



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 other than a non-disclosure measure in an order 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). The test for a measure in an order involves a range of considerations but requires strong justification, and justification would generally be difficult without some risk to the child.
- 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 on CSAS 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 outcome where there is a non-disclosure measure in an order. In this situation, the implementation authority and any residential establishment the child is required to reside at are to be given the full order, decisions and reasons, Others, including any carers with whom the child is required to reside are to be given a redacted order, decisions and reasons.
- Where a placement is being recommended, the names and address of the proposed carers must be available to the hearing. This is achieved, in a non-disclosure situation, by the local authority providing the information to the reporter in advance of the hearing and making a non-disclosure request (and the reporter notifying the panel members that the information is available on request). Otherwise, the local authority will require to table the information in the hearing, by giving it to the chair, and make a non-disclosure request in the hearing.
- Rule 80 information (which for the purposes of this Practice Direction does not include the names and address of the proposed carers) must be considered by the panel members before they can make or vary a CSO to include a residence measure requiring the child to reside with carers who are not relevant persons. If the panel members have not each received the rule 80 information the reporter must intervene in the hearing to explain it would not be competent to make the residence measure.

- If someone entitled to withheld information requests the information, it must be given to them in writing without delay. The information must be provided as set out in Appendix 1.
- 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.

CONTENTS

1.	Introduction	6
2.	The Statutory Non-disclosure Provisions	8
3.	Rule 15 – Duty to Inform	9
4.	Withholding the Non-disclosure Information	10
5.	Responding to a Request for Withheld Information	10
6.	Recording and Checking	11
7.	Rule 16	11
	• <i>General</i>	11
	• <i>Ending Rule 16</i>	12
8.	Non-disclosure Requests	12
	• <i>General</i>	12
	• <i>Non-disclosure Request - Papers for Panel Members and Parties</i>	14
	• <i>NDR - Procedure at a hearing or pre-hearing panel</i>	15
	• <i>Non-disclosure request made during a Hearing or PHP</i>	16
	• <i>Information about a Recommended Placement</i>	17
	• <i>Report under section 95 of the Adoption and Children (Scotland) Act 2007</i>	18
	• <i>Ending the application of a non-disclosure request</i>	19
9.	Non-disclosure Measure in an Order	19
	• <i>General</i>	19
	• <i>Notification of Hearing Outcome</i>	21
	• <i>Arranging a hearing where existing measure in an order</i>	21
	• <i>Non-disclosure direction in a CPO</i>	21
10.	Section 178	21
	• <i>General</i>	21
	• <i>Section 178 – Procedure in the Hearing</i>	22
11.	Sheriff orders non-disclosure of address in proof application under section 93 or 94	22
12.	ICSO Applications to the Sheriff	23
13.	Practical Issues	25
	• <i>Hearings</i>	25
	• <i>Court Proceedings</i>	26
	APPENDIX 1 - Requests for Withheld Information	28
	APPENDIX 2 - Recording and Checking in relation to Non-disclosure Error! Bookmark not defined.	
	APPENDIX 3 - CSAS Processes for each Non-disclosure Provision	34
	APPENDIX 4 - Process Charts	37
	APPENDIX 5 – Notice that information is being withheld	43
	APPENDIX 6 - Positions to be promoted with Partner Agencies	48
	APPENDIX 7 - Documents to be Provided where a Non-disclosure Provision Applies	50

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 out-with CSAS. Regard should be had to any additional information in the standard operating model and to the CSAS User Guide. For supporting advice on processing and recording in CSAS please refer to the CSAS User Guides.
- 1.3 Supporting Process Charts are provided in Appendix 4 and Non-disclosure Forms are provided in Appendix 5.
- 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 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 the Breach Management and Reporting Procedures. The Breach Reporting Form is available here

Terminology

- 1.11 Within this Practice Direction, the following terms are defined as set out below:

Non-disclosure individual: The person from whom information is to be withheld

Non-disclosure provision: Any statutory provision which enables information to be withheld from someone otherwise entitled to receive it. More than one non-disclosure provision can apply to information at the same time.

Non-disclosure measure: A measure included in an order, providing that the place where the child is required to reside in terms of the order³ is not to be disclosed to a specified person or persons.

Non-disclosure case note: A note recorded in the child's non-disclosure grid (generally done on each occasion a non-disclosure provision comes into effect, is removed, or is reviewed by the reporter, or if a request for the withheld information is made.)

NDR Address: A non-disclosure request relating to address related information (see 2.6 and Part 6 below in relation to non-disclosure requests).

NDR Other: A non-disclosure request relating to non-address related information (see 2.6 and Part 6 below in relation to non-disclosure requests).

Parties: Refers to child (if able to understand the information), relevant person(s) and any safeguarder.

Withheld information: The information to be withheld from the non-disclosure individual(s) as a result of any non-disclosure provision.

Rule 80 information: The information which a hearing is required to consider before making or varying 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. The hearing must not make or so vary the order unless:

³ A non-disclosure measure is competent only where the hearing has decided a measure requiring the child reside at a specified place, including a place of safety, is necessary (see section 9 below for full discussion).

- 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,⁴ 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.

For the purposes of this Practice Direction, rule 80 information does not include the name and address of the proposed carer(s)/placement.

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 There are four types of non-disclosure provision:

- Rule 16
- Non-disclosure request
- Non-disclosure measure in an order
- Section 178

In addition, the sheriff may make a non-disclosure order in relation to a proof application.⁵

Each is considered in more detail in subsequent sections of this Practice Direction.

2.2 The statutory test for all non-disclosure provisions other than a measure in an order 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 under rule 16). 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.⁶

2.3 In relation to the test for making a non-disclosure measure in an order, in *X&Y v Principal Reporter & KB*, Lady Wise considered that the hearing should have in mind a range of considerations. These include the usual considerations of

⁴ The information which the hearing is required to consider as a result of Rule 80 does not include the address of the proposed placement or the names of the proposed carers.

