and, in their opinion, believe it ought to be disclosed (what is meant by '**any information**' is explained later in this guidance)

**It cannot be stressed enough that simply stating that you do not want the information to be disclosed, without providing supporting information or evidence, is unlikely to influence the police decision-making process.**

## **What next?**

The chief officer of the relevant force will consider your response before making a final decision on whether their information ought to be included on your DBS certificate. The relevant force **may** try to contact you with their decision, but it is possible that you may not come to know the outcome until you receive your completed certificate.

### **Contacting the police**

If you have any questions about the representations letter that you have received, or would like to discuss this process further, you should contact the relevant force using the details provided in their letter.

### **Use of your representations by police**

Your response – your representations – will be used by police in their decision-making and may be added to police records to be used again for future DBS checks (this may remove the need to contact you again for the same information). What you provide – including a response of '**no representations**' - will be used as one of the determining factors in deciding whether or not certain information will be disclosed. Please also see the section entitled "**The right to withdraw an application**" on Page 5.

## **Enhanced Disclosure certificates**

### **What information can appear on a certificate?**

In addition to those Convictions, Cautions, Reprimands and Warnings that are automatically disclosed, other information can appear on a certificate.

As part of the Enhanced Check process, the DBS sends each application to the relevant police forces across England, Wales, Scotland and Northern Ireland. It needs to be understood that police are not limited to disclosure of conviction information - it is the statutory obligation of the chief officer of every relevant police force to consider the release of '**any information**' that they reasonably believe to be relevant and, in the opinion of the chief officer, ought to be included on the certificate including (but not limited to):

- Information that provides the background to a **Conviction, Caution, Reprimand or Warning**, (such as victim profile; method/weapons used; level of violence; nature of injury/harm inflicted, mitigating circumstances etc);
- **Any information** (including non-conviction and non-criminal information) held by local police forces:
  - Details of incidents that did not result in police action, arrest, investigation, charge or prosecution
  - Details of prosecutions that resulted in a verdict of Not Guilty or Not Proven;
- **Third Party information** – information about family members, friends or associates who, in the opinion of police, may present a risk to the vulnerable through their connection with the applicant and their access to the vulnerable.
- **'Old & Minor' convictions, cautions, warnings and reprimands** – those offences which the Home Office filtering rules removed from automatic disclosure. Police retain the ability to disclose 'filtered' offences where they consider the offence to be relevant ('*any information*' within legislation)

## **The legislation, the tests and ‘any information’**

The ability for police to disclose ‘**any information**’ comes from the legislation governing the services delivered by the DBS: The Police Act, 1997 (as amended).

For an Enhanced certificate, information must pass two tests:

Section 113B(4) of the act:

- (4) *Before issuing an enhanced criminal record certificate the Secretary of State must request any relevant chief officer to provide any information which —*
- (a) *the chief officer reasonably believes to be relevant for the purpose described in the statement under subsection (2), and*
  - (b) *“in the chief officer’s opinion, ought to be included in the certificate.*

Since the legislation was enacted, the courts have considered what ‘*any information*’ actually meant – they ruled that ‘any’ means ‘**any**’:

80 “...If parliament had intended to limit the relevant types of information, for example, by confining it to information of a criminal or potentially criminal nature, it would have been the easiest thing in the world to do. But it chose not to. It made the statutory scheme apply to “any” information. In my judgment, “any” means “any”.”

Mr Justice Munby, R (L) and Commissioner of Police of the Metropolis, 2006.

The tests (‘*relevant*’ and ‘*ought to*’) that must be passed before disclosure can be made are lower than the test for securing a conviction in a criminal court (‘*beyond all reasonable doubt*’). To assist in this decision making process, the information is processed in accordance with nationally approved guidance called the ‘Quality Assurance Framework’ and supported by Statutory Guidance issued by the Secretary of State. The final disclosure decision, however, rests with the chief officer.

The Statutory Guidance issued by the Secretary of State requires the chief officer to consider each case on its own facts, giving particular consideration to the purpose for which the certificate is being sought as well as the relevance of the information, the seriousness of the information, the currency of the information and the credibility of the information. The chief officer is also required to balance the above considerations against the impact upon the private life of applicant or any named third party.

## **Third Party information**

This ability to disclose ‘*any information*’ also means that information about someone other than the applicant may be disclosed – a third party. Police will disclose third party information only when they believe that the individual concerned poses a risk and they have good reason to believe that they may have relevant access, to the vulnerable, through the applicant’s employment.

