STATUTORY RULES OF NORTHERN IRELAND

# 2016 No. 123

# PUBLIC RECORD OFFICE

## The Court Files Privileged Access Rules (Northern Ireland) 2016

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| *Made - - - -* | *4th March 2016* |
| *Coming into operation* | *30th March 2016* |

The Department of Culture, Arts and Leisure [F1], makes the following Rules in exercise of the powers conferred by section 9(1) of the Public Records Act 1923 [F2] and now vested in it [F3].

**F1** Established by the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1)), **Article 3(1)**
**F2** 1923 c.20 (N.I.)
**F3** S.R. 1999 No. 481 (N.I.) Article 6(a) and Schedule 4 Part 1

### Citation and commencement

**1.** These Rules may be cited as The Court Files Privileged Access Rules (Northern Ireland) 2016 and shall come into operation on 30th March 2016.

### Interpretation

**2.** In these Rules—

"Charity" has the same meaning as in the Charities Act (Northern Ireland) 2008 [F4].

"Court files" means records created by, or originating from, any court in Northern Ireland, including records relating to inquests.

"Incident" means an event or series of events which caused serious physical or psychological harm to a person.

"Minister" means the Minister responsible for the Public Record Office of Northern Ireland and "Department" shall be construed accordingly.

"Office" means the Public Record Office of Northern Ireland.

"Partner" includes "Director".

"Relevant authority" means:

(a) In the case of a court file which has been transferred to the Office from a government department in the charge of a Minister of the Crown, the Minister of the Crown who appears to the Minister to be primarily concerned;

(b) In the case of a court file which has been transferred to the Office from a Northern Ireland Department, the Northern Ireland Minister who appears to the Minister to be primarily concerned; or

(c) In the case of a record transferred to the Office by any other person, the person who appears to the Minister to be primarily concerned.

"Solicitor" has the same meaning as in article 3 of the Solicitors (Northern Ireland) Order 1976.

**[**[F5]"the UK GDPR" has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(10) and (14) of that Act);**]**

**F4** 2008 c.12 (N.I.)

**F5** Words in rule 2 inserted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 103** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

**Persons who may apply for court files**

**3.**—(1) An application for a court file held by the Office will be accepted from a person (an "applicant") who, at the time of the application, is aged eighteen years or older and who meets any of the following eligibility criteria—

(a) a person who appears to the Department to be—

(i) a person who has sustained physical or psychological injury as a result of an incident which has been recorded in a court file;

(ii) a person who has been bereaved as a result of an incident which has been recorded in a court file; or

(iii) a person who has been seriously adversely affected, in a manner other than as described at (i) and (ii), as a result of an incident which has been recorded in a court file.

(b) a solicitor acting on behalf of a person who meets any of the eligibility criteria set out at rule 3(1)(a).

(c) an employee of a charity acting on behalf of a person who meets any of the eligibility criteria set out at rule 3(1)(a).

**Applications for a court file**

**4.**—(1) An application for a court file under these Rules shall—

(a) be made in writing on the relevant form which shall be published from time to time via the official web-site for the Office;

(b) be signed by the applicant; and

(c) contain such particulars as the Department may reasonably require.

(2) An application for a court file under these Rules shall be made to the Office at the address specified on the form.

(3) The Department may request such further particulars as it requires.

(4) Where an application for a court file is made by, or on behalf of, a person who meets any of the eligibility criteria set out at rule 3(1)(a), that person must supply a completed form and provide a signed copy of the undertaking set out at Schedule 1.

(5) Where an application for a court file is made by, or on behalf of, two or more persons acting together, each of whom meets any of the eligibility criteria set out at rule 3(1)(a), each person must supply a completed form and provide a signed copy of the undertaking set out at Schedule 1.

(6) Where an application for a court file is made by a solicitor who meets the eligibility criteria set out at rule 3(1)(b), a partner in the legal firm must supply a completed form and provide a signed copy of the undertaking set out at Schedule 2.

(7) Where an application for a court file is made by an employee of a charity who meets the eligibility criteria set out at rule 3(1)(c), each person requiring access to the file must supply a completed form and provide a signed copy of the undertaking set out at Schedule 3.

### Information that may be released

**5.** A court file shall be deemed eligible for release under these Rules only to the extent that the release of the information complies with the Data Protection Principles set out in **[**F6—

(a) Article 5(1) of the **[**F7UK GDPR**]** , and

(b) section 34(1) of the Data Protection Act 2018.**]**

**F6** Words in rule 5 substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 408** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

**F7** Words in rule 5(a) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 104** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

### Ministerial decision and duty on the Department to consult

**6.** Prior to the Minister making a decision about the release of a court file under these Rules the Department shall consult the relevant authorities, and, were the Relevant Authority in any particular case is not a Minister of the Crown, the Department, in addition, to consulting the Relevant Authority shall also consult the Secretary of State for Northern Ireland.

### Provision of information

**7.**—(1) An applicant who meets the eligibility criteria set out at rule 3(1) may be provided by the Department with all information deemed eligible for release.

(2) Without prejudice to the generality of rule 7(3), the Department shall review any requested court file to ensure that its release complies with the Data Protection Principles set out in **[**F8—

(a) Article 5(1) of the **[**F9UK GDPR**]** , and

(b) section 34(1) of the Data Protection Act 2018.**]**

(3) The Minister may withhold the whole or part of any court file and may impose such conditions, as the Minister sees fit, on the release of the whole or part of any court file.

(4) In order for the Department to release a court file to an applicant under these Rules, the applicant shall—

(a) attend the Office at a time agreed by the Office; and

(b) produce photographic evidence of identity which is reasonably capable of establishing their identity.

(5) Without prejudice to the generality of rule 7(4), the Department may release a court file to an applicant by such other arrangements as the Department may determine where it appears to the Department that it is appropriate to do so.

**F8** Words in rule 7(2) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 409** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

**F9** Words in rule 7(2)(a) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 105** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

### Conditions applicable to a released court file

**8.**—(1) An applicant to whom the Department has released a court file under these Rules must—

(a) keep the court file confidential and stored securely;

(b) not copy, or permit the copying of, the court file other than as permitted by rule 8(3);

(c) not reformat, or permit the reformatting of, the court file;

(d) not publish, or permit the publication of, the court file, except where such permission has been sought and granted under rule 9; and

(e) notify the Office in writing of any change of name or address.

(2) A person who is subject to the undertaking at Schedule 1 may share with a solicitor a court file released under these Rules for the purposes of obtaining legal advice.

(3) A solicitor who is subject to the undertaking at Schedule 2 may copy, or permit the copying of, a court file released under these Rules for the purposes of—

(a) sharing the court file with counsel;

(b) sharing the court file with medical or other expert witnesses; or

(c) making a submission to the Attorney General to request a new inquest under section 14(1) of the Coroners Act (Northern Ireland) 1959 [F10].

(4) An applicant who receives a court file under these Rules shall within ten years of the date on which the Department released the court file—

(a) return to the Office the court file and any copy of the court file; or

(b) apply in writing to the Department for permission to retain the court file for a further period of time.

(5) Upon receipt of an application under rule 8(4) the Minister may permit the applicant to retain the court file for such further period of time as the Minister may decide.

**F10** 1959 c.15 (N.I.)

### Application to publish released court file

**9.**—(1) An applicant may seek the Minister's permission to publish a court file released under these Rules by applying in writing to the Office.

(2) An application must—

(a) identify the information intended for publication;

(b) identify the purposes for which publication is required; and

(c) provide any other information relevant to the application.

(3) Prior to the Minister making a decision about the publication of the court file the Department shall consult the relevant authorities.