

**Southend, Essex and Thurrock
Domestic Homicide Review
(DHR)**

Standard Operating Procedures (SOP)

July 2017

Please forward any queries to:

Title of ISA:	SET Domestic Homicide Review Information Sharing Agreement
Purpose:	For use by all agencies involved in Domestic Homicide Reviews
Date Agreement comes into force:	July 2017
Date of Agreement Review:	April 2018
Agreement Owner:	SET DA Team
Agreement drawn up by:	SET DA team
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1. Summary

This agreement sets out the obligations on staff in partner agencies and other signatories to this agreement.

- To share or disclose information about service users;
- To maintain confidentiality.

It does not impose new obligations, but reflects current regulations and legislation.

This agreement is the protocol for ensuring confidentiality whilst permitting the appropriate transfer and sharing of information between agencies involved in Domestic Homicide Reviews in Southend, Essex and Thurrock. Agencies will also be expected to be signatories to the overarching safeguarding ISP, the Whole Essex Information Sharing Framework (WEISF).

This agreement shall commence from July 2017 and signatories are invited to sign a copy of the agreement.

2. Organisations Covered by this Policy

This agreement has been developed to meet the information security and confidentiality requirements for sharing personal data (that is data which relates to a living individual who can be identified by that data or that data and other information likely to be in the possession of the recipient) across organisations in Southend, Essex and Thurrock.

Organisations involved in sharing information include the Local Authorities, Police, Essex Community Rehabilitation Company, National Probation Service, Health Authorities, NHS trusts and voluntary and independent providers. It is recognised that organisational boundaries are changing and this policy can include any organisation (and any successor organisation) in any area that becomes a signatory to this policy.

3. Introduction

This information sharing agreement sets out the local arrangements for sharing confidential information about particular individuals between the responsible, cooperating and participating bodies that may participate in a Domestic Homicide Review. It aims to encourage greater confidence in sharing information and, as a consequence, stimulate improved engagement between partners involved in this initiative. This agreement aims to clarify under which circumstances information will be provided by partners and later disclosed in accordance with the Domestic Homicide Review process.

This information sharing agreement is an agreement between the signatories to share information about individuals for specified purposes. This agreement has been developed to:

- Set out the purposes for which information needs to be shared,
- List the organisations which may share information under its terms,
- Identify the legal basis on which information can be shared,
- Describe the roles and structures that will support the exchange of information between partners,

- Ensure compliance with individual partners' policies, legal duties and obligations.

This information sharing agreement should be read in conjunction with the Southend, Essex and Thurrock Domestic Homicide Review Protocol.

4. Purpose and Scope of this Agreement

The purpose of this information sharing agreement is to ensure that Domestic Homicide Reviews fulfill their purpose to:

- Establish what lessons are to be learned from the domestic homicide regarding the way in which local professionals and organisations work individually and together to safeguard victims;
- Identify clearly what those lessons are both within and between agencies, how and within what timescales that they will be acted on, and what is expected to change as a result;
- Apply these lessons to service responses for all domestic abuse victims and their children through intra and inter-agency working;
- Prevent domestic violence and abuse homicide and improve service responses for all domestic abuse victims and their children through improved intra and inter agency working.

This agreement applies to the exchange and sharing of any information including computer held data, written exchange delivered by post/ fax, email, and formal meetings between partners where minutes or notes are produced or actions recorded that support the aims listed above.

Information sharing for, and at, DHR meetings is strictly limited to achieving the purpose of DHRs. At meetings all attendees will agree a confidentiality declaration to that effect at the start of each conference. Information shared during the DHR process cannot be used for other purposes without reference and permission from the person/ agency that originally supplied it.

For DHR purposes, outside of face to face meetings, all official sensitive material must be exchanged using secure email addresses or via the egress system (secure web service).

It is not intended to restrict information exchange and intelligence, and agencies should continue to interact face to face or by telephone in order to carry out their operational duties/ responsibilities.

Home Office Guidance accompanying the Crime and Disorder Act 1998 states:

'Effective information exchange is key to multi agency working in any sphere – nowhere more so than the statutory partnerships for Crime and Disorder reduction. It relies on good relations between partners and above all on mutual trust. The effectiveness of information sharing arrangements is a reflection of the effectiveness of the partnerships as a whole'.

5. Legislation and Guidelines

Domestic Violence Crime and Victims Act 2004, Section 9:

Domestic Homicide Reviews (DHRs) were established on a statutory basis under Section 9 which was brought into force on 13th April 2011.

