

Retention, Disclosure and Use.

Police Information: is broadly defined in statutory guidance as “*all information including intelligence and personal data obtained and recorded for police purposes*”. It can be split into two main categories; convictions and soft intelligence.

1. **Convictions** covers all cautions, warnings, reprimands and in court convictions.
2. **Soft intelligence** includes any information, that doesn't relate to formal police or court action that a police force holds on a person. This includes records of 'no further action', records of investigations, findings of innocence and records of suspicion.

Management: involves **3** distinct practices.

Retention refers to the initial production of police records, and the storing of them on local and national police systems.

Disclosure includes 2 processes through which an organisation can access a person's criminal record.

1. By applying for a Criminal Records Certificate; or
2. By asking the individual to volunteer their criminal records.

Use refers to decisions made about an individual as a result of disclosure. This can include a refusal to offer employment, dismissal of an individual from a role or barring the individual from a course of education.

The diagram on the right sets out how each practice fits into the management system.

Retention is the first step in criminal records management.

Convictions and cautions can be retained forever no matter how minor. Police intelligence can be kept anywhere from 6 to 100 years depending on which of 4 “bands” it falls into. The key principal for keeping police information is that it must be “necessary for a police purpose”.

Self disclosure can always be required for unspent convictions.

Applicants are empowered to deny the existence of spent convictions unless the employer is lawfully asking an “exempted question”, for example when the role will involve working with children or vulnerable adults.

CRC disclosure by a *standard* certificate will show all unspent and spent convictions that have not been filtered. An *enhanced* certificate will show the same, but with the addition of any police information that the disclosure officer believes is relevant to the application and that ought to be disclosed.

Employers are not entitled **use** spent convictions they were not authorised to ask for. An individual may be deemed to have been unlawfully dismissed if their employment or education is ended as a result of such a conviction.

Private employers are encouraged to take a balanced view when considering an applicant's offending that they have lawfully obtained, but are not bound to do so.

Challenging police records:

Recent years have seen a flurry of cases challenging each of the 3 stages. In relation to **retention**, the courts have been reluctant to prevent the police keeping information, giving them blanket authority to keep conviction records in 2009, and broad authority to keep soft intelligence records in 2012. In relation to **disclosure**, the courts have repeatedly found that indiscriminate or arbitrary elements of the disclosure schemes, both through criminal records certificates or the requirement to self disclose, are unjustified interferences with article 8. In relation to **use** the courts have been critical of the idea that employers will respect a person's right to privacy in a risk adverse hiring culture. They have been willing to quash the 'use' decisions of public bodies who didn't strike the right balance between public protection and an individual's right to privacy.