

**INVESTIGATION UNIT
TRAINING PACKAGE**

(D)

DISCLOSURE MODULE

Units

Unit D1

Disclosure

Unit D1: DISCLOSURE

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Objectives

By the end of this unit you will:

- Understand what disclosure means
- Be able to complete disclosure

Disclosure

INTRODUCTION

Disclosure

The defendant's right to a fair trial is the essential rationale for disclosure by the prosecution. The defendant's right to fair disclosure is an inseparable part of his or her right to a fair trial.

Disclosure is a process by which all relevant information gathered by the prosecution against the defendant in criminal proceedings is provided to the defendant, to enable the defendant to view the case against them and prepare their defence.

As an Investigator, you will be involved in prosecuting a person for benefit fraud (or student allowance, and/or student loan fraud). A solicitor from the Ministry or Crown Law will provide legal representation in court.

The person being prosecuted, usually a client and/or their partner will be the defendant(s). One of your roles will be to prepare and share the relevant Ministry information and documents and organise the witnesses so that prosecution runs smoothly. You may also be called upon to review information disclosed by the defendant.

Disclosure is a legal requirement under the Criminal Disclosure Act 2008.

THE CRIMINAL DISCLOSURE ACT 2008

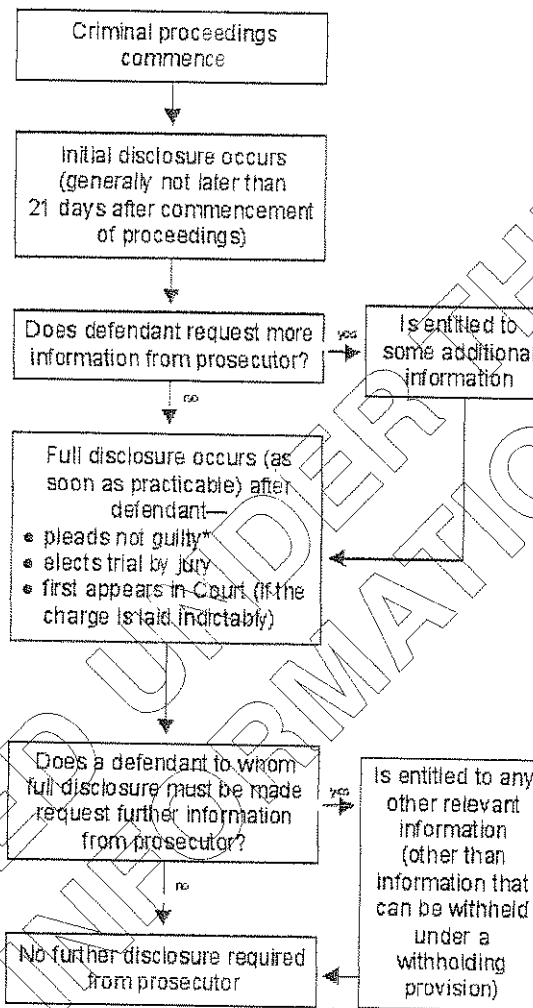
The purpose of the Criminal Disclosure Act 2008 is to promote a fair, effective and efficient disclosure of relevant information between the prosecution and the defence, and by non-parties, for the purposes of criminal proceedings.

The Criminal Disclosure Act 2008 does not limit or affect other enactments relating to availability of information.

The following diagram provides a general overview of disclosure by prosecutor to the defendant.

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Disclosure by prosecutor to defendant



* If disclosure is not required if the defendant pleads guilty instead of not guilty to a charge laid summarily.

INITIAL DISCLOSURE

Soon after prosecution begins (often as the summons is being served, at the client's first appearance in court, or when charges are laid), but no longer than 21 days after service of the summons upon the defendant, you must complete initial mandatory disclosure and disclose the following information to the defendant:

- A Summary of Facts (which includes the maximum penalty, and the minimum penalty (if one is provided for), for the offence and a list of previous offences proved to have been committed by the defendant
- A summary of the defendant's right to apply for further information before entering a plea

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- A list of the defendant's previous convictions that are known to the prosecutor

This initial mandatory disclosure is provided to the defendant (or their lawyer) pursuant to section 12(1) Criminal Disclosure Act 2008.

