

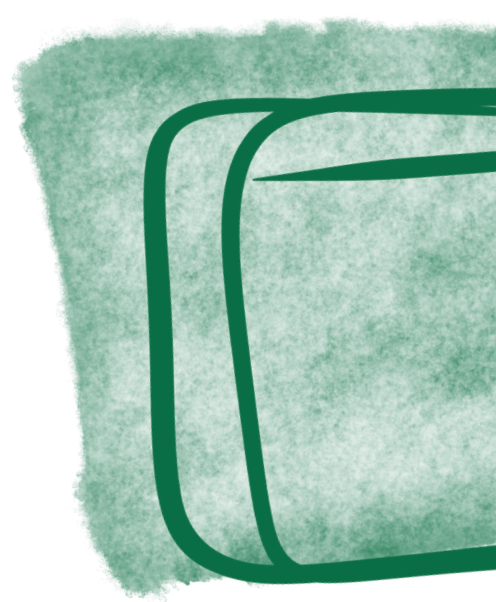


Practice Advice for Police:

A practice advice sheet to support police officers in taking a trauma-informed approach to third-party notes requests

Practice advice

Taking a trauma informed approach to third party notes requests



The Victim Information Requests Code of Practice (2026), implementing Sections 44A-44C of the Victims and Prisoners Act 2024, sets out the statutory duties and safeguards concerning how and when third party material requests can be made. These requirements build on the principles established by the CPS Pre-Trial Therapy Guidance (2022), which has been temporarily withdrawn from publication while under review (as of May 2026). This practice advice sheet outlines a step-by-step approach for officers when approaching victims and support services, taking a trauma-informed approach. It is aligned with Op Soteria best practice and draws on guidance from the Code of Practice (2026), the Information Commissioner's Office and the Attorney General's Guidance on Disclosure.

Fundamental principles

- ✿ Pre-trial therapy refers to any therapeutic support given when a report has been made to the police, a criminal investigation is underway and before the case has gone to trial. The Code of Practice (2026) applies to any support service, not just therapy.
- ✿ The CPS confirms that all therapies and counselling services can be accessed pre-trial; victims have a right to choose which service is right for them. The right to access therapy pre-trial is a statutory entitlement and cannot be delayed for any reason connected with a criminal investigation.
- ✿ Counselling records are presumed not to be necessary or proportionate to request. This presumption can only be displaced in exceptional cases. Therapy and counselling notes can only be requested if the request meets the substantial probative value test, forms a necessary and proportionate part of a reasonable line of enquiry, and has been authorised by a Chief Inspector;
- ✿ For medical counselling services e.g. NHS psychologist, consent is required; whereas for non-medical counselling services e.g. voluntary sector counsellor or ISVA, the victim's views are required.
- ✿ Support services have a duty under UK GDPR to be assured that the request meets the statutory tests before sharing any notes.

- ✿ Responding to a TPM request is voluntary. Services are only legally obliged to share information via a formal witness summons. Bluestar's preferred position is a client-centred approach that supports the client to make an informed choice.
- ✿ Best practice should allow time for conversations between police, victims and support services, so that the victim has a choice whether to agree to share their notes and is informed that they have a right to refuse.
- ✿ If the victim does not agree to their session notes being shared, only a formal Witness Summons from the Crown Court can compel the support service to produce the notes.
- ✿ Support services, investigators and prosecutors must all comply with data protection legislation when processing therapy notes.

Disclosure guidance

The Criminal Procedure and Investigations Act (1996) states that police are obliged to follow all reasonable lines of inquiry, but it will only be a reasonable line of inquiry if there is some reason to believe that the notes will contain material relevant to the case. Just knowing that a victim has had therapy or support services is not enough.

The Victim Information Requests Code of Practice (2026) is clear that notes cannot be accessed on a speculative basis. This means:

- ✿ Police should take Early Advice from the CPS
- ✿ Police and other authorised persons may only request therapy or counselling notes where there is a clear reasonable line of enquiry and the request is not speculative.
- ✿ Requests must be necessary and proportionate and should not be made where the information can reasonably be obtained by other means.
- ✿ Police must have a reasonable belief that the third party holds the information being requested; and be able to clearly articulate what information is being sought, during what time period.
- ✿ For counselling and therapy notes (including ISVAs, IDVAs, ISAs notes), a higher threshold applies and requests should only be made where the information is likely to have substantial probative value and with authorisation from a Chief Inspector.
- ✿ Police must inform the victim of the request, seek and record their views, and ensure they are aware of their right to object.
- ✿ For medical counselling records (e.g. NHS psychologist, SARC), police must obtain the victim's consent before approaching the service. A higher requirement than seeking views.

The following do not, on their own, establish substantial probative value:

- ✿ That the record exists
- ✿ That the victim received counselling
- ✿ That the records merely relate to the incident under investigation, or contain an account of the facts of the offence given by the victim (Code of Practice, paragraph 91(c))
- ✿ That the relevance of the records to the investigation is purely speculative or conjectural
- ✿ Speculation about credibility based solely on receipt of counselling
- ✿ That the notes relate to the victim's reputation
- ✿ That the notes relate to the victim's sexual activity with any person, including the accused
- ✿ That the records may reveal allegations, unrelated to the offence under investigation, of abuse to the victim by a person other than the accused
- ✿ That the records were made close in time to the offence, or to when the victim reported it

If notes do not meet the applicable threshold – substantial probative value for counselling records, or reasonable line of enquiry for all other records – services should not release notes to the police and are within their rights to do so. Remember: the notes belong to the victim and the therapy/support service are data processors with a duty to follow data protection legislation when processing therapy notes.

