



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

Practice Direction 4

Non-disclosure

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SUMMARY

General

- A reporter **must not** provide any case-related information unless there is specific authority to provide that information to that person, whether or not any non-disclosure provision applies. Where there is discretion as to the level of case-related information to provide, the reporter must only provide relevant and proportionate information.
- The statutory non-disclosure provisions enable the reporter to withhold information which the reporter would otherwise have a duty to provide.
- Where disclosure of a child's home address would place the child at risk, the reporter is to give the child's address as care of the Principal Reporter, Ochil House. This includes the child's designation address on any order made by a children's hearing.

Statutory Provisions

- The test for any non-disclosure provision is that disclosure of the information would be likely to cause significant harm to the child (or to a relevant person re disclosure of the child's or relevant person's whereabouts).
- Rule 16 of the Children's Hearings Rules enables the reporter to withhold information disclosing the whereabouts of the child or a relevant person when sending any notification, papers or other communication relating to a children's hearing or pre-hearing panel.
- Any person may make a "non-disclosure request" in relation to information to be considered by a hearing or pre-hearing panel. The request must specify what information is to be withheld from whom and give reasons. The reporter must withhold the specified information and refer the request to the hearing or pre-hearing panel, which then decides whether to agree to the request.
- Where an order by a children's hearing or sheriff contains a requirement to reside at a specified place or a place of safety, the order may also contain a non-disclosure measure prohibiting the disclosure (whether directly or indirectly) of the place. The measure prohibits disclosure of the address and also other information if necessary to prevent indirect disclosure of the place.
- Section 178 of the Act allows a children's hearing not to disclose information about the child or about the child's case if disclosure of that information to that person would be likely to cause significant harm to the child.

- When considering an application for proof under section 93 or 94, the sheriff may order that the address of the child or relevant person is not to be disclosed in the copy application which the reporter serves on the child, relevant persons and any safeguarder.

Process

- Accurate and up-to-date recording in Case Notes and Warning Box on CMS is essential to ensure reliable information about non-disclosure is available to any member of staff dealing with a case.
- When withholding information under one of the statutory provisions, the reporter has a duty to tell those otherwise entitled to the information what information has been withheld and from whom. This notice is to be given by Form 1 or Form 5.
- The 'standard approach' is to withhold the information from panel members and all parties, and to provide the information on request to those entitled to be given it. The standard approach does not apply:
 - (1) to a non-disclosure request about non-address related information (eg a relevant person's medical history). In this situation, the information is withheld **only** from the non-disclosure individual.
 - (2) when notifying a hearing decision to include a non-disclosure measure in an order. In this situation, the implementation authority and carers (or residential establishment) are given the full order.
- If someone entitled to withheld information requests the information, it must be given to them in writing without delay. The information must be provided on Form 4 if available or otherwise on Form 2.
- Whenever a non-disclosure provision is in place, the reporter must be alert to this and alert others to this in relation to the management of hearings, and court matters.

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1. Introduction

- 1.1 This Practice Direction explains the legal provisions relating to non-disclosure and how they are to be applied.
- 1.2 The Practice Direction also specifies the mandatory elements of operational process which must be followed for case processing within and outwith CMS. Therefore there is no separate Operational Process Guidance. For supporting advice on processing and recording in CMS please refer to the CMS User Guide.
- 1.3 Supporting Process Charts are provided in Appendix 1 and Non-disclosure Forms are provided in Appendix 2.
- 1.4 The statutory non-disclosure provisions enable information which would otherwise have to be provided to an individual to be withheld from that individual. The statutory provisions operate in the broader context that no agency should be providing personal information about one individual to any other individual without good cause. Every agency must always consider whether it is lawful and appropriate to provide such information even if no non-disclosure provision applies¹.
- 1.5 SCRA staff must **not** provide any case-related information unless there is authority to provide that information to that person, whether or not any non-disclosure provision applies. Where there is discretion about the information to be provided (e.g. when informing a relevant person about a referral or when conducting an investigation) only relevant and proportionate information is to be included in the communication. **Any communication with the child or a relevant person must not include unnecessary personal information about another person.**
- 1.6 Where the reporter has a statutory duty to provide information to a child or relevant person, that information must be provided unless one of the non-disclosure provisions applies.
- 1.7 Where disclosure of a child's home address would place the child at risk, and the reporter has discretion about including the details of the child's home address, the reporter is to give the child's address as care of the Principal Reporter, Ochil House, Stirling. This includes the designation of the child's home address on an Order made by a children's hearing.²
- 1.8 Locality Reporter Managers are to seek to ensure that the local authority and other relevant agencies in their area are aware of the provisions in relation to non-disclosure. The good practice guide on Non-Disclosure of Information in the Children's Hearings System published by the Children's Hearings Improvement Partnership should be promoted in this inter-agency work. Appendix 3 sets out more detailed explanation of the positions to be promoted with other agencies.

¹ Good Practice Guide on Non-disclosure of Information (CHIP).

² This is the address for the child at the top of the Hearing Form, **not** the address in a measure requiring the child to reside at a specified place. Practice Direction 18 on Completion of Forms at paragraph 5.1 addresses completion of the designation address on Hearing Forms.

- 1.9 The same principles apply to a decision in relation to non-disclosure as to any other decision made by a children's hearing or sheriff: the principles are contained in sections 25/26 (welfare of the child), 27 (views of the child) and 28/29 (better for the child if the order is made than not). In addition, Article 8 of the European Convention on Human Rights is particularly relevant and requires that any interference in family life must be proportionate to the legitimate aim pursued. This means that there must be relevant and sufficient reasons for the hearing/court taking the measures they did. The more important the right or the more far reaching the interference, the stronger the reasons required to justify it.
- 1.10 Staff must comply with Children's Case Information - Breaches of Security Policy. The Breach of Non-Disclosure Notification Form is available here.

Other Relevant Material

- Practice Direction 18 on the Completion of Forms and the Record of Proceedings at a Children's Hearing
- The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013
- CHIP Good Practice Guide on Non-disclosure of Information
- Guidance Note on Completion of Forms 3 and 4

2. The Statutory Non-disclosure Provisions

- 2.1 The statutory provisions which enable information to be withheld are very briefly summarised below and are looked at in detail in subsequent sections. If a non-disclosure provision is applied, the process must be transparent; there is a statutory duty on the reporter to inform all parties each time any non-disclosure provision is applied. There is not a statutory duty to tell the local authority in every situation where a non-disclosure provision applies, but if it would not otherwise be aware, the local authority is to be informed.
- 2.2 The test (express or implied) for any non-disclosure provision is that disclosure of the information to the individual(s) would be likely to cause significant harm to the child (or to a relevant person in relation to disclosure of the child or relevant person's whereabouts). Significant harm is undefined but covers physical, mental or emotional harm. Risk of harm in itself is insufficient – the risk must be of significant harm. Reluctance by a carer to share their address does not meet the test of significant harm.³
- 2.3 More than one type of non-disclosure provision can apply to a child's case at the same time.

³ The CHIP Good Practice Guide states: There is no established definition of what that term means. It covers physical and emotional harm, most obviously where there is an assessed risk to the health or wellbeing of a child or other person and/or a threat of the child being abducted. It should never be a reluctance by a carer to share their address.

- 2.4 In this Practice Direction the term ‘parties’ is used to mean the child (if of an age to understand), relevant persons and safeguarder. The term ‘non-disclosure individual’ is used to mean a person from whom information is to be withheld under any of the statutory provisions.
- 2.5 Where a child would be unable to understand the information, it is not necessary nor appropriate to apply a non-disclosure provision. Rule 18 enables the reporter to *not* provide information to a child where the child would not be capable of understanding the information.⁴
- 2.6 The statutory provisions are summarised below. The express or implied threshold for each provision is likely significant harm to the child (and additionally for rule 16 likely significant harm to a relevant person).

(i) Rule 15 – duty to inform

When withholding information under the 2011 Act or the Children’s Hearings Rules the reporter has a duty to tell everyone otherwise entitled to receive the information what information has been withheld and from whom. This applies on every occasion information is withheld and applies to communications both before and after the hearing or pre-hearing panel.

(ii) Rule 16

Rule 16 enables the reporter to withhold the whereabouts of the child or a relevant person when sending notifications, papers or other communications relating to a children’s hearing or pre-hearing panel. It applies to communications both before and after the hearing or pre-hearing panel.

(iii) A non-disclosure request

A non-disclosure request may be made by any person. The request must specify what information within the hearing (or pre-hearing panel) papers is to be withheld from whom, and why. The reporter must withhold the specified information from the specified individual(s) and refer the request to the children’s hearing (or pre-hearing panel). The Hearing (or pre-hearing panel) then decides whether to agree to the request. Rules 84-87 set out the procedure.

(iv) A non-disclosure measure – children’s hearing or sheriff

Where an order by a Children’s Hearing or sheriff requires the child to reside at a specified place, including a place of safety, the hearing or sheriff may include a measure in the order prohibiting disclosure of that place. The measure prohibits disclosure of the address, and also other information if necessary to prevent indirect disclosure of the place. Section 83(2)(c) and others.

⁴ Practice Direction 14 at paragraph 7.2 sets out the presumptions to be applied. A child under the age of 6 is presumed to be not capable of understanding any notification. A child under the age of 12 is presumed to be not capable of understanding the hearing papers. Each child’s understanding is to be assessed on a case-by-case basis.

(v) Section 178

Section 178 enables a children's hearing to decide not to disclose to a person any information about the child or about the child's case. It is relevant for verbal information which comes to light during a hearing and includes information given in reasons for decision.

(vi) Sheriff – proof application

When considering an application for proof under section 93 or 94, the sheriff may order that the address of the child or relevant person is not to be disclosed in the copy application which the reporter serves on parties.

3. Recording and Checking in relation to Withheld Information

- 3.1 CMS enables recording of rule 16, a non-disclosure request and a non-disclosure measure in an order (which applies to all types of order including a child protection order).
- 3.2 In addition to accurate recording of any non-disclosure provision which applies, accurate and up-to-date recording in Case Notes and Warning Box on CMS is essential to ensure reliable information about non-disclosure is available to any member of staff dealing with a case. The Warning Box must contain only relevant and current information. Information which has become historical must be deleted from the Warning Box.
- 3.3 When a child is first referred, the CMS record of each sibling of the child must be checked for any non-disclosure provision applying to that sibling. If a non-disclosure measure in an order applies, the Case Notes and Warning Box for the referred child must be updated to record that the particular sibling has a non-disclosure measure in their order. If any other non-disclosure provision applies, the reporter should take account of it when dealing with the referral.
- 3.4 When a non-disclosure measure is included in an order for a child, in addition to updating the record for the child, the Case Notes and Warning Box for each sibling of the child must be updated to explain that the subject child has a non-disclosure measure in their order. If a child ceases to have a non-disclosure measure in place, the Case Notes and Warning Box for each sibling must also be updated (the content of the Warning Box related to the non-disclosure measure must be deleted).
- 3.5 All redaction of documents is to be carried out on CMS. The double-check function on CMS must be completed.
- 3.6 Where a document of any type relating to a non-disclosure case is being put in an envelope, there should be a check at that stage:
 - that the redaction has been properly applied, and
 - that the right papers have been included.

Particular care needs to be taken with the papers for the non-disclosure associate.