A Domestic Homicide Review, under the terms of the above Act, means 'a review of the circumstances in which the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect by –

- a) a person to whom he was related or with whom he was or had been in an intimate personal relationship, or
- b) a member of the same household as himself, held with a view to identifying the lessons to be learnt from the death.'

Where a victim took their own life (suicide) and the circumstances give rise to concern, for example it emerges that there was coercive controlling behaviour in the relationship, a review should be undertaken, even if a suspect is not charged with an offence or they are tried and acquitted.

When this definition has been met, a Domestic Homicide Review must be undertaken.

Agencies/individuals required under statute to participate under in any future DHR are:

- Chief officers of police for police areas in England and Wales;
- Local Authorities (the council of a district, county or London borough);
- NHS Commissioning Board;
- Clinical Commissioning Groups;
- Providers of probation services;
- Local Health Boards.

The Secretary of State may in a particular case direct a specified person or body above, to establish, or to participate in, a domestic homicide review.

Other relevant agencies may be required to participate in the DHR at the request of the local DHR Review Panel.

Other related legislation

Crime & Disorder Act 1998, Section 115:

Enables agencies to share information disclosed to relevant authorities (as amended by the Police and Justice Act 2006). This provides a statutory power to exchange information where disclosure is necessary to support the local crime and disorder strategy or objectives outlined within it.

Human Rights Act (HRA) 1998:

A disclosure will comply with the HRA if it:

- (a) Is made for the purposes of preventing crime, protecting the health and/ or safety of alleged victims and/ or the rights and freedoms of those who are victims of domestic violence and/ or their children;
- (b) Is necessary for the purposes referred to in (a) above and is no more extensive in scope than is necessary for the purposes; and
- (c) Complies with all relevant provisions of law

Data Protection Act 1998 (and any subsequent replacement legislation i.e. General Data Protection Regulations (GDPR)):

The prevention of crime exemption under DPA can be used if disclosure is necessary to prevent a crime against a named individual or specified household. It is acknowledged that the implementation of the GDPR and any UK derogations will have an effect on the lawful condition for processing this data. Once the government provides clear statutory responsibilities and guidance, this SOP will duly be aligned.

Criminal Prosecutions and Investigations Act 1996:

Where there is a current criminal prosecution, police officers attending are obliged to inform the Crown Prosecution Service of any evidence that might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused.

The Children Act 1989:

Section 47 of the Children Act 1989 places a duty on local authorities to make enquiries where they have reasonable cause to suspect that a child in their area may be at risk of suffering harm. Section 47 states that unless in all circumstances it would be unreasonable for them to do so, the following authorities must assist a local authority with these enquiries if requested, in particular by providing relevant information:

- Any local authority;
- Any local education authority;
- Any housing authority;
- Any health authority;
- Any person authorised by the Secretary of State.

Common Law Duty of Confidence:

An obligation of confidence will exist where the individual has provided the information to another in circumstances where it is reasonable to assume that the provider of the information expected it to be kept confidential. Where there is a duty of confidence the information can only be disclosed to third parties if one of the exceptions applies, namely if there is informed consent, compulsion by law, public interest or the information is in the public domain.

Public Interest – Exception to the Duty of Confidence

When considering whether to disclose information under this exception an individuals private right to confidentiality must be weighed against any relevant public interest factors in exchanging information and each case must be decided upon its merits. In determining whether the public interest would justify disclosure against the normal presumption of

confidentiality, an objective assessment of all the available information must be made. Disclosure will engage Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998.

Public interest criteria will include:

- The prevention of crime and disorder
- The reduction of crime and disorder
- The detection of crime
- Crime displacement
- The apprehension of offender
- Reducing the fear of crime
- The protection of vulnerable members of the community
- Maintaining public safety
- The administration of justice
- Diverting young offenders
- National security

Proportionality of the Data Sharing

The Human Rights Act 1998 incorporating the European Convention on Human Rights restricts public authorities in their use of private information. Article 8, the Right to Respect for Private and Family Life is the most commonly referred to article when considering and dealing with requests for disclosure of information.

The right is qualified, in that it may be interfered with where this is in accordance with the law and is necessary in a democratic society:

- In the interests of national security;
- In the interests of public safety;
- In the interests of 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.

When the human rights of any individual are considered to be actually or potentially engaged by a disclosure under the Agreement, the decision makers involved should ask themselves whether their actions are justifiable, appropriate, proportionate, auditable and necessary (JAPAN).

