



Home Office

Police requests for Third Party Material **Consultation response**

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Ministerial Foreword

This consultation was launched with the aim of understanding more about the issues surrounding police requests for third party material. That is material held by a third party, such as personal records about an individual, for example education records, medical files, local authority records or therapy notes, which are sometimes requested as part of an investigation.

While third party material might be requested to support investigations into a variety of crime types, the focus of this consultation was on rape and other sexual offences. The Government's End to End Rape Review noted that the issues of unnecessary and disproportionate requests for records, and these requests causing a delay to investigations, are particularly prominent.

We received excellent engagement, with over 400 responses from a variety of respondents including victim groups, policing, the Crown Prosecution Service, organisations that represent barristers and third parties who respond to requests for records. I would like to thank everyone who responded, these contributions have provided a rounded view of the current landscape and will help us to ensure that any interventions will work well for those who have been victims of crime, as well as everyone operating across the criminal justice system.

The responses to the consultation suggest that this aspect of the criminal justice system is not functioning effectively. Victims of some of the most traumatic crimes are having significant amounts of their personal records unnecessarily requested, and the lack of clarity in these requests is causing delays to investigations and access to justice for victims. Indeed, victim groups have reported that this invasion of privacy can be a contributing factor to victims withdrawing from the process.

This consultation response provides a summary of what respondents told us, and the action that the Government is committing to take to ensure that victims feel confident that they can pursue and receive justice.

A handwritten signature in blue ink that reads "Sarah Dines".

Sarah Dines MP

Parliamentary Under Secretary of State (Minister for Safeguarding)

Executive summary

The majority of respondents indicated that third party material (TPM) requests about victims of rape and other sexual offences (RAOSO) crimes can sometimes be unnecessary and disproportionate, and made to establish victim credibility, that is, whether the victim has a history of being truthful, as opposed to the facts of the case.

Requests of this nature can originate with the police, the Crown Prosecution Service (CPS), or defence lawyers and there appears to be a lack of consistency across England and Wales, with some CPS areas and police forces correctly requesting TPM only where necessary and proportionate and while others are making broader requests which may be difficult to justify. It is not possible to conclude, based on the responses to the consultation, whether inappropriate TPM requests typically originate in the police, from the CPS or defence.

From the perspective of both policing and the third parties who hold material which is requested, there is a significant variation in the amount of time it can take for third parties to respond to requests. While it is likely that there will always be some variation due to the nature of the request, the police making clear and proportionate requests for TPM is likely to make it easier for third parties to process them.

The respondents largely agreed that the police engaging in early advice with the CPS is likely to contribute to TPM requests being necessary and proportionate. They were overwhelmingly supportive of the proposed new statutory duties, underpinned by a code of practice, to only request necessary and proportionate TPM, to inform the subject of the TPM request and to provide clear information to the third party to whom the request is made. We will aim to pursue legislation when Parliamentary time allows.

A number of additional issues were raised throughout the consultation. These include ensuring RAOSO victims receive free legal advice when they encounter requests for TPM, and adding additional legal safeguards around access to pre-trial therapy notes. The government will keep this under review and consider the need for additional safeguards in due course to ensure victims feel confident in coming forward to report crimes.

Introduction

Background

TPM is material held by a person, organisation, or government department other than the investigator and prosecutor, either within the UK or outside the UK. Third parties are not directly involved in the case in question, but may hold information relevant to it¹. This might include medical, educational, or social service records but can encompass a broad range of material such as employment records or notes from counselling sessions.

It is sometimes necessary for police to request material from a third party about a victim where it is relevant to a reasonable line of enquiry which may point towards or away from a suspect, ensuring a fair trial. Where police make such a request, they must have a lawful basis to do so and ensure compliance with the wider legislative obligations (such as the Human Rights Act 1998, the Data Protection Act 2018 and UK GDPR). While the issues being explored in this consultation are especially relevant to RAOSO investigations, TPM can be requested to support investigations into a range of crime types, so the responses to, and outcome of, the consultation could have a broad impact.

The Government's End-to-End Rape Review, published in June 2021, and the Information Commissioner's Office's (ICO) Opinion on the processing of victims' personal data in rape and serious sexual offence investigations, published in May 2022, highlighted a number of issues related to TPM, which our consultation sought to explore. A primary issue is the necessity and proportionality of requests, meaning that too much information might be requested about a victim or that the information requested might not be relevant. Requests might come directly from the police, or the CPS might ask the police to request material. Participants in research conducted as part of the Rape Review reported an increase in requests for third party material in recent years, making an already distressing process feel even more intrusive.

There is a concern that information requested about victims in RAOSO cases may be used to try to prove or disprove the victim's credibility using information that is not relevant to the investigation. For example, historic educational records from before the time when the alleged offence took place. This can have a severe negative effect on the victim. Such an approach might unnecessarily invade their privacy, make them feel like they are the ones under investigation and may be a significant factor that causes them to withdraw from the criminal justice process.

A further issue is the amount of time it takes for third parties to return requests for material, and the impact this can have on slowing down a case. As part of this consultation, we were interested to find out more about whether or not this is a significant factor in elongating investigation timeframes, why third parties might struggle to return material quickly, and whether by ensuring requests are only made where necessary and proportionate this will have a positive effect on timeliness. Lengthy investigations are traumatic to victims, especially in relation to RAOSO.

¹ Attorney_General_s_Guidelines_2020_FINAL_Effective_31Dec2020.pdf (publishing.service.gov.uk), p.9

How we consulted

The consultation ran for eight weeks from 16 June to 11 August 2022. It was publicly available on GOV.UK and was actively circulated to key stakeholders across the victim support space and the criminal justice system.

The consultation was developed following significant stakeholder engagement with victim groups, policing, CPS and third party information holders. This initial engagement, as well as a review of existing reports, gave us a good foundational knowledge of the issues and helped to inform the types of questions we asked in the survey.

The questionnaire was divided into three sections: one aimed at those in law enforcement, which established basic information about TPM, why and how often it is requested; one aimed at third party information holders and victim groups which asked about how much TPM is typically requested and how long these requests might take to fulfil; and one aimed at all respondents which proposed possible policy solutions for respondents to give their views on. All respondents were welcome to answer all sections of the questionnaire if they wished to.

Many questions gave respondents the option to select one or several options to choose from, which generated quantitative results to allow us, for example, to assess how many respondents agreed with certain statements. Some questions were open ended and therefore generated qualitative results where respondents could give us additional information. The majority of questions gave respondents options to choose from, with an extra category of 'other/additional information' if the respondent did not feel that their experience was adequately covered in the pre-defined options, or if they wanted to give us extra information. When analysing the results, the percentages included in the summary section focus on how many responses were received to the pre-defined options. The information provided in the 'other' sections has been drawn out where a number of respondents made similar comments, but all responses have been considered as part of our thinking in terms of next steps.

The majority of the available information related to TPM is qualitative and anecdotal, based on the views of the respondents. It has not been possible through this consultation to establish empirical data on the exact number of TPM requests in RAOSO cases, the origin of these requests (that is, whether they originated from the police, the CPS, or the defence), how far they were or were not necessary and proportionate, and issues to do with timescales. However, this consultation has allowed us to collate information in a focused study on this topic. The summary section of this consultation response offers an overview of the themes of responses, and Annex A includes a detailed breakdown of the responses to each question.