- 3.7 Each office should have a written process for the checking of any non-disclosure papers, which must be approved by the Senior Operational Manager and Head of Practice and Policy. This must require at least 2 checks of any non-disclosure papers either by two different individuals, at least one of whom must be a reporter, or by a reporter having checked the papers at two different times.

4. Rule 15 – Duty to Inform

Giving notice that information has been withheld

- 4.1 The duty under rule 15 to tell persons what information has been withheld and from whom will be fulfilled by using Form 1 or Form 5. Form 1 is to be completed and provided to all persons with a right to receive information, including the non-disclosure individual(s), on each occasion when information is being withheld under the Act or Rules, with one exception.
- 4.2 The situation where Form 1 is **not** used is where information is being withheld in response to a non-disclosure request about non-address related information such as a relevant person's medical history or the child's family background. This type of non-disclosure request will be referred to as 'NDR Other'. In this situation, Form 5 is used to give notice. Further information about non-disclosure requests is contained in Section 6. Paragraphs 6.10 and 6.24 – 6.27 explain the two different types of non-disclosure request.

Standard approach

- 4.3 The 'standard approach' to withholding information is to withhold the information from **all** persons entitled to it, not just from the non-disclosure individual. Form 1 informs persons with a right to the information that they will be given it on request.
- 4.4 The standard approach does not apply where:
- (1) information is being withheld because of a non-disclosure request about non-address related information such as a relevant person's medical history or the child's family background (NDR Other). In this situation, the non-disclosure information is withheld **only** from the non-disclosure individual(s).
 - (2) notifying a hearing outcome where there is a non-disclosure measure in the order. In this situation, the carer or establishment must be given the full unredacted order, as must the implementation authority. Other persons entitled to the information, and the non-disclosure individual(s), will be given the redacted order.⁵

Providing the full information

- 4.5 A request for withheld information by someone entitled to the information may be in any format including verbal. If requested, the information must be provided in

⁵ If the reasons have been redacted, the carer(s) and implementation authority must be given the full unredacted reasons, while others are given the redacted reasons.

writing without delay. The information is to be provided either on Form 4 if available or otherwise on Form 2. Form 4 will be available where a person making a non-disclosure request (of either type, 'address' or 'other') chooses to provide the full information on Form 4. In other situations the full information will be given by completing Form 2.⁶

- 4.6 Where the standard approach applies (ie the information is being withheld from everyone) Form 2 may be completed at the outset or it may be completed later if and when required. The factors to take into account in deciding when to complete Form 2 are the likelihood of the information being requested and whether copies of Form 2 will be taken to the Hearing Centre (see paragraphs 4.10 – 4.12. (However if any of the information provided by the local authority under rule 80 of the Children's Hearings Rules is withheld, Form 2 must be completed – see paragraph 4.13.)
- 4.7 Where the basis for withholding the information is a non-disclosure request about non-address information (NDR Other), the standard approach does not apply and Form 2 must be completed at the outset as it will be provided to panel members and all parties except the non-disclosure individual.
- 4.8 Where an entire report or document is to be withheld, then depending on the length of the document, either:
 - (1) the content can be copied onto Form 2 or
 - (2) the report can be referenced on Form 2 and the report provided along with the Form 2.
- 4.9 Any Form 4 which is received, and any Form 2 which is completed, is to be imported into the reports folder on CMS.

Posting and taking full information to the Hearing Centre

- 4.10 If a request for the withheld information is made in advance of the hearing, Form 2 or Form 4 must be sent without delay by first class post using the general letter template, unless there is no possibility of receipt by post before the hearing. If it is not posted or there is insufficient time to be sure of receipt by post, the Form 2 or Form 4 must be taken to the Hearing Centre and given to the person who requested the information (unless they confirm they received a postal version).
- 4.11 If the full information is available via Form 4 and there is any possibility of a request for the information being made at the Hearing Centre, Form 4 must be available either:
 - by taking a hard copy to the Hearing Centre, or
 - by printing from CMS at the Hearing Centre if a request is made.

Factors to take into account in deciding whether to take a hard copy to the Hearing Centre are the likelihood of the information being requested and the ease of printing Form 4 at the Hearing Centre.

⁶ Where information is withheld when notifying hearing outcomes, the full information is to be given by providing a copy of the full order and/or full reasons rather than by Form 2.

4.12 If the full information is available via Form 2 and there is any possibility of a request for the information being made at the Hearing Centre, Form 2 must be available through one of the following:

- by taking a hard copy to the Hearing Centre
- by printing an already completed Form 2 from CMS at the Hearing Centre if a request is made
- by completing Form 2 electronically and printing at the Hearing Centre if a request is made
- by completing Form 2 by hand at the Hearing Centre if a request is made.

Factors to take into account in deciding whether to take a hard copy to the Hearing Centre are the likelihood of the information being requested, the ease of access to complete Form 2 electronically at the Hearing Centre, the ease of printing at the Hearing Centre, the volume of information to be provided and the practical difficulties of completing Form 2 by hand at the Hearing Centre.

4.13 However, if the withheld information includes any of the information provided by the local authority under rule 80 of the Children's Hearings Rules, a hard copy of the Form 2 or Form 4 must be taken to the Hearing Centre unless all three panel members have requested and received a copy in advance.⁷

4.14 The reporter may need to ask the hearing to adjourn to allow time for the information to be generated and provided.

4.15 A Form 2 or 4 will be required for each person requesting the information, unless it is appropriate to ask them to share and they agree to share. If the Form 2 is handwritten, an additional hand-written Form 2 will be required for importing into CMS after the hearing.

Recording a request for full information

4.16 A record of all competent requests for the full information, and the response, must be made on CMS through the task of matching the Form (2 or 4) to the relevant associate or panel member. This will automatically generate an entry in Case Notes. The same approach applies to requests made at the Hearing Centre or during the hearing, although these must also be recorded on the Hearings Outcome Form.

Informing the local authority

4.17 Where the local authority would not otherwise be aware of the non-disclosure provision which applies, and the categories of information being withheld, the local authority must be told.

⁷ Rule 80 provides that the children's hearing must consider the rule 80 information before it is competent to require the child to reside with someone who is not a relevant person.

5. Rule 16

General

- 5.1 When a reporter is sending (or giving) any notification or documents before or after a hearing or pre-hearing panel, the reporter may withhold information disclosing the whereabouts of the child or of any relevant person if s/he considers that disclosing the whereabouts would be likely to cause significant harm to the child or any relevant person.
- 5.2 Rule 16 applies to the child's and/or relevant person's current whereabouts. It does **not** cover future/proposed whereabouts.
- 5.3 **'Whereabouts'** covers any place where the child or relevant person currently is. The reporter may withhold any information additional to the address which is necessary to prevent disclosure of the whereabouts of the child or relevant person. For example, this could be the names of carers, names or addresses of schools, or any other details which may identify the child's or relevant person's whereabouts.
- 5.4 The reporter is generally not to use rule 16 in relation to the place at which an order requires the child to reside. If there is a non-disclosure measure in place, the measure creates the duty to withhold.⁸ If there is no non-disclosure measure, the use of rule 16 in relation to the placement will not be justified without significant new information becoming available after the children's hearing.

Rule 16 Process

- 5.5 Process Chart A summarises the process to be followed when dealing with rule 16.
- 5.6 Where the reporter has decided to apply rule 16, the following actions must be taken:
 - Apply rule 16 on CMS
 - Record in Case Notes and Warning Box (including what information is to be withheld, from whom and the reasons for decision)
 - Add 'ND applied date' to ND Associate(s)
 - Set the Warning Flag
- 5.7 Reports and documents must be redacted on CMS to remove all non-disclosure information. If a document contains only non-disclosure information the entire document should be withheld.
- 5.8 Form 1 (notice that information has been withheld) must be created on CMS and included in all hearing papers.

⁸ Rule 16 may be required in addition to withhold the whereabouts of a relevant person.

Providing full information

- 5.9 Full information, if requested, is to be provided on Form 2. Form 2 may be completed at the outset or later if and when required. The factors to take into account are the likelihood of the information being requested and whether copies of Form 2 will be taken to the Hearing Centre (see paragraphs 5.12 – 5.13).
- 5.10 Where an entire report or document is to be withheld, then depending on the length of the document, either:
- (1) the content can be copied onto Form 2 or
 - (2) the report can be referenced on Form 2 and the report provided along with the Form 2.
- 5.11 If Form 2 is completed, it is to be imported into the reports folder on CMS.

Posting and taking full information to the hearing centre

- 5.12 If a request for the withheld information is made in advance of the hearing, Form 2 must be sent without delay by first class post using the general letter template, unless there is no possibility of receipt by post before the hearing. If it is not posted or there is insufficient time to be sure of receipt by post, the Form 2 must be taken to the Hearing Centre and given to the person who requested the information (unless they confirm they received a postal version).
- 5.13 If there is any possibility of a request for the information being made at the Hearing Centre, Form 2 must be available through one of the following:
- by taking a hard copy to the Hearing Centre
 - by printing an already completed Form 2 from CMS at the Hearing Centre if a request is made
 - by completing Form 2 electronically and printing at the Hearing Centre if a request is made
 - by completing Form 2 by hand at the Hearing Centre if a request is made.

Factors to take into account in deciding whether to take a hard copy to the Hearing Centre are the likelihood of the information being requested, the ease of access to complete Form 2 electronically at the Hearing Centre, the ease of printing at the Hearing Centre, the volume of information to be provided and the practical difficulties of completing Form 2 by hand at the Hearing Centre.

- 5.12 The reporter may need to ask the hearing to adjourn to allow time for the information to be generated and provided.
- 5.14 A Form 2 will be required for each person requesting the information, unless it is appropriate to ask them to share and they agree to share. If the Form 2 is handwritten, an additional handwritten Form 2 will be required for importing into CMS after the hearing.

Recording a request for full information

- 5.15 A record of all competent requests for the full information, and the response, must be made on CMS through the task of matching the Form 2 to the relevant associate or panel member. This will automatically generate an entry in Case Notes. The same approach applies to requests made at the Hearing Centre or during the hearing, although these must also be recorded on the Hearings Outcome Form.
- 5.16 If a panel member has requested the full information and the Locality practice is to retain panel member papers for future use, the Form 2 must be removed from the papers.

Informing the local authority

- 5.17 If the local authority is not otherwise aware, it must be told that the reporter has applied rule 16, with an explanation of what information has been withheld from whom.

Removal of Rule 16 from CMS

- 5.18 Rule 16 applies at a particular point in time to the communications being sent out at that time. However, the presumption is that rule 16 will remain in place throughout a set of proceedings until the substantive decision is made. Nevertheless, the reporter must be alert to whether the test for rule 16 ceases to apply during a set of proceedings, and if it ceases, rule 16 must be removed from CMS immediately. If rule 16 is not removed sooner, it is to be removed when the substantive decision has been made and notified.
- 5.19 When removing rule 16 from CMS, a 'ND removed date' must be added to the ND Associate(s) on CMS. If it is appropriate to provide an alert for future decisions about the application of rule 16, the Warning Flag on CMS is to be retained. The presumption is that the Warning Flag will remain unless the reporter decides it is to be removed.
- 5.20 If the Warning Flag is retained, Case Notes and the Warning Box must be updated, including the reasons for retaining the warning flag. The Warning Box is to contain only current information.
- 5.21 If the Warning Flag is **not** retained, Case Notes must be updated, including the reasons for not retaining the Warning Flag, and the content of the Warning Box in relation to rule 16 must be deleted.
- 5.22 If the Warning Flag has been retained and at the next decision point⁹ the reporter decides not to apply rule 16, Case Notes must be updated explaining that rule 16 does not apply. The Warning Flag must be removed and the content of the Warning Box in relation to rule 16 deleted.

