

The Interpersonal Violence Disclosure Protocol (Clare's Law) Act

Questions & Answers

Q1: What is the Interpersonal Violence Disclosure Protocol (Clare's Law) Act?

A1: The Act authorizes a police service to disclose certain risk-related information, in accordance with the Protocol, to a current or former intimate partner where such information will assist the current or former partner in making informed decisions about their safety and relationship.

Q2: What is the Protocol's process?

A2: There are two methods to the protocol's disclosure process: the "right to ask" entry route and the "right to know" entry route.

The "right to ask" process can be initiated by a member of the public making an application. The "right to know" process can be initiated by a member of a police service who has received information that may impact the safety of a person at risk. The process associated with each entry route may vary but the key element is a full assessment of risk.

Once a police officer assesses the risk posed to the person at risk, the file, whether initiated through the "right to ask" or "right to know" entry route, will proceed to a multi-sector review committee for further assessment and review. The multi-sector review committee will make a recommendation regarding disclosure. The police service receiving the application will make the final decision regarding disclosure.

Q3: Who can make an application?

A3: An application can be made by a person who feels they may be at risk of harm by a current or former intimate partner. A third party who is concerned about someone's safety may also make an application on behalf of the person at risk, with or without their consent. This third party includes someone who has a close personal relationship with the person at risk, such as a parent, sibling, friend or support worker.

Q4: How are applications made?

A4: In general terms, applications are made when a member of the public makes a direct application to a police service for information about potential previous violent offences or abusive behaviour of a current or former intimate partner.

Ideally, the application will be received by a police officer at the police station. In these circumstances, the applicant must be allowed the opportunity to make their application

in private. An application form will be provided to applicants so that they can record their concerns.

There may be cases where the applicant makes an inquiry to another agency rather than a police service. In these instances, the agency is encouraged to assist with the application process, using existing referral policies and procedures where applicable.

There may also be circumstances where it is impossible or impracticable to follow the standard in-person procedures due to an increased risk of harm to an applicant, mobility challenges, or social distancing requirements. In such situations, police services can follow an alternate process that provides for greater flexibility and contact options.

Q5: What if a crime is being reported during the “right to ask” application process?

A5: If at any stage during the initial contact the police officer or civilian staff member believes that an applicant is alleging a crime (e.g. a specific incidence of a violent or abusive act) rather than asking for information about the previous violent offences or abusive behavior of an individual, then a police officer must pursue the crime report under normal criminal investigation procedures. The Protocol allows for the application to run concurrently with a criminal investigation.

Q6: What are the obligations of a police service if they know of an offender’s previous history of domestic violence?

A6: The Protocol provides a roadmap for officers to make disclosures when they learn information that an individual may be at risk in their intimate relationship. The Protocol does not create an ongoing obligation for police services to make disclosures, but will facilitate the disclosure process by having an established procedure. The Act provides immunity for officers acting in good faith.

Q7: Does the Protocol replace existing arrangements for access to information requests under The Freedom of Information and Protection of Privacy Act (FOIP) or The Local Authority Freedom of Information and Protection of Privacy Act (LAFOIP)?

A7: No. If it is identified at the initial contact that the enquiry relates to an access to information request, then the individual should be directed down the existing route for this type of request.

Q8: How is risk assessed?

A8: The Protocol is focused on an assessment of risk taking into account any relevant convictions, warnings, charges, or diversions for violent or abusive offences; and/or information held about an individual’s behaviour which reasonably leads the police service to believe that they pose a risk of harm. Risk assessment is conducted in

accordance with the interpersonal violence risk assessment procedure followed by that police service.

After gathering information about the relevant parties through the “right to ask” or “right to know” entry route, the police officer should complete additional checks to gather all relevant background information to perform a comprehensive assessment of risk.

The additional checks should aim to fill any gaps in information and attempt to collect all available information known to the police service on the individuals concerned with the enquiry. This will include any additional checks with police services in other jurisdictions that have been identified as relevant by the applicant and/or the person at risk in the face-to-face meeting. Checks will also be completed with other relevant agencies where appropriate.

