

The Requests for Victim Information Code of Practice Consultation
Data and Identity Directorate
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To whom it may concern,

I hope this finds you well.

Please find below my response to the consultation on the proposed Victim Information Requests Code of Practice and counselling services definition.

This is informed by extensive conversations with third sector organisations supporting women affected by sexual violence and domestic abuse, as well as services supporting victims of child sexual abuse. It is also informed by the experiences of those victims in London I have worked with who have been subjected to and often deeply distressed by such requests for their personal information.

I know through my work that addressing this issue appropriately is highly important in protecting survivors' privacy and dignity, and in helping aid their recovery—particularly in the context of sexual violence and abuse. I welcome the opportunity to contribute to this process and have organised my response in accordance with the consultation questionnaire.

Q1: Part 1 Overview of the Guidance – Suitability

Response: Strongly Disagree

The overview provided in Part 1 of the Code is not suitable. Although the Code applies to all criminal offences, the majority of Third Party Material / Victim Information Requests will occur in cases of sexual violence, where the material sought is likely to be highly sensitive. In these cases, the correct threshold is not merely “necessary and proportionate” but “strictly necessary and proportionate.” The reason why the 2024 Act included these provisions was due to concerns about excessive requests for victims' data in sexual offences investigations. It is therefore pertinent to ensure that the higher threshold for making TPM requests in these cases is clear throughout the Code.

It should be acknowledged that Police officers and others using the Code will not read it cover to cover; they will consult the relevant section they believe applies. If the stricter test is only found in one paragraph (at present, paragraph 56), it is very likely to be overlooked. The higher threshold must be clearly embedded throughout the document wherever requests for sensitive data are discussed.

Q2: Part 2 – Summary of Duties under Chapter 3A

Response: Strongly Disagree

Part 2 fails to provide a sufficiently clear summary of authorised persons' legal duties. For example, references to "reasonable lines of enquiry" (RLEs) are incomplete. Each use of the term should either quote or link to the full definition found in paragraph 61 of the draft code, which incorporates the key legal principle from *R v Bater-James* that such enquiries must be based on an identifiable foundation, not mere speculation.

Additionally, references to the "substantial probative value" threshold for counselling records (e.g. at paragraph 20(d)) are made without explaining what this means until much later in the Code (paragraph 83). The concept should be fully explained or directly linked to Paragraph 83 at each reference.

Finally, paragraph 22's description of informing victims about requests is too vague. The phrase "unless inappropriate" is open to overuse unless clearly defined. The Code must limit such discretion and clarify that victims should be informed unless there are exceptional and well-defined circumstances.

Q3: Part 3 – Compatibility with Data Protection and Human Rights Law

Response: Strongly Disagree

The guidance that the Code of Practice provides in Part 3 on the compliance of the duties in accordance with data protection and human rights legislation is not accurate. Paragraph 62 fails to reflect the new legal threshold brought about under the Victim and Prisoners Act 2024 that is now required for accessing pre-trial therapy (PTT) records. These are counselling records and subject to the stricter test of "substantial probative value." This must be clearly stated here.

The principle of data minimisation—central to the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR)—is only mentioned once (in paragraph 49). This is insufficient. Clear guidance must be included throughout the Code that all data requests should be as limited as possible (e.g., restricted by date or subject matter).

Q4: Part 4 – Assessing Necessity, Proportionality and RLE

Response: Strongly Disagree

The Code continues to undermine clarity by failing to repeat or link to essential legal definitions.

Paragraph 70 should directly cite the definition of RLE found in paragraph 61. Without this, practitioners may assume that the term has no fixed meaning.

Paragraph 75 mentions that lifetime records should not be requested, but fails to provide positive guidance about how to appropriately set data parameters. The emphasis should be on default minimisation, not merely on avoiding extreme overreach.

Q5a: Guidance on Requesting Counselling Records

Response: Strongly Disagree

The guidance on counselling records is not fit for purpose. Paragraph 88 must explicitly state that the presence of **a factual account of the offence** in therapy records **is not sufficient reason** to access those records.

This is the most common rationale given by investigators and is precisely what the new threshold was introduced to prevent.

The omission of this clarity undermines the intent of the legislation and may deter victims from seeking or engaging fully in therapy. Language from the Canadian framework—specifically stating that prior inconsistent statements alone are not sufficient—should be incorporated.

Q5b: Appropriateness of Paragraphs 81(a)–(e)

Response: Disagree

Paragraph 81(b) refers to “less intrusive alternatives” without defining what this means. Across the Code, vague references to “less intrusive means” lack the specificity needed to support proper application or oversight. Clear examples and explanatory text are essential wherever “less intrusive means” is referenced.

Q5c: Safeguards Introduced for Counselling Records

Response: Disagree

While the Code introduces *some* safeguards, they fall short of the protections envisaged by the legislation. Please refer to my response to Q5a for detailed concerns and recommendations.

