

## Joint protocol for the release of images to media and restricted audiences

(Warwickshire, West Mercia, West Midlands police forces)

The following guidance relates to the release of images for publication of CCTV, photographs, artists impressions and e-fits.

It reflects a shift in emphasis in the stance of police forces, where public satisfaction and confidence has taken on a far greater emphasis.

As a result, where appropriate and proportionate, officers should be encouraged to release images to the media at the earliest opportunity.

The aims of the protocol are to:

- **Reassure** communities that crime is being prevented and detected and that offenders and suspects will be brought to justice.
- 
- **Encourage** public participation, in partnership with the police, to tackle crime in their communities and maintain law and order.
  - **Ensure transparency and openness** in the reporting of criminal investigations and criminal proceedings where applicable and relevant to any investigation.

The release of an image can only follow consultation and formal agreement of the senior investigating officer or their nominated representative.

An image should be released if it:

- Reinforces or supports a 'policing purpose'
- Meets the risk assessment criteria
- Is necessary and justified within the Human Rights Act and Data Protection
- Is proportionate

The overarching aim of any release should be to protect the public by helping in the detection and prevention of crime while also increasing confidence in the criminal justice system.

### General guidance for the release of images

The release of images can encourage public participation in conjunction with police in tackling crime in their communities

Consideration should be given to the potential impact of releasing a photograph of the victim/crime scene/exhibit, on the victim or the victim's family and to a lesser extent on any witnesses.

appendix 1

The victim should be consulted/notified in advance of the release through the family liaison officer.

The release of selected images can highlight good police work.

Any image should ideally be issued contemporaneously but if the 'policing purpose' behind release is strong, a common sense view can be taken.

Lack of contemporaneity should not be a bar to release of an image where public confidence, reduction of fear of crime and the prevention of criminality are factors.

Bear in mind that some titles are weekly/broadcasts are delayed and as such the media do not always use items contemporaneously themselves.

### **Identification of people who are a danger to the public**

Primary consideration must be the protection of the public from harm and as such the release of an image of a person deemed a danger to the public will almost always be justified.

All other means of tracing the person should have been exhausted by officers. Before release of an image the following must have been considered:

- Have alternative ways of achieving this purpose been tried including internal circulation, visits to known addresses, covert action. If not have they been considered?
- If considered but not tried, why have they been rejected? Are they not viable or unlikely to be effective?
- Is the image to be released the minimum necessary to achieve its intended purpose?
- Has the victim or victims been informed of any imminent release and has the effect on them been considered?
- Are the details accurate and up to date?
- Would the release of the image be likely to achieve the legitimate purpose?

Identification through an image must be balanced with the effect any release could have on public disorder, perception and the possibility of jeopardising any subsequent court hearing.

Particular consideration should be given to the potential importance of identification evidence.

appendix 1

If the person is a known paedophile or sexual offender the effect on public confidence and reassurance is paramount, and as such **ACPO level clearance is mandatory**.

Another major consideration is the potential for an offender to go 'underground' or become psychologically unstable, becoming more of a danger to the community as a result of publicity.

The effect on family or dependents of the person identified by any image release should also be considered in terms of whether they would be affected/targeted by the media or vigilantes.

Likewise the effect on the life, physical and mental well-being of the person whose image is to be issued must also be considered.

**Post release of an image:** A suspect will be named when their photograph is released so careful consideration should be given to continuing or not to publicly name an apprehended suspect before charge, particularly as this conflicts with normal force practice of not publicly naming until after a first court appearance.

In cases where there is intense media interest, consider giving the media 'not for publication or broadcast' guidance that the arrested person is the one previously named as 'wanted', but once the suspect is apprehended, his or her photograph should be removed as soon as is practicably possible (possibly the next working day) from the force website. It is important to note that the complete removal of images from circulation is very difficult these days and once put into the public domain it will remain so.

## **Location of vulnerable missing people**

Any images issued will usually be with the consent of the family, unless the decision is governed by extreme circumstances or investigative requirements.

The image should be as up to date as possible and any other person identified in the image should be deleted/obscured. This should be done by the force prior to release rather than rely on media organisations to do so.

In cases of missing children, the parents' or carers' (eg Social Services) permission should be sought before the photograph is issued.

The media should be informed when the person is found and the image should be removed from the force and any other social networking websites used by the force to publicise the disappearance, as soon as is reasonably practicable

## **Apprehension of people unlawfully at large**

The image of any person wanted on warrant or who has absconded from custody, or who has failed to appear at court, may be issued.