To be proportionate the disclosure must only go as far as is necessary to achieve the desired aim.

Vulnerable Adults

Department of Health – No Secrets 2000

The principles can be summarised as:

- Information will only be shared on a need to know basis when it is in the best interests of the service user;
- Confidentiality must not be confused with secrecy;

- Informed consent should be obtained but, if this is not possible and other vulnerable adults are at risk, it may be necessary to override the requirement; and
- It is inappropriate for agencies to give assurance of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other vulnerable people may be at risk.

Caldicott Guidelines on Information Sharing

The Caldicott guidelines affirm the individual's wishes should be respected unless there are exceptional circumstances. It is important to remember that these are guidelines and not law and that the Data Protection Act, the Human Rights Act and the common law duty of confidence will always take precedence. If there is an apparent conflict between legislation and the common law, the legislation must take precedence.

NHS and social care organisations must have procedures to control access to patient/person identifiable information. A Caldicott 'guardian' should be appointed as gatekeeper of individual information. The Caldicott guardian should agree who has access to what information. Caldicott Guardians can delegate their information sharing responsibilities, if they so wish, to someone else in their organisation. This person must be familiar with current legislation, guidance and best practice.

Similarly, in relation to the Department of Health document "No Secrets" (2000) approach, it is inappropriate for agencies to give assurance of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other vulnerable people may be at risk.

Cases considered at DHRs would be likely to constitute exceptional circumstances as defined in the Caldicott Guidelines.

Management of Police Information (2005)

In addition it should be noted that the sharing of police information must meet one or more of the purposes set out in the statutory Code of Practice for the Management of Police Information (2005). The purposes are:

- Protecting life and property,
- Preserving order,
- Preventing the commission of offences,
- Bringing offenders to justice, and
- Any duty or responsibility of the police arising from common or statute law.

6. Sharing of Information

Effective information exchange is the key to multi-agency working in any sphere nowhere more so than the statutory partnerships for Crime and Disorder reduction. It relies on good relations between partners, and above all on mutual trust.

6.1 Personal Details

It is acknowledged that complying with the Domestic Homicide Review Process can be considered lawful grounds for sharing information, under the Domestic Violence Crime and Victims Act (2004), and therefore consent is not required.

Whilst consent does not apply to the deceased, the perpetrator or any associated victim due to our statutory duty, where information is processed for other individuals, care should be taken not to involuntarily identify other individuals whose consent has not been sought or obtained. If consent is not given, then agencies will need to decide on a case-by-case basis whether to share any information that they may have on the individuals.

6.2 Types of Information to be shared

Personal information will be shared and discussed during the Domestic Homicide Review process in respect of the alleged victim, the alleged offender, any children of either party, other relevant family members or other personal relationships they may have had.

Types of information that can be shared may be,

- **Non-personal data** which constitutes data that has never referred to individuals;
- **Depersonalised data** which encompasses any information that does not and cannot be used to establish the identity of a living individual; and
- **Personal data** which is data that relates to a living individual who can be identified from those data, or from those data and other information, which is in possession of, or likely to come into the possession of, the data controller.
- **Sensitive personal data** is data that falls into the following categories; racial or ethnic origin, sexual preference, physical or mental health, membership of a trade union, political or religious beliefs and or criminal offences and proceedings.

It is likely that during the DHR process the type of information that will most commonly be shared will be personal and sensitive personal data.

The information discussed may cover the following areas:

- Name, date of birth, address (es), aliases and gender;
- Information relating to recent contact, meetings, sightings, and phone calls. This could include attendance or non attendance at appointments, who is present at an address and attendance at emergency departments or other health settings e.g. mental health;
- Information on attitude, demeanor, behaviour etc;
- Information about Court Orders, injunctions, bail conditions and other legal issues;
- Historic relevant information such as previous convictions, family or relationship history, other safety options considered or substance misuse issues;
- Information regarding housing or accommodation options;
- Information regarding children's attendance and behaviour at school;
- Information regarding attendance at refuges;
- Other information relating to the victim or other data subjects that are requested in the Terms of Reference of the DHR.

Both personal and sensitive personal data must be clearly marked as '**Official Sensitive**' and shared using the standardised template forms provided within the Southend, Essex and Thurrock DHR Protocols, copies of which can be obtained by emailing the Southend, Essex and Thurrock Domestic Abuse Team.