⁵ The child's address is not to be included in a Form 60 in any event.

⁶ 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.

necessity and minimum intervention, also whether granting or refusing a non-disclosure measure would risk significant harm to the child, and all considered against the overarching consideration of the child's welfare being paramount. Lady Wise also said that generally it would be difficult to satisfy the necessity test unless there was some risk to the child without the measure. The position to be taken by reporters is that:

- strong justification is needed given the extent of the interference with the family life of the child and parents
- while there does not require to be likely significant harm, it is a relevant consideration - and generally justification would be difficult without some risk to the child.

2.4 Where a reporter considers that disclosure of information would be likely to cause significant harm to a person not covered by the statutory provisions, they are to seek advice from the Practice Team. There may be justification to withhold information in circumstances beyond the statutory provisions.

2.5 More than one type of non-disclosure provision can apply to a child's case at the same time.

2.6 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.⁷

3. Rule 15 – Duty to Inform

3.1 If a non-disclosure provision is applied, the process must be transparent. Rule 15 requires that when withholding information under the 2011 Act or the Children's Hearings Rules the reporter tells 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.

3.2 The duty under rule 15 to tell persons what information has been withheld and from whom is to 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.

3.3 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. Form 5 is a standard notice that requires no editing.

⁷ 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 8 is presumed to be not capable of understanding the statement of grounds. 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.

- 3.4 There is no express 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. The local authority is to be told the non-disclosure provision which applies and the categories or outline description of information being withheld. The level of detail provided about the withheld information should take account of the extent of interference with respect for private and family life (including the sensitivity of the information and how much is already known to the local authority) together with the significance of the information to the local authority's statutory functions.

4. Withholding the Non-disclosure Information

- 4.1 In order to manage the risk of inadvertent disclosure of information to be withheld while also respecting the right of persons to receive the information, the information is generally to be withheld from **all** persons otherwise entitled to it, and notice given to them that the information will be provided on request. This approach will be referred to as the standard approach.
- 4.2 Under the standard approach Form 1 tells everyone entitled to receive hearing papers that information has been withheld, from whom, the applicable non-disclosure provision and the category/outline description of the information. It also informs those entitled to receive the withheld information that they will be given it on request.
- 4.3 The standard approach does not apply where 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). Form 5 is used to tell everyone entitled to receive hearing papers that information has been withheld.

5. Responding to a Request for Withheld Information

- 5.1 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 writing without delay.
- 5.2 If the information cannot be provided in response to a request without delay, the hearing may require to consider deferring (or if considering an interim decision, making it for the shortest time possible). This will be for the hearing to determine taking into account the overall issue of fairness, in particular that the individual is entitled to receive the information.⁸
- 5.3 A record of all competent requests for the full information, and the response, must be made, including those made at the Hearing Centre or during the hearing.⁹

⁸ If the withheld information includes rule 80 information, it will not be competent for the hearing to require the child to reside at the proposed placement unless the panel members have each received and considered the rule 80 information. The reporter is to alert panel members to this if they appear to be unaware of the issue.

⁹ This is to be recorded in a non-disclosure case note. See Appendix 2 for more details on non-disclosure case notes.

- 5.4 Appendix 1 gives more detail on providing withheld information in response to a request.

6. Recording and Checking

- 6.1 It is essential that an accurate record is maintained of any non-disclosure provision that currently applies to a child, the category/outline description of the information to be withheld and, where the reporter has applied rule 16, the reasons for doing so.
- 6.2 When a child is referred, a check is to be made to ascertain whether any sibling of the child is subject to a non-disclosure provision. Where a sibling has a non-disclosure measure in an order, this must be recorded on the referred child's case record.
- 6.3 When a hearing makes a non-disclosure measure in an order, a record of this must be made on the records of any sibling of the child. When a non-disclosure measure in an order comes to an end, this must be recorded on the case record of any sibling.
- 6.4 Appendix 2 provides full details on recording and checking, including the use of non-disclosure case notes on CSAS and recording in relation to siblings.

7. Rule 16

General

- 7.1 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. The reporter can withhold the information only if they consider that disclosing the whereabouts would be likely to cause significant harm to the child or any relevant person.¹⁰
- 7.2 Rule 16 applies to the child's and/or relevant person's current whereabouts. It does **not** cover future/proposed whereabouts.
- 7.3 '**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 or addresses of schools, names or addresses of a health centre, names of carers or any other details which may identify the child's or relevant person's whereabouts.
- 7.4 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.¹¹ If there is no non-disclosure measure, the use of rule 16 in relation to the placement will not be justified

¹⁰ If you think disclosure would cause significant harm to any other person, please contact the Practice Team.

¹¹ Rule 16 may be required in addition to withhold the whereabouts of a relevant person.

without significant new information becoming available after the children's hearing.

- 7.5 It is for the reporter to be satisfied that the criteria in rule 16 are met. The reporter cannot apply rule 16 simply on the basis of a person requesting that the reporter apply it. There is no role for the hearing or pre-hearing panel to consider rule 16.

Ending Rule 16

- 7.6 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, the application of rule 16 must be brought to an end immediately. If rule 16 is not removed sooner, it is to be removed when the substantive decision has been made and notified.
- 7.7 If appropriate, the reporter is to provide an alert for future decisions about the application of rule 16. The presumption is that an alert is appropriate unless the reporter decides it is not necessary. The reporter is to record reasons for including or not including an alert. If the reporter decides not to apply rule 16 where there is an alert, the alert must be deleted and reasons for not applying rule 16 recorded.¹² The alert is to simply state 'Previous Rule 16'.

8. Non-disclosure Requests

General

- 8.1 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.
- 8.2 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.¹³ 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.
- 8.3 Any person, including the reporter, may make a non-disclosure request prior to the hearing or pre-hearing panel, and the reporter must refer this to the hearing

¹² Any alert is to be recorded in the Warning Box for the child. Reasons for including/ not including an alert, or removing an alert, are to be recorded in the child's non-disclosure case notes.