After criminal proceedings start, the defendant can request in writing the following information which must be disclosed to them as soon as practicable under Section 12 (2) of the Criminal Disclosure Act 2008:

- (a) the names of any witnesses whom the prosecutor intends to call at the hearing or trial; and
- (b) a list of the exhibits that are proposed to be produced on behalf of the prosecution at the hearing or trial; and
- (c) a copy of all records of interviews with the defendant; and
- (d) a copy of all records of interviews of prosecution witnesses by a law enforcement officer that contain relevant information; and
- (e) a copy of job sheets and other notes of evidence completed or taken by a law enforcement officer that contain relevant information; and
- (f) a copy of any records of evidence produced by a testing device that contain relevant information; and
- (g) a copy of any diagrams and photographs made or taken by a law enforcement officer that contain relevant information and are intended to be introduced as evidence as part of the case for the prosecution; and
- (h) a video copy of any video interview with the defendant; and
- (i) a copy of relevant records concerning compliance with the New Zealand Bill of Rights Act 1990; and
- (j) a copy of any statement made by, or record of an interview with, a co-defendant in any case where the defendants are to be proceeded against together for the same offence; and
- (k) a list of any information described in paragraphs (a) to (j) that the prosecutor refuses under section 15, 16, 17, or 18 to disclose to the defendant, together with—
 - (i) the reason for the refusal; and
 - (ii) if the defendant so requests, the grounds in support of that reason, unless the giving of those grounds would itself prejudice the interests protected by section 16, 17, or 18 and (in the case of the interests protected by section 18) there is no overriding public interest.

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FULL DISCLOSURE

If, during prosecution, a client pleads not guilty to an offence proceeded against summarily, elects trial by jury or if the information has been laid indictably, and made his or her first appearance in Court in relation to the offence(s), the prosecutor must complete full disclosure. Full disclosure involves the prosecution providing copies of all 'relevant' information to the defence.

Relevant means information or an exhibit that tends to support or rebut, or has material bearing on, the case against the defendant. The types of information that must be provided as part of full disclosure includes:

- (a) a copy of any statement made by a prosecution witness; and
- (b) a copy of any brief of evidence that has been prepared in relation to a prosecution witness; and
- (c) the name and, if disclosure is authorised under section 17, the address of any person interviewed by the prosecutor who gave relevant information and whom the prosecutor does not intend to call as a witness; and—
 - (i) any written account of the interview, whether signed or unsigned, and any other record of the interview; and
 - (ii) any statement made to the prosecutor by the person; and
- (d) any convictions of a prosecution witness that are known to the prosecutor and that may affect the credibility of that witness; and
- (e) a list of all exhibits that the prosecutor proposes to have introduced as evidence as part of the case for the prosecution; and
- (f) a list of all relevant exhibits in the possession of the prosecutor that the prosecutor does not propose to have introduced as evidence; and
- (g) a copy of any information supplied to the prosecutor in connection with the case by any person or persons whom the prosecutor proposes to call to give evidence as an expert witness or witnesses; and
- (h) a copy of any relevant information supplied to the prosecutor by a person or persons whom the prosecutor considered calling to give evidence as an expert witness or witnesses, but elected not to do so.

If information referred to above comes into the possession or control of the prosecutor after full disclosure has been completed and before the trial or hearing has been completed, the prosecutor must disclose the information to the defendant as soon as reasonably practicable. You are not required to record information or obtain information for the sole purpose of disclosure.

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INFORMATION THAT MAY BE WITHHELD

Some information may be withheld from the defendant under Section 14 (2) if:

- (a) the information is not relevant; or
- (b) the information may be withheld under section 15, 16, 17, or 18; or
- (c) the request appears to be frivolous or vexatious.

Information may be withheld under the Criminal Disclosure Act 2008 if:

- (a) disclosure of the information is likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or
- (b) disclosure of the information is likely to endanger the safety of any person; or
- (c) the information is—
 - (i) material that is prepared by or for the prosecutor to assist the conduct of the hearing or trial; or
 - (ii) a communication dealing with matters relating to the conduct of the prosecution and is between—
 - (A) the prosecutor and another person employed by the same person or agency that employs the prosecutor; or
 - (B) the prosecutor and any adviser to the prosecutor; or
 - (iii) analytical or evaluative material prepared, in connection with an investigation that led to the defendant being charged, by a person employed by a person or agency for another person employed by that person or agency or for the prosecutor; or
- (d) the information is subject to sections 108 and 109 of the Evidence Act 2006 (which relates to information about undercover police officers); or
- (e) the information is subject to a pre-trial witness anonymity order under section 110 of the Evidence Act 2006 or a witness anonymity order under section 112 of the Evidence Act 2006; or
- (f) the information is subject to section 16 of the Victims Rights Act 2002 (which relates to information about witnesses' addresses); or
- (g) the disclosure of the information would be likely to prejudice—
 - (i) the security or defence of New Zealand or the international relations of the Government of New Zealand; or

