

The CCRC's power to obtain material from public bodies
under S.17 of the Criminal Appeal Act 1995

CASEWORK POLICY

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The CCRC's power to obtain material from a public body

1. Section 17 of the Criminal Appeal Act 1995 applies where the CCRC believes that a person serving in a public body has possession or control of a document or other material which may assist the CCRC in the exercise of any of its functions.¹ When requested to do so, a public body is under a duty to make such material available to the CCRC, providing such a request is reasonable.

The meaning of "public body"

2. A public body is defined in section 22 of the Criminal Appeal Act 1995. It includes
 - (i) any body constituted for the purposes of public service, local government, or the administration of justice; or
 - (ii) whose members are appointed by the Queen, by any Minister or any government department; or

¹ Section 33(2) Criminal Appeal Act 1995: the Commission's powers under section 17 extend only to England, Wales and Northern Ireland.

(iii) whose revenues consist wholly or mainly of money provided by Parliament

3. "Public body" therefore includes police forces, the Crown Prosecution Service, the Armed Forces, the Security Services, government departments, Local Authorities (including Social Services departments), Courts, HM Prisons and the Probation Service.²

"Reasonable to do so"

4. The CCRC's power under section 17 can only be exercised when it is reasonable to do so. As a matter of broad principle no documents or material will be requested from a public body unless it appears that they may assist the CCRC in determining whether or not a case should be referred to an appellate court.
5. The fact that material held by a public body relates directly or indirectly to a case under review by the CCRC, or to a case being investigated for the Court of Appeal by the CCRC, will generally satisfy the requirement of reasonableness.
6. Where the use of the section 17 power relates to enquiries by the CCRC to assess witness credibility, the CCRC will also have regard to its policy on [Enquiries as to Witness Credibility](#).
7. The CCRC may need to obtain material under section 17 from a public body when investigating a matter on behalf of the Court of Appeal³ or the Home Secretary⁴.

"Possession or control" and "the appropriate person"

8. Material may be with an individual or department, it may have been passed on elsewhere or it may have been archived. Therefore, material will be in the "possession" of the person or office which has physical possession at the time the section 17 notice is received, but it may still be under the "control" of another person or office elsewhere.
9. It is not always possible to identify which part of a public body is actually in possession or control of material at the time a section 17 notice is issued. Consequently, the CCRC will direct any formal notice issued under section 17 to "the appropriate person" at the public body. The appropriate person will be responsible for ensuring that the public body complies with its obligations.
10. Section 22(4) of the Criminal Appeal Act 1995 sets out who will be the "appropriate person" at a public body: the head of the organisation or the Minister in charge of a government department.

² This list is not exhaustive.

³ See section 15 Criminal Appeal Act 1995

⁴ See section 16 Criminal Appeal Act 1995

11. In practice, the appropriate person will generally delegate the task of complying with a notice under section 17 to a nominated representative within the public body. Most public bodies dealing with the CCRC on a regular basis have appointed a specific member of staff to act in this capacity.

Form of notice under section 17

12. The CCRC has a standard form of notice under section 17. This will be accompanied by an explanation (Section 17 Duties) of the specific legal obligations imposed on a public body by such a notice.

The duties imposed on a public body by section 17

13. A public body receiving a notice under section 17 notice from the CCRC is under a legal duty to comply with the request. The notice will specify exactly what is being requested of the public body by the CCRC.
14. The CCRC may require a public body
 - (i) to produce material;
 - (ii) to allow access to it;
 - (iii) to allow the CCRC to take it away;
 - (iv) to allow the CCRC to make and take away a copy in an appropriate form.
15. When a section 17 notice is received by a public body it is required not to destroy, damage or alter the material until the notice has been withdrawn by the CCRC.

Are there any limitations on the section 17 power?

16. 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”.
17. In other words, the duty on a public body to comply with a notice under section 17 is not affected by matters such as the general sensitivity of the material, or medical confidentiality⁵, or the existence of a court order for public interest immunity, or by legislation such as Data Protection legislation or the Official Secrets Acts.

⁵ But see policy on [Medical Records](#)

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

18. Ownership of the material remains with the public body throughout.
19. The CCRC will handle and store all material provided by a public body in accordance with its formal policy.

Will the CCRC give the material to someone else?

20. Section 25 of the Criminal Appeal Act 1995 specifies that a public body can notify the CCRC that no onward disclosure of material provided under section 17 is to be made without prior consent, although such consent may not be unreasonably withheld.
21. The CCRC may decide that it is necessary to disclose information provided by a public body under section 17. If so, disclosure can only be made for one of the purposes specified in section 24 of the Criminal Appeal Act 1995.
22. A full explanation of the relevant statutory provisions and the CCRC's general approach to disclosure of information is set out in its policy on [Disclosure by the Commission](#) .

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

23. The CCRC will return all original material provided by a public body, generally at the conclusion of its review, but it might be returned earlier. Once the review has been concluded, the section 17 notice will be formally withdrawn and the public body will be notified in writing that its obligations under section 17 are at an end.