¹³ 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.

or pre-hearing panel. This is to be recorded as a purpose of the hearing or pre-hearing panel in notifications and the record of proceedings.

- 8.4 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 will be about information being tabled.¹⁴
- 8.5 A non-disclosure request must specify:
- (i) the information, document or part of document for which non-disclosure is requested;
 - (ii) the person or persons from whom the information or document is requested to be withheld; and
 - (iii) the reason or reasons for requesting each document or piece of information to be withheld from each person.
- 8.6 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.
- 8.7 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.
- 8.8 Certain documents cannot be the subject of a non-disclosure request:
- The statement of grounds.¹⁵
 - 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](#).
- 8.9 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.¹⁶ 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 unnecessary 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.
- 8.10 All report requests 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.

¹⁴ A non-disclosure request cannot be made for verbal information.

¹⁵ 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).

¹⁶ 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.

- 8.11 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).¹⁷ 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 8.5). Similarly, in the absence of an agreed written Protocol, the full information must be accepted in any format, including being contained within a wider report.
- 8.12 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.
- 8.13 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.

Non-disclosure Request - Papers for Panel Members and Parties

- 8.14 The information which is included in the papers for panel members and parties depends on the type of non-disclosure request. For the purposes of this Practice Direction non-disclosure requests are divided into two types:
- (1) a request relating to an address (including information additional to the address to prevent disclosure of the address) – referred to as a NDR Address, and
 - (2) a request relating to non-address related information such as a relevant person's medical history or a child's family background – referred to as a NDR Other.
- 8.15 The key differences in relation to papers are that:
- with an NDR Address the standard approach applies and the non-disclosure information is withheld from all hearing papers ie panel members and all parties. The full information is provided on request to anyone entitled to the information by giving Form 2 (or Form 4 if one was provided). Notice is given to everyone by completing and providing Form 1.
 - with an NDR Other the non-disclosure information is withheld from **only** the non-disclosure individual.¹⁸ The full information is provided to the panel

¹⁷ 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.

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.

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.

- 8.16 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 information that is to be withheld, the request must be redacted (this may also require the reporter to provide a brief explanation of the redacted information in its place).
- 8.17 The material to be provided in response to each type of request is summarised in the following table:

	Panel Members and Others	ND Individual
NDR Address	<ul style="list-style-type: none"> the non-disclosure request (Form 3 or whatever other format was used), redacted if necessary Form 1 	Same as panel members and others
NDR Other	<ul style="list-style-type: none"> the non-disclosure request (Form 3 or whatever other format was used), redacted if necessary Form 5 the full information (Form 4 if provided or otherwise Form 2) 	Same as panel members and others except without the full information

NDR - Procedure at a hearing or pre-hearing panel

- 8.18 Where a non-disclosure request has been made in advance of the hearing or PHP, it is to be notified as a purpose of the hearing or PHP and recorded on the record of proceedings as a purpose. The hearing's or PHP's decision in relation to the request must be recorded as a decision.¹⁹
- 8.19 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.
- 8.20 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 request.²⁰
- 8.21 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

¹⁹ Where a non-disclosure request is made during a hearing, it will appear on the record of proceedings only as a decision.

²⁰ This is also the approach of the National Convener (PPM paragraphs 6.44 – 6.49).

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, they must be invited to return and advised of the determination. Rule 86(5).

- 8.22 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.²¹
- 8.23 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.
- 8.24 Where a hearing rejects a non-disclosure request about a proposed placement, the National Convener's guidance for panel members is that the withheld information should not be disclosed until the hearing has decided whether to make a CSO and has an opportunity to consider whether a measure of non-disclosure of the child's place of residence is necessary in the child's interests. This is on the basis that disclosure of information should not prejudice the hearing's consideration of a non-disclosure measure²². The reporter is to take no issue with this approach.²³ If the hearing makes a non-disclosure measure, this is to be taken to supersede the requirement in rule 86(6) for the hearing to ensure the information withheld under the non-disclosure request is given to the non-disclosure individual.

Non-disclosure request made during a Hearing or PHP

- 8.25 A non-disclosure request may be made during a hearing or PHP 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.²⁴ The person is to give the information to the chair of the hearing and it will be for the hearing to decide whether to consider the report, as with any tabled report.²⁵ A report or information brought to the Hearing Centre or hearing is not a report given to the reporter and the reporter does not have a decision-making role in relation to it.²⁶
- 8.26 If the hearing decides to consider the report or information, the approach to any non-disclosure request about the information is the same as for a non-disclosure request made in advance of the hearing. This means that:

²¹ 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.

²² CHS Practice and Procedure Manual paragraph 7.41. It should be taken to also apply to variation of a CSO.

²³ This is separate to the position to be taken by the reporter in relation to the test for making a non-disclosure measure. See paragraph 2.2.

²⁴ A non-disclosure request cannot be made for verbal information.

²⁵ Further information on dealing with a tabled report, including where the person providing the information is not in the same location as the panel members, is provided at paragraphs 13.4 -13.6.

²⁶ See Practice Direction 11 on the Role of the Reporter at a Children's Hearing or Pre-hearing Panel at paragraph 11.4 to 11.6.

- 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.
 - If the non-disclosure request is about other information, the non-disclosure information is withheld only from the non-disclosure individual.
 - If the person who tabled the information is attending the hearing in person, the panel members will have the information in full as the information is given to the chair.
 - The non-disclosure request if in writing must be given to the panel members and all parties. If made verbally, all parties attending the hearing must hear the non-disclosure request.
- 8.27 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.
- 8.28 If the requirements specified at paragraph 8.26 cannot be met (for example because people are attending remotely or because of practical difficulties with redacting a tabled report before sharing) consideration of the non-disclosure request will very likely require to be deferred in the interests of fairness, impacting on other decision-making by the hearing.
- 8.29 If a non-disclosure request is not made for tabled information that the hearing has decided to consider, and no other non-disclosure provision applies, the tabled information must be given to all those present who have a right to receive hearing papers. This approach must be followed in relation to any report or written information provided at a hearing, including name and address details for any proposed placement. There is no justification for withholding information from those with a right to receive papers, and withholding would almost certainly amount to a breach of natural justice and ECHR Article 6.