7. Security of Information

Organisations will ensure there is appropriate security for the safe and secure transportation or transmission of information. It is the individual agencies responsibility to ensure any information they hold in relation to a Domestic Homicide Review is secure and marked in accordance with Government Protective Marking Scheme.

There is an absolute requirement for all partners to hold information securely. It is the individual partners' responsibility, as signatories to this agreement, to ensure that they have adequate security arrangements in place, in order to protect the integrity and confidentiality of the information we hold. All information shared under this agreement must be protectively marked in accordance with Government Security Classifications: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251480/Government-Security-Classifications-April-2014.pdf

Agencies should have regard to their in house protocols in respect of retention and disposal of 'official sensitive' information. Appropriate technical and organisational measures shall be taken by partners against unauthorised or unlawful processing of information and against accidental loss or destruction of or damage to information.

It is the responsibility of each partner to ensure that information shared, or subsequent updates, is accurate. Where a partner becomes aware that information shared by them is inaccurate or no longer relevant then they must inform the Southend, Essex and Thurrock Domestic Abuse Team, who will update the records held and notify relevant partners.

7.1 Freedom of Information Act 2000

This agreement will be made available to the public under the Freedom of Information Act 2000 publication scheme operated by any named partner who is a public authority. Freedom of information requests for access to information exchanged via this Agreement will be referred to the receiving organisation's Freedom of Information specialist(s).

An organisation will respond to a request for information under an individual right of access within the statutory time limit.

Where a partner body receives an information request under Section 1 of the Freedom of Information Act 2000 and the request involves access to information received from a partner agency, the partner who receives the request will forward the request onto the partner from whom the information was given at DHR.

7.2 Indemnity

In consideration of the provision of information in accordance with this Agreement, each of the parties to this Agreement undertake to indemnify the other against legal liability for a negligent act or accidental error or accidental omission which may be incurred in circumstances where the subject of the exchange of information suffers loss as a result of

the misuse or inaccuracy of the information and brings an action claim or demand as a consequence thereof.

Provided that this indemnity shall not apply:

- Where the liability arises from information supplied which is shown to have been incomplete or incorrect, unless the person or authority claiming the benefit of this indemnity establishes that the error did not result from any wilful wrongdoing or negligence on its part;
- Unless the party claiming the benefit of the indemnity has notified the party against whom it intends to invoke the indemnity within 56 days of any third party action claim or demand and thereafter the parties shall consult as to how the party against whom the claim has been made should proceed in respect of such claim;
- The party seeking to invoke the indemnity may not do so if it has made or makes any admission, which may be prejudicial to the defence of the action, claim or demand.

7.3 Retention and disposal

Partners will retain copies of minutes and any other notes for no longer than a period required by legislation or their own policy. Each partner will be responsible for the safeguarding of information in line with the DPA 1998. When the information is no longer regarded as being relevant, the partner will be responsible for its secure disposal/destruction.

Information will be deleted if:

- The information has been shown to be inaccurate, in ways which cannot be dealt with by amending or appending the record; or
- It is no longer considered that the information is necessary for police or the partners' legitimate purposes;
- It reaches the end of the agreed retention period in each partner agency.

8. Publication of Domestic Homicide Reviews

Following approval from the Home Office, Southend, Essex and Thurrock Domestic Abuse Board will publish a copy of each Executive Summary and Overview Report on their relevant agency websites. The published documents will have been anonymised and will therefore be no longer classed as 'official sensitive'.

Family members or friends, associated with the victim or offender, who have been identified, or involved, within the review processes will be provided with a copy of the finalised reports.

9. Review

This information sharing agreement will be reviewed annually by the Southend, Essex and Thurrock Domestic Homicide Review Group or sooner in the emergence of best practice.

The review will:

- Ensure the contact list is up to date;
- Consider whether the agreement is still useful and fit for purpose;
- Identify any emerging issues;
- Determine whether the agreement should be extended for a further period (up to one year) or whether to terminate it.

The decision to extend or terminate the agreement, and the reasons, will be recorded by the Steering Group

10. Complaints

Any complaints/ breaches of this agreement, in the first instance, need to be raised with the Southend, Essex and Thurrock Domestic Abuse Team. If necessary they will refer onto the agencies internal complaints procedure.

Complaints and/or breaches of the agreement may be discussed at the Southend, Essex and Thurrock Domestic Homicide Review Group and when necessary may be then raised at the Southend, Essex and Thurrock Domestic Abuse Board, for resolution.