⁹ ie when next sending notifications or documents about a hearing or pre-hearing panel.

6. Non-disclosure Requests

General

- 6.1 The statutory provisions on non-disclosure requests are set out in Part 19 of the Rules (rules 84 – 87). A non-disclosure request is a request that any document, part of a document or information contained in a document relating to a hearing should be withheld from a specified person on the basis that disclosure would be likely to cause significant harm to the child to whom the hearing relates. A non-disclosure request can relate to any information.
- 6.2 A non-disclosure request is made about information or documents relating to a specific hearing or pre-hearing panel. The non-disclosure request must be considered by the hearing or pre-hearing panel which will be considering the document or information.¹⁰ If the non-disclosure request is accepted by the hearing or pre-hearing panel, the information continues to be withheld from the non-disclosure individual. This includes communications after the hearing or related to subsequent hearings in the same set of proceedings until the substantive decision is made.
- 6.3 Any person, including the reporter, may make a non-disclosure request prior to the hearing or pre-hearing panel. The child, a relevant person, a safeguarder, the reporter or the author of the document may make a non-disclosure request during the hearing or pre-hearing panel. Such a request would be about information being tabled.
- 6.4 A non-disclosure request must specify:
- (i) the information
 - the information, document or part of document for which non-disclosure is requested; and
 - (ii) the person
 - the person or persons from whom the information or document is requested to be withheld; and
 - (iii) the reason
 - the reason or reasons for requesting each document or piece of information to be withheld from each person¹¹.
- 6.5 Provided the non-disclosure request specifies these matters, it is a valid non-disclosure request. The reporter is to treat it as a non-disclosure request even if the reasons given do not appear to the reporter to meet the significant harm test.
- 6.6 If **no** reason is given, the request is not a valid non-disclosure request and must not be recorded as one. The person who made the request must be informed – they may decide to make a modified request which does meet the criteria.

¹⁰ A pre-hearing panel can only consider a non-disclosure request about information being provided to the pre-hearing panel. It cannot consider a request about information being provided to the hearing.

¹¹ Rule 84(3)

- 6.7 Certain documents cannot be the subject of a non-disclosure request:
- The statement of grounds.¹²
 - Any order or warrant which the child is subject to under the Act or Rules (but see section 7 below regarding a measure contained in an order).
 - A remit by a court under s.49 of the Criminal Procedure (Scotland) Act 1995.
 - A requirement by a sheriff under section 12(1A) or statement under section 12(1B) of the Antisocial Behaviour etc. (Scotland) Act 2004.
- 6.8 A non-disclosure request is not necessary, nor appropriate, for the child's or relevant person's current whereabouts if the reporter is applying rule 16 to those whereabouts.¹³ A non-disclosure request is not necessary, nor appropriate, for a place which is subject to a non-disclosure measure in an order. If an inappropriate non-disclosure request is received, the reporter should explain the situation and invite the person making the request to withdraw it. However, if the person does not withdraw the request, the reporter must deal with the non-disclosure request as normal.

Informing the Local Authority

- 6.9 If the request was not made by the social worker, the social worker is to be informed of the request and the details of the information being withheld.¹⁴

Non-disclosure Requests - Process

- 6.10 There are two different processes for dealing with a non-disclosure request depending on whether the request is about:
- (1) an address (including information additional to the address to prevent disclosure of the address) or
 - (2) other non-address related information such as a relevant person's medical history or a child's family background.

The process for the first type – NDR Address – is set out in Process Chart B. The process for the second type – NDR Other – is set out in Process Chart C. The key difference is that with an NDR Address the non-disclosure information is withheld from everyone, whereas with an NDR Other the non-disclosure information is withheld only from the non-disclosure individual. The differences are explained more fully at paragraphs 6.24 – 6.27. Within each Process Chart the route to follow depends on the format of the non-disclosure request and the format of the full information which is received.

¹² Note that specification of the child's or other's address is rarely essential within a statement of grounds and should not be included where there is risk from disclosure and the address is not an essential fact (or can be described indirectly).

¹³ If the reporter has been asked to apply rule 16 but declined to do so, the person who considers that the information should be withheld may wish to make a non-disclosure request. The person should be told that the reporter has decided not to apply rule 16, so that the person can consider whether to make a non-disclosure request.

¹⁴ If providing the full details would be a disproportionate interference with respect for private and family life, only an outline of the information is to be provided to the social work department.

- 6.11 All report request letters must contain links to SCRA's non-disclosure request form (Form 3), the full information form (Form 4) and the Guidance Notes on completion of Forms 3 and 4 all of which are available on the SCRA website. The standard report request letters contain these links.
- 6.12 A non-disclosure request can be made in any format. However, Localities should encourage agencies to use Form 3 for the request and Form 4 for the provision of the full information. Localities may agree a Protocol with a local authority or any other agency about the format of non-disclosure requests and the provision of the full information (for example, an agreement that non-disclosure requests will be made only using Form 3 and that the full details of the information to which the request relates will be provided only in Form 4).¹⁵ In the absence of a written protocol, a non-disclosure request from an agency must be accepted in any written format (provided the 3 essential elements are present – see paragraph 6.4). Similarly, in the absence of an agreed written Protocol, the full information must be accepted in any format.
- 6.13 An individual may make a non-disclosure request in any written format. The reporter should accept a non-disclosure request made verbally by an individual where the individual would have difficulty providing the request in writing. In this event, the reporter is to complete Form 3 on behalf of the individual.
- 6.14 If the reporter is aware of information which would be likely to cause significant harm to the child if disclosed to a specified person, the reporter is to check with the agency which provided the information and/or the lead agency as to whether that agency is going to make a non-disclosure request. If not, the reporter is to make a non-disclosure request using Form 3.
- 6.15 If a non-disclosure request is received¹⁶, it is to be recorded as a non-disclosure request on CMS. The following actions must be undertaken:
- Apply non-disclosure request on CMS
 - Record in Case Notes and Warning Box that NDR has been received and summarise the information to be withheld
 - Add 'ND applied date' to ND Associate(s)
 - Set Warning Flag

Providing Full Information

- 6.16 If no Form 4 has been provided by the person making the request, Form 2 (full information) may require to be completed by SCRA staff. If the request is an NDR Address (this includes information additional to the address to prevent disclosure of the address), Form 2 may be completed at the outset or it may be completed later if and when required. The factors to take into account in deciding whether to complete Form 2 at the outset are the likelihood of the information being requested and whether copies of Form 2 will be taken to the Hearing Centre (see

¹⁵ However, all reports or documents will require to be checked by SCRA staff for information which is to be withheld, even if the person making the non-disclosure request states that the information is contained only in Form 4 or only in a particular report.

¹⁶ Subject to the request being appropriate, or if not appropriate subject to the person making the request declining to withdraw it. See paragraph 6.6.

paragraph 6.20 – 6.22). (However if any of the information provided by the local authority under rule 80 of the Children’s Hearings Rules is withheld, Form 2 must be completed – see paragraph 6.23.)

- 6.17 If the non-disclosure request is about other information for example a relevant person’s medical history (NDR Other) Form 2 must be completed at the outset as it will be provided to panel members and all parties except the non-disclosure individual.
- 6.18 Where an entire report or document is to be withheld, then depending on the length of the document, either:
- (1) the content can be copied onto Form 2 or
 - (2) the report can be referenced on Form 2 and the report provided along with the Form 2.
- 6.19 Any Form 4 which is received, and any Form 2 which is completed, is to be imported into the reports folder on CMS.

Posting and taking full information to the hearing centre

- 6.20 If a request for the withheld information is made in advance of the hearing, Form 2 or Form 4 must be sent without delay by first class post using the general letter template, unless there is no possibility of receipt by post before the hearing. If it is not posted or there is insufficient time to be sure of receipt by post, the Form 2 or Form 4 must be taken to the Hearing Centre and given to the person who requested the information (unless they confirm they received a postal version).
- 6.21 If the full information is available via Form 4 and there is any possibility of a request for the information being made at the Hearing Centre, Form 4 must be available either:
- by taking a hard copy to the Hearing Centre, or
 - by printing from CMS at the Hearing Centre if a request is made.

Factors to take into account in deciding whether to take a hard copy to the Hearing Centre are the likelihood of the information being requested and the ease of access to print Form 4 at the Hearing Centre.

- 6.22 If the full information is available via Form 2 and there is any possibility of a request for the information being made at the Hearing Centre, Form 2 must be available through one of the following:
- by taking a hard copy to the Hearing Centre
 - by printing an already completed Form 2 from CMS at the Hearing Centre if a request is made
 - by completing Form 2 electronically and printing at the Hearing Centre if a request is made
 - by completing Form 2 by hand at the Hearing Centre if a request is made.

Factors to take into account in deciding whether to take a hard copy to the Hearing Centre are the likelihood of the information being requested, the ease of access to complete Form 2 electronically at the Hearing Centre and to print, the volume of information to be provided and the practical difficulties of completing Form 2 by hand at the Hearing Centre.

- 6.23 However, if the withheld information includes any of the information provided by the local authority under rule 80 of the Children's Hearings Rules, a hard copy of the Form 2 or Form 4 must be taken to the Hearing Centre unless all three panel members have requested and received a copy in advance.¹⁷
- 6.24 The reporter may need to ask the hearing to adjourn to allow time for the information to be generated and provided.
- 6.25 A Form 2 or 4 will be required for each person requesting the information, unless it is appropriate to ask them to share and they agree to share. If the Form 2 is handwritten, an additional hand-written Form 2 will be required for importing into CMS after the hearing.

Recording a request for full information

- 6.26 A record of all competent requests for the full information, and the response, must be made on CMS through the task of matching the Form (2 or 4) to the relevant associate or panel member. This will automatically generate an entry in Case Notes. The same approach applies to requests made at the Hearing Centre or during the hearing, although these must also be recorded on the Hearings Outcome Form.

Non-disclosure Request - Papers for Panel Members and Parties

- 6.27 The information which is included in the papers for panel members and parties depends on the type of non-disclosure request. The key differences in the two processes are that:
- with an NDR Address the standard approach applies and the non-disclosure information is to be withheld from all hearing papers ie panel members and all parties. The full information is to be provided on request to anyone entitled to the information by giving Form 2. Notice is given to everyone by completing and providing Form 1.
 - With an NDR Other the non-disclosure information is to be withheld **only** from the non-disclosure individual.¹⁸ The full information is provided to the panel members and all parties except the non-disclosure individual(s) by giving Form 4 if it was completed by the person making the non-disclosure request or otherwise by completing and providing Form 2. Notice is given to everyone by providing Form 5.

¹⁷ Rule 80 provides that the children's hearing must consider the rule 80 information before it is competent to require the child to reside with someone who is not a relevant person.

¹⁸ The reason for the difference in approach is that where the non-disclosure request relates to information other than an address, the hearing or pre-hearing panel will be unlikely to be able to properly consider the request without knowing the full information. Similarly parties entitled to the information will be unlikely to be able to participate effectively in the consideration of the request without knowing the full information.

