

MANAGING THE DISCLOSURE OF EMPLOYEE-RELATED INFORMATION

A GOOD PRACTICE GUIDE FOR EMPLOYERS

EDITION THREE: OCTOBER 2014

© Crown Copyright 2014

Disclaimer

Reference to any specific commercial product, process or service by trade name, trademark, manufacturer or otherwise, does not constitute or imply its endorsement, recommendation, or favouring by CPNI. The views and opinions of authors expressed within this document shall not be used for advertising or product endorsement purposes.

To the fullest extent permitted by law, CPNI accepts no liability for any loss or damage (whether direct, indirect or consequential and including, but not limited to, loss of profits or anticipated profits, loss of data, business or goodwill) incurred by any person and howsoever caused arising from or connected with any error or omission in this document or from any person acting, omitting to act or refraining from acting upon, or otherwise using, the information contained in this document or its references. You should make your own judgement as regards use of this document and seek independent professional advice on your particular circumstances.

Introduction

The aim of this guidance

This document provides guidance to employers in the national infrastructure on the process to be followed when disclosures of employee-related information are made to them by CPNI.

This guidance does not cover instances where the employee is in a post for which National Security Vetting is required. In those cases, any disclosures would be made through established vetting channels.

CPNI recommends that organisations seek professional advice, especially on employment law, when implementing or amending their personnel security measures.

This guidance should be read in conjunction with other CPNI publications, in particular:

- *Personnel Security Risk Assessment: a guide*
- *Ongoing Personnel Security: a good practice guide*
- *Investigating Employees of Concern: a good practice guide*

These can be downloaded from www.cpni.gov.uk.

The request, disclosure and response

CPNI may, in some situations, need to either request or disclose information about employees to an employer. As even a request for information on its own necessarily discloses CPNI's interest to an employer, a 'disclosure' by CPNI will take place in both situations.

The need for a disclosure is likely to have resulted from an ongoing security-related investigation which has reached the stage where it can be assisted by questions being posed to the employer. Alternatively, information received about an employee may need to be passed to the employer in order for them to consider whether any actions or mitigations are appropriate.

It is unlikely that CPNI would be asking an employer for employee-related information if the employee posed a serious, imminent threat to the organisation. In most situations where such a threat had been identified, the police would deal with the matter.

A disclosure may simply mean that an employee has come to CPNI's attention, either on the periphery of an investigation or by being tenuously linked to the subject of the investigation. In this situation, the employer's response to the questions asked by CPNI may be all that is required to address any concerns or eliminate the employee from the investigation.

The information disclosed will be sensitive and should not be disseminated beyond those to whom disclosure is absolutely necessary. CPNI will provide clear advice as to who in the organisation can be consulted about the disclosure, and will explain how the information should be stored securely.

CPNI's request is governed by the legal frameworks surrounding the collection, disclosure and dissemination of data. These legal frameworks will be clearly explained in CPNI's correspondence, but employers should also familiarise themselves with relevant legislation, and consult their own legal advisers.

The employer is not obliged to provide the information requested; any response is entirely voluntary.

Next steps

A disclosure about an employee does not necessarily mean that the employee is a threat or is involved in any form of wrongdoing. Employers should take time to consider the implications of any response, which may have lasting consequences.

However, if there are any concerns, CPNI will be able to provide advice and recommendations on security-related matters. For example, CPNI will be able to advise whether there would be security benefits in the employee's terms of reference being altered.

In most circumstances, and particularly given the difficulties inherent in deploying sensitive material in employment tribunals and court proceedings, employers are unlikely to be able to use the fact of an enquiry or any of the sensitive information provided by CPNI as the justification for decisions which impact on the employment status of the employee. Employers should therefore carefully consider the situation and discuss the issues with their CPNI adviser and their own legal advisers.

Decisions regarding an employee's status, or terms and conditions, are the employer's responsibility, and should be taken in accordance with employment legislation and the employee's contract of employment. CPNI will be able to advise on the management of any security risk, which may include implementing or enforcing existing procedures; see for example:

- **Personnel Security Risk Assessment: a guide** – focuses on individuals (be they permanent employees, contractors, agency staff etc.), their access to an organisation's assets, the risks they pose to the organisation and the sufficiency of countermeasures implemented.
- **Ongoing Personnel Security: a good practice guide** – provides advice on protecting an organisation's assets from unauthorised use by employees, establishing an effective security culture, identifying and managing employees who may pose a security risk, and measures to resolve suspicions or provide evidence for disciplinary procedures.
- **Investigating Employees of Concern: a good practice guide** – provides advice on the various stages involved in the investigative process.

As each situation is different, it is impossible to predict how long it will take for the information provided by the employer to be actioned, or for any further steps to be taken. CPNI will do everything possible to help the employer manage the risk during this time, although they will not be able to reveal details of investigations.

The information provided to CPNI may prompt further enquiries being made with the employer, in which case the process will be repeated until the matter can be resolved. When the investigation is complete, CPNI will confirm this in writing.