Breakdown of respondents

The consultation received a total of 406 responses from the following types of respondents:

Type of Respondent	Frequency	Percentage (%)
Police	203	50.0
CPS	34	8.4

Non-CPS Lawyers	4	1.0
Victims	1	0.2
Victim Groups	21	5.2
Third parties	29	7.1
Unaffiliated	114	28.1
Total	406	100

It is worth noting the range of sample sizes for the different groups. For those with fewer respondents, any conclusions drawn may not be as representative. In some cases, a single response may be representative of an entire organisation. Those who did not provide information about which organisation or group they belonged to are referred to as “unaffiliated”.

Summary of responses

Key issues raised in section 1 by criminal justice system respondents including law enforcement, prosecutors and non-CPS lawyers

Section 1 included questions for law enforcement, prosecution and defence lawyers and aimed to establish some basic information about TPM: what it is and why and how often it is requested. Due to the intended audience for this section, the summary focuses on respondents from policing, the CPS and organisations representing barristers.

Respondents agreed that TPM can include any type of record or relevant material held by external bodies². Almost all of these respondents thought that TPM is typically requested about a victim, with fewer saying that it was requested about witnesses³ or suspects. However, there was general agreement that it can be requested about victims, suspects or witnesses depending on the circumstances. Similarly, while respondents noted that TPM could be requested in a variety of different crime types, RAOSO and similar high harm crimes (Domestic Abuse and Child Sexual Exploitation) were the ones that respondents cited as being the most likely instances in which TPM would be requested. Further, when asked to estimate the frequency of TPM requests, 79% of respondents said that TPM is requested in 76-100% of RAOSO investigations. Victim groups who responded to these questions agreed that TPM is primarily requested about the victim, and is requested in the vast majority of cases. Organisations representing barristers, who work across crime types, noted that TPM is routinely requested about victims, witnesses and suspects, but agreed with other respondents that TPM is requested in 76-100% of RAOSO cases.

One police respondent noted, *“Rape cases in particular seem to attract a considerable amount of third party material requests about counselling and therapy sessions - whether related to the offence in question or not - with a view to discrediting victims and witnesses”*. **Generally, the responses suggest that, in RAOSO investigations, TPM is requested in the vast majority of cases, and is more frequently requested about the victim as opposed to the suspect.**

Necessity and proportionality

Participants were questioned about why TPM is requested. Of the responses received from the police, 36% stated that it was to support or refute a reasonable line of enquiry, 39% said that it was because they were requested to do so by the CPS or another external party, and 21% said it was routine to do so.

A respondent from a victim group observed, *“the police routinely request third party material assuming that the CPS will require them to have done so in order for them to reach the CPS threshold to press charges, and if victims/survivors refuse it can delay cases further.”* A policing respondent said, *“As an investigator I was trained and supervised by police officers, both detectives and non-detectives, and as investigators we*

² It is important to note that health data (for example, medical notes) falls under special category data and can be processed if there is a lawful basis for doing so.

³ At some stages of the criminal justice process, a victim may be referred to as a witness. In this instance we are using the term to refer to a person who witnessed or had knowledge of the crime who is not the victim.

absolutely did not consider lines of enquiry and seek material accordingly. Investigative strategy, in practice, was far more random than this. Fishing expeditions⁴ were extremely commonplace in all types of investigation. This applies across the board and not just to third party material.” By contrast, 75% of responses received from the CPS participants said that TPM was requested to support or refute a reasonable line of enquiry. **This suggests a lack of cohesion and consistency between the police and the CPS. In their additional comments, several police and CPS respondents noted that TPM might be requested to test victim credibility.**

When asked what drives unnecessary and disproportionate requests for TPM, only 1% of responses selected stated that requests are always necessary and proportionate. A variety of reasons were offered for this. 52% of responses selected by police and 49% of responses selected by unaffiliated respondents felt that unnecessary and disproportionate requests were driven by the CPS either by direct request, or because the police predict that the CPS will ask for a large amount of material. A further 17% of responses selected by police stated that defence lawyers drive the requests. 10% of responses selected by CPS participants agreed that the CPS drive unnecessary and disproportionate requests, 22% thought they were driven by the defence, and 24% thought that police predicted the CPS would request a large volume of material and therefore over-request material. **This suggests that in at least some cases, unnecessary and disproportionate requests for TPM are driven by the CPS and the defence, and this may be exacerbated by police thinking that the CPS expect a large volume of records.** However, an association representing barristers suggested that the existing legal framework is such that requests are required to be necessary and proportionate and this ensures that they are. The government considers that while it may be the case that the legal framework dictates that requests should be necessary and proportionate, there is substantial evidence from responses to this consultation that suggests the law may not always be applied correctly, leading to fishing expeditions.

The majority of policing, CPS and unaffiliated respondents felt that third parties generally did provide only the material requested, although a proportion of respondents from all three groups noted that there are occasions when third parties fail to respond to requests or return too much information. A respondent from policing noted, *“It all depends on what agency the request has been submitted to, what facilities the individual agency has to facilitate providing the request to access the third party and also the time of year requests are submitted.”* **Overwhelmingly, the message from respondents seems to be that a third party’s ability to respond quickly and appropriately to a request varies greatly from agency to agency.**

Timeliness

Respondents from policing (59%) and CPS (57%) agreed that third parties do not return third party material within a reasonable timeframe, with one policing representative stating: *“It (the return) can be anywhere between days and months depending on the third party.”* In terms of why third parties take a long time to respond to requests, a minority of policing respondents did say that it was due to requests from policing not being clear enough, but mostly it was thought that these requests were not a priority for third parties, that they were not trained to deal with these types of requests or lacked a dedicated staff member to handle them. **Almost all policing (91%) and CPS (90%) respondents agreed or strongly agreed that delays in receiving TPM from third parties causes a significant**

⁴ An informal phrase used when speculative requests are made without a reasonable line of enquiry to support them.

impact in terms of elongating investigations. While an association representing Barristers disagreed that TPM requests can slow down an investigation, the number of contrary CPS and policing responses suggest that in at least some cases TPM requests can have a negative impact on an investigation's timeline. This effect may be more pronounced in the earlier stages of an investigation before barristers are engaged.

We asked respondents how long it takes to issue a request for TPM, and the answers were so varied that it was not possible to provide a meaningful average. In terms of ideas about how to improve timely return of requests, respondents representing policing and the CPS pointed towards more standardised processes and training for the police. A CPS respondent stated "*I appreciate that it takes them [the police] a long time...to have access to the material.... There is a fear that they will miss something. Police officers need regular training and supervision to do this work properly.*"

Key issues raised in section 2 by third parties, victim groups and victims.

Section 2 included questions aimed at third party information holders and victim groups. Participants were asked how much TPM is typically requested and how long these requests might take to fulfil. Due to who this section was aimed at, the summary focuses on responses from third parties, victims and victim groups.