Information about a Recommended Placement

- 8.30 The name and address details of a specified placement being recommended for a child must be available to the panel members and others with a right to receive hearing papers. This is achieved either by the information being given to them or, if a non-disclosure request is made, by telling the panel members and others that the information is available on request. The latter is best achieved by the information being provided to the reporter in advance of the hearing along with a non-disclosure request and the panel members and others being told that the information will be provided on request. Otherwise the information will require to be tabled at the hearing and a non-disclosure request made in the hearing (see paragraphs 8.25 – 8.28 and 13.4 – 13.6).
- 8.31 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.

It is not sufficient for the above information to be available to panel members on request, the panel members must consider the information. Unless the panel members receive the rule 80 information it will not be competent for the hearing to require the child to reside at that recommended placement through a CSO.

- 8.32 The information specified in rule 80 does not expressly include the name and address details of the placement, hence the distinction for the purposes of this Practice Direction between name and address details and rule 80 information.
- 8.33 The local authority should not routinely include rule 80 information in a non-disclosure request made for the purpose of preventing disclosure of the placement being recommended. If a non-disclosure request includes any of the rule 80 information, the reporter is to check with the social worker whether they really want the request to include this information²⁷, explaining the consequences if it is included.
- 8.34 Where a non-disclosure request includes rule 80 information, then unless all three panel members ask for and received the rule 80 information in advance, the reporter must be ready to provide copies of Form 4 or Form 2 at 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.²⁸

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

- 8.35 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

²⁷ If the intention of the social worker is simply to ensure that the address of the recommended placement and/or the name(s) of recommended carer(s) are not disclosed, the reporter should explain that a non-disclosure request should be limited to this information unless there is a need for the request to additionally include the Rule 80 information.

²⁸ If the hearing is a virtual or hybrid hearing, and the reporter is not able to provide the panel member with a copy of the Form 4 or Form 2 during the hearing, it will not be competent for the hearing to make a residence measure specifying the recommended placement in a CSO and the hearing will require to consider deferring in order for the information to be provided.

Court Adoption Rules 2009, the sheriff may decide to send only the redacted report to any party to the permanence order proceedings.

Ending the application of a non-disclosure request

8.36 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.

9. Non-disclosure Measure in an Order

General

9.1 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.²⁹

9.2 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)
- **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).

9.3 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.³⁰

²⁹ 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 ideally 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).

³⁰ The reporter is to be alert to asking the sheriff to be specific if including such a measure or direction in an order.

- 9.4 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'. If withholding the name of the carer(s) is not an issue, the panel member may state the name of the carer(s).
- 9.5 When a non-disclosure measure is included in an order made by a children's hearing, the full details of the placement or placements must be recorded by the reporter and submitted to the chair for authentication, as with any residence measure. Once the chair has signed and submitted the decisions and reasons, the reporter must take the steps set out in the SOM and User Guides , which will result in the full residence measure appearing in an annex to the record of proceedings and the order, rather than in the main body of the record of proceedings and order. The measure that will appear in the full body of the record of proceedings and order is "[child's name] is required to reside as specified in the Annex to this document." Only the main body of the record of proceedings and order is to be given to those with a right to be notified of the outcome of the hearing. See Appendix 1 para 2 for how to respond to a request for the withheld information.
- 9.6 The 'annex approach' cannot be applied where there is an order including a secure accommodation authorisation. The details of the placement(s) must be recorded in full within the residence measure and the SAA, **and then redacted** before notifying the outcome.³¹
- 9.7 It is for the reporter to decide whether any information additional to the address of the placement is to be withheld to prevent indirect disclosure of the address. This could be, for example, the name of the carer or the name of the child's school. Each category/outline description of additional information to be withheld must be expressly recorded, and if no additional information is to be withheld this is to be recorded.³² The hearing reporter should consult with the case reporter if in any doubt about what additional information, if any, to specify. Although the approach set out in paragraph 9.5 will result in the carer name(s) not appearing in the main body of the record of decisions or order, this does not amount to the carer name(s) being withheld as additional withheld information. The reporter is to decide whether the name(s) require to be withheld as usual. If the carer names(s) do not form part of the additional withheld information then any party, including a non-disclosure associate, is entitled to receive information about the name(s) on request. The name(s) may be withheld/removed from other documents only if the reporter has specified the name(s) are to be withheld as additional information.

³¹ The same applies if a movement restriction condition is made along with a separate corresponding residence measure which is subject to a non-disclosure measure. The details of any residence requirement should be set out in full within the residence measure **and then redacted**. However, MRCs can be, and usually are, made without any separate residence measure and the situation is therefore unlikely to arise.

³² Record whether and what additional information to withhold in a non-disclosure case note. See Appendix 2 for more details on recording non-disclosure case notes.

Notification of Hearing Outcome

- 9.8 When the hearing outcome is notified, all parties entitled to notification are to be given the main body of the decisions, reasons and order, which will not include the full details of the residence measure. Form 1 is to be included with all outcome notifications. If any party entitled to receive full information requests it, a copy of the Annex document is to be provided.³³ Part 5 above and Appendix 1 give more detail on providing withheld information.

If the hearing has made a secure accommodation authorisation along with the residence measure, the placement details within the SAA must be redacted from the main body of the record of proceedings and order before notifying the hearing outcome.³⁴

Arranging a hearing where existing measure in an order

- 9.9 When arranging a hearing 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. A record must be made to show that the review has taken place, and any change in the information to be withheld or that there is no change.³⁵

Non-disclosure direction in a CPO

- 9.10 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.
- 9.11 If information requires to be withheld³⁶, the same approach as for arranging a hearing where there is a measure in an order is to be applied.

