



# Disclosure policy

## Take home message:

- *Survive* believes the data it holds about clients and former clients should remain private and confidential
- *Survive* will only share this data with third parties with the consent of clients and former clients or when legally obliged to do so
- *Survive* will help clients make informed decisions about whether to share some, none or all of their data with third parties including the Police and prosecutors

Policy owner:	SMT
Date of policy:	20 Sept 2023
Due date of policy review:	20 Sept 2026

## 1. General Statement of Intent

1.1 *Survive* recognises that confidentiality and securely managing personal and sensitive data are essential in building trust with clients who access our specialist services or call the Helpline.

1.2 There is an expectation of privacy and confidentiality attached to the nature of the therapeutic services *Survive* delivers and to the information we hold about clients/former clients. The status of clients/former clients as victims of crime does not diminish this expectation of privacy and confidentiality.

1.3 Information held about clients/former clients including counselling notes will almost inevitably constitute 'special category data' as defined by the UK General Data Protection Principles (GDPR) meaning data protection regulations will apply (ICO).

1.4 This policy sets out how *Survive* handles third party requests for access to the information we hold about clients/former clients and applies to all staff, sessional workers, volunteers and trustees and continues to apply after their service or involvement with *Survive* has ended.

1.5 *Survive* is committed to adhering to:

- Data protection principles set out in the Data Protection Act 2018 (DPA) and UK GDPR;
- Information's Commissioner's Opinion: Who's Under Investigation? The processing of victims' personal data in rape and serious sexual offence investigations (2022);
- European Convention on Human Rights (ECHR) and the Human Rights Act (1998).

## 2. Context

2.1 On 26 May 2022, the Crown Prosecution Service (CPS) updated its guidance on pre-trial therapy. This new CPS guidance supersedes previous guidance and aligns with the Attorney General's Guidelines on Disclosure (2022) and is clear that:

- the health and wellbeing of survivors is paramount and they are free to obtain therapy without delay if they wish to do so;
- survivors should be allowed to have their emotional and psychological needs met before, during and after a trial; and
- accessing therapeutic services (such as those delivered by *Survive*), should not be delayed for any reason connected with a criminal investigation or prosecution.

2.2 This change could potentially give rise to more information requests from third parties, in particular the police and prosecutors, about *Survive* clients/former clients.

2.3 *Survive* recognises the imbalance of power survivors of sexual violence and/or domestic violence experience when people in authority (e.g. the police, social services) ask them to consent to a third party (such as their GP or *Survive*), sharing information held about them in order in order to access justice in the criminal courts or remedies in civil cases.

2.4 *Survive* recognises the additional harm, distress and anxiety such information requests can cause to survivors who are already dealing with the impact of being subjected to sexual and/or domestic violence.

2.5 *Survive*'s default position is to not share any information about clients/former clients with third parties (including the police, prosecutors, defence or social services) unless:

- we are legally obliged to do so (i.e. in receipt of a Court Order);
- we have written permission from the client/former client to do so; or
- the client/former client requests we share their information with third parties.

This is to protect the information rights of clients/former clients and to ensure *Survive* complies with data protection legislation.

2.6 Where a client/former client asks us to share information about them with a third party, we will follow the processes laid out in this policy to ensure that such clients/former clients are making an informed decision and understand the implications and potential consequences of that decision.

2.7 Where applicable, *Survive* will apply the '*data minimisation principle*' and ensure that any personal data shared with a third party is '*adequate, relevant and limited to what is necessary*' (ICO).

2.8 Any breaches of confidentiality due to safeguarding concerns are dealt with separately under *Survive*'s Confidentiality, Data Protection and Information Sharing Policy and Safeguarding and Public Protection policies.

### **3. How *Survive* responds to an information request from third parties (excluding the police)**

3.1. *Survive* commits to the following process when we receive an information request:

- Tell the client/former client that we have received an information request and from whom it has been received;
- Provide the client/former client with factual information so that they can make an informed decision about whether to consent to information being shared in its entirety, partially shared or not shared at all;
- Make clear to the client/former client that they are under no obligation to consent to their information being shared with a third party unless it is in response to a Court Order;
- At the request of the client/former client, provide a letter or report to the third party, once the client/former client has agreed to the content of such letter or report;
- Inform the third party that data requests can take up to 30 days to process.

### **4. How *Survive* responds to an information request from the Police**

4.1 In line with the Information Commissioner's Opinion (2022), *Survive* will inform any police officers/staff that:

- Unfocussed requests to browse survivor records in order to determine whether they contain anything of interest to the investigation will be declined;

- Requests to *Survive* must be *targeted* and, to the greatest extent possible, *specific* (i.e. spanning a particular timeframe and related to a particular issue) in order for *Survive* to comply with data protection legislation;
- Any forms used to request consent from *Survive* clients/former clients should:
  - make clear whether the requests are voluntary or mandatory;
  - explain the reason for seeking the information;
  - explain how the investigators will use the information; and
  - explain that the information sought might end up being disclosed to others including the defendant/s.