Volume of material requested and timeliness of response to requests

When asked how much TPM is generally requested about a victim, 58% of third party responses and 94% of victim group responses said that material that doesn't seem to relate to the alleged offence is sometimes requested. Those unaffiliated with any group, as well as police and CPS representatives who responded to this question were largely in agreement with this. A police respondent stated, "*we end up holding more data on a victim than a suspect, it's hard to work out who is on trial*". **It is noteworthy that across all respondents, 69% of the responses state that a lot of material is requested about a victim that doesn't seem to relate to the alleged offence.** In section 1 above, barristers suggested that TPM requests are typically necessary and proportionate. The fact that those with frontline experience (policing, CPS, third party information holders and victim groups) have a contrary view is noteworthy. A question was asked about what prevents the timely return of TPM with three possible answers relating to the volume of the request, the clarity of the request, and the availability of individuals trained to respond to requests. There was general agreement across groups (third parties, victim groups, CPS, policing and unaffiliated) that requests for a large quantity of documents take a long time to fulfil. A victim group respondent noted "*Large amount of information, potentially in different locations and large quantity of documents routinely requested...take a long time to fulfil*". However, there were other views regarding possible reasons, with third parties and victim groups agreeing that requests from the police are unclear and need to be clarified before they can be completed. One police representative stated that "*We are not specific enough with what information we require...*" Policing, CPS and unaffiliated respondents attached greater importance to the fact there is no-one at third party organisations who are trained to handle TPM requests. **This suggests that large volume requests are problematic in terms of a quick return, and that at least in some cases a combination of unclear**

police requests and/or a lack of trained staff at a third party organisation can also be contributing factors that slow down a third party's ability to respond to a request.

Several questions in this section aimed to establish some average timeframes around how long it takes third parties to respond to requests for material. Responses from third parties, victim groups, policing and CPS showed a large variation in timeframes. **It is not possible therefore to state an overall average for what a quick or slow response time is.** A certain amount of variation is likely to be inevitable due to the content of individual requests, which will differ depending on the facts of the case.

Key issues raised in section 3 by all groups

Section 3 included questions for all respondents to offer their views on proposed policy solutions to address the issues associated with police requests for TPM. The questions in this section were measured on a scale of how much the respondent agreed or disagreed with the statement, with open text fields for further details. Responses were broken down per statement below.

The majority of respondents, across all groups, either agreed or strongly agreed with the proposals. One policing representative said *"All...are positive steps to improving 3rd party material requests"*. A CPS respondent said, *"I agree, there should be ultimate transparency and we should be able to tell victims why we are requesting and what to expect. There should then be a standardised process for third parties to deal with the information."* A victim group said, *"We believe that new legislation which outlines a clear framework for requests from police for information about victims in the hands of third parties...is necessary to make clear the intention of government which is that these routine speculative credibility checks must end."*

- **Engaging in Early Advice with the Crown Prosecution Service in rape cases helps to ensure requests for TPM are necessary and proportionate, in pursuit of a reasonable line of enquiry.** Considering all responses from across the different groups, 64% agreed or strongly agreed with this statement. The CPS were highly in favour with 91% of those representing the CPS in agreement. Police were still largely in agreement with 60% of these respondents agreeing or strongly agreeing. Two organisations representing barristers also tended to agree, in their responses, that Early Advice is a valuable tool. 43% of those representing victim groups agreed and 43% neither agreed or disagreed. Some victim group respondents questioned the value of early advice if disproportionate and unnecessary requests originate with the CPS.
- **There should be a statutory duty on policing to only request third party material that is necessary and proportionate, in pursuit of a reasonable line of enquiry for an investigation.** 87% of all respondents agreed or strongly agreed with this proposal. Agreement was fairly consistent across all groups, with 100% of victim groups, 89% of police and 65% of CPS respondents agreeing or strongly agreeing. There was a slightly lower level of CPS agreement, which based on

further information provided, seemed to be due to concerns about implementation and training to ensure that police fully understand, and are trained to apply, any new duties.

- **There should be a statutory duty on policing to provide full information to the person about whom the third party material is being requested. This could include details about the information being sought, the reason why and how the material will be used, and the legal basis for the request.** 70% of all respondents agreed or strongly agreed with this proposal. Across all groups, those who disagreed noted that it may not always be appropriate to provide full information to the person about whom the TPM is being requested as it may prejudice the investigation, contravene confidentiality or otherwise not be possible in certain scenarios such as when the TPM is required as part of a covert investigation.
- **There should be a statutory duty on policing, in their requests for information to third parties, to be clear about the information being sought, the reason why, how the material will be used and the legal basis for the request.** Considering respondents representing police, CPS, third parties and victim groups respectively, at least 79% of each group agreed or strongly agreed with this proposal.
- **There should be a code of practice to accompany the new duties outlined above to add clarity on the expectations on policing and promote consistency in practice.** 85% of all respondents agreed or strongly agreed with this proposal, with high levels of agreement within each respective group of respondents representing police, CPS, third parties and victim groups.

A number of respondents referenced that the above duties would need to be accompanied by an appropriate implementation plan, as well as organisations understanding the consequences for not adhering to them. Some respondents additionally noted that duties should extend to the CPS and defence practitioners, as unnecessary and disproportionate TPM requests can originate from these sources.

Those who disagreed with the proposals did so for several commonly occurring reasons. These included the duties already existing in data protection law and police should be trained to apply them, and concerns around the potential extra administrative burden on the police. While there is an existing legal framework, the responses to this consultation suggest that it is not always applied correctly and the overwhelming support for new duties suggests that those who most frequently consider TPM requests (the police and CPS) would benefit from additional clarity. While training might help to promote compliance with existing laws, creating new duties is an effective way to ensure consistency across England and Wales.

The action we commit to take

The responses to this consultation corroborate the findings in the Rape Review and are in line with the ICO's Opinion, that police requests for third party material can be unnecessary and disproportionate. We therefore commit to proceeding with measures, which will include legislation when Parliamentary time allows, to ensure that police requests for TPM are necessary and proportionate. We will also work with the police and CPS to explore ways in which they can consistently engage in Early Advice to set the parameters for TPM at an early stage of the investigation.

Throughout the consultation, respondents raised a number of issues that fall outside of the scope of the policy proposals in section 3 of the consultation. These include:

- Additional duties on the CPS and defence, similar to those outlined in section 3 of the consultation.
- An additional duty on policing to ensure that police obtain non-coerced consent from victims before progressing with TPM requests.
- Access to independent legal support or advice for victims regarding requests for personal information.
- Additional legal protection surrounding police access to pre-trial therapy notes to ensure that victims aren't discouraged from accessing support.
- Additional training or guidance for police, CPS, defence lawyers and third parties who process TPM requests.
- Better standardisation to ensure practice is consistent across the country.

We are grateful to respondents for raising these points. The duties we have committed to exploring legislation on will address some of these, particularly those of standardisation and additional guidance via the new code of practice. A proportionate and consistent approach will also be supported via the National Police Chiefs Council's (NPCC) third party material notices, which are currently in development and due to be rolled out across all police forces in England and Wales.