Q6a–e: Definition of Counselling Services

- **Q6a: Strongly Agree** – The definition must cover the full range of therapeutic approaches and focus on the nature of the work (support for emotional and mental health).
- **Q6b: Strongly Disagree** – The protections must apply regardless of the provider’s registration or qualification status. Protection of the victim-survivor must not depend on regulating therapists.
- **Q6c: Strongly Agree** – Group and family therapy sessions must be covered equally.
- **Q6d: Strongly Agree** – The same standards must apply regardless of the provider (NHS, private, or voluntary sector).
- **Q6e: Yes** – I fully support the following proposed definition put forwards by Rape Crisis England & Wales, Centre for Women’s Justice, End Violence against Women Coalition, Imkaan, Rights of Women, British Association for Counselling and Psychotherapy (BACP), The National Counselling and Psychotherapy Society (NCPS), United Kingdom Council for Psychotherapy (UKCP) and the British Psychological Society (BPS):

“Counselling services are services provided by a person in a professional capacity, whether that person is paid or unpaid, registered or unregistered, who provides therapeutic and/or emotional support for the counselled person’s emotional, psychological and/or mental health.”

This definition ensures that all victims are equally protected, irrespective of where or how they access support.

Q7: Part 5 – Provision of Information to Victims**Response: Strongly Disagree**

The Code permits notification to the victim on the same day as the TPM request is submitted.

This defeats the purpose of victim involvement, as there would be little to no opportunity to make representations or seek legal advice about the request. The threshold for delayed notification (“not reasonably practicable”) is too low and open to abuse.

Additionally, the list of professionals in paragraph 108 should include independent legal advisers. This reflects a current service in London and the Government’s commitment to a national rollout.

Q8: Content of Victim Information Requests to Third Parties**Response: Strongly Disagree**

Third parties must be informed:

- That disclosure is voluntary unless ordered by a court. Paragraphs 131 and 135 make this clear to the authorised person, but it is very important to include it in the information provided to the third party, as inevitably most third parties will assume that they have to comply with a police request.
- That third parties have their own data protection obligations and professional responsibilities to the victim.
- Of the victim-survivor’s views—if these have been sought and recorded—before making a decision on whether to comply with the request. It is an essential part of a fair system for a third party to be aware of their views before making a decision on disclosing data about them.

Without this information, the current system risks being coercive and incomplete.

Q9: Early CPS Advice**Response: Strongly Disagree**

Where sought, the CPS provide advice to the Police as early as possible on what kind of evidence to look for to help them build the case.

Paragraph 144 wrongly implies that Early Advice is used to determine whether a case proceeds to court, which is inaccurate. It should also clarify that Early Advice should be sought particularly where victims raise objections to data requests or the relevance of proposed enquiries. If victims object to data requests then this should be discussed in early advice.

Q10a: Engagement with Vulnerable Adults**Response: Disagree**

The guidance fails to:

- Clarify that police must provide interpreters—not support services.
- Address risks in using unqualified supporters as interpreters, which may compromise safety and accuracy.
- Recognise the limitations of ISVAs and IDVAs in acting as translators.

Q10b–c: Engagement with Children and Adults Without Capacity

Response: Neither Agree nor Disagree

I defer to the expertise of practitioners who work directly with children and adults without capacity.

Q11: Supporting Materials

Response: Yes

We strongly recommend that draft TPM request forms, FAQs for practitioners, and guidance for victims and third parties be shared for consultation. The current NPCC interim TPM form is legally complex and inaccessible to non-specialist organisations. The third-party section especially needs to be redrafted in plain English.

Q12: Any Other Comments

Yes

In addition to the feedback I have provided in response to question 7, in relation to how victims are provided with information about such requests, I also strongly recommend updating the Victims' Code to reinforce victims' rights in relation to Victim Information Requests (VIRs) and help ensure greater compliance amongst authorised persons.

At present, the Code sets out broad entitlements such as the right to be kept informed and to have personal data treated respectfully, but it does **not** contain specific provisions for how victims should be notified about requests for their sensitive information, nor what rights they have to participate in or challenge that process.

I suggest that this new entitlement should be added to the Victims' Code stating that victims must be informed **before** any request is made for third-party material (TPM) about them.

This should include notification of:

- What material is being requested
- Why it is being requested
- What legal threshold is being applied (e.g. "substantial probative value")
- That the third party is not obliged to comply unless compelled by court order
- Their entitlement to express their views on whether their information should be disclosed
- Their entitlement to have their views recorded and must be considered before any request is submitted.
- That they can seek independent legal advice, where available

I would suggest a form of wording along the following lines as the basis for a new right under the Victims Code in relation to this:

- *"You have the right to be informed before the police or prosecution request personal or sensitive information about you from a third party (such as your GP, school, or counsellor). You have the right to say whether you agree or object to this request, and your views must be taken into account. You may also seek legal advice and ask for support in understanding the process."*

Your sincerely,

A handwritten signature in black ink, appearing to read 'C. Waxman', on a light grey background.

Claire Waxman OBE

Independent Victims' Commissioner for London