4.2 In line with the Information Commissioner’s Opinion (2022) and to comply with UK GDPR, *Survive* will consider whether it is appropriate to respond to a Police request for information by applying the following tests:

- Purpose test: is the third party pursuing a legitimate interest?
- Necessity test: is the processing necessary for that purpose?
- Balancing test: do the client/former client’s interests override the legitimate interest?

4.3 The Information Commissioner’s Office (ICO) has produced a Legitimate Interest’s Assessment (LIA) for organisations who receive requests from Police officers/staff involved in Rape and Serious Sexual Offence (RASSO) cases (see Appendix 1). *Survive* will conduct a LIA in their discussions with clients/former clients before any disclosure is made and record decisions on the client/former client’s counselling records. This will include considerations regarding:

- whether disclosure is in the best interests of the client/former client and the potential additional harm it could cause them should the information be shared with others including the defendant/s;
- the potential harm disclosure could cause the therapeutic relationship;
- to not disclose information to a third party just because the client/former client requests us to do so.

4.4 *Survive* will inform the Police that data requests can take up to 30 days to process.

## 5. How *Survive* responds to information requests from CICA

5.1 *Survive* may receive information requests from Criminal Injuries Compensation Authority (CICA) in relation to claims made by clients and former clients.

5.2 The rules CICA must apply and the amount of compensation which can be awarded is set out within the Criminal Injuries Compensation Scheme 2012 (the Scheme). The tariff of injuries at Annex E of the Scheme outlines that an award for a mental injury can only be made if it is “disabling”. The Scheme provides a specific definition of this and states that the mental injury must have had a substantial adverse effect on a person’s ability to carry out normal day-to-day activities for at least six weeks and must be confirmed specifically by the diagnosis or prognosis from a clinical psychologist or a psychiatrist.

5.3 CICA has discretion to consider a range of evidence when assessing the impact of sexual violence on a survivor. In some cases, the content of the counselling records will be an important first step to understand the extent of the mental injury, the disabling features and assess what, if any, further enquiries would be most appropriate in each individual case.

5.4 CICA also recognises that in some cases a survivor may not have been treated by a clinical psychologist or a psychiatrist and we may therefore be unable to obtain the required diagnosis through a treating practitioner. In those circumstances, the content of the counselling records will help CICA request that a clinical psychologist or psychiatrist assess all of the records and provide an expert opinion about the mental injury for the sole purpose

of meeting the criteria laid down by the Scheme. Where that is not appropriate, a referral may be made for a face-to-face assessment.

5.5. As with other information requests, *Survive* will ensure that the client has sufficient information to make an informed decision about what to disclose and, with client consent, may provide a bespoke report based on counselling records, what the counsellor can recall and the before and after scores of any psychological assessments tools such as the IES-R trauma scale or CORE10 which may assist CICA in their assessment and the client or former client in securing compensation.

5.6 *Survive* will inform CICA that data requests can take up to 30 days to process.

## **6. How *Survive* responds to an information request from clients and former clients**

6.1 Sometimes clients/former clients request in writing disclosure of their records for example to their solicitor. We will always read the request carefully to ensure we understand what it is being requested and why. We will also engage with the client/former client to check they are seeking the information voluntarily or are legally required to do so or they feel coerced into doing so.

6.2 *Survive* is aware that sometimes clients/former clients contact *Survive* direct to secure a copy of their records for the sole purpose of onward sharing with third parties, including Police and prosecutors, because the third party has asked them to do so or has led them to believe that decisions to prosecute a case can only be made after accessing their records. *Survive* will conduct a LIA (see Appendix 1) in their discussions with clients/former clients before any disclosure is made and record decisions on the client/former client's counselling records.

6.3 Any Data Subject Access Requests (DSAR) will be dealt with by our Confidentiality, Data Protection and Information Sharing Policy.

## **7. How *Survive* helps clients/former clients make an informed decision about consenting to *Survive* sharing their information with third parties, including the Police.**

7.1 *Survive* will provide clients/former clients with additional information to help them make informed decisions about whether to consent to *Survive* sharing all, some or none of the information it holds about them with third parties, including the Police.