There is additional work underway across the criminal justice system to explore some of these other issues. The Ministry of Justice has recently consulted on options to enhance legal support or advice for victims of rape or serious sexual assault regarding personal information requests, including police requests for mobile phone downloads and social media records. The results of this consultation are being reviewed and next steps will be announced in due course. As part of its review of laws governing sexual offence trials, the Law Commission is examining the disclosure and admissibility of complainants' personal records, including pre-trial therapy notes and records where there is a reasonable expectation of privacy. A final report is expected in 2023, and the government will respond to any recommendations made in due course.

We are committed to continuing to work across the criminal justice system, and alongside other programmes including Operation Soteria, to ensure that victims feel confident that their personal records will not be unnecessarily intruded upon and that they are not the ones under investigation.

Annex A: Full breakdown of responses

Section 1: Questions law enforcement, prosecutors, and defence lawyers, analysis of all responses

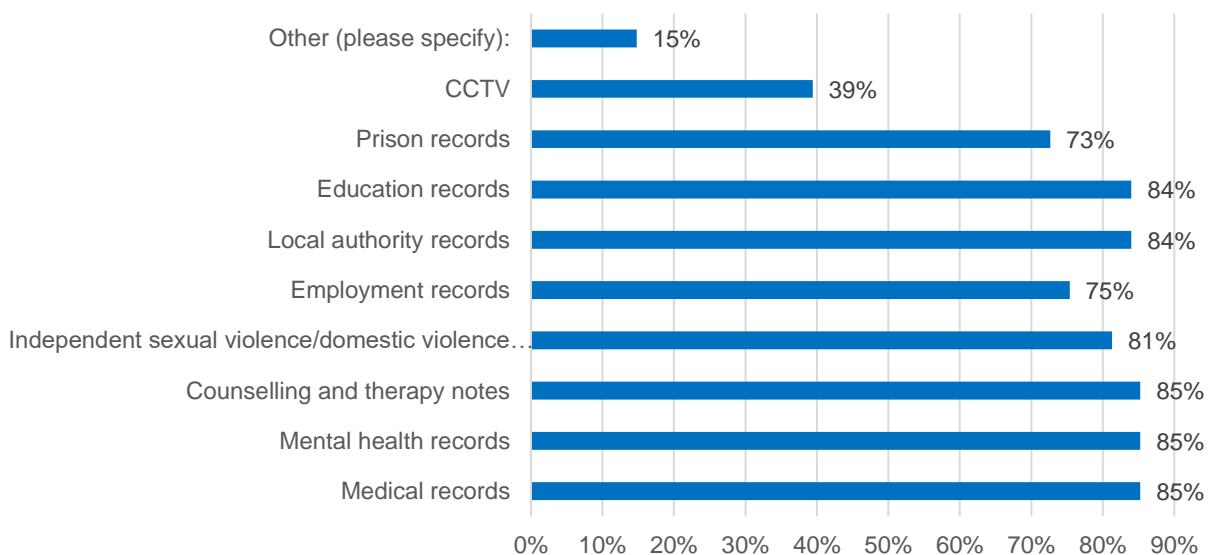
1.1 Summary

In this section, we asked what third party material is and why and how often it is requested.

1.2 Responses

1. What kind of material do you think constitutes third party material?

The government sought views on what constitutes third party material. Respondents were given the following options: medical records; mental health records; counselling and therapy notes; independent sexual violence/domestic violence advisor notes; employment records; local authority records; education records; prison records; and CCTV. Respondents were asked to check all that apply.



Other	15%
CCTV	39%
Prison Records	73%
Education records	84%

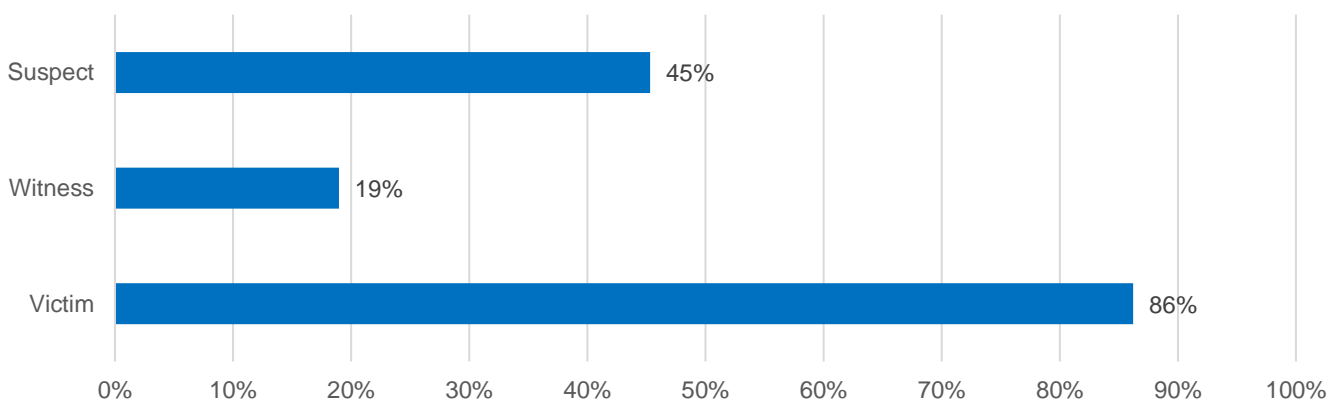
Local Authority Records	84%
Employment Records	75%
Independent Sexual Violence/Domestic Violence notes	81%
Counselling and Therapy Notes	85%
Mental Health Records	85%
Medical Records	85%

Counselling and therapy notes, mental health records and medical records were most selected as materials which constitute third party material (each being selected by 364 respondents). The majority of respondents agreed that third party material constitutes any relevant material held by a third party organisation. This is in line with the Attorney General’s definition that *‘third party material is material held by a person, organisation, or government department other than the investigator and prosecutor, either within the UK or outside the UK. Third parties are not directly involved in the case in question, but may hold information relevant to it’*.

Financial records; mobile communications; probation and legal services; religious organisations and sexual health clinics were additional categories highlighted by respondents as third party material.

2. About whom is third party material typically requested?

The consultation asked about whom third party material is typically requested, with participants asked to check all that apply.



