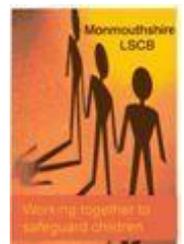




# South East Wales Regional Safeguarding Forum

## Protocol for the Management of Information held by the Local Safeguarding Children Board



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## 1. INTRODUCTION AND PURPOSE

- 1.1 The local safeguarding children board (LSCB) has been established under Section 31 (1) of the Children Act 2004 to coordinate what is done by its agency members to safeguard and promote the welfare of children
- 1.2 The LSCB is committed to openness and transparency in the delivery of functions and responsibilities for safeguarding children, (Safeguarding Children Working Together under the Children Act 2004, WAG 2006). To this end the Board is working to make as much information as possible accessible to the public. This is generally available on the Board's website.
- 1.3 There is still a considerable amount of information held by the LSCB that is unpublished, including exempt material and confidential information concerning individuals. The Board considers it to be in the public interest to disclose information unless it can be clearly shown that it is not in the public interest to do so for example, because it could cause harm, breach confidentiality or prejudice the conduct of the LSCB in safeguarding children.
- 1.4 The aim of this protocol is to establish a mechanism for the handling of LSCB materials and the management of requests for their release.
- 1.5 This protocol should not hinder the rights of individuals or others to access information lawfully under the Data Protection Act 1998 and the Freedom of Information Act 2000.

## 2. SCOPE

- 2.1 This protocol applies to the information obtained and generated by the Board or undertaken in the name of the Board. It does not apply to information controlled by a constituent single agency unless this has been generated for a LSCB purpose. Nor does this protocol give direction to individual agencies or organisations about the management of their data.
- 2.2 The scope of the protocol does not extend to the topic of minute taking but recognises the importance of this task in relation to the release of information. Of particular importance is how professional opinion is recorded. This should be a matter of consideration for the LSCB.

Good Practice Guidance on the recording of professional opinion is available from the Information Commissioners (ICO) website: [www.ico.gov.uk](http://www.ico.gov.uk) (Data Protection Good Practice Note).

- 2.3 This protocol sets out the principles by which the Board will meet its obligations particularly with regard to the following legislation:-

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- The Data Protection Act 1998
- Freedom of Information Act 2000

### **3. PRINCIPLES**

3.1 The following principles must underpin the interpretation of this protocol:-

- Concern to avoid harm.
- Sensitivity to the request for information from individuals who have personal involvement in a safeguarding issue.
- Respect for the professional status of each agency and staff members.
- Maintenance of confidence for clients and professionals in the handling of sensitive information.
- Consistency of approach from constituent agencies of the Board.
- Lawfulness

### **4. KEY FEATURES OF LEGISLATION**

4.1 There have been examples of both individuals and the safeguarding process being placed at risk as a result of inappropriate disclosures of confidential information. Whilst this is well intentioned the decisions taken to do so have sometimes been based on too narrow an interpretation of the legislation and insufficient understanding about the wider duties of the LSCB. Careful consideration must therefore be given to the interpretation of legislation in this area.

4.2 A significant amount of the information held by the LSCB is personal data which must be managed in accordance with the regulations contained within the Data Protection Act 1998 (DPA). To determine whether the data is “personal data” for the purposes of DPA, the questions set out in appendix 1 will assist.

4.3 The Freedom of Information Act 2000 (FOI) is intended to reinforce the transparency and accountability of public authorities, and provides a general right of access to recorded information held by a public authority. Requests for information held by the LSCB under the FOI is likely to be made to one of the public authorities represented on the LSCB and in particular the local authority council. Such requests may be made without the need for explanation or purpose and once released the information can be made widely available.

The Act places two general duties on the public body.

- To confirm or deny that it holds the information requested

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And

- If it does hold the information, to communicate it to the person requesting it

In answering the first question it is important for the decision makers to consider whether confirming or denying whether information is held could cause harm and there may be times when to do so would be inappropriate.

These duties are subject to exemptions. (Appendix 2).

#### 4.4 The Human Rights Act incorporates the European Convention on Human Rights in UK law. Article 8 of the Convention provides that:

- Everyone has the right to respect for his private and family life, his home and his correspondence; and
- There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Where information relating to a deceased person is also personal data about a living individual, a public authority must consider disclosure in the context of the Data Protection Act 1998. However, there are also situations in which the information in question identifies only a deceased person, but whose disclosure would affect a living person, most commonly a member of the deceased person's family. In these cases, a public authority must consider the implications of the Convention. More information on this issue can be obtained from the ICO website.

## 5 MANAGEMENT OF LSCB MATERIAL

### 5.1 The following system is recommended to proactively provide clarity about the status of LSCB documentation and a system for data management.

#### Protective Marking System

All materials generated by or for the purpose of the LSCB should be subjected to an evaluation for the need for protection by the author and marked appropriately as:-

- Unprotected
- Protected
- Confidential

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**Unprotected** Information will be material that can be freely shared and made available for public access.

**Protected** information will include personal data, case sensitive or organisation sensitive information that should not be shared wider than the constituent agency members and their Boards without the agreement of the LSCB.