**Relevant access** - the majority of third party disclosure results from Home Based applications (roles undertaken primarily in the applicant’s own home - Child Minder or Foster Carer, for example). It is reasonable to believe that the partner, close friends or family of the applicant have relevant access as the courts have recognised that a person’s private life cannot be ‘hermetically sealed’ from their professional life. This applies to some non-Home Based roles too (i.e. Teacher/Classroom Assistant) as there may be reasonable opportunity for the third party to gain relevant access to the vulnerable.

## The wording of the disclosure

When police disclose information, the text must follow an agreed format. This format came about from Recommendation 6c of the report into the Criminal Records Regime, "A Common Sense Approach":

*6c "I recommend the development and use of a common template to ensure that a consistent level of information is disclosed to the individual with clearly set out reasons for that decision."*

For this reason, police are advised to include the key aspects of their reasoning within the disclosure text, to explain why they decided to make a disclosure.

Police are not allowed to comment on whether or not they themselves believe the applicant to be suitable for the employment being sought, but they do need to explain why the information that they are disclosing will be useful to any employer responsible for making that decision.

This means that police will highlight what they believe to be the risk that is posed and identify which group of people they believe may be at risk, allowing an employer to understand the extent of the risk and manage it appropriately. This should not be viewed as a comment on suitability – **the ultimate employment suitability decision is the responsibility of the employer and the employer alone.**

## Disputing your completed DBS Check

If, after receiving your completed DBS Check, you find that some or all of the information is not accurate or does not relate to you or ought not to have been disclosed, you may contact the DBS and ask for it to be reviewed under the **Dispute** process – this is known as **disputing your disclosure**. Please note that this can only be done **after** you receive your **completed** DBS Check – it does not apply to applications that are in progress, including cases that are undergoing the representation process.

Providing you with the opportunity to make representation does not infringe upon your right, provided by the legislation, to challenge the content of your certificate using the DBS Dispute process.

It also does not infringe upon your right to dispute any subsequent disclosure or (if your dispute is not resolved to your satisfaction) to have your case reviewed by the Independent Monitor should you still believe that the information is not relevant and ought not to have been disclosed. The Independent Monitor is appointed by The Secretary of State and their role is set out in the Protection of Freedoms Act 2012. Under that Act, an individual may apply in writing to have the local Police intelligence, disclosed on the face of their completed Enhanced certificate, reviewed independently should the Dispute process not bring satisfaction. Access to the Independent Monitor process is made through the DBS Disputes process.

## The right to withdraw an application

Every applicant has the right to withdraw their application for an Enhanced Check at any time before it is completed. However, you are advised that withdrawing an application will effectively remove access to both the DBS Dispute process and to the Independent Monitor Review process, as they relate only to certificates that have been completed and issued.

If you do wish to withdraw your application, you must inform DBS and your employer/prospective employer – this is because your employment (or offer of employment) is likely to be subject to you providing an Enhanced DBS certificate.

To have your application withdrawn, **you must contact the DBS**. However, if you have reached this decision as a result of being offered representations, you should also inform the police force concerned, instructing them to **stop processing your application as you intend to withdraw your application**.

**To dispute your completed certificate or withdraw your application, please see the contact details at the end of this guidance.**

### **DBS Update Service**

Subscribers to this service may be offered the opportunity to make representations when new information is being considered by police (i.e. prior to you making any new application). In such cases, their decision (if still minded to disclose after considering any representations which you provide to them) would see the status of your subscription change. The information concerned could not appear on any certificate without a further application from you being received by DBS.

### **Contact details – Disputes and Independent Monitor Review**

You can dispute your completed DBS Check online at the address below:  
Disputes (website) <https://www.gov.uk/disclosure-barring-service-check/appeals-and-disputes>

If you do not have access to the internet, you can call the DBS Disputes team on:

Telephone: 03000 200 190 Minicom: 03000 200 192

(Please select **Option 4** – “discuss *DBS Certificate that has been received*”)

The Independent Monitor Review process is accessed through the DBS Dispute process – when you raise your dispute, you are asked whether or not you wish your case to be referred to the Independent Monitor should police not agree to the changes that you request.

### **Contact details – Withdrawal of an application**

Before completion of your certificate, you can request withdrawal of your application by contacting the DBS in writing via the following channels:

Email: [Customerservices@dbs.gsi.gov.uk](mailto:Customerservices@dbs.gsi.gov.uk)

Or by Post:  
Withdrawals Team  
2<sup>nd</sup> Floor West  
DBS  
PO Box 165  
L69 3JD