6.28 For both types of non-disclosure request, the panel members and **all** parties are to be given the non-disclosure request, whether the request is made on Form 3 or in a different format. If the request contains any of the full non-disclosure information, the request must be redacted (this may also require the reporter to provide a brief explanation of the redacted information).

6.29 Therefore, for an NDR Address:

(i) the panel members and all parties are given:

- the non-disclosure request (Form 3 or whatever other format was used) and
- Form 1.

6.30 For an NDR Other:

(i) the non-disclosure individual is given:

- the non-disclosure request (Form 3 or whatever other format was used) and
- Form 5.

(ii) the panel members and parties other than the non-disclosure individual(s) are given:

- the non-disclosure request (Form 3 or whatever other format was used),
- Form 5 **and**
- the full information (which will be in either Form 4 or Form 2).

Process where the Request is to withhold Information from the Child

6.31 Where information is to be withheld from the child, this will usually be because of a non-disclosure request about non-address related information (NDR Other).

6.32 The request is dealt with in the usual way, with the exception that the child has to be set up as an associate. This is done by clicking the 'Info withheld from Child' button and adding a 'ND applied date' to the 'ND TO CHILD' associate.

6.33 Case Notes and Warning Box are updated in the usual way.

6.34 When the non-disclosure request is no longer current, add 'ND removed' date to the 'ND TO CHILD' associate (as for any ND associate).

NDR - Process at a hearing or pre-hearing panel

6.35 Every children's hearing, except a grounds hearing, must consider the non-disclosure request at the beginning of the proceedings. A grounds hearing may wait until after the grounds are put but before the hearing proceeds to decide whether to make a CSO. The non-disclosure request should be considered at a grounds hearing before any consideration of an interim order.

- 6.36 The hearing must consider and determine the non-disclosure request. As the request must be made on the basis of likely significant harm to the child this is the test that the hearing should apply in determining the request¹⁹.
- 6.37 When considering a non-disclosure request, the hearing may exclude the non-disclosure individual if it considers that the presence of the individual would prevent proper consideration of the non-disclosure request. Rule 86(3). Even if excluding the individual, it is likely to be appropriate for the hearing to obtain the views of the individual before exclusion. The reporter is to be alert to any issues of fairness within the hearing. If the non-disclosure individual is excluded, s/he must be invited to return and advised of the determination. Rule 86(5).
- 6.38 There is no equivalent power for the hearing to exclude a representative of the non-disclosure individual during consideration of the non-disclosure request. The general criteria in section 77 for exclusion of a representative may apply.²⁰
- 6.39 If the hearing rejects the non-disclosure request, the hearing must ensure that the withheld information is provided to the non-disclosure individual at a time and in such a manner as it considers appropriate having regard to the best interests of the child. Rule 86(6) This could include adjourning the hearing for the information to be given or deciding that the information is to be given at a later date. The hearing may defer the substantive decision if it is unfair to proceed. The reporter is to alert the panel members to issues of fairness, particularly if the information is to be given at a later date but the hearing is considering proceeding to make a substantive decision.
- 6.40 A non-disclosure request may be made during a hearing but only by the child, a relevant person, a safeguarder, the reporter or the author of the information in question. Rule 87. The request will relate to information which someone is seeking to table at the hearing.²¹ It will be for the hearing to decide whether to consider the report, as with any tabled report.²² A report or information brought to the Hearing Centre is not a report given to the reporter and the reporter does not have a decision-making role in relation to it.²³
- 6.41 If the hearing decides to consider the report, the approach to the non-disclosure request is the same as for a non-disclosure request made in advance of the hearing. This means that:
- If there is information in the tabled report not covered by the non-disclosure request, the information must be given to all parties.
 - If the non-disclosure request is about an address, the non-disclosure information is withheld from all parties but provided on request.

¹⁹ This is also the approach of the National Convener (PPM paragraphs 6.44 – 6.49).

²⁰ Their presence is preventing the hearing obtaining the views of the child or is causing, or is likely to cause, significant distress to the child.

²¹ A non-disclosure request cannot be made for verbal information.

²² Further information on dealing with a tabled report where non-disclosure is an issue is provided at paragraph 10.3.

²³ See Practice Direction 11 on the Role of the Reporter at a Children's Hearing or Pre-hearing Panel at paragraph 4.9 to 4.11.

- If the non-disclosure request is about other information, the non-disclosure information is withheld only from the non-disclosure individual.
- The panel members will have the information in full as they will have the tabled report.
- The non-disclosure request must be given to the panel members and all parties.

6.42 If the hearing decides to consider the report, the hearing must make a decision on the non-disclosure request and the reporter must record the decision in the record of proceedings.

Information about a Recommended Placement

6.43 The details of a specified placement being recommended for a child must be available to the panel members even if a non-disclosure request is made. This is achieved by the report being provided to the reporter in advance of the hearing (and the panel members told that the information will be provided on request), or, exceptionally, the information is tabled at the hearing and a non-disclosure request made in the hearing (see paragraphs 6.40 – 6.42).

6.44 Rule 80 states that a hearing cannot make or vary a compulsory supervision order to require a child to reside at a place where the child would be under the charge or control of someone who is not a relevant person unless:

- the hearing has received and considered a report from the local authority which provides the local authority's recommendations on the needs of the child and the suitability to meet those needs of the place and the person being recommended, and
- the local authority confirms that in compiling the report they have carried out the procedures and gathered the information described in regulations 3 and 4 of the Looked after Children (Scotland) Regulations 2009

6.45 Therefore, unless the panel members actually have and consider the rule 80 information it will not be competent for the hearing to require the child to reside at the recommended placement if it is not with a relevant person.

6.46 The local authority should not routinely include any of the rule 80 information in a non-disclosure request made for the purpose of preventing disclosure of the placement being recommended. Exceptionally, if any of the rule 80 information meets the criteria for a non-disclosure request it is appropriate to include it in the request.

6.47 If all three panel members have not asked for and received the rule 80 information in advance, the reporter must take hard copies of the Form 2 or Form 4 to the hearing. If any panel member appears to be proceeding to consider the recommended placement without asking for the withheld information, the reporter is to alert the panel member to the requirements of rule 80 and offer to give them the information.

Report under section 95 of the Adoption and Children (Scotland) Act 2007

6.48 Where a permanence order application has been lodged in relation to the child and a review hearing wants to vary the child's CSO, the hearing must prepare a report for the court under section 95 of the Adoption and Children (Scotland) Act 2007. If the hearing accepted a non-disclosure request, rule 77(6) enables the withheld information to be redacted from the section 95 report. The reporter is to send to the court:

- the full section 95 report;
- the section 95 report with the non-disclosure information redacted; and
- the details of the hearing's determination of the non-disclosure request from the record of proceedings.

Such a situation will most often arise when the local authority has recommended that the child's CSO is varied to move the child to a new placement and the withheld information is the detail of that placement. Under rule 51 of the Sheriff Court Adoption Rules 2009, the sheriff may decide to send only the redacted report to any party to the permanence order proceedings.

Removing the application of a non-disclosure request from CMS

6.49 Where a non-disclosure request has been made, the effect of the request remains in force until the substantive decision is made and notified, if the children's hearing or pre-hearing panel agreed to the request. If the children's hearing or pre-hearing panel did not agree to the request, the request ceases to have effect from the point the withheld information is given to the ND individual(s). The hearing or pre-hearing panel will determine the time and manner of giving the withheld information.

6.50 Once a non-disclosure request no longer has effect, a 'ND removed date' must be added to the ND Associate(s) on CMS.

7. Non-disclosure Measure in an Order

General

7.1 A non-disclosure measure is a measure in an order prohibiting disclosure (whether directly or indirectly) of the at which a measure in the order requires the child to reside. The place may be specified or it may be a place of safety.²⁴ The following orders can contain a non-disclosure measure:

- **CSO** - where the compulsory supervision order (including an interim variation of the CSO) requires the child to reside at a specified place.
- **ICSO** - where the interim compulsory supervision order requires the child to reside at a specified place or at a place of safety away from where the child predominantly resides. Section 86(1), 86(2)

²⁴ A non-disclosure measure can only apply to a residence measure made under section 83(2)(a). A measure requiring the child to reside with a specified person but not at a specified place is **not** a measure under section 83(2)(a). (A measure should not be written in terms that the child is required to reside with a specified person followed by the address of the person as it is insufficiently clear eg the child is required to reside with John Smith, 10 High Street, Anytown.)

- **MEO** - where the medical examination order requires the child to attend or reside at a specified clinic, hospital or other establishment. The non-disclosure measure applies to the specified clinic, hospital or other establishment.
- **Warrant**
- **CPO** – A direction to the applicant that:-
 - (i) the location of any place of safety at which the child is being kept, and
 - (ii) any other information specified in the direction, must not be disclosed (directly or indirectly) to any specified person(s).

A hearing can remove, vary or add such a direction at a second working day hearing. Section 47(1)(a)(ii).

- 7.2 A non-disclosure measure or direction in an order must specify the person(s) to whom the measure or direction applies. If a panel member fails to specify this, the reporter is to express a view to the hearing about this.²⁵
- 7.3 If the non-disclosure individual is present at the hearing and/or a panel member has not requested the withheld placement information, it is expected that the panel member will state the residence measure along the lines of: ‘The child is required to reside with the carer(s) and at the place recommended by the local authority’.²⁶ If withholding the name of the carer(s) is not an issue, the panel member may state the name of the carer(s).

Process – Post-hearing action when measure included in an order

- 7.4 Process Chart D summaries the process to be followed when dealing with a hearing decision to make a non-disclosure measure.
- 7.5 When a non-disclosure measure is included in an order made by a children’s hearing, the measure requiring the child to reside at a specified place is to be recorded in the record of proceedings as follows:²⁷
- **if to reside with carers** - ‘To include in the order a requirement that the child reside with the carers and at the place specified in the order dated today’
 - **if to reside in a residential establishment** or other place where the carer is not specified - ‘To include in the order a requirement that the child reside at the place specified in the order dated today’
 - **if secure accommodation authorisation (CSO)** - ‘To include in the order a requirement that the child reside at the residential establishment(s) specified in the order dated today’ AND ‘To include in the order authorisation that the child may be placed and kept in secure accommodation within the residential establishment specified in the order dated today’.

²⁵ The reporter is to be alert to asking the sheriff to be specific if including such a measure or direction in an order.

²⁶ See paragraph 7.5 for wording of measures on the record of proceedings.

²⁷ These decisions are available in Appendix 3 to Practice Direction 18.

- **if secure accommodation authorisation (ICSO)** – ‘To include in the order a requirement that the child reside at any place of safety away from the place where the child predominantly reside’²⁸ AND ‘To include in the order authorisation that the child may be placed and kept in secure accommodation within a residential establishment’.²⁹

7.6 The full details of the placement or placements must be recorded in the order.

7.7 The hearing reporter is to specify on the Hearings Outcome Form any information additional to the address that is to be withheld from the non-disclosure individual(s) to prevent indirect disclosure of the address. This could be, for example, the name of carer or the name of the child’s school. Each category of additional information to be withheld must be expressly stated on the Hearings Outcome Form. The hearing reporter should consult with the case reporter if in any doubt about what additional information, if any, to specify.

7.8 The following actions must be undertaken on CMS:

- Record as measure in an order
- Update Case Notes and Warning Box, including recording what information additional to the address is to be withheld to prevent indirect disclosure (as specified by the reporter on the Hearing Outcome Form)
- Set Warning Flag
- Add ‘ND applied date’ to ND Associate(s)
- Check content of sibling tab and link any missing siblings. For each sibling add text to Case Notes and Warning Box by stating ‘[name of subject child] has ND measure’ and set Warning Flag.
- Complete Hearing Outcome task and set CSO ND box.