10. Section 178

General

- 10.1 Section 178 enables a children's hearing to 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)

³³ The steps the reporter is to take to produce the Annex document are set out in the SOM, and (as of 7 December 2022) in User Guide 4 (Hearings) and the Non Disclosure User Guide

³⁴ The same applies if an MRC is made along with a corresponding residence measure.

³⁵ This is to be recorded in a non-disclosure case note. See Appendix 2 on non-disclosure case note recording.

³⁶ When notifying the making of a CPO, it is for the applicant to redact the CPO and supporting documents.

- 10.2 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.
- 10.3 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 – Procedure in the Hearing

- 10.4 Neither s.178 itself nor the Hearing Rules specify the procedure 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 not disclose [specify information] to [specify person]." As with any decision, the hearing must give reasons for the decision.
- 10.5 If the hearing withholds information under section 178 in reasons for decision, the reporter must record this together with the category/outline description of the withheld information.³⁷
- 10.6 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.
- 10.7 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.
- 10.8 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.

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

General

- 11.1 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

³⁷ In a non-disclosure case note. See Appendix 2 for more information on recording non-disclosure case notes.

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.

- 11.2 However, the child's address is not required and should not be included in the proof application (Form 60).³⁸
- 11.3 When making a proof application, Form 60 requires the address of any relevant persons to be stated. The reporter is to state all relevant person addresses (whether there is a non-disclosure provision in place or not) as c/o the Principal Reporter. If that is not acceptable to the sheriff, then the reporter can seek a non-disclosure order from the sheriff, and can contact the Practice Team.
- 11.4 The Form 60 must state whether an ICSO is in force, and if so, must specify the details of the order. Where the ICSO requires the child to reside in a specified place and includes a non-disclosure measure, the reporter is to describe the residence measure as, "a measure that the child is to reside in a specified place (details of the place are not stated here as there is a non-disclosure measure). The reporter will provide the sheriff with details if requested."
- 11.5 An application to the sheriff under section 93 or 94 must be in Form 60. A non-disclosure 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.
- 11.6 The request to the sheriff and related information is to be provided in a covering letter with the application.

Where an order is made

- 11.6 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.
- 11.7 Rule 15 does not apply so there is no requirement to give notice that information has been withheld.
- 11.8 The local authority is to be informed that the information is being withheld as a result of the decision of the sheriff.

12. ICSO Applications to the Sheriff

- 12.1 When making an ICSO application where there is a non-disclosure provision in place in relation to the child's or any relevant person's address, no address for that person is to be included in the application.³⁹
- 12.2 Where the reporter is applying for an ICSO (or interim variation under section 109) the reporter should consider whether it is necessary to seek a non-

³⁸ ICSO applications do require the child's address to be included. The child's address should be stated in all ICSO applications (including those where a non-disclosure provision applies) as c/o the Principal Reporter, Ochil House, Springkerse Business Park, Stirling.

³⁹ This fits with the current functionality available on CSAS. It is hoped that this will be changed in future to allow for c/o the Principal Reporter addresses to be included in ICSO applications, as in proof applications.

disclosure measure in the ICSO (or interim variation). Where the existing ICSO or interim variation contains a non-disclosure measure, the reporter must assess whether it continues to be necessary. Particular issues arise where:

- 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.

12.3 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.

12.4 When there is a current measure in the ICSO, the reporter is to include in the application the following description of the residence measure in the current ICSO: "a measure that the child is to reside in a specified place (details of the place are not stated here as there is a non-disclosure measure). The reporter will provide the sheriff with details if requested."⁴⁰

12.5 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".⁴¹
- To include in the order a prohibition on disclosure of the place where the order requires the child to reside to [specify person(s)]."

12.6 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.

12.7 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, and should instead state the address as c/o the Principal Reporter.

12.8 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.

12.9 When an ICSO made by the sheriff includes a non-disclosure measure, the reporter is to adopt the approach to non-disclosure measures in an order.

⁴⁰ Where court hearing will be taking place virtually, this approach will require to be adapted.

⁴¹ Where court hearing will be taking place virtually, this approach will require to be adapted.

13. Practical Issues

Hearings

- 13.1 Where any non-disclosure provision applies the reporter is to alert panel members to this at the start of the hearing.
- 13.2 Reception staff must be alert to the existence of any non-disclosure provision through the Hearings Arrangement Form and any relevant diary (CSAS and/or Outlook) in accordance with diary arrangements in place. Reception staff must not distribute any reports to any person unless instructed to do so by a reporter.⁴² 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.
- 13.3 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.
- 13.4 Where the person seeking to table a report or information is attending the hearing in person, the information is to be given by the person to the chair of the hearing. Where the person seeking to table the information is attending remotely, they may provide the information by secure email to the reporter, and the hearing may authorise the reporter to receive the information for secure onward transmission to panel members. Generally, once the information is received from the reporter by all the panel members, the information can be treated as having been tabled. However, for name and address information of a proposed placement where a non-disclosure request has been made, if the reporter confirms to the hearing that the information is the name and address re the proposed placement, this can be treated as the information having been tabled.
- 13.5 If information can't be tabled (eg because of difficulties with secure transmission) the hearing will require to consider the best way to proceed, taking account of fairness. If information is tabled, the hearing will require to decide whether to consider the information or to defer to allow more time for consideration.
- 13.6 If the hearing decides to take tabled information 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

⁴² Reports or other written information brought to the hearing by attendees are to be regarded as brought for tabling at the hearing, and are not to be distributed in advance by the reporter: see paragraph 4.9 of Practice Direction 11, Role of the Reporter.

is any doubt as to what information is to be removed the reporter should ask the chair to clarify.