Q9: How is risk categorized?

A9: Once sufficient information has been gathered to determine whether there is a credible risk of harm to the person at risk, the police officer will categorize the application (under “right to ask”) or the indirect information received (under “right to know”) as either a “concern” or “no concern” before it is referred to the multi-sector review committee for discussion and recommendation.

The multi-sector review committee, in turn, will consider the information presented and categorize the risk as “low”, “medium” or “high”. Appendices accompanying the Protocol contain a description of each of these categories of risk.

Regardless of whether the file is categorized as “low”, “medium” or “high” risk, support services will be available to the person at risk after disclosure is made. The multi-sector review committee’s recommendations should be taken into consideration in determining the appropriate support services.

Q10: Who is represented on the multi-sector review committee?

A10: The multi-sector review committee is composed of up to ten individuals with knowledge of interpersonal violence representing the following agencies: (a) Police services; (b) Victims Services as designated by the Director of Victim’s Services; and (c) The Provincial Association of Transition Houses and Services of Saskatchewan.

Q11: Could an application be discontinued?

A11: It is within the police service’s discretion to discontinue an application where it is not satisfied of the legitimacy of the application. Circumstances that may justify discontinuation of an application at this stage include: capacity concerns in relation to

the applicant; the application is made for a purpose other than to protect the person at risk from harm; and/or if it is determined that there is not a close personal relationship between the applicant and the person at risk, that justifies an application without the consent of the person at risk.

Should an application be discontinued, the protocol recommends that all applications include a face-to-face meeting to ensure all relevant information is collected. Where a police officer discontinues an application, clear reasons for the discontinuation must be documented. The discontinued application must then be reviewed by a supervisor and referred with the reasons and recommendation to the Review Committee for review.

Q12: Will the applicant be notified that their application has been discontinued?

A12: If an application is discontinued at the initial contact stage, it should be documented and reported to the applicant. The applicant should be provided with safety planning information and contacts for local support services.

Q13: After being reviewed by a police officer as part of the assessment of risk stage, what classifies an application as a “no concern”?

A13: A “no concern” applies where the person whose information is being sought has either no convictions for an offence related to interpersonal violence and abuse that may be disclosed; has no other previously recorded incidents or information that indicates that their behaviour may cause harm to the person at risk; or if there is insufficient information to register a concern.

Regardless of the application risk categorization, the file will be referred to the multi-sector review committee.

Q14: Once forwarded to the multi-sector review for further assessment, how is it decided whether or not a disclosure will be made?

A14: The police service responsible for the file will be responsible for recording, in writing, the recommendations of the multi-sector review committee. The members of the multi-sector review committee will not maintain any documentation regarding their review of files pursuant to this Protocol.

Taking into consideration the multi-sector review committee’s recommendations, the police officer must make a final determination regarding whether a disclosure should occur and if so, the content and practical aspects of the disclosure.

Q15: Is the multi-sector review committee subject to a confidentiality agreement?

A15: Pursuant to section 6 of the Act, all multi-sector review committee members must maintain the confidentiality of the information provided at the meetings.

Each member of the committee shall sign a confidentiality agreement respecting information received in their role as a member of the committee.

Q16: How much of personal information will the multi-sector review committee have access to?

A16: The information presented to the multi-sector review committee will in all cases be de-identified so that the committee members cannot directly or indirectly identify either the person at risk and/or the applicant and/or the person whose information is being disclosed.

Q17: Who delivers the disclosure?

A17: The disclosure will be delivered by a member of the police service which received the application, however the multi-sector review committee will consider whether there are other support agencies that should also be available during the disclosure process. It is strongly recommended that support services be immediately available to the person at risk of harm, with his or her consent, after disclosure is made.

Q18: Where are disclosures made?