However conventional methods of locating the person should have been exhausted before an image is issued or be considered unlikely to succeed if tried.

appendix 1

If the person is considered a danger to the public or poses a threat to an individual, immediate publication must be seriously considered against the use of conventional methods first.

### **People who have died and victims of fatal Road Traffic Collisions (RTCs)**

Media interest in the image of a person who has died as a result of crime or an RTC is always high and the media often use tribute websites to trawl for them.

Approaching the family through the family liaison officer to obtain a photograph may seem intrusive, but can serve several purposes including lessening the pressure on the family from the media, encouraging witnesses to come forward and increasing the prominence of the incident within publications.

The image should be as up to date as possible.

The release of an image of a victim of crime without family consent may be necessary for investigation purposes but any family should be informed of this action in advance of it being taken.

### **Location and apprehension of suspects – known or unknown**

#### **1. Images can be issued prior to charge or arrest**

This may help eliminate people from the investigation or encourage the suspect to contact police.

For people whose identity is **known** - all other means of tracing the person should have been tried/and or considered (as above).

For people whose identity is **unknown** – all other means of tracing the person should where practical have been tried and/or considered. It is essential to ensure the description of the person is accurate and details given alongside any picture release cannot prejudice any future court proceedings.

#### **2. CCTV images**

The SIO should reasonably believe that the person(s) pictured committed the offence.

The image should be of good enough quality that a member of the public is likely to be able to identify the subject's face.

No other investigation will be compromised by issuing the image to the media

The image has been displayed at briefings and internally throughout the force, eg on an intranet, without a successful identification.

The photograph is being used only to ascertain the identification of the person(s) pictured.

appendix 1

**Be mindful** that under the Human Rights Act, a person has the right to a fair trial and identification may be an issue.

**However**, public protection is a legitimate reason to release an image. The Crown Prosecution Service may need to be consulted. The media must be informed upon arrest and the image should be removed from websites, as soon as is reasonably practicable.

### **Release of images in relation to court proceedings**

#### **1. Release of images prior to sentence**

Where offences carry mandatory life sentences or where the offence is of such seriousness, images can be considered for release prior to sentence.

In those cases public reassurance and the deterrent effect may outweigh any strict policy on release of images following sentence although the usual risk assessment process must still apply.

Where offenders have been convicted and are awaiting sentence there can be no contempt issue, weakening any refusal not to release an image.

This is not a blanket ruling but one which should be considered at the discretion of the SIO and force Press Office, bearing in mind factors including the likely sentence, the court's comments and the potential for an appeal.

#### **2. Pre-verdict briefings**

Pre trial images can be released in liaison with the Crown Prosecution Service but not until it has been presented at court or at the conclusion of the case.

While it is advisable to wait until after conviction before releasing a photograph, in some cases (such as high profile cases involving pre-verdict briefings), issuing a photograph under embargo during a trial may support the post-conviction promotion of policing successes, messages and objectives.

- 3. When issuing defendants' photographs under embargo, the media should sign a written agreement to the effect that the photograph will not be published without a guilty verdict, in no way that might prejudice court proceedings, and will be returned to the force if a 'not guilty' verdict is delivered. Journalists must be aware of the requirement not to further distribute the image and to return it in such circumstances **Demonstrating successful convictions****

The media usually request an image in relation to high profile serious crime or unusual crime case. Such images should be released in accordance with the below and only following sentence.

appendix 1

'Serious crime' is defined under the Regulation of Investigatory Powers Act 2000 as any offence for which a person of 21 or over may reasonably expect a sentence of imprisonment of three years or more on first conviction.

Local context must be taken into account when considering the criteria of 'seriousness' or 'significant public interest'. Senior officers may wish to consider this before making a decision on release and the potential for community tension should be considered.

Serious crime images can be published on the force website/released to the media, to highlight effective police work, to reassure the public or to encourage other victims to come forward. eg: sex offences.

It may also be important to consider the release of images of offenders who have been convicted of priority offences the force is tackling or as a result of a significant police operation or initiative a sentence of less than three years imprisonment has been given. This would again be highly beneficial in increasing public confidence and reassurance.

Images should not be released of those individuals who do not receive prison sentences as this would not be a proportionate response.

People under the age of 18 are not usually identified during or after a court process, but for people aged between 15 and 18 the court may allow them to be identified on conviction of a serious crime such as murder. Release of any photograph of a person aged 17 or under must be approved by an ACPO rank officer.

