

Applicant Guidance (Update Service Representations)

This guidance is issued by the Disclosure and Barring Service and accompanies the police 'Offer of Representations' letter and directly relates to Enhanced Criminal Record Checks processed for subscribers to the Disclosure and Barring Service (DBS) Update Service.

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.

As a subscriber to the DBS Update Service, your details are periodically checked against the records held by police. If police find that they hold new information that they believe to be relevant to your subscription, they may take action that results in a change to the status of your subscription (your certificate would no longer be valid).

In such circumstances the police *may*, before going any further, offer you an opportunity to make 'representations' in order to help them to decide whether or not your subscription status should change.

You have received a letter from police inviting you to make written representations about certain information that the Chief Officer is evaluating for possible (future) disclosure on a DBS certificate or that needs some clarification:

- Carefully consider the question(s) asked and/or the information that police are considering for possible disclosure
- 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 your Update Service subscription status will be changed and the information disclosed on future certificates

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 the police decision-making process.

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 a decision to change the status of your subscription.

Offering representations gives those concerned a chance to put their case to police; helping them reach an informed decision (or to revise the wording of any subsequent new disclosure certificate).

A process for representations, developed jointly by the DBS (formerly the CRB) and the Association of Chief Police Officers (ACPO) is 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 assessing. The process is now used by all police forces when considering the release of information or changing an Update Service subscription status as part of the Enhanced DBS process.

Must police always offer Representations before coming to a decision?

No. Representations are not mandatory; they are not required in every case. The following are examples of reasons why representations *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 affect your subscription status or you may influence the wording of a future 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 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 change your subscription status, 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 the information is relevant and whether it ought to be disclosed on a future application (effectively changing the status of your subscription) making your certificate 'out of date' as new information is available. 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 check your online Update Service subscription status.

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 in future. Please also see the section entitled "**The right to remove a certificate from your subscription**" 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 obliged 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 a change to your Update Service status

If, after confirming that your Update Service status has changed, you believe that it should not have been changed, you may contact the DBS and ask for the status change to be reviewed under the **Dispute** process – this is known as **disputing your subscription status**. Please note that this can only be done **after** a status has been changed – it does not apply to cases that are still being considered (cases that are undergoing the representation process, for instance).

Providing you with the opportunity to make representation does not infringe upon your right, provided by the legislation, to challenge a change to your subscription status 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 Independent Monitor cannot act to review a dispute of a change to subscription status.

The right to remove a certificate from your subscription

Every applicant has the right to remove a certificate from their subscription at any time. However, you are advised that removing application, prior to completion of police decision-making processes, will effectively remove access to both the DBS Dispute process and to the Independent Monitor Review process as they relate only to completed (issued) certificates.

If you do wish to remove a certificate from your subscription, you can do so via your online DBS Update Service profile page.

To dispute a change to your subscription status, please see the contact details at the end of this guidance.

Contact details – Disputing a change of subscription status

You can call the DBS Disputes team on:

Telephone: 0870 909 0811 Minicom 0870 909 0344

(Please select **Option 2** – “*discuss the results of your completed DBS check*”)