7.2 *Survive* will inform clients/former clients (see Appendix 2) that:

- They are entitled to request a copy of the police force's policy on the processing of their data to ensure it complies with UK GDPR, the DPA (2018) and the Information Commissioner's Opinion (2022).
- Police officers/staff should inform them:
  - how they might use their information throughout the investigative process; and
  - the likelihood of disclosures to others including the defendant/s.
- Where organisations are processing for law enforcement purposes, they must also be aware of their general duties under Section 44 of the DPA (2018) including making survivors aware of:
  - their right to object to the request being made and the information shared;
  - the existence of their right to complain to the Information Commissioner; and
  - the contact details of the Commissioner.

7.3 *Survive* will provide clients/former clients with a copy of the checklist for police officers and investigators involved in RASSO cases produced by the Information Commissioner's

Office (ICO) (see Appendix 3) so that they can satisfy themselves that the requests being made are *'adequate, relevant, not excessive and pertinent to an investigation'*.

## **8. How *Survive* responds to Court Orders**

8.1 *Survive* must comply with any Court Order requiring disclosure. The wording must be read carefully to ensure compliance. *Survive* will inform the client/former client (if they are not already aware of the request) and arrange for them to read their records before we pass a copy of the records or we will arrange to have the records read to them over the telephone. Note, we must supply a copy of the records in full – this means no redactions if that is what the court order requires. Again, the terms of the order must be read carefully.

8.2 Where *Survive* has taken all reasonable steps to contact the client and has still been unable to do so (e.g. client contact details have changed or client does not respond within the timeframes), *Survive* will comply with the Court Order.

## **9. Stafford statements**

9.1 *Survive* is aware that, on occasions, *Survive* clients/former clients have been asked to sign 'Stafford Statements' which give police and prosecutors 'blanket' consent to access confidential information held about them by third party organisations without further justification (e.g. historical education reports, or sensitive medical records). The Information Commission's Officer understands that this was not the intended use of these statements and the ICO does not consider them to be lawful. *Survive* will endeavour to highlight this to clients/former clients. Note, clients may, however, in some circumstances request such disclosure to be made.

## **10. ECHR and the Human Rights Act (1998) and The Criminal Procedures and Investigations Act (1996) (CPIA)**

10.1 Article 8 of the ECHR is the right to private and family life which is a qualified right. Article 6 of the ECHR is the right to a fair trial which is an absolute right.

10.2 The CPIA (1996) (revised 2015) and its code of practice sets out how investigators in England and Wales should gather evidence. This covers how to record, retain and reveal to the prosecutor material obtained in a criminal investigation that may be relevant to the investigation. It states:

- *"In conducting an investigation, the investigator should pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. ... It is a matter for the investigator, with the assistance of the prosecutor if required, to decide what constitutes a reasonable line of inquiry in each case."*
- *"Material may be relevant to an investigation if it .... has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case".*

10.3 CPS guidance (2022) states that:

- the CPIA Code of Practice (1996) and the Attorney General's guidelines make it clear that the obligations to pursue all reasonable lines of enquiry include material held by third parties such as therapists;
- the police should never be advised to seek access to therapy records simply because survivors have received therapy.

10.4 Victims of crime do not automatically waive their right to privacy under Article 8 of the ECHR. Investigators should therefore only disclose material generated as a result of therapy to the defence which is considered capable of undermining the prosecution or assisting the case for the accused and inform survivors of such disclosures.

10.5 Under Article 6 UK GDPR, *Survive* must have a lawful basis to share the records of clients/former clients for criminal justice purposes.

## **11. Access and review**

11.1 Line managers will provide a copy of this policy to all new staff and volunteers as part of their induction.

11.2 A soft copy of this policy will be stored on Sharepoint and HR Breathe

11.3 The Board of Trustees will review this policy every 3 years, unless there is further legislative change.

11.4 Staff and volunteers will be informed of any updates via team meetings.

### **Links to other policies**

Confidentiality, Data Protection and Information Sharing Policy

Safeguarding and Public Protection – Adults at Risk

Safeguarding and Public Protection – CYP

Pre-trial therapy

### **Further reading**

CPS (2022). Pre-trial therapy. Available at: [cps.gov.uk/legal-guidance/pre-trial-therapy](https://cps.gov.uk/legal-guidance/pre-trial-therapy)  
Accessed 22 June 2022.

CPS (2022). Pre-trial therapy - Accompanying notes for therapists. Available at:  
[cps.gov.uk/legal-guidance/pre-trial-therapy-accompanying-note-therapists](https://cps.gov.uk/legal-guidance/pre-trial-therapy-accompanying-note-therapists). Accessed 7 July 2022.

Criminal Injuries Compensation Scheme (2012). Ministry of Justice. Available at:  
[gov.uk/government/publications/criminal-injuries-compensation-scheme-2012](https://gov.uk/government/publications/criminal-injuries-compensation-scheme-2012) Accessed 21 August 2023.

Equality and Human Rights Commission (2018). The Human Rights Act. Available at:  
[equalityhumanrights.com/en/human-rights/human-rights-act](https://equalityhumanrights.com/en/human-rights/human-rights-act) Accessed 22 June 2022.

Ministry of Justice (2015). Revised CPIA Guidance Code of Practice. Available at:  
[gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice](https://gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice)  
Accessed 23 June 2022.

ICO (no date). Principle (c): Data Minimisation. Available at: [ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/data-minimisation/](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/data-minimisation/) Accessed 7 July 2022.

ICO (no date). Special category data. Available at: [ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/). Accessed 7 July 2022.

ICO (2022). Information Commissioner's Opinion: Who's Under Investigation? The processing of victims' personal data in rape and serious sexual offence investigations. Available at: [ico.org.uk/media/about-the-ico/documents/4020539/commissioners-opinion-whos-under-investigation-20220531.pdf](https://ico.org.uk/media/about-the-ico/documents/4020539/commissioners-opinion-whos-under-investigation-20220531.pdf) Accessed 22 June 2022.

## Appendix 1

### Legitimate Interests Assessment

**To be completed by *Survive* with the client/former client for all information requests from the police – even when the client/former client consents to their information being shared**

We are satisfied, on the basis of the details provided by the police, that they have a legitimate reason for requesting information from *Survive*.

We have considered if it is necessary to disclose the requested information in order to assist the police's investigation.

We have confirmed (by directly engaging with the client/former client) that they are aware of their broader rights and have not objected to the disclosure, separate to any right to object under data protection legislation.

We have made clear to the client/former client where appropriate, that information provided to the police may be disclosed further, such as to a defendant.

On the rare occasions, where client consent is not required (e.g. where counselling is part of a Child Protection Plan or we are in receipt of a Court Order), we will inform the client of the information we have shared.

We have considered if the reasons provided by the Police and the needs of the investigation outweigh the interests, rights and freedoms of the client/former client.

## Appendix 2

***Survive* will share the following additional information with clients/former clients to help them make informed decisions about whether to consent to *Survive* sharing all, some or none of the information it holds about them with third parties including the police.**

In line with the Information Commissioner's Opinion (2022), *Survive* will inform clients/former clients that:

- They are entitled to request a copy of the police force's policy on the processing of their data to ensure it complies with UK GDPR, the DPA (2018) and the Information Commissioner's Opinion (2022). At a minimum, the policy should cover:
  - the circumstances under which it might be appropriate for them to seek access to material from: (i) a survivor's electronic devices, or (ii) other third party organisation. How they might use information, who they can disclose it to and how they secure it;
  - the formulation and documentation of appropriate parameters around material they are seeking (e.g. between x date and y date);
  - the information they provide to any third party organisation who they are requesting material from;
  - how they will deal with cases where a request for information is declined by a third party;
  - the consequence of any decision to not allow access to the requested digital materials; and
  - how they will manage your personal data and retain information, whether it is:
    - obtained directly from you;
    - extracted from your devices; or
    - acquired from third parties like *Survive*.
- Police officers/staff should inform clients/former clients
  - how they might use their information throughout the investigative process; and
  - the likelihood of disclosures to others including the defendant/s.
- Where organisations are processing for law enforcement purposes, they must also be aware of their general duties under Section 44 of the DPA (2018) including making survivors aware of:
  - their right to object to the request being made;
  - the existence of their right to complain to the Information Commissioner; and
  - the contact details of the Commissioner.



## Appendix 3

### Information Commission Office checklist for police officers and investigators involved in Rape and Serious Sexual Offences (RASSO) cases

#### Law enforcement requests for data held by a third party organisation

We have considered in the circumstances of the investigation, if the proposed line of enquiry is reasonable and necessary.

We have explored if there are means of fulfilling the line of enquiry without requesting material about the person or victim held by other organisations.

We have considered if the material is likely to meet the relevance and disclosure tests.

We have made the person or victim aware of their information rights and broader rights, and considered if they have raised an objection to the material being sought.

We have considered if the public interest benefits outweigh any privacy concerns of the person or victim.

#### Law enforcement requests for data held on a mobile device

We have considered in the circumstances of the investigation, if the proposed line of enquiry is reasonable and necessary.

We have considered if there are specific devices which we believe store relevant material.

We have considered if there is a reasonable and legitimate means of acquiring the device(s) if needed.

We have explored if there are means of fulfilling the line of enquiry without resorting to extracting and examining digital data.

We have considered if the public interest benefits outweigh any privacy concerns of the person or victim.

We have made contact with the device user where appropriate and only acquired the minimum amount of data which is strictly necessary.