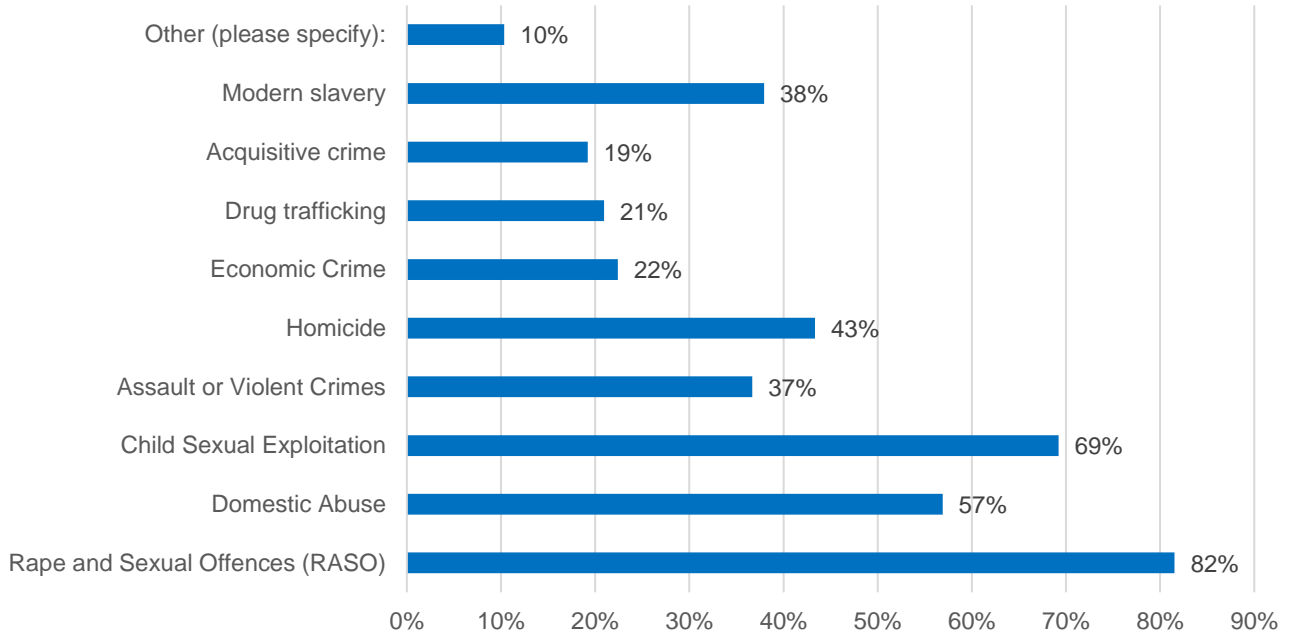
Suspect	45%
Witness	19%
Victim	86%

86% of respondents reported that third party material is typically requested about victims and less often sought in relation to a suspect, with only 45% of respondents reporting this.

98% of police and 100% of CPS respondents believed third party material is typically requested about victims.

3. In what types of investigations do you request third party material?

The government sought views on what types of investigations third party material is requested.



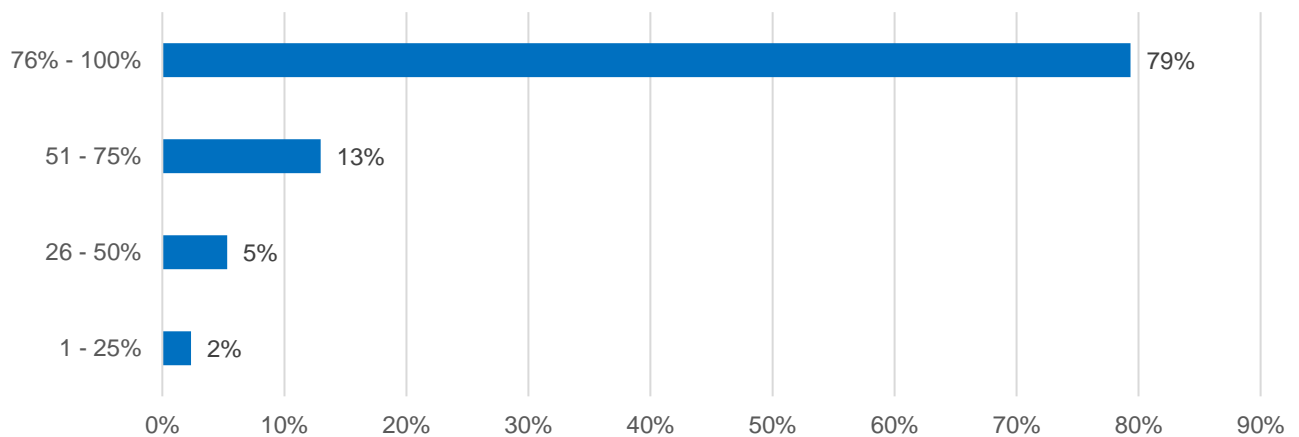
Other	10%
Modern Slavery	38%
Acquisitive Crime	19%
Drug Trafficking	21%
Economic Crime	22%
Homicide	43%
Assault or Violent Crimes	37%
Child Sexual Exploitation	69%
Domestic Abuse	57%
Rape and Sexual Offences (RASO)	82%

Over half of respondents selected RAOSO-like crimes (RAOSO, domestic abuse and child sexual exploitation) as types of investigations where third party material is requested, with some respondents noting that almost all investigation types will involve some element of third party material requests. Acquisitive crime was the least selected type of investigation where third party material may be requested. As with broad consent, third party material

requests are generally more prominent in RAOSO-like crimes where victim focused credibility is an issue as compared to other types of crime.

4. We understand that requests for third party material can be a particular issue in RAOSO investigations. In your experience, in roughly what proportion of RAOSO investigations is third party material requested?

The consultation asked what proportion of RAOSO investigations third party material is roughly requested.

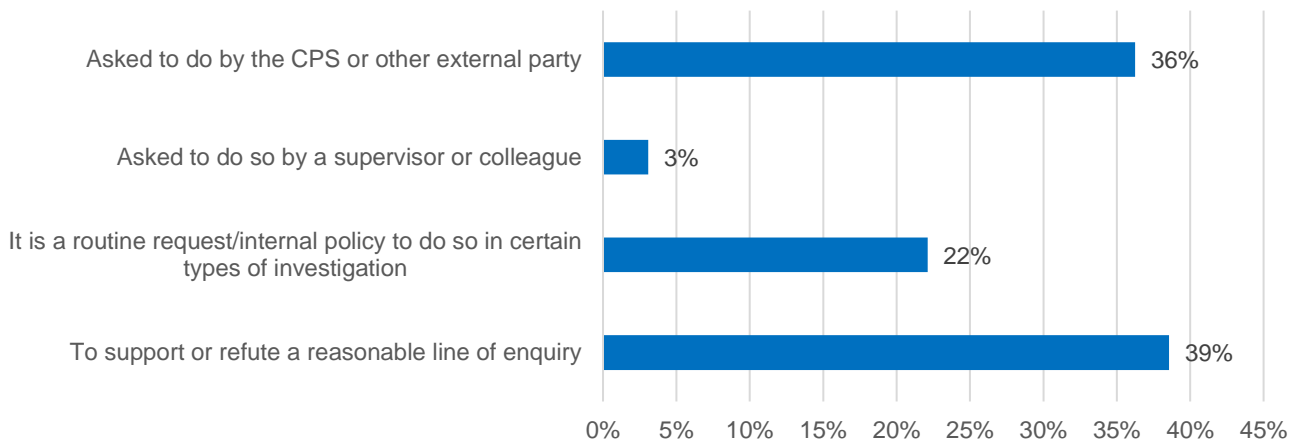


76% - 100%	79%
51% - 75%	13%
26% - 50%	5%
1% - 25%	2%

79% of respondents agreed that third party material is requested in roughly 76-100% of RAOSO investigations.

5. Why is third party material requested?

The government sought views on why third party material is typically requested during an investigation. The majority of respondents were the police (50%); 8% of respondents were CPS; 42% of respondents were other affiliates.