7.9 The order must be redacted (taking account of any additional information to be withheld eg name of carer). The reasons for decision must be redacted if they contain any non-disclosure information.

7.10 Form 1 is to be completed.

7.11 When the hearing outcome is notified, the **redacted** order and Form 1³⁰ are to be given to:

- relevant persons, except the carer(s)
- child (if of age to understand)
- safeguarder

²⁸ If this measure is not included, the order gives authority only for placement in secure accommodation.

²⁹ If in making an ICSO the hearing wants to specify the particular placements in the requirement to reside or in the secure accommodation authorisation, then the wording of the decision or part of the decision follows that for a CSO.

³⁰ If reasons were redacted, they should be given the redacted reasons.

7.12 The **full** order and **full** reasons are to be given to:³¹

- The carer(s), whether or not a relevant person, or the residential establishment. The standard hearing outcome letter for carers is to be edited to include the statement: 'Please note that the placement details are not being given to the person(s) specified in the order.'
- The implementation authority

7.13 If anyone entitled to the full information asks for it, they are to be given the full order (and full reasons). This will be by 1st class post.³² A record of each request, and response, must be made on Case Notes.

Process – Action when arranging a hearing where existing measure in an order

7.14 Process Chart E summaries the process to be followed when a hearing is being arranged where there is a non-disclosure measure in the child's order.

7.15 Where there is a non-disclosure measure in an order, the need to withhold any information additional to the placement address is to be reviewed by a reporter. Case Notes and Warning Box must be updated to show that the review has taken place and record any changes made.

7.16 Reports for the hearing are to be redacted on CMS. Where a report contains only non-disclosure information the entire report should be withheld.

7.17 Form 1 (notice that information has been withheld) must be created on CMS and included in all hearing papers.

7.18 Form 2 may be completed at this stage or later if and when required. The factors to take into account are the likelihood of the information being requested and whether copies of Form 2 will be taken to the Hearing Centre (see paragraph 4.11). If Form 2 is completed, it is to be imported into the reports folder on CMS.

7.19 If a request for the withheld information is made in advance of the hearing, Form 2 must be sent without delay by first class post using the general letter template, unless there is no possibility of receipt by post before the hearing. If it is not posted or there is insufficient time to be sure of receipt by post, the Form 2 must be taken to the Hearing Centre and given to the person who requested the information (unless they confirm they received a postal version).

7.20 If there is any possibility of a request for the information being made at the Hearing Centre, Form 2 must be available through one of the following:

- by taking a hard copy to the Hearing Centre
- by printing an already completed Form 2 from CMS at the Hearing Centre if a request is made

³¹ Rule 89 requires that the chief social work officer and any person who is responsible for providing any service, support or accommodation under the order are given the decision, reasons and order. The chief social work officer, and carer(s) or establishment, must be given the full order and reasons in order to be able to implement the order and show authority for the child's placement.

³² If the person requesting the information attends an SCRA office and there is no doubt as to their identity, the order (and reasons) should be given to the person, rather than posted, if the person so requests.

- by completing Form 2 electronically and printing at the Hearing Centre if a request is made
- by completing Form 2 by hand at the Hearing Centre if a request is made.

Factors to take into account in deciding whether to take a hard copy to the Hearing Centre are the likelihood of the information being requested, the ease of access to complete Form 2 electronically at the Hearing Centre, the ease of printing at the Hearing Centre, the volume of information to be provided and the practical difficulties of completing Form 2 by hand at the Hearing Centre.

- 7.21 The reporter may need to ask the hearing to adjourn to allow time for the information to be generated and provided.
- 7.22 A Form 2 will be required for each person requesting the information, unless it is appropriate to ask them to share and they agree to share. If the Form 2 is handwritten, an additional handwritten Form 2 will be required for importing into CMS after the hearing.
- 7.23 A record of all competent requests for the full information, and the response, must be made on CMS through the task of matching the Form 2 to the relevant associate or panel member. This will automatically generate an entry in Case Notes. The same approach applies to requests made at the Hearing Centre or during the hearing, although these must also be recorded on the Hearings Outcome Form.
- 7.24 If a panel member has requested the full information and the Locality practice is to retain panel member papers for future use, the Form 2 must be removed from the papers.

Non-disclosure direction in a CPO

- 7.25 Section 40 provides that when making a child protection order the sheriff must consider whether to include an information non-disclosure direction in the order. The direction is that the place of safety at which the child is being kept and any other specified information must not be disclosed (directly or indirectly) to the person(s) specified in the direction.
- 7.26 If information requires to be withheld ³³, the process for arranging a hearing where there is a measure in an order is to be followed.

³³ When notifying the making of a CPO, it is for the applicant to redact the CPO and supporting documents.

8. Section 178 of the Children's Hearings (Scotland) Act 2011

General

- 8.1 A children's hearing may decide not to disclose to any person any information about the child or about the child's case if disclosure of that information to that person would be likely to cause significant harm to the child. This includes not disclosing such information when:
- giving an explanation of what has taken place during a relevant person's exclusion or absence from the hearing,
 - giving reasons for decision,
 - informing those present at the hearing of the substance of any relevant report or other document. S.178(2)
- 8.2 Given the potential unfairness which could arise, particularly if the withheld information forms a part of the reasons for the hearing's decision, this provision may be of limited application.
- 8.3 Section 178 appears to apply to information that is made available verbally during a hearing while the person from whom the hearing decides to withhold the information is not present (whether not in attendance, voluntarily absent or excluded).

Section 178 - Process

- 8.4 Process Chart F summarises the process to be followed by Localities when a hearing withholds information under section 178.
- 8.5 Neither s.178 itself nor the Hearing Rules specify the process to be followed in relation to s.178 at a hearing. However, it is a decision of the hearing and is to be recorded by the reporter as such. It is to be recorded as 'to withhold information from [X] under section 178'. As with any decision, the hearing must give reasons for the decision.
- 8.6 If the hearing withholds information under section 178 in reasons for decision, the reporter must specify this in the Hearings Outcome Form and give the details of the withheld information.
- 8.7 The reporter is to seek advice from the Practice Team on what is the most appropriate approach to take to recording the situation on CMS.
- 8.8 The reporter is to consult the Practice Team to determine whether, in notifying the hearing outcome, the non-disclosure information is to be withheld from all parties or from only the non-disclosure individual(s). The information is likely to be such that it should be given to all parties except the non-disclosure individual(s) when notifying the outcome of the hearing.
- 8.9 In this case, the reasons for decision must be redacted and the redacted reasons provided to the non-disclosure individual when notifying the outcome of the hearing. The standard outcome notification letter to the non-disclosure

individual must be edited to explain that information has been withheld because the hearing applied section 178. The full reasons must be provided to the relevant persons, child (if of age to understand), any safeguarder and the implementation authority – excluding the non-disclosure individual. The standard outcome notification letter to these people must be edited to explain that information (give brief description) has been withheld from the non-disclosure individual because the hearing applied section 178.

- 8.10 When arranging a subsequent hearing, it is likely that the non-disclosure information will require to be provided to panel members and all parties other than the non-disclosure individual. However, please consult your Senior Practitioner and the Practice Team.

9. Sheriff orders non-disclosure of address in proof application under section 93 or 94

General

- 9.1 When considering an application for proof under section 93 or 94 of the Children's Hearings (Scotland) Act 2011, the sheriff may order that the address of the child or relevant person is not to be disclosed in the copy application which the reporter serves on the child, relevant persons and any safeguarder.
- 9.2 An application to the sheriff under section 93 or 94 must be in Form 60. The terms of Form 60 indicate that in considering an application under section 93 or 94 the sheriff may order that an address is not be disclosed in the application. This covers the address of the child and of a relevant person. The order made by the sheriff relates only to an address in the Form 60 application itself and does not apply to any other paperwork forming part of the child's proceedings, for example, the statement of grounds.
- 9.3 When making an application under section 93 or 94, the reporter must decide whether to seek such an order to cover the child's and/or relevant person's address which would otherwise appear in the application to be notified to other parties. Such an order is likely to be required where the child is subject to an order containing a non-disclosure measure or the reporter has applied rule 16 in the case. However, there may be other reasons to seek such an order for example where there is some risk but the rule 16 significant harm test is not met.
- 9.4 The request to the sheriff and related information is to be provided in a covering letter with the application.

Process if order is made

- 9.5 The reporter is to ensure that the address of the child or relevant person is removed from the copy application which the reporter serves on the child, relevant persons and safeguarder.
- 9.6 Rule 15 does not apply so there is no requirement to give notice that information has been withheld.
- 9.7 The local authority is to be informed that the information is being withheld as a result of the decision of the sheriff.

10. ICSO Applications to the Sheriff

- 10.1 Where the reporter is applying to the sheriff for an ICSO under section 98 or 99 of the Act , particular issues arise if:
- the child's ICSO has a current measure with a named place of residence and a non-disclosure measure, and/or
 - the terms of the ICSO being applied for include a proposed measure with a named place of residence and a non-disclosure measure.
- 10.2 In these circumstances, the reporter is not to include the details of the named place of residence in the Form 65C or 65D application, either as a current or proposed measure.
- 10.3 When there is a current measure in the ICSO, the reporter is to include in the application the following information regarding the current ICSO: "The child's current ICSO has a measure that the child is to reside [with named foster carers/at a named residential placement] and a measure that this place is not to be disclosed to [add details of non-disclosure associate(s)]. The reporter will be able to provide the Sheriff with details of the place at the hearing of this application."
- 10.4 When the application contains a proposed measure, the reporter is to narrate the measures being sought in the application as:
- "That [name of child/the child] reside [with named foster carers/at a named residential placement], the details of which the reporter will provide to the Sheriff at the hearing of this application.
 - To include in the order a prohibition on disclosure of the place where the order requires the child to reside to [specify person(s)]."
- 10.5 When the application contains a proposed measure with a named place of residence and a non-disclosure measure, the reporter is to ask the Sheriff to include the full details of the place in the interlocutor.
- 10.6 Rule 16 does not extend to a court application. However, where the reporter has applied Rule 16 in relation to a relevant person's address, the reporter is not to include the address in Part 1 of the Form 65C or 65D.

- 10.7 Court Rule 3.64A – 3.64C set out the requirements to intimate the making of orders by the sheriff. Where the sheriff makes or extends an ICSO, the reporter must intimate this to the child, the implementation authority and such other person as the sheriff determines. However, in the interests of fairness, the reporter is to notify any relevant person who was not present when the sheriff made the decision even if not ordered to do so by the sheriff. Note that where the sheriff varies or continues a CSO or MEO the sheriff clerk must intimate this forthwith to the parties and the relevant implementation authority.
- 10.8 Where the reporter is applying for an ICSO under section 98, 99, or 109 of the Act or interim variation of a CSO under section 109 the reporter should consider whether it is also necessary to seek a non-disclosure measure. Where the existing ICSO or interim variation contains a non-disclosure measure, the reporter must assess whether it continues to be necessary.
- 10.9 When an ICSO made by the sheriff includes a non-disclosure measure, the reporter is to adopt the approach outlined in paragraphs 7.8 – 7.13 in relation to non-disclosure measures in an order.