The NPCC Third Party Material Request Form

All requests to therapy and support services must be made on the NPCC Third Party Material Request Form. The form requires the requesting officer to set out: the specific reasonable line of enquiry; why the notes are likely to have substantial probative value (for counselling records); what less intrusive alternatives were considered; and evidence of Chief Inspector sign-off. Services are within their rights to return a request that arrives without the correct form or without all required elements and ask for resubmission.

When responding, services complete the third-party response section of the form, recording their decision, the legal basis for sharing, any handling instructions, and what has been redacted and why.

The legislation on information sharing

The Data Protection Act (2018) defines material generated as a result of therapy or support services as 'sensitive data'. This can be shared with the police where the service user gives their views and agreement (non-medical records) or consent (medical records). It can also be shared without the service user's agreement or consent, where this is necessary for reasons of substantial public interest – for example, to prevent or detect an unlawful act, or to safeguard a child or an individual at risk. This is the service's own legal basis for sharing the data – separate from the police's legal basis for requesting it. The Information Commissioner's Office has advised that in criminal justice processes, the consent of a service user cannot be regarded as freely given.

When police request notes during an investigation, their own lawful basis for processing is 'strictly necessary for law enforcement purposes' (Data Protection Act 2018). But for this to justify the request, the notes sought must form a reasonable line of inquiry that is necessary and proportionate, and – for counselling and therapy records specifically – must also meet the higher substantial probative value test, with Chief Inspector authorisation.

Taking a trauma-informed approach, regardless of the legal basis for the data request, the CPS is clear that police should seek the views of the victim and inform them of their right to object at any time. This is because the data within the notes belongs to the victim, and support services and police officers can empower them to make choices about what information is shared to support the investigation.

A final element for officers to consider is ensuring that the victim has the time, information and capacity to make decisions about their agreement to share notes. The Mental Capacity Act (2005) reminds officers that the victim must be able to: (a) understand the information relevant to the decision; (b) retain that information; (c) use or weigh that information as part of the process of making the decision; and (d) communicate their decision. The Bluestar Project has created Pre-Trial Therapy Leaflets for support services and for police to use when explaining to adult and child victims what they can expect when a notes request is received.

A trauma informed notes request

This section details a step-by-step guide for police officers taking a trauma-informed approach to notes requests. At the start of therapy/support, the support service will have explained to the victim what will happen if a notes request is received as part of a criminal investigation. Notes of new disclosures can provide useful evidence and give victims a voice in the criminal justice system if they want to share them. Therapy notes belong to the victim, and they are their voice. Victims should be informed that they have a right to say no to a therapy notes request, and wherever possible, sharing information should be their choice.

A trauma-informed notes request process for the police:

- ✿ Seek early investigative advice from CPS to determine reasonable lines of enquiry and confirm the substantial probative value test is met.
- ✿ Ensure there is a specific reason to rebut the presumption that it is not necessary and proportionate to obtain therapy records.
- ✿ Before approaching the victim or their support service, obtain Chief Inspector authorisation for any request relating to counselling notes. This is a statutory requirement under the Code of Practice (2026).
- ✿ For counselling notes, be able to clearly articulate how the substantial probative value test is met. Such as a verbatim first disclosure never previously shared with police or anyone else.
- ✿ Complete the NPCC Third Party Material Request Form and seek the victim's consent (medical records) or views (non-medical records) on the request being made, discuss what evidence could be in their notes to support the investigation, and give the victim the choice to refuse. Share the Bluestar Pre-Trial Therapy Leaflet with them to take away and revisit. For medical counselling records (e.g. NHS psychologist, SARC), require consent rather than simply seeking the victim's views.
- ✿ Where the substantial probative value threshold appears to be met, offer a phone call to the support service to confirm the specific information sought and explain how the request meets the threshold, in line with the NPCC Third Party Material Request Form. This is not an opportunity to explore what the notes might contain – officers should already have a reason to believe the notes hold something of substantial probative value before making contact. The call can also be used to discuss whether a witness statement from the service, rather than the notes themselves, would meet the evidential need. This directly addresses one of the factors the Code of Practice requires police to consider before requesting counselling notes (para 84(b)): whether all less intrusive alternatives for obtaining the required information have been exhausted or deemed impractical.

- ✿ Allow time for the support service to consider the request, consult with the victim, collate and redact notes.
- ✿ If a service reviews records and advises that nothing meets the required threshold, this should be believed. Services have a legal duty under UK GDPR to satisfy themselves that a request is lawful before sharing – their assessment is a professional and legal judgement, not an obstruction.
- ✿ If a victim chooses to refuse to share their notes, only a formal Witness Summons from the Crown Court can compel production.

For more information about supporting victims pre-trial and the notes request process, visit the [Bluestar Project website](https://www.bluestarproject.co.uk) for free online resources or contact info@bluestarproject.co.uk

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