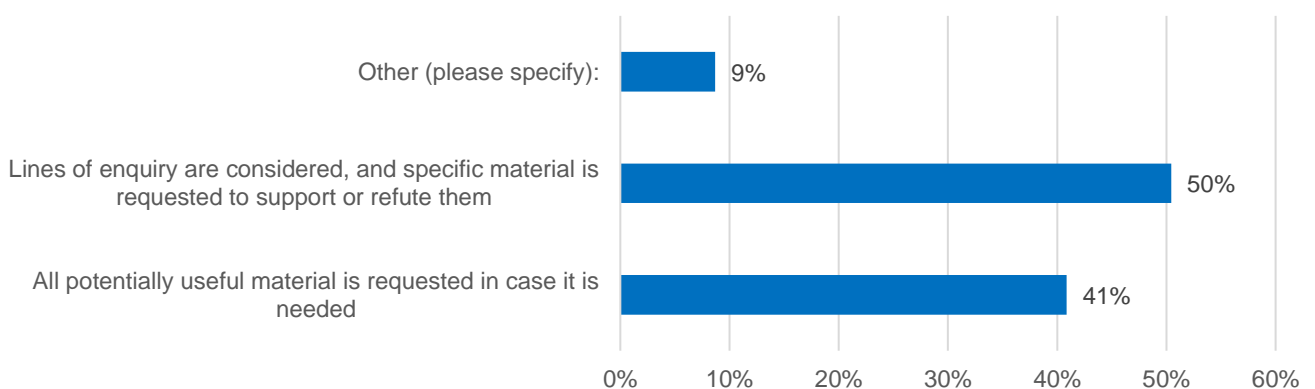
Asked to do by the CPS or other external party	36%
Asked to do so by a supervisor or colleague	3%
It is a routine request/internal policy to do so in certain types of investigation	22%
To support or refute a reasonable line of enquiry	39%

Whilst 39% of responses agreed that it was to support or refute a reasonable line of enquiry, 36% of responses said that they were asked to do so by the CPS or other external party and 22% responses to say that it was a routine request.

Indications from responses written in the additional information section are that the majority of respondents had a general understanding that third party material requests should be part of a reasonable line of enquiry, but that it sometimes becomes routine or can be underpinned by wanting to assess the credibility of a victim.

6. How do you decide what and how much material to request from third parties?

The government sought views on how respondents generally decide what and how much material to request from third parties.



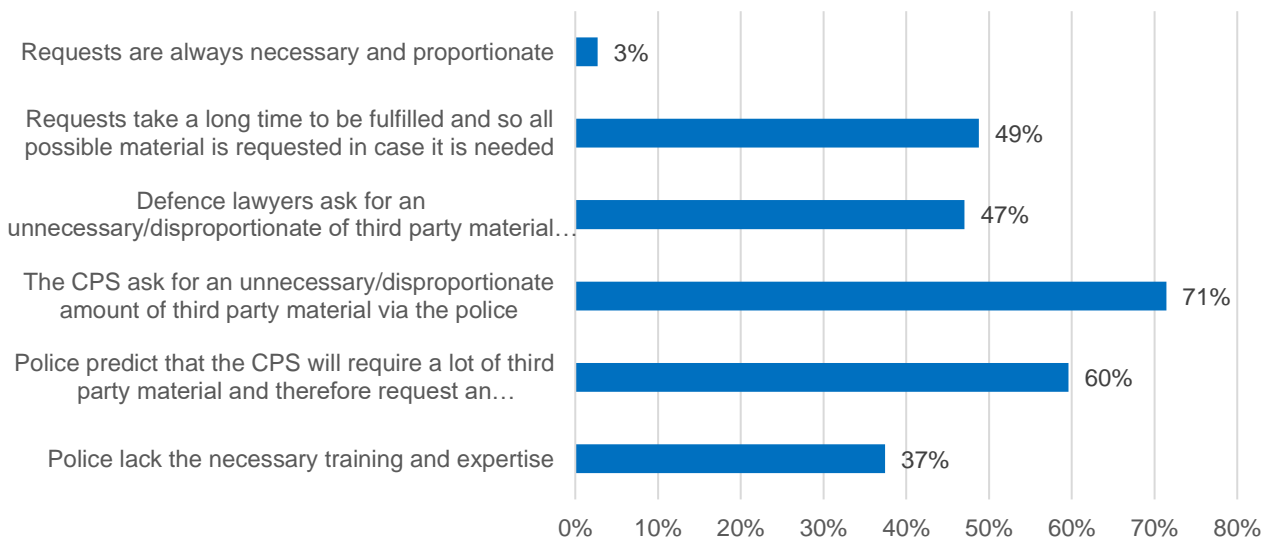
Other	9%
Lines of enquiry are considered, and specific material is requested to support or refute them	50%
All potentially useful material is requested in case it is needed	41%

Around half of the respondents said that reasonable lines of enquiry are considered, and specific material is requested to support and refute them. However, 41% of respondents noted that all potentially useful material is requested in-case it is needed.

Some respondents reported in the additional information section the difficulties in issuing targeted third party material requests. Respondents reported that third parties may not have the necessary resources to be able to provide specific third party material, which may affect the quality and quantity of returns.

7. In your view, what are unnecessary and disproportionate requests for third party material driven by?

Respondents were asked what drives unnecessary and disproportionate requests for third party material, checking all that apply. The majority of responses (50%) to this question came from police officers. Approximately 8% of respondents were CPS and 42% of respondents were from the other response categories.



Requests are always necessary and proportionate	3%
Requests take a long time to be fulfilled and so all possible material is requested in case it is needed	49%
Defence lawyers ask for an unnecessary/disproportionate of third party material via the police	47%
The CPS ask for an unnecessary/disproportionate amount of third party material via the police	71%

Police predict that the CPS will require a lot of third party material and therefore request an unnecessary/disproportionate amount	60%
Police lack the necessary training and expertise	37%

A very small percentage (3%) of the responses said requests are always necessary and proportionate, whilst 71% of responses said the CPS were the driving force behind unnecessary and disproportionate requests for third party material. Some responses indicated that this may be due to police officers predicting that the CPS will require all third party material to make a charging decision.

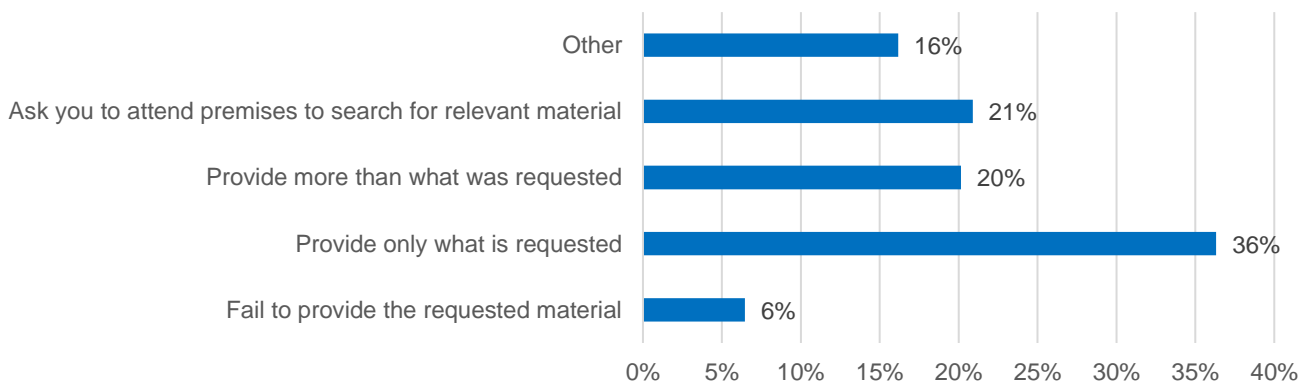
Issuing requests for third party material (questions 8, 9 and 10)

The government sought views on how long it takes to issue a request for third party material and whether this differs by type of investigation. 56% of respondents said that the length of time it takes to issue a third party request did not differ by type of investigation. Indications from some responses are that this may be more dependent on the nature and complexity of the case rather than investigation type. There were mixed views regarding the length of time it took to issue a third party request. As timelines varied widely, it was not possible to estimate a meaningful average.