11. Practical Issues

Hearings

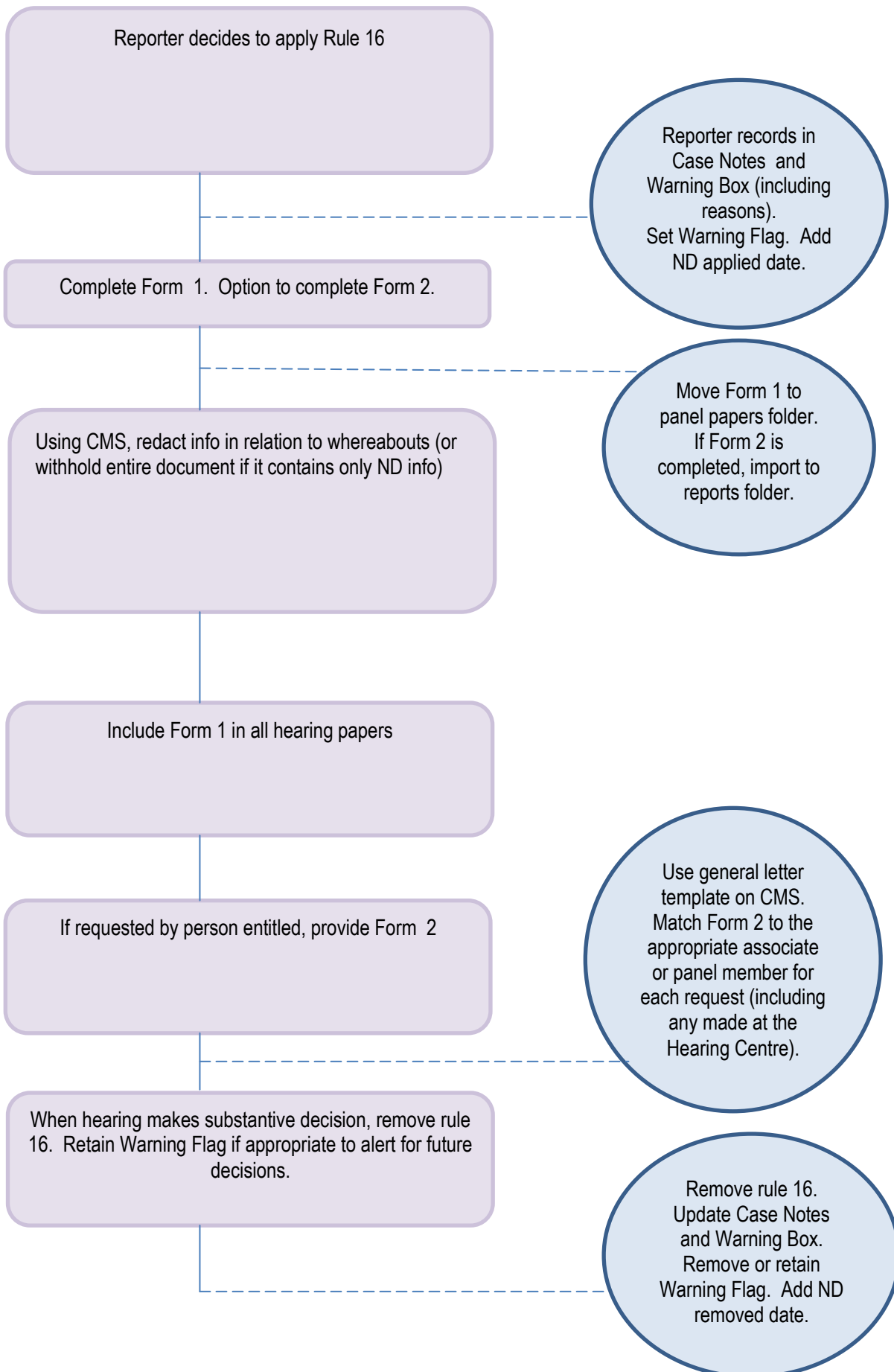
- 11.1 Where any non-disclosure provision applies the reporter is to alert panel members to this at the start of the hearing.
- 11.2 Reception staff must be alert to the existence of any non-disclosure provision through the Hearings Arrangement Form. Reception staff must not distribute any reports to any person unless instructed to do so by the reporter attending the hearing. All offices are required to ensure that any register or log used at reception to record who attends hearings does **not** record the address of any child or their carer where non-disclosure is an issue. If there is a need to seek names and addresses verbally from persons attending a hearing this must be done outwith the hearing of persons who are not allowed that information.
- 11.3 If the hearing decides to take a tabled report into consideration, the reporter is to offer to remove any information that should not be disclosed to a particular person, in so far as practicable. The information withheld will depend on the terms of any measure, the application of rule 16 or the hearing's determination of a non-disclosure request. However as it is the hearing which is deciding what to do with the report, the reporter should make clear to the chair whether it is practicable for the reporter to remove the non-disclosure information and if there is any doubt as to what information is to be removed should ask the chair to clarify.
- 11.4 If a child or relevant person from whom information has been withheld under one of the non-disclosure provisions requests sight of a set of papers to refer to during a hearing, the reporter must ensure that any papers provided by the reporter avoid any breach of non-disclosure. If any other person offers, or is considering offering, sight of their papers the reporter is to alert that person to the issue of non-disclosure.

Court Proceedings

- 11.5 Where there is a non-disclosure measure in an order, SCRA staff must comply with the order during the course of its existence, which may include proof or appeal proceedings. The reporter must ensure that the sheriff, any safeguarder, any agent acting for the reporter, and any agent acting for the child or relevant persons is aware of any current non-disclosure measure, non-disclosure request or application of rule 16.
- 11.6 Where the reporter has a duty to provide the sheriff with the papers available to the hearing, the duty applies to the papers provided to the panel members before any request for withheld information is made. Therefore the sheriff's papers will include Form 1 and/or Form 5, but not the withheld information where the standard approach applied. The reporter should have the full information (Form 2 and/or Form 4) to give to the sheriff if requested. However Localities may have an agreement with the sheriff about whether the sheriff will want the full information and should act in accordance with that agreement.
- 11.7 In appeals there is no obligation on the reporter to provide a set of copy hearing papers to the child or relevant persons. If papers are provided, they are to be the same as provided to that person for the hearing, including any non-disclosure Forms.
- 11.8 Where there is a non-disclosure measure in an order, the reporter must ensure that any productions or evidence in a proof or appeal which s/he copies or makes available to a person (including via a solicitor acting for that person) to whom disclosure is not to be made do not contain information which is not to be disclosed. This includes checking, for example, audio tapes, video and DVD recordings and medical records. The reporter must ensure the sheriff and all other parties are alert to the non-disclosure measure in relation to their productions or any new reports produced in the course of the proceedings.
- 11.9 Rule 16 does not extend to productions or evidence in a proof or appeal. However, all parties will be aware that the reporter has applied rule 16 at an earlier stage in the proceedings (see paragraph 9.11). Where information has been withheld from a person by the reporter under rule 16 rather than under a non-disclosure measure, it will be for the sheriff to determine whether such information may be removed from productions or evidence to be provided to that person. **The reporter must not disclose the information to the person unless the sheriff has ordered that it must be so disclosed.** Where the reporter withholds information in productions or evidence in advance of consideration by the sheriff, the reporter must alert the sheriff and the person from whom the information has been withheld, in order that the issue may be considered by the sheriff should either that person or the sheriff wish to raise it.
- 11.10 In any motion for recovery of documents the reporter must ensure that any non-disclosure issue is taken into consideration in responding to the motion.
- 11.11 For withholding information in a report under section 95 of the Adoption and Children (Scotland) Act 2007 (see paragraph 5.30).

