

The Commission's power to obtain material from private bodies
and individuals under S.18A of the Criminal Appeal Act 1995

CASEWORK POLICY

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Policy in respect of the Commission's power
under, and use of, section 18A of the Criminal
Appeal Act 1995

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CASEWORK POLICY

1. Section 18A was inserted into the Criminal Appeal Act 1995 by the Criminal Cases Review Commission (Information) Act 2016¹.
2. Section 18A applies where the Commission believes that a private body or individual has possession or control of a document or other material which may assist the Commission in the exercise of any of its functions.
3. This provision allows the Commission to seek an order from the Crown Court requiring a person in the private sector to give the Commission access to documents or other material in that person's possession or control.
4. Failure to comply with an order from the Crown Court would put an individual or company in contempt of Court and potentially subject to the associated sanctions.

Applying for an order

5. In most cases, the Commission will seek to obtain the material by way of voluntary disclosure, without resorting to an application to court.
6. Applications by the Commission will be made in the Central Criminal Court. Criminal Procedure Rules 47.53 – 47.57² have been inserted to cover such applications. In order to grant an order, the Court must think that the document or other material may assist the Commission in the exercise of any of its functions.

Are there any limitations on the section 18A power?

¹ In force as of 12 July 2016

² In force as of the October 2016 update

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7. Once an order has been made by the Crown Court, the provisions of that order apply notwithstanding any obligations of secrecy or other limitations upon disclosure. It should be noted that if the information sought is eligible to be requested under section 17, then there is no power to apply for a section 18A order.
8. Subsections (3) and (4) of section 17 apply for the purposes of this section 18A as they apply for the purposes of section 17.
9. Section 17(3) provides that the material may relate either directly to a case to which the Commission's function may be exercised, or in relation any other case which may be connected in any way with that case.
10. This means that the Commission could, for example, seek information relating to a co-defendant of an applicant, even if that co-defendant had not applied to the Commission themselves.
11. Section 17(4) provides that the duty imposed on a public body is not affected "by any obligation of secrecy, or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) which would otherwise prevent the production of the document or other material to the Commission or the giving of access to the Commission".
12. In other words, the duty on a private body or individual to comply with an Order under section 18A is not affected by matters such as the general sensitivity of the material, or medical confidentiality, legal professional privilege or the existence of a court order for public interest immunity, or by legislation such as the Data Protection Acts or the Official Secrets Acts.

Sensitive Information

13. It will not always be appropriate to alert a Respondent to the fact that the Commission is making an application for a section 18A order. This can be dealt with by way of an *ex-parte* application.
14. Applications of this nature will be rare, and will only be made when it is clear that the consequences for the integrity of the review should the Respondent be made aware of the application are potentially significant.
15. In other cases, the Commission may need to withhold certain information from the Respondent during the course of making an application. In these circumstances, the application will be made using a confidential annex which is served only upon the Court. The Respondent will leave Court when the sensitive material is discussed³.

³ CPR 47.56

What happens to material when it is provided to the Commission?

16. Ownership of the material remains with the private body or individual throughout.
17. The Commission will handle and store all material provided by a private body or individual in accordance with its policy [.FM Exhibits and other original evidence storage and movement](#)

Will the Commission give the material to someone else?

18. Section 25 of the Criminal Appeal Act 1995⁴ specifies that a private body or individual can notify the Commission that no onward disclosure of material provided under section 18A is to be made without prior consent, although such consent may not be unreasonably withheld.
19. The Commission may decide that it is necessary to disclose information provided by a private body or individual under section 18A. If so, disclosure can only be made for one of the purposes specified in section 24 of the Criminal Appeal Act 1995.
20. A full explanation of the relevant statutory provisions and the Commission's general approach to disclosure of information is set out in its policy on [Disclosure by the Commission](#)

What happens when the Commission's review has been completed?

21. The Commission will return all original material provided by a private body or individual at the conclusion of its review. At this point, the private body or individual will be notified in writing that its obligations under section 18A are at an end.

⁴ As amended by the Criminal Cases Review Commission (Information) Act 2016
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