Court Proceedings

- 13.7 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.
- 13.8 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 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.
- 13.9 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.
- 13.10 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 they copy or make available to a non-disclosure individual (including via a solicitor acting for the individual) do not contain the withheld information. 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.
- 13.11 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 13.7). 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.** The terms of the sheriff's order must be recorded.⁴³ 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.
- 13.12 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.

⁴³ In a non-disclosure case note.

13.13 For withholding information in a report under section 95 of the Adoption and Children (Scotland) Act 2007 see paragraph 8.35.

APPENDIX 1 - Requests for Withheld Information

1. 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 writing without delay. If posting, first class must be used. Electronic sending may be used where this is sufficiently secure.
2. Requested information is to be provided as follows:
 - For information withheld under a non-disclosure request, by giving Form 4 if available or otherwise by giving Form 2. (Form 4 will be available where a person making a non-disclosure request chooses to provide the full information on Form 4.)
 - For information withheld under a non-disclosure measure when notifying hearing outcomes, by giving the Annex to the record of proceedings and order. If the decisions, reasons or order were redacted, by providing the unredacted decisions, reasons or order.⁴⁴
 - In other situations, by giving Form 2.
3. Any Form 2 is to be generated on CSAS⁴⁵. Any Form 4 is to be saved to the child's Sharepoint site on CSAS.
4. If the information is part of the hearing papers and is not received by the requester in advance of the hearing, and the individual is attending the hearing in person or from an SCRA office, a hard copy of the information must be given to the individual at that location.
5. If a request for withheld information is made at the Hearing Centre or during the hearing, the information must be provided either by providing a hard copy or, where the request is made by an individual who is not physically present at the hearing, or not attending the hearing from an SCRA office, by sending by secure electronic means to the individual. If the information cannot be provided fairness will almost certainly require the hearing to defer its decision (or if considering an interim decision, making it for the shortest time possible).
6. If a Form 4 is not available, Form 2 must be completed at the outset where:
 - A non-disclosure request has been made about non-address related information. This is because the information is to be provided to panel members and all parties except the non-disclosure individual.
 - A non-disclosure request includes rule 80 information (other than the address of the placement and name of carers). This is because the panel members must be given and must consider the rule 80 information before it is competent to make or vary a CSO to require the child to reside at the placement.

⁴⁴ For example, where a SAA has been redacted or where the chair has included information to be withheld in the reasons.

⁴⁵ In order to generate a Form 2 relating to non-address related information on CSAS, it is necessary to use a workaround. The workaround involves 1) selecting the option "withhold address related information" on the child's non-disclosure screen, and 2) entering text in the Form 1 box which will appear when this option is selected (the text can simply state "not applicable" – it will not appear on the Form 2 later generated). When generating the Form 2, the reporter will have the option to enter the information that is being withheld (or reference a report if the entire report is being withheld).

7. In other situations where no Form 4 has been provided with a non-disclosure request Form 2 may be completed at the outset or later, if and when required. The factors to take into account in deciding whether to prepare and print a Form 2 in advance include:
 - the likelihood of the information being requested and by whom,
 - the ease of completing Form 2 electronically if requested at the Hearing Centre or during the hearing,
 - the ease of printing Form 2 or 4 at the location,
 - the ease of providing the Form 2 or 4 electronically,
 - the volume of information to be provided, and
 - any practical difficulties of completing Form 2 by hand at the Hearing Centre⁴⁶.
8. Where an entire report or document is to be withheld, then depending on the length of the document, either:
 - the content may be copied into Form 2, or
 - the report may be referenced on Form 2 and the report provided along with the Form 2.
9. If a request is made in the hearing, the reporter may need to ask the hearing to adjourn to allow time for the information to be generated and provided.
10. When more than one individual in the hearing requests the information, it may on occasion be appropriate to ask them to share but each individual requesting the information should be given their own copy unless they agree to share.
11. A record of all competent requests for the full information, and the response, must be made.⁴⁷ The same recording requirements apply to requests made at the Hearing Centre or during the hearing.

⁴⁶ If Form 2 is handwritten, a Form 2 will require to be generated in CSAS after the hearing.

⁴⁷ By making a non-disclosure case note that includes who made the request, the date of the request, and when and how the information was given.

APPENDIX 2 - Recording and Checking in relation to Non-disclosure

(changes made from October 2022 are highlighted)

1. CSAS enables recording of rule 16, a non-disclosure request, a non-disclosure measure in an order (which applies to all types of order including a child protection order) and a section 178 decision to withhold information made by a hearing. CSAS also enables non-disclosure case notes to be recorded. This appendix addresses the recording that is to take place on CSAS in relation to non-disclosure of information, and any checks that are to be carried out.

Recording a non-disclosure provision and non-disclosure case note

2. Upon any non-disclosure provision coming into effect, the reporter must record it as follows:⁴⁸
 - Apply the provision on CSAS, selecting the appropriate category of non-disclosure. This will generate the non-disclosure banner.
 - Add 'ND applied date' to the ND Individual(s)
 - Create a new non-disclosure case note in the child's non-disclosure record on CSAS (paragraph 3 gives further direction about the making of a case note).
 - Within the record for the ND Individual, the field "Entitled to receive un-redacted information" should be set to "Not entitled"⁴⁹
 - If the information to be withheld includes the address of a relevant person, apply "Withhold relevant person address" within the associate record for the relevant person whose whereabouts are not to be disclosed.
3. In addition to accurate recording of any non-disclosure provision which applies, accurate and up-to-date recording of a non-disclosure case note in the non-disclosure tab on CSAS is essential to ensure reliable information about non-disclosure is available to any member of staff dealing with a case. The following approach must be applied.
 - a) All recordings in relation to live non-disclosure provisions are to be made in the non-disclosure case note section on CSAS. No recordings about non-disclosure provisions are to be made in the Warning Box other than an alert about a previous application of Rule 16 (to help inform future decisions about the application of rule 16). The content of the alert in the Warning Box is simply 'Previous rule 16'.
 - b) A non-disclosure case note must be recorded in the child's non-disclosure grid as specified in the table at the end of the appendix.
4. When recording in a case note the information to be withheld, the information is to be specified in the following ways:
 - a) Where the information is the address and/or name(s) of carers (or prospective carers), the information must be noted in full in the non-disclosure case note (e.g. measure – withhold name of carer Joe Smith, and address, 3 High Street,

⁴⁸ Where a member of support staff first records, the reporter must check the recording.