APPENDIX 1

Rule 16

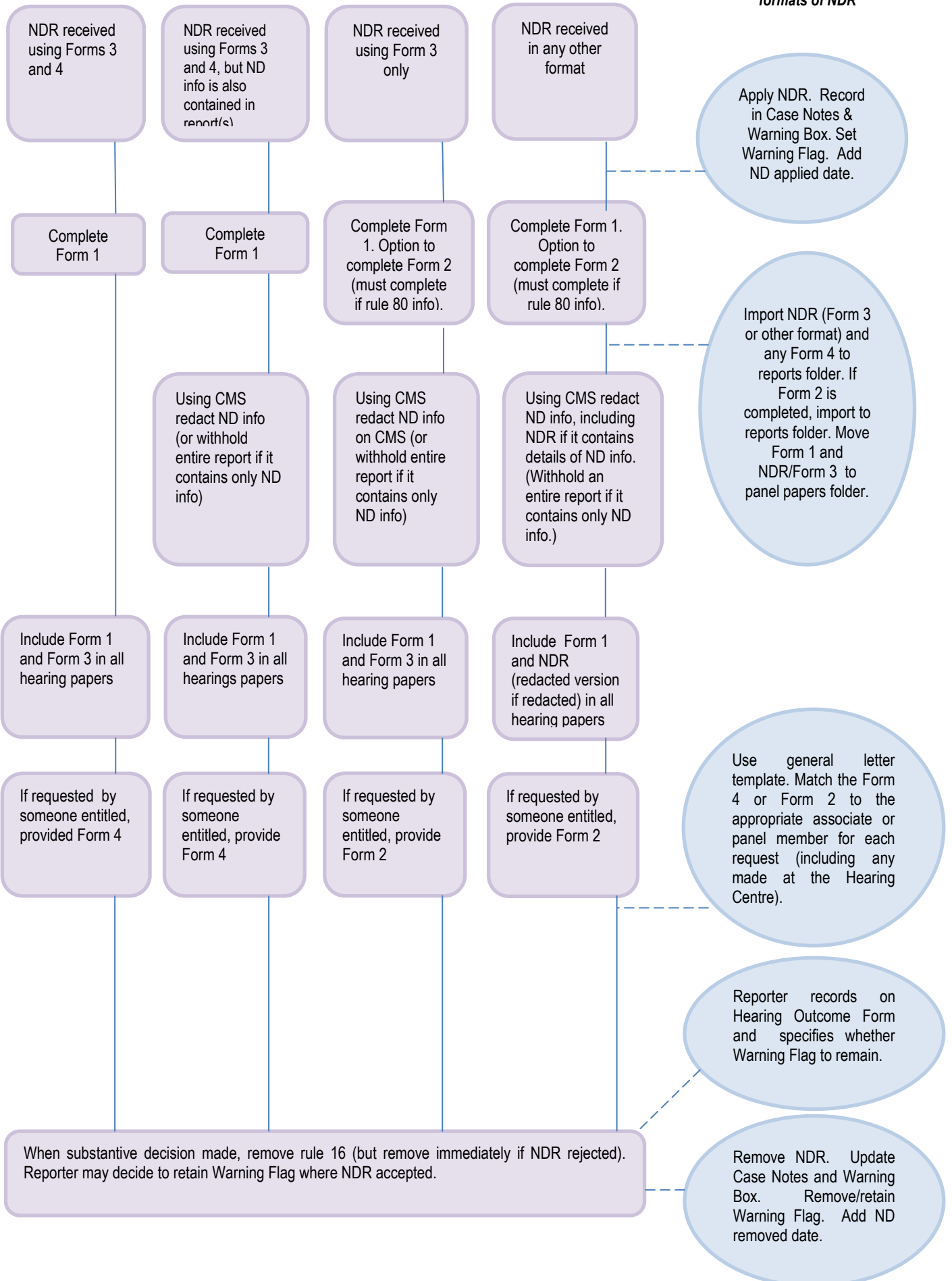


Non-disclosure Request – Information Relating to an Address

ND Process B

Select one column depending on format of NDR

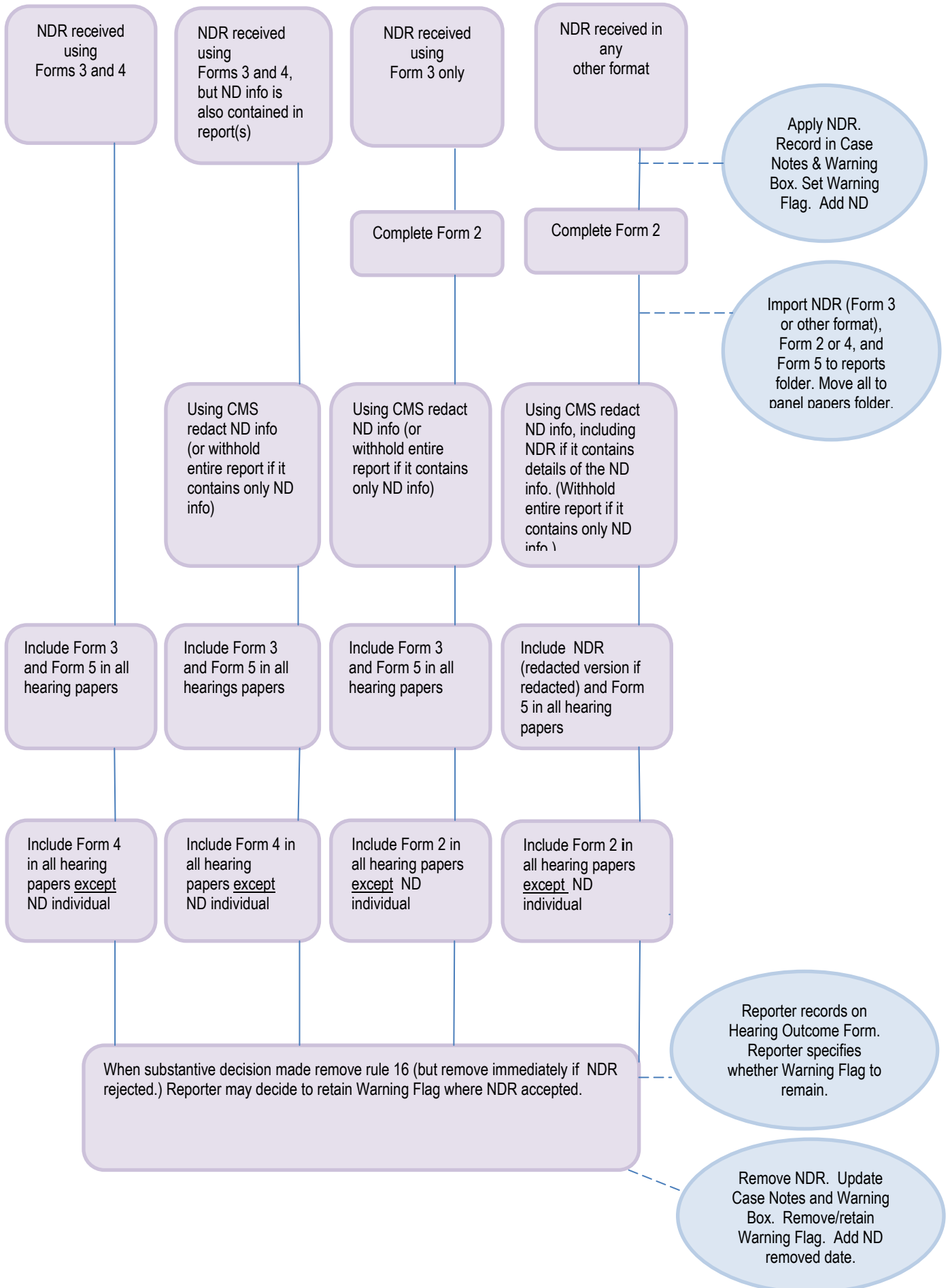
These tasks apply to all formats of NDR



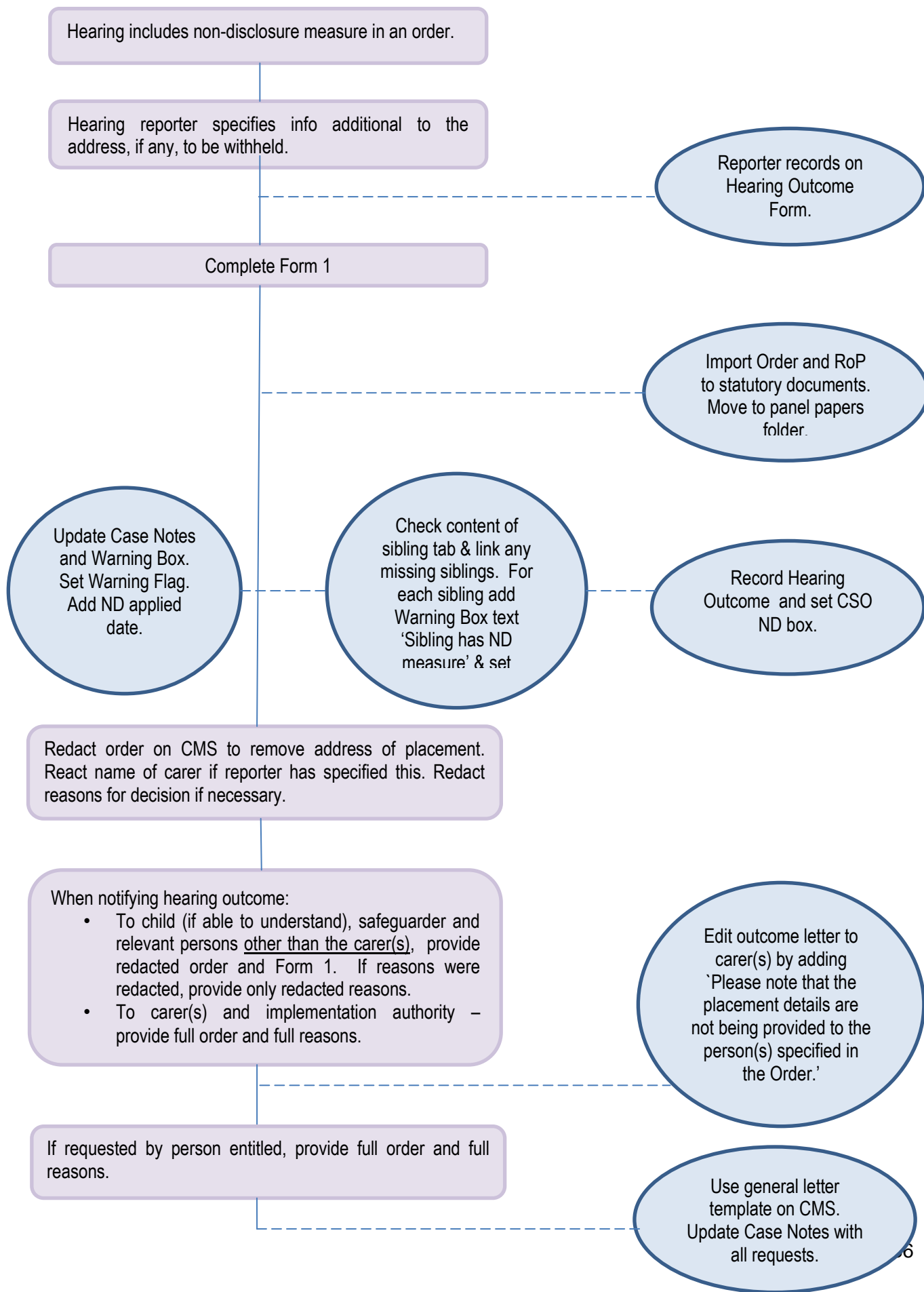
Non-disclosure Request – Other Information