**Confidential** information will include personal data, case sensitive or organisational sensitive information that should not be shared wider than an identified audience for a specific identified purpose, without the agreement of the LSCB. For example information made available to a Serious Case Review Subgroup

The flow chart in appendix 3 may assist the author in determining the level of protective marking required.

- 5.2 While these markings will provide a useful preliminary indication of their management, the level of confidentiality may change over time. A document marked confidential because of its sensitive content at the time may no longer be so 5 years later. Along with the level of marking, the period of time for which the marking is anticipated to be relevant should also be recorded on the document, along with a simple rationale for the marking, e.g. personal data; case sensitive; organisational sensitive (see appendix 3).

**These are guidelines only and if there is any uncertainty about the level of protective marking required then guidance should be sought from the Chair of the LSCB.**

- 5.3 The level of protection ascribed to the data brings with it requirements for
- Movement
  - Storage
  - Dispersal

Appendix 4 provides guidance for these requirements.

#### 5.4 Document Notation

In order for members of the Board who receive protectively marked LSCB information to handle this material appropriately, all LSCB documents should have noted on the covering page and as a footer:-

- Date of document
- Author of document
- Primary holder – LSCB member, Executive Officer of the agency; Chair LSCB
- The level of protection ascribed.

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- The anticipated time period for protective marking and any review date if this is appropriate
- The disposal time.

## 5.5 Responding to requests for Information

Where it is believed that the public may have interest, the LSCB should be proactive in making such information accessible, for example on an LSCB web site.

Requests for information made to any holder of unpublished LSCB data marked as '**Unprotected**' should be made freely available.

Information marked as **Protected** may be shared by the LSCB representative in receipt of the information within their own agencies and with professionals requiring the information for the purpose and function of the organisation. Information must not be copied or shared more widely than is necessary without the authorisation of the Chair of the LSCB.

Requests for information protectively marked as **Confidential** should not be shared beyond the identified audience without the authorisation of the Chair of the LSCB.

**All requests for protected or confidential information made by persons or organisations who are not constituents of the local safeguarding Board should be made in writing to the Chair of the LSCB.**

**Any request for 3<sup>rd</sup> party interest requests for information made to individuals or agencies in respect of LSCB data should be taken to the Chair of the LSCB to consider management of the request.**

Reaching a decision about the release of information can be difficult with issues complex and requiring a balance of the rights of different individuals. In these circumstances the Chair of the LSCB should convene a panel with appropriate LSCB members and professionals with relevant expertise in legislation and safeguarding to consider the management of the request.

Guidance on the release of information is constantly evolving. In some circumstances and in order to ensure the safe welfare of children, individuals and the safeguarding process it may be necessary to refer to the Information Commissioners Office for advice and guidance.

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## APPENDIX 1

### Personal Data for the purposes of the Data Protection Act 1998

- a) Can a living individual be identified from the data, or, from the data and other information in your possession, or likely to come into your possession?  
YES - Go to next question  
NO - The data is not personal data.
- b) Does the data 'relate to' the identifiable living person whether in personal or family life, business or profession?  
YES - The data is personal  
NO - Go to next question
- c) Is the data obviously about a particular individual?  
YES - The data is personal  
NO - Go to next question
- d) Is the data 'linked to' an individual so that it provides particular information about that individual?  
YES - The data is personal  
NO - Go to next question
- e) Does the data have any biographical significance in relation to the individual?  
YES - The data is likely to be personal data  
NO/UNSURE - Go to next question
- f) Does the data focus or concentrate on the individual as its central theme rather than on some other person or some object, transaction or event?  
YES - The data is likely to be personal data  
NO/UNSURE - Go to next question
- g) Does the data impact or have the potential to impact on an individual, whether on a personal, family, business or professional capacity.  
YES - Data is personal data  
NO - Data is unlikely to be personal data

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**Personal data applies to all individuals, including members of staff.**

## **APPENDIX 2**

### **Freedom of Information Act 2000 : Exemptions**

The duties of public authorities to release information following requests under the FOI Act are subject to exemptions.

Where the exemptions are 'qualified' exemptions they are subject to a "public interest test". This means that the public body will be under a duty to assess whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

A number of exemptions may be applicable to information held by the LSCB. For example:-

#### **Absolute Exemptions**

Section 36: Information likely to prejudice the effective conduct of public affairs.

Section 40: Personal information.

Section 41: Information provided in confidence.