⁴⁹ The purpose of completing this field is in order that the name of the ND Associate is included in the Forms 1 and 2 generated by CSAS. The default setting for the field is "not entitled."

Anytown; NDR – withhold name and address of prospective carer Mary Jones, 7 Main Street, Anytown; rule 16- withhold address of mother, 4 Elsewhere Road, Anytown).

b) For any other withheld information, the information may be specified in the following ways:

- setting out the category or outline description of information to be withheld where this will give sufficient clarity (e.g. ‘measure – withhold name of school’, ‘NDR – mother’s medical history’),
- by describing the information with reference to a document or part of a document (e.g. ‘NDR – withhold Appendix at page 5 of SW report dated X’), or
- by noting the information directly (eg ‘NDR – any reference to the mother having terminated a pregnancy’).

5. When deciding to withhold school information as additional information under a measure or rule 16, this is to be taken as including the names of members of staff at the school.⁵⁰ If the reporter does not intend that the names of any particular staff members should be withheld⁵¹, this must be clearly stated in a non-disclosure case note.

6. When completing Form 1 all relevant categories of information, as specified in a non-disclosure case note, are to be selected.⁵² The category ‘school’, if the reason for withholding is a measure or rule 16, is to be taken as including the names of members of staff employed at the school unless the contrary has been stated by the reporter in a non-disclosure case note. Where the information to be withheld is not covered by one of the specified categories, an outline description of the information to be withheld must be added.

Recording and checking of child’s siblings

7. When a child is first referred, the CSAS record of each sibling of the child must be connected to the child’s record and checked for any non-disclosure provision applying to that sibling. Once connected, the sibling will display in the connections section on the child contact record. If a non-disclosure provision applies to a sibling, the connection will result in the referred child’s record appearing with a banner warning that a non-disclosure provision applies to a sibling. If the non-disclosure provision or provisions applying to a sibling include a non-disclosure measure, a non-disclosure case note is to be made in the non-disclosure record for the referred child. If any other non-disclosure provision applies, the reporter should take account of it when dealing with the referral.

8. When a non-disclosure measure is included in an order for a child, in addition to updating the record for the child, the records of any siblings are to be checked to ensure they are connected. Connected siblings display in the child’s connections section on the child’s contact record. This will result in the record of any siblings appearing with a banner

⁵⁰ This approach does not apply where the information is being withheld as a result of a non-disclosure request, as the reporter has no power to withhold additional information in relation to a non-disclosure request. If a non-disclosure request is received relating to school information and it is not clear whether the requester intends the names of members of staff to be included in the request, the reporter should check with the requester.

⁵¹ For example, because the reporter is aware that this information is already known.

⁵² Where different information is being withheld from different individuals, a separate Form 1 will be required for each set of information.

warning that a non-disclosure provision applies to a sibling of the child. A non-disclosure note is to be made in the non-disclosure record for each sibling of the child. If a child ceases to have a non-disclosure measure in place, a further non-disclosure note is to be made in each sibling's record.

9. The table at the end of the appendix sets out what is to be recorded in a non-disclosure case note where there are siblings.

Redaction and checking

10. All redaction of documents is to be carried out on CSAS. The double-check function on CSAS must be completed.
11. Reference should be made to the CSAS Standard Operating Model and User Guides for the process for the checking and redacting of non-disclosure papers. Any operational or IG requirements must be followed in relation to any other correspondence to a non-disclosure individual.
12. Where a document of any type relating to a non-disclosure case is being put in an envelope, any operational or Information Governance requirement in relation to checking that redaction has been properly applied or that the right papers have been included must be followed. Particular care needs to be taken with the papers for the non-disclosure individual.

Occasion	Content
A non-disclosure provision comes into effect (including by continuation or variation)	<ul style="list-style-type: none"> • What non-disclosure provision (or provisions) is in place (ie rule 16/NDR/measure/s.178). • What information is to be withheld under each provision. Where a measure is in place, this will include noting the address directly, and also identifying any information additional to the address, or that no additional information is to be withheld. • Where Rule 16 is being applied, the reporter's reasons for applying it.
A non-disclosure provision is removed	<ul style="list-style-type: none"> • What provision is removed (ie rule 16/NDR/measure/s.178). • Where rule 16 is ending, the reporter's reasons for recording – or not recording – an alert in the Warning Box for future consideration of rule 16.
A non-disclosure provision is reviewed by the reporter	<ul style="list-style-type: none"> • That the review has taken place. • What information is to be withheld under the provision. Where a measure is in place, this will include noting the address directly, and also any information additional to the address, or that no additional information is to be withheld
The reporter decides not to apply rule 16 where there is an alert in the Warning Box	<ul style="list-style-type: none"> • The reasons for not applying rule 16. (The alert in the Warning Box must also be deleted.)
A request for withheld information is made	<ul style="list-style-type: none"> • Who made the request

	<ul style="list-style-type: none"> • The date of the request • How and when the Form 2 or 4 was given.
Court in adoption or permanence order proceedings terminates a CSO and also orders non-disclosure of any kind	<ul style="list-style-type: none"> • Terms of the court order in relation to non-disclosure • Date of the court order
Sibling Situations	
A child is referred and the check shows a sibling has a non-disclosure measure in their order	<ul style="list-style-type: none"> • Name of sibling • That a non-disclosure measure applies to that sibling
Hearing makes a non-disclosure measure and the child has a sibling	<p>In a non-disclosure case note for each sibling:</p> <ul style="list-style-type: none"> • Name of child at the hearing • That a non-disclosure measure applies to that child
Child with a sibling ceases to have a non-disclosure measure in their order	<p>In non-disclosure case note for each sibling:</p> <ul style="list-style-type: none"> • Name of child at hearing • That a non-disclosure measure no longer applies to that child