Select one column depending on format of NDR

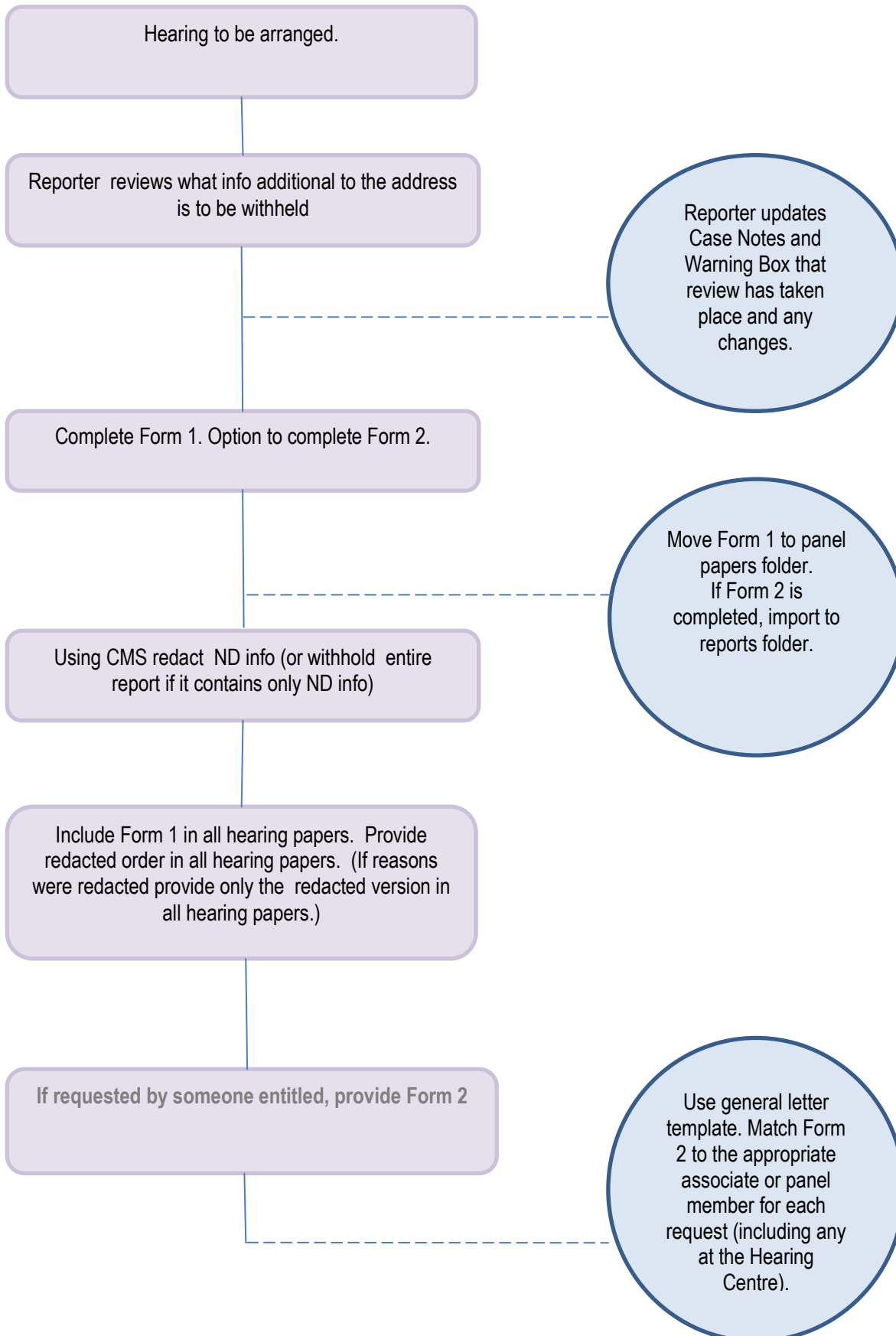
These tasks apply to all formats of NDR



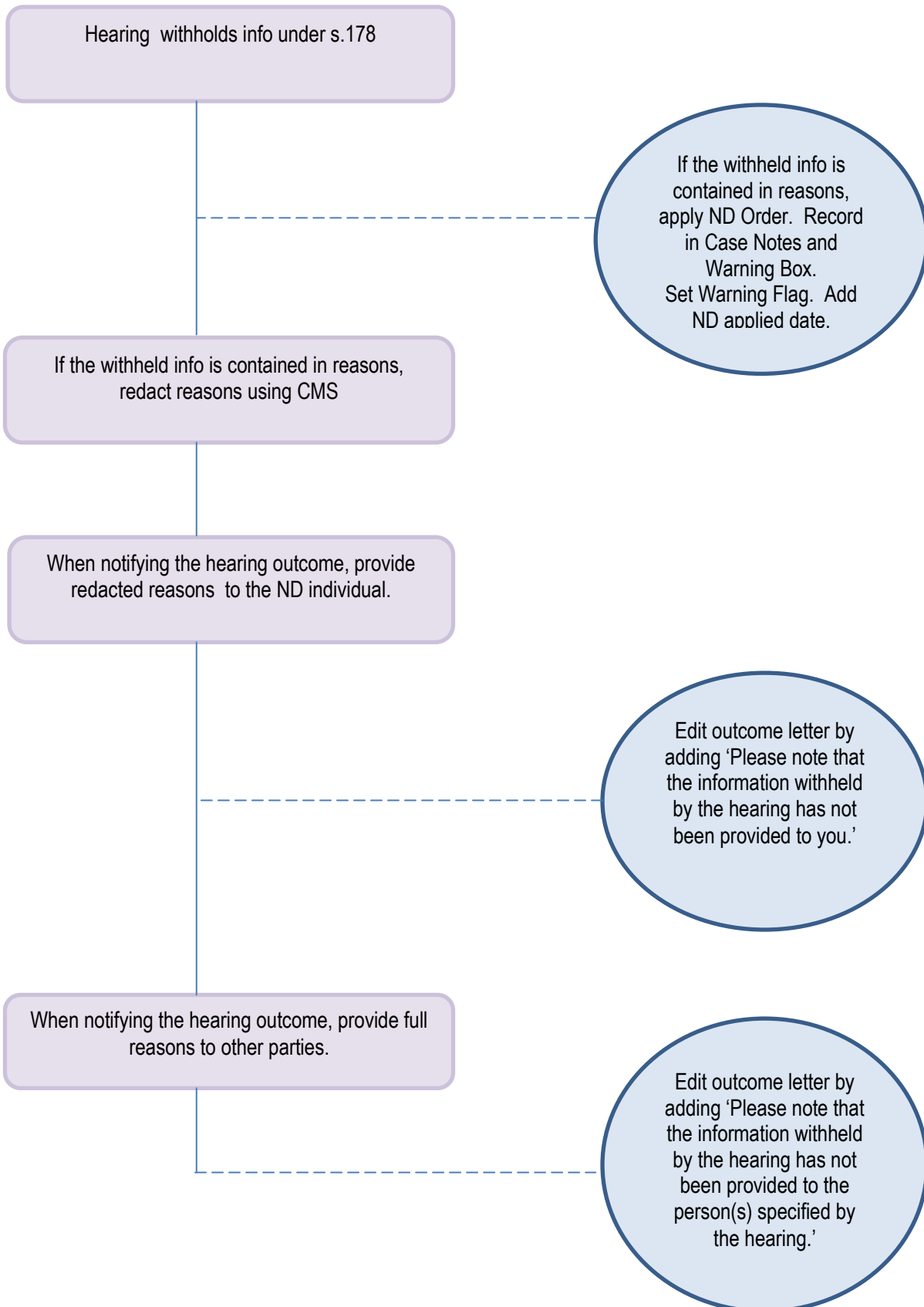
Measure in an Order – Post Hearing



Current Measure in an Order – Arranging Hearing



Section 178



NOTICE THAT INFORMATION IS BEING WITHHELD

Name of Child:	Date of Birth:
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Date of hearing or pre-hearing panel:

Current address of the child	<input type="checkbox"/>
Current address of (specify relevant person)	<input type="checkbox"/>
Name of current carer(s)	<input type="checkbox"/>
Name of proposed carer(s)	<input type="checkbox"/>
Address of proposed placement	<input type="checkbox"/>
Child's school/nursery	<input type="checkbox"/>
Child's GP/Health Centre	<input type="checkbox"/>

Other information to prevent disclosure of an address:

Non-address related information:

The information is being withheld because:

The reporter has decided to withhold the information.	<input type="checkbox"/>
An order made by a children's hearing or sheriff prohibits disclosure of the information.	<input type="checkbox"/>
A Non-disclosure Request has been made (it is included in your hearing papers). The children's hearing will consider the request and decide whether the specified person is to be given the information. You will be able to tell the hearing what you think about this before the decision is made.	<input type="checkbox"/>
The children's hearing withheld information.	<input type="checkbox"/>

The following person(s) is not entitled to receive the information:

If you are NOT named above, you have a right to be given the information. If you want the information please contact [team mailbox and team phone number]

Completed by

Date

Non-disclosure - Full Details of Information

Name of Child:	Date of Birth:
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Completed by (Name):
Job Title:
Date:

The following is the full information subject to non-disclosure.
It is being withheld from:
<i>Current address of the child:</i>
<i>Current address of (specify relevant person):</i>
<i>Name of current carer(s)</i>
<i>Name of proposed carer(s):</i>
<i>Address of proposed placement:</i>
<i>Child's school/nursery:</i>
<i>Child's GP/health centre:</i>
<i>Other information to prevent disclosure of an address:</i>
<i>Non-address related information:</i>

As this information is subject to non-disclosure, please handle the information with sensitivity before and during and after the hearing.

Non-Disclosure Request Reports/Documents for a Children’s Hearing or Pre-Hearing Panel

This Form will be provided in full to the child (if able to understand), all relevant persons, any safeguarder and panel members. The Request will be considered by the children’s hearing or pre-hearing panel.

Child’s Name:	Date of Birth:
Name of Person making Request:	
Job Title:	
Date of Request:	

1. Summary of the information requested to be withheld

Current address of the child	<input type="checkbox"/>
Current address of (specify relevant person)	
Name of current carer	
Name of proposed carer(s)	<input type="checkbox"/>
Address of proposed placement	
Child’s school/nursery	<input type="checkbox"/>
Child’s GP/health centre	<input type="checkbox"/>

Other information to prevent disclosure of an address
Please give outline description e.g. ‘name of headteacher’

Other information unrelated to an address
Please give outline description e.g. ‘medical history of X’, ‘previous behaviour by Y’, ‘family background of Z’

2. Person(s) from whom the information is requested to be withheld

3. Reasons for making the request

Reasons should explain why disclosure of the information to the specified person(s) would be likely to cause significant harm to the child.

4. Which Document(s) Contain the Information

Form 4
Ideally provide the information to be withheld only on Form 4 and not in any other document.

Other document(s) – specify by name and date
If the request does not relate to the whole of the document specify all places within the document where the information appears e.g. by page and paragraph number.

Please send to [team mailbox]

Non-disclosure Request – Full Details of Information

Child's Name:	Date of Birth:
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Name of Person making the Request:
Job Title:
Date of Request:

The following is the full information referred to in the Non-disclosure Request:
<i>Current address of child:</i>
<i>Current address of (specify relevant person):</i>
<i>Name of current carer(s):</i>
<i>Name of proposed carer(s):</i>
<i>Address of proposed placement:</i>
<i>Child's school/nursery:</i>
<i>Child's GP/health centre:</i>
<i>Other information to prevent disclosure of an address:</i>
<i>Non-address related information:</i>

The above information is contained only in this Form, not in my report.

The above information is also contained in my report.

NOTICE THAT INFORMATION HAS BEEN WITHHELD

A request has been made to withhold information from someone. A copy of the request is included in your papers for the children's hearing. The request tells you who has made the request, what information they have asked to be withheld, who from and the reasons why.

Because of the request the reporter has withheld the information from the person(s). The children's hearing will consider the request and decide whether the person(s) is to be given the information. You will be able to tell the hearing what you think about this before the decision is made.³⁴

³⁴ If the request is about information in papers for a pre-hearing panel, the pre-hearing panel will consider the request.

APPENDIX 3

Positions to be promoted with Partner Agencies

The local authority has a duty to comply with a non-disclosure measure in an order, and it and other agencies have wider duties to promote the child's welfare. Therefore, it is appropriate for Locality Reporter Managers to promote the following with partner agencies:

- Partner agencies should be familiar with and apply the Good Practice Guide on Non-disclosure of Information produced by the Children's Hearings Improvement Partnership.
- An agency should alert the reporter if it considers that disclosure of the whereabouts of the child and/or relevant person to a particular person(s) would be likely to cause significant harm to the child and/or relevant person. This will assist the reporter in considering whether to apply rule 16.
- An agency should make a non-disclosure request if it considers that disclosure of information in communications or reports relating to the children's hearing (or pre-hearing panel) would be likely to cause significant harm to the child, and no other non-disclosure provision enabling the information to be withheld applies to the information. An agency should make a non-disclosure request *only* in these circumstances.
- The local authority should not routinely include in a non-disclosure request which relates to a recommended placement any of the information required under rule 80 of the Looked After Children Regulations. This is because the panel members must consider the rule 80 information before being able to require the child to reside with someone other than a relevant person. Where possible, the rule 80 information should be stated in a way which does not include information likely to disclose the placement details.
- If an agency makes an unnecessary or inappropriate non-disclosure request, the reporter will contact the person making the request to explain the situation and check whether the person wants to withdraw the request.
- The local authority should recommend a non-disclosure measure in an order only if disclosure would be likely to cause significant harm to the child, and should provide relevant and sufficient reasons for the recommendation. The same applies to any recommendation to continue a non-disclosure measure. Reluctance by a carer to share their address does not meet the test.³⁵
- An agency should convey to the reporter any information which is to be withheld in a manner that best facilitates the reporter handling that information in a safe and secure way. For example, by providing the information only in a separate document or only in one place within a report.
- If making a non-disclosure request, an agency should use SCRA's non-disclosure request form (Form 3) and provide the full information on Form 4 (ideally *only* on Form 4). The Guidance Note on completion of Forms 3 and 4 should be followed by the

³⁵ Good Practice Guide on Non-disclosure of Information (CHIP).

agency. The Forms and Guidance Note are available on the SCRA website on the 'Information for Professionals' page. Links to the documents will be included in all report requests.

- An agency should consider entering a formal protocol with the Locality about:
 - (i) how it will provide information which requires to be withheld under any of the non-disclosure provisions,
 - (ii) if making a non-disclosure request, how the request will be made and how the information to be withheld will be provided, and
 - (iii) how the reporter will respond if information is provided in a way that does not comply with the protocol.