Section 44: Prohibitions on disclosure (i.e. may constitute contempt of court)

#### **Qualified Exemptions (to which public interest test applies)**

Section 22: Information intended for future publication

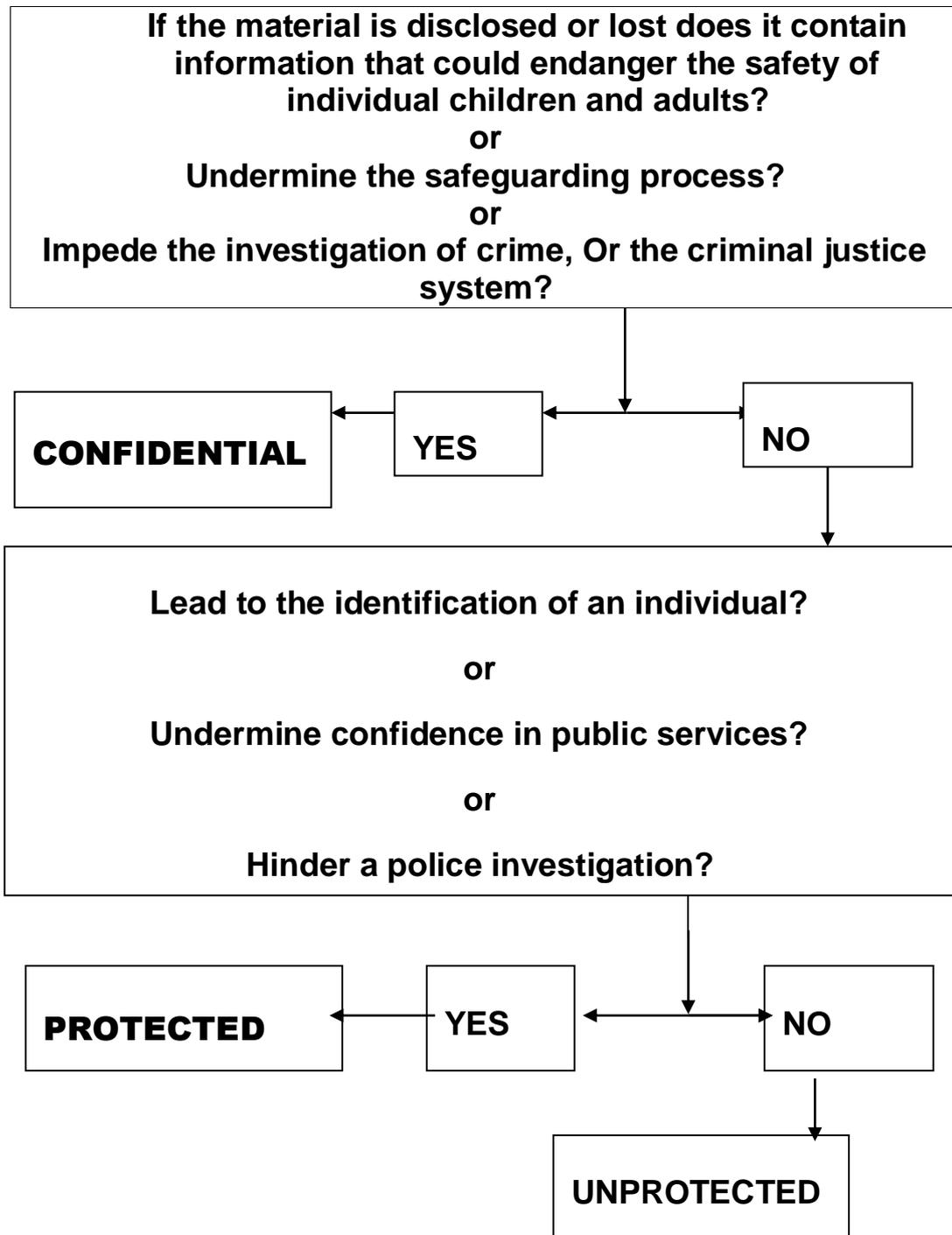
Section 31: Law enforcement.

Further information about these Acts and related legislation can be obtained from the Information Commissioner's Office. [www.ico.gov.uk](http://www.ico.gov.uk)

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### APPENDIX 3

#### Flow chart to determine Protective Marking level of LSCB Material



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## APPENDIX 4 :Storage and Movement of LSCB data

Application/Activity	Unprotected	Protected	Confidential
<b>Marking documents</b>	<b>Footer every page</b>	<b>Footer every page</b>	<b>Footer every page</b>
<b>Storage of hard copy documents</b>	<b>General filing system</b>	<b>Protected by one barrier e.g. locked filing cabinet.</b>	<b>Protected by two barriers e.g. locked filing cabinet within secure room</b>
<b>Disposal of paper waste</b>	<b>Recycle or general waste</b>	<b>Secure waste sacks</b>	<b>Cross cut shredder</b>
<b>Disposal of magnetic material</b>	<b>Recycle material where appropriate, general waste.</b>	<b>Securely destroy, cut up, melt shred. etc.</b>	<b>Securely destroy, cut up, melt, shred.</b>
<b>Reuse of Media (e.g. Hard drives etc)</b>	<b>Delete information</b>	<b>Triple overwrite</b>	<b>Triple overwrite</b>
<b>Movement between agencies</b>	<b>Post, fax, e-mail, portable USB drive.</b>	<b>Post in sealed envelope.</b> <b>E-mail with encryption or password protected.</b> <b>Secure fax.</b>	<b>Post or courier.</b> <b>Double enveloped, Protective marking on inner envelope.</b> <b>Full and Return address.</b> <b>E-mail with encryption or password protected.</b> <b>Secure fax.</b>
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