11. In your experience, do third parties from whom you have requested information generally:

- a. **Fail to provide the requested material**
- b. **Provide only what is requested**
- c. **Provide more than what was requested**
- d. **Ask you to attend premises to search for relevant material**

The consultation sought views from consultees on their experiences with third parties regarding third party material requests.



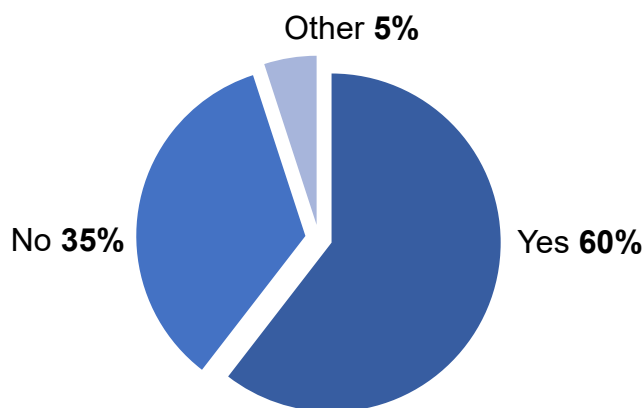
Other	16%
Ask you to attend premises to search for relevant material	21%
Provide more than what was requested	20%
Provide only what is requested	36%
Fail to provide the requested material	6%

Of the 402 total responses received, 36% agreed that third parties generally provide only what is requested and only 6% reported that in their experiences, third parties failed to provide what was requested. 21% of responses said that some third parties require them

to attend the premises to search for relevant material. Some responses highlighted the effect this practice has on police resources and the potential for exposure to material that is not relevant to the investigation.

65 respondents gave additional comments to provide an answer to this question. Some respondents reaffirmed that the quantity and quality is variable between third parties as they operate under different policies. For example, some respondents noted that the material returned by a third party may be redacted or that the third party requires additional forms to be completed by the investigation officer. The government considers that this may be due to the sensitive nature of the information held by the third party.

12. In your experience, does the quantity of third party material requested affect the amount of time taken for the material to be returned?

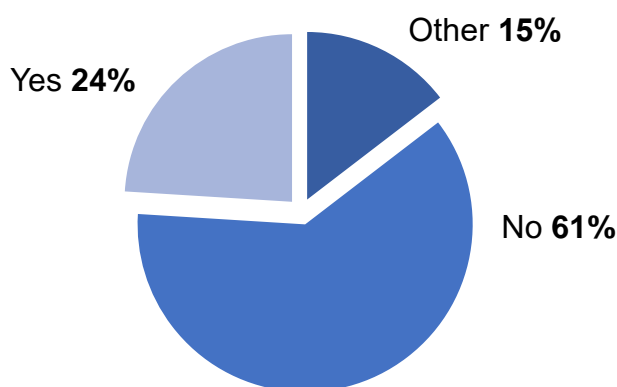


Other	5%
Yes	60%
No	35%

Out of 339 respondents, 60% of respondents agreed that if more third party material is requested, then it will take longer for the material to be returned. Some respondents have noted that the length of time for large volumes of material to be returned can be extended depending on the format of the material or if redaction of information is required.

13. In your experience, do third parties generally return requests for material within a satisfactory timeframe (i.e. to ensure timely progression of the investigation)?

The consultation asked consultees if third parties generally returned requests for material within a satisfactory timeframe.



Other	15%
Yes	24%
No	61%

Out of 330 respondents, 61% of respondents said that third parties do not generally return third party material requests within a satisfactory timeframe, with some respondents noting that third parties required chasing. Some respondents considered that a third party's organisational size and resource capacity can heavily impact on their ability to return third party material requests within a satisfactory timeframe.

14. Why do you think it can take a long time for some third parties to respond to requests for third party material?

Respondents were asked to check all that apply. There were mixed views on why it may take a long time for some third parties to respond to requests for third party material. 69% of respondents believed that many third parties did not consider third party material requests a priority, with some respondents reaffirming that it can be challenging to obtain prompt responses. Just over half of respondents said that this was due to a lack of a dedicated member of staff or team to handle these requests. Some respondents considered that third party resources, against existing workload and volume of requests, can impact the length of time for third parties to respond.

15. How far do you agree with the following statements:

- a. Delays in returns for third party material is a significant single factor in slowing down an investigation.**
- b. When third party material is requested early in an investigation, it is less likely to cause a delay.**

89% of response agreed that delays in returns for third party material slows down an investigation. 64% of responses agreed that when third party material is requested early in an investigation, it is less likely to cause delay.

16. Aside from ensuring that requests for third party material are necessary and proportionate, is there any other action – legislative or non-legislative – you would like to see to improve the timeliness of returns for third party material?

The consultation asked an open-ended question on what legislative or non-legislative actions respondents would like to see to improve the timeliness of returns for third party material.

There was support for measures to introduce a more standardised process or national framework for handling third party requests to ensure for a more consistent approach. Respondents noted this could involve the implementation of service level agreements; specialised training amongst police forces and third parties; and greater transparency of decision-making processes between CPS, police forces and third parties.

Section 2: Questions for providers of third party material, victim groups and victims, analysis of all responses

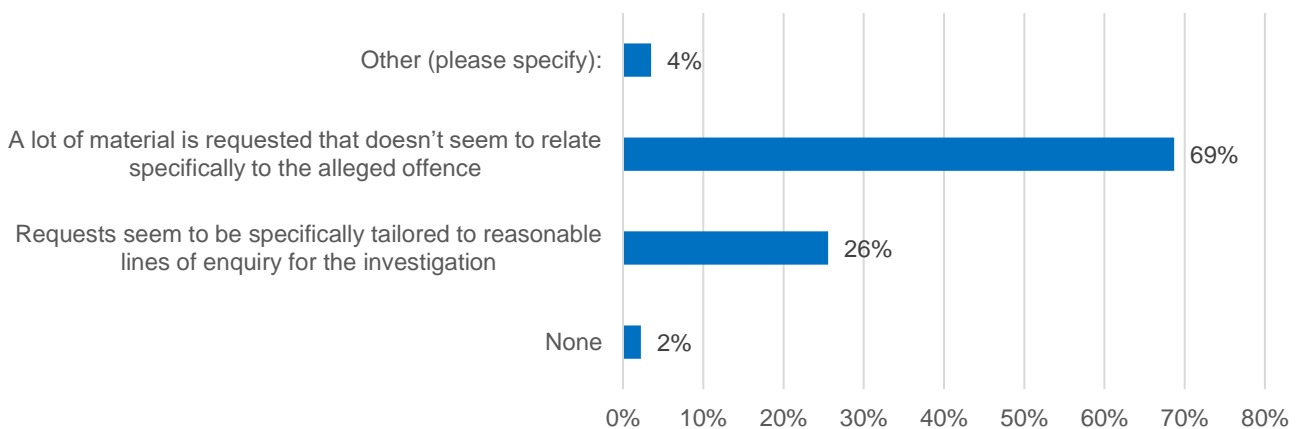
2.1 Summary

In this section, we asked what third party material is and why and how often it is requested.