APPENDIX 3 - CSAS Processes for each Non-disclosure Provision

1. Rule 16

- 1.1 Process Chart A summarises the process to be followed when dealing with rule 16.
- 1.2 Rule 16 must be recorded on CSAS, following the process set out in Appendix 2. A new non-disclosure note must be recorded, as set out in Appendix 2. The non-disclosure note, as well as stating what information is to be withheld⁵³ and from whom, must include the reasons for decision.
- 1.3 Reports and documents must be redacted on CSAS to remove all non-disclosure information. If a document contains only non-disclosure information the entire document should be withheld.
- 1.4 Form 1 (notice that information has been withheld) must be created on CSAS and included in all hearing papers.
- 1.5 The approach to providing full information on request set out in Section 5 and Appendix 2 above must be followed.
- 1.6 When removing rule 16 from CSAS⁵⁴, an 'ND removed date' must be added to the connection record for the ND individual(s) on CSAS. A new non-disclosure note must be completed in the child's non-disclosure record.
- 1.7 If it is appropriate to provide an alert for future decisions about the application of rule 16, the Warning Box must be updated to record that rule 16 has previously been in place. A non-disclosure case note must be made, providing the reasons for retaining a recording in the Warning Box. The presumption is that a recording will be made in the Warning Box unless the reporter decides this is not necessary. The Warning Box is to contain only current information.
- 1.8 If no recording is made in the Warning Box, a non-disclosure case note must be made, including the reasons for not retaining a note in the Warning Box.
- 1.9 If the Warning Box records that Rule 16 has previously been in place and at the next decision point⁵⁵ the reporter decides not to apply rule 16, a non-disclosure case note is to be recorded explaining why rule 16 does not apply. The content of the Warning Box in relation to rule 16 must be deleted.

2. Non-disclosure Requests

- 2.1 The process for a NDR – Address is set out in Process Chart B. The process for an NDR Other – is set out in Process Chart C. 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.

⁵³ See Appendix 2 for the degree of specification required.

⁵⁴ Which at the latest will be when the substantive decision has been made and notified see para x

⁵⁵ ie when next sending notifications or documents about a hearing or pre-hearing panel.

- 2.2 If a non-disclosure request is received⁵⁶, it is to be recorded as a non-disclosure request on CSAS, following the procedure set out in Appendix 2. A new non-disclosure note is to be recorded, following the approach set out in Appendix 2. The non-disclosure case note must include the information to be withheld⁵⁷ and the person(s) from whom it is to be withheld.
- 2.3 Any Form 3 or 4 received by the reporter (or any Form 3 completed by the reporter on behalf of someone else) is to be saved to the child's Sharepoint site on CSAS.⁵⁸
- 2.4 The approach to providing full information set out in Appendix 1 must be followed.

Process where the Request is to withhold Information from the Child

- 2.5 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).
- 2.6 The "Withhold Information from Child" box should be set to "Yes" on CSAS. This will generate the "Information withheld from child" banner on CSAS, and will generate a mandatory text box. In the text box, the reporter should refer to the new non-disclosure case note by stating, "See non-disclosure case note dated [X]." No other information should be recorded in the text box.⁵⁹ The request is then dealt with in the usual way, with the exception that the child has to be set up as a connection on CSAS. This is done by adding the ND TO CHILD RECORD as a connection, and adding an 'ND applied date' to the 'ND TO CHILD RECORD' associate.⁶⁰
- 2.7 When the non-disclosure request is no longer current, delete the 'ND TO CHILD RECORD' associate as a connection for the child.

Ending a NDR

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

3. Non-disclosure Measure

Action when a non-disclosure measure is made

- 3.1 Process Chart D summaries the process to be followed when dealing with a hearing decision to make a non-disclosure measure.

⁵⁶ Subject to the request being appropriate, or if not appropriate subject to the person making the request declining to withdraw it. See paragraph x.

⁵⁷ See Appendix 2 for the degree of specification required.

⁵⁸ Form 3 cannot be generated within CSAS. It requires to be completed in a word document and then uploaded to CSAS.

⁵⁹ Details of the information to be withheld should be included in the non-disclosure case note, as set out in the table at p. 32 above.

⁶⁰ This will generate the usual non-disclosure banner. There will therefore be two banners visible on the child's record: the ND banner and the Information Withheld from Child banner.

- 3.2 A non-disclosure measure must be recorded in line with the directions on recording in Appendix 2. The hearing reporter is to specify in a non-disclosure case note (and Form 1) any information additional to the address that is to be withheld from the non-disclosure individual(s) to prevent indirect disclosure of the address. Each category of additional information to be withheld must be expressly stated in the non-disclosure note and on Form 1. If no additional information is to be withheld, this is to be recorded in a non-disclosure case note.
- 3.3 The reporter is to check that any siblings are linked to the child on CSAS. This will generate a warning banner. For each sibling, add a non-disclosure note stating '[name of subject child] has ND measure.'
- 3.4 The record of proceedings and 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.
- 3.5 Form 1 is to be completed. All of the actions at paragraphs 3.2 to 3.4 are to be completed by the reporter before the hearing outcome is processed.

Action when a hearing is being arranged where there is a non-disclosure measure

- 3.6 Process Chart E summarises the process to be followed when a hearing is being arranged where there is a non-disclosure measure in the child's order.
- 3.7 When arranging a hearing 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. A non-disclosure case note must be made to show that the review has taken place and record any change in the information to be withheld, or record that there is no change in the information to be withheld.⁶¹
- 3.8 Reports for the hearing are to be redacted on CSAS.
- 3.9 Form 1 