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(ii) the entrusting of information to the Government of New Zealand on a basis of confidence by the government of any other country or any agency of such a government or any international organisation; or

(h) disclosure of the information would be likely to facilitate the commission of another offence; or

(i) disclosure of the information would constitute contempt of Court or contempt of the House of Representatives; or

(j) the information could be withheld under any privilege applicable under the rules of evidence; or

(k) disclosure of the information would be contrary to the provisions of any other enactment; or

(l) the information is publicly available and it is reasonably practicable for the defendant to obtain the information from another source; or

(m) the information has previously been made available to the defendant; or

(n) the information does not exist or cannot be found; or

(o) the information—

(i) reflects on the credibility of a witness who is not to be called by the prosecutor to give evidence but who may be called by the defendant to give evidence; and

(ii) is not for any other reason relevant.

(2) If part only of the information may be withheld, the prosecutor must make the remainder of the information available if it is possible to protect the withheld information by deletion, summary, or otherwise.

(3) If the prosecutor becomes aware that there has ceased to be any justification for withholding all or part of any information that has been withheld under this Act, the prosecutor must, if the criminal proceedings have not yet been completed, disclose that information to the defendant as soon as reasonably practicable.

Trade secrets may also be withheld under section 18 of the Criminal Disclosure Act 2008.

There are also restrictions on disclosing certain identifying witness or informant information, for example their address (residential or postal), email address, fax number or telephone number. This information may only be disclosed with the consent of the witness or informant, or with the leave of the Court. This applies to the informant regardless of whether the prosecutor intends to call the informant as a witness.

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If you decide to withhold information you must (as soon as reasonably practicable) inform the defendant of that decision and the grounds for withholding the information unless:

- The information is not held by, in possession of or in control of the prosecutor, or
- You do not hold the information in the recorded form.

DISCLOSURE BY DEFENDANT TO PROSECUTOR

Disclosure by defendant to a prosecutor can occur when the defendant has an alibi and/or any other expert evidence. This does not happen very often, but it may happen.

If the defendant has an alibi, they must disclose the details to the prosecutor within 14 days after:

- the defendant pleads not guilty to a charge brought summarily
- elects trial by jury
- is committed for trial (if the charge is laid indictably).

If the defendant has evidence to be given by an expert witness, they must, within 14 days of start of the trial or defended hearing, disclose certain details to the prosecution.

Inspection of exhibits by the defendant

The prosecutor must, on request of the defendant, allow the defendant to inspect any exhibit that appears on the exhibit list. If the exhibit can be easily copied or duplicated, then the prosecutor must disclose a copy of it to the defendant.

The inspection by the defendant may be subject to conditions the prosecutor deems necessary to ensure the security and integrity of the exhibit in maintaining its evidential value.

DISCLOSURE BY NON-PARTIES

The defendant may apply to the Court for an order requiring a non-party to make disclosure. An application may be made at any time after the defendant has:

- pleaded not guilty to a charge brought summarily; or
- elected trial by jury under the Summary Proceeding Act 1957; or
- if the information has been laid indictably, been committed for trials.

The defendant may apply to the Court for an order granting a hearing to determine whether information that is held by a person or agency, other than

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the prosecutor (which in the case is the Ministry), be disclosed to the defendant.

The defendant must give a copy of the application for an order to the prosecutor, and the prosecutor must be allowed reasonable time to make written submissions to the Court concerning the application. The Court may seek and consider written submissions from the person or agency that holds information requested by the defendant.

UNDISCLOSED INFORMATION

If, during a hearing or trial of a defendant, the court finds that evidence should have been disclosed to the other party but was not, the Court may:

- exclude the evidence; or
- adjourn the hearing or trial; or
- admit the evidence if it is in the interests of justice to do so.

CONGRATULATIONS!!

You have now finished the **Disclosure Module**

**NEXT MODULE:
COURT**