2.2 Responses

17. In your experience, how much third party material is typically requested about a victim?

The consultation sought views from consultees on how much third party material is typically requested about a victim.



Other	4%
A lot of material is requested that doesn't seem to relate specifically to the alleged offence	69%

Requests seem to be specifically tailored to reasonable lines of enquiry for the investigation	26%
None	2%

69% of responses agreed that a lot of material is requested that doesn't relate specifically to the alleged offence, with many respondents noting that everything they hold on a victim is requested. Some respondents expressed concern that this is directly related to assessing the credibility of a victim.

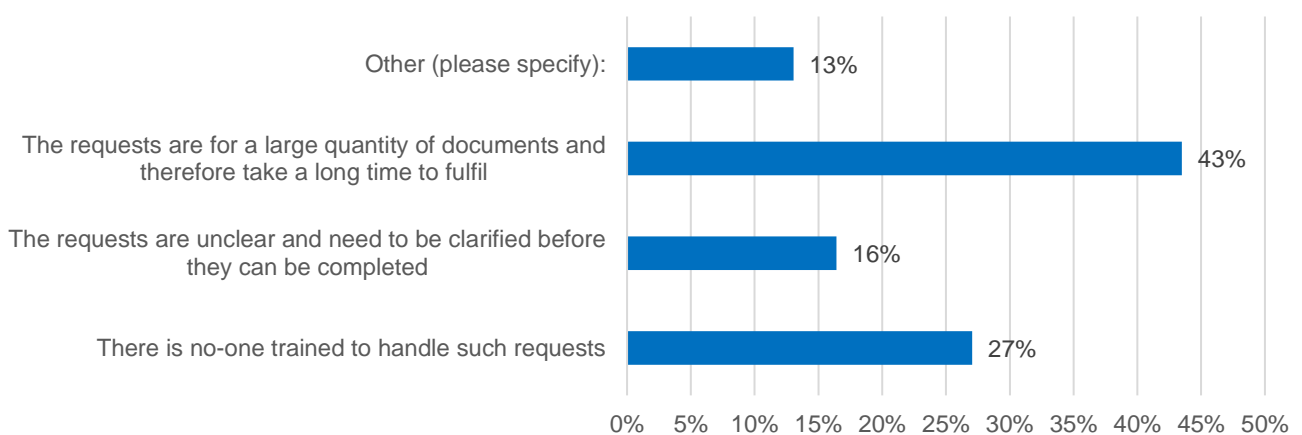
Processing and answering a request for third party material (questions 18, 19, 20, 21, 22)

The consultation sought views on how long it takes to process and answer a request for third party material and whether this differs by type of investigation.

Respondents answered equally yes and no when asked if the length of time it takes to process and answer a third party material request is dependent on the type of investigation. Indications from some responses are that the nature and complexity of a case may have an impact on response times rather than investigation type. There were mixed views regarding the length of time it took to answer and respond to a third party request. As timelines varied widely, it was not possible to estimate a meaningful average.

23. In your experience, what prevents the timely return of third party material?

The government consulted on what prevents the timely return of third party material.



Other	13%
The requests are for a large quantity of documents and therefore take a long time to fulfil	43%
The requests are unclear and need to be clarified before they can be completed	16%

There is no-one trained to handle such requests	27%
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43% of the responses agreed that third party material requests are for a large quantity of documents and therefore take a long time to fulfil. Many respondents argued that staff resources and availability impede their ability to respond to requests in a timely manner. There was a general feeling amongst some respondents that requests from investigators were often ill-defined and did not follow a reasonable line of enquiry. This meant that requests needed to be clarified before they could be completed.

Section 3: Questions for all respondents, analysis of all responses

3.1 Summary

The consultation asked for views on whether the suggested proposals in the consultation document would help address the issues of necessity and proportionality in third party material requests. The consultation also asked an open question if there are any other solutions consultees would like considered.

3.2 Responses

24. Policy proposals

The government invited views on whether respondents agreed or disagreed with the following policy proposals. The results are outlined in the table below.

Please state how much you agree or disagree with the following:	Number of respondents	Percentage of respondents that agree or strongly agree
Q24.1. a. Engaging in Early Advice with the Crown Prosecution Service in rape cases helps to ensure requests for third party material are necessary and proportionate, in pursuit of a reasonable line of enquiry.	373	64%
Q24.2. b. There should be a statutory duty on policing to only request third party material that is necessary and proportionate, in pursuit of a reasonable line of enquiry for an investigation.	380	87%
Q24.3. c. There should be a statutory duty on policing to provide full information to the person about whom the third party material is being requested. This could include details about the information being sought, the reason why and how the material will be used, and the legal basis for the request.	379	70%

Q24.4. d. There should be a statutory duty on policing, in their requests for information to third parties, to be clear about the information being sought, the reason why, how the material will be used and the legal basis for the request.	378	81%
Q24.5. e. There should be a code of practice to accompany the duties outlined in points b - d to add clarity on the expectations on policing and promote consistency in practice.	377	85%

25. Please provide further details for your answers and responses to the policy proposals outlined in questions 24 a-e.

The government invited respondents to provide further details on their answers and responses to the police proposals outlined in question 24 a-e. Respondents gave further information for why they did or did not agree with the proposals. Those who agreed generally did so because they felt the proposals would add clarity and promote consistency. Those who disagreed cited reasons including that the legal framework already exists and concerns around the additional administrative burden on the police.

26. Are there any other actions – legislative or non-legislative – you would like to see to reduce the number of disproportionate and unnecessary requests for third party material?

The government asked an open question on whether there are any other legislative or non-legislative actions respondents would like to see to reduce the number of disproportionate and unnecessary requests for third party material. Many respondents supported measures for specialist guidance and training on third party material across the criminal justice system. Responses reaffirmed the need for greater transparency of decision-making processes across the criminal justice system and with third parties. Some respondents argued that guidance and training should be supported by a code of practice or legislative guidance to ensure best practices are enforced across the board.

There was also some support for specialist legal support for victims of RAOSO-like crimes, with some respondents noting that counselling and therapy notes should be non-disclosable.

Help and support

The purpose of this consultation is to gather information and evidence to support Government policy proposals regarding police requests for third party material. If you have been affected by any of the issues in this consultation and require help or support, information about available services is available here: [How to get support | VAWG \(campaign.gov.uk\)](https://www.campaign.gov.uk). If you are in immediate danger or want to report a crime, call 999 and ask for the police.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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This publication is available at <https://www.gov.uk/government/consultations/police-requests-for-third-party-material>

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