

TO: All Crown Counsel & Clerks of Courts
FROM: Glen R. Andrade, Q.C.
Director of Public Prosecutions
DATE: June 14, 1996
RE: Guidelines for Disclosure in Criminal matters

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In order to ensure a fair trial and to give effect to the Judgement of the Privy Council in the consolidated appeals of Vincent v R and Franklyn v R, delivered on the 22nd March, 1993, the following guidelines are issued.

1. In cases of complexity, the prosecution, upon request by the defence, shall, subject to any claim for immunity on the grounds of public interest, disclose all such documentation, material, or information, either by making copies available or allowing inspection.
2. Where the case is simple and straightforward, the prosecution need not comply with a request, but may, instead, provide a summary of the facts.
3. There are instances where it is necessary in the public interest to withhold from disclosure certain material particularly in cases where it is necessary to maintain confidentiality, or where the material is not directly relevant to the case, for example where:
 - (a) It is necessary to preserve the identity of an informant;
 - (b) It is necessary to protect the safety or security, including protection from harassment of persons who have supplied information to the Police;

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- (c) The information is protected by legal professional privilege;
 - (d) The material, if it became known, might facilitate the commission of other offence or alert a person to police investigations;
 - (e) The material discloses some unusual form of surveillance or method of detecting crime;
 - (f) The information is supplied to the Police only on the condition that the contents will not be disclosed;
 - (g) The material contains sensitive or delicate details relating to the maker;
 - (h) The material relates to the internal workings of the Police Force;
4. Where disclosure is withheld or delayed, the prosecutor should advise the defence and state the reason therefor.
 5. If a dispute arises as to the claim for withholding material, the matter should be resolved by the Court.
 6. Where necessary the prosecution may seek an undertaking that the material may not be disclosed to parties other than the accused's legal representative and the accused.
 7. The obligation as to disclosure is a continuing one, so that if, during the course of a trial or a preliminary enquiry, a material discrepancy arises between the evidence of a witness and his/her statement which has not been disclosed, it is the duty of the prosecution to alert the defence of such discrepancy and to make the relevant portion of the statement available. In so doing, care should be taken not to disclose confidential or sensitive material either by blanking out or editing the statement.