#### **4. Anti-social behaviour orders**

Although there are no automatic reporting restrictions, it is advised to contact the anti-social behaviour officer/court/safer neighbourhoods team to check no restrictions are in place. (Restrictions on the release of images of juveniles aged 15 and over may be in place and any orders imposed by the court should be checked to ascertain whether they bar identification.)

A simple desire to 'name and shame' is not appropriate justification for publication. Forces cannot be seen to be exacting further punishment through humiliation.

However the purpose of an ASBO or CRASBO is usually a deterrent one, giving weight to the release of any image – again dependent on the issues around human rights.

If a juvenile breaches an ASBO it is a criminal matter and will be heard in a youth court, where automatic reporting restrictions *do* apply (Section 49 of Children and Young Persons Act 1933). This is the case even if details of the initial ASBO have been reported.

But the court has the discretion to lift the restrictions if the juvenile is found guilty and the court can receive representations from the media requesting this.

appendix 1

The Anti-Social Behaviour Act 2003 *removes* automatic reporting restrictions on ASBO proceedings which immediately follow conviction in a youth court ('post-conviction ASBOs). This relates *only* to the ASBO aspect of the proceedings. However, the court retains the discretion to impose s39 reporting restrictions.

Details of the *criminal offence/s* for which the individual is in court remain subject to automatic reporting restrictions.

So, details of the ASBO and against whom it's made *can* be reported, but details of their criminal conviction/s *cannot*.

If an ASBO is breached and a conviction secured, it would appear there is little to be achieved by re-issuing the photograph of the individual if he/she is in prison.

However, it is often the case that breaches and subsequent court action come about as a result of information from the local community.

In order to reassure local communities and demonstrate their involvement has resulted in court action, it might be appropriate to re-publicise the individual's details and photograph.

In some cases, an ASBO will be suspended to take effect when a subject is released from prison. A photograph can be issued at or around the time of their release from prison, subject to there being no reporting restrictions.

An officer might wish to circulate a leaflet to a community directly affected by an ASBO, or several, containing details and photographs of the subject/s. Again, subject to no identification restrictions, this can be done.

However, the officer should ensure the leaflet's content is proportionate. If the distribution of the leaflets is publicised through local media, the choice of media should also be proportionate, eg coverage in a weekly newspaper might be more acceptable than a report on local TV which would reach a much wider audience and less directly relevant area.

### **Informing a restricted audience about potential criminal activity**

Images to support the deterrent effect and detection of future criminal activity may be shown to a restricted audience e.g. to shopkeepers to alert them to shoplifters who may return to an area.

If any officer recommends the image should be left in the possession of a/the restricted audience, this needs to be agreed by a senior officer in conjunction with the force's Press Office and the person(s) concerned should be instructed not to make the image 'publicly available', e.g. by displaying in their shop.

The image should be immediately withdrawn if the person is arrested/charged.

### **Release of images for historic convictions**

Often a media organisation will request the release of an offender's image not contemporaneously to the individual's conviction, e.g. for a documentary several years after criminal proceedings have concluded. Such release should be refused on the grounds of it not being contemporaneous to the court proceedings and convictions may have been spent.

### **Human Rights Act and Data Protection Act**

There must be a balance between the rights of an individual suspect and those of the wider community and the rights of a missing person.

Any decision to release an image should be for a legitimate purpose, be necessary and proportionate.

### **Data Protection Act 1998**

Police held images are classed as personal data under the Data Protection Act. – Section 29 allows for exemptions on the use of personal data, including photographs for the prevention or detection of crime or the apprehension or prosecution of offenders

European Convention on Human Rights and the Human Rights Act 1998. Article 8 covers the right to respect for private life. Article 8.2 allows interference in that right if it is necessary and proportionate to do so in the interests of public safety or for the prevention of crime or disorder.

Any image released should carry a rider that it must only be published or used in a broadcast in direct relation to the information, appeal or conviction of the subject. This is to prevent images being filed and re-used to illustrate articles on a general theme of not contemporaneous to court proceedings. This will safeguard against the misuse of images on future occasions.

### **Record Keeping**

A file should be kept of all decision making in relation to the release of an image including rationales, risk assessment where appropriate and the senior officer who gave authority..



appendix 1

This record may be used as disclosure under the Criminal Procedures and Investigations Act.

**Review of the joint protocol**

To be carried out annually or more often if legal precedents/cases deem it necessary