A18: The member of a police service must make contact with the individual to receive disclosure in a manner that will protect them from increased risk. During this contact, a meeting should be arranged to disclose information to the applicant. In most cases, this meeting will occur in person at the police station but accommodations may be made in circumstances where the applicant may be placed at increased risk by attending a police station.

Q19: How are disclosures made?

A19: An appendix accompanying the Protocol provides a template which may be used to convey a disclosure. The officer, should record, verbatim, the information conveyed to the applicant in accordance with the information contained in the template. This form should then be signed and retained. In no circumstance will the form be given to the applicant.

Q20: What sort of information will be disclosed?

A20: The assessment of the category of risk, ("low", "medium," or "high") will be disclosed. The multi-sector review committee will also consider which of an individual's convictions are relevant to the decision to disclose risk information to the person at risk. Only those convictions that may indicate an increased risk of interpersonal violence should be considered. The details of the relevant convictions will not be disclosed but rather the severity of the conviction will be reflected in the categorization of risk.

The disclosure must be accompanied by a safety plan tailored to the needs of the person at risk and based on all relevant information. The multi-sector review committee should recommend information to be included in the safety plan.

Q21: Will an individual's personal information be included in the disclosure?

A21: A disclosure shall not contain personal information. At no time will written correspondence concerning the specifics of the disclosure be sent out or left with the applicant. There would be a potential risk to information sources, victims and perpetrators should such written information was used outside of the purposes of the Protocol.

Q22: Who is expected to attend the disclosure meeting?

A22: The disclosure should be provided to the person(s) best placed to safeguard the person at risk. Accordingly, the disclosure will be made to the person at risk, unless there are extenuating circumstances. In rare circumstances it may be appropriate to disclose to a third party and the multi-sector review committee should, in these cases, consider who is in the best position to safeguard the person at risk based on the information gathered as part of this process and subsequent risk assessments.

Q23: What are the terms of confidentiality regarding the disclosure?

A23: Prior to receiving a disclosure, the applicant must be advised that any information disclosed by the police service must be kept confidential and must only be used for the purpose for which it has been shared (i.e. in order to safeguard the person at risk). The person to whom the disclosure is being made will be asked to sign an agreement stating that they understand that the information is confidential and that they will not disclose this information further.

If that person is not willing to sign the agreement, the police officer will need to consider whether disclosure should still take place.

Q24: Will the individual whose information is being disclosed be notified of the disclosure?

A24: For the most part, no. There may be an extenuating circumstance where the subject of the application is notified of the disclosure. However, such a decision must be based on an assessment of risk of harm to the applicant.

Q25: What happens if a decision is made not to disclose information to the applicant?

A25: It is highly recommended that the applicant should be told in person, via a safe telephone number if appropriate, as any written correspondence or a home visit has the potential to put the applicant at an increased risk. The applicant should be told that

there is no information to disclose given the information/details provided by the applicant and the result of checks made on these details.

The applicant will also be told that the lack of information to disclose does not mean that there is no risk of harm to the person at risk, and the applicant should remain vigilant and report any future concerns. This contact also presents an opportunity to provide safeguarding information and direction to relevant support services.

Q26: How long does the entire application to disclosure process take?

A26: Timeframes are dependent on each stage of the process. Once an application is made at the initiation of process stage, initial checks will be completed as soon as possible and in any case, within 24 hours. Should a decision be made to progress the application further, the applicant and/or person at risk will be required to attend a face-to-face meeting within the next 10 days. From there, the police service will aim to complete the enquiry within 30 days. Once the application has been forwarded to the multi-sector review committee, the referral should be considered no later than 20 working days after the categorization of the “concern” or “no concern” has been made by the police officer.

Note that timescales provided in the Protocol are intended as a guide. Police will use their discretion, based on assessment of risk, to determine appropriate timescales for action.

Q27: Can the disclosure be used in an affidavit?

A27: No. Information under this Act cannot be used for alternative purposes such as a custody dispute and the police and the multi-sector review committee are not compellable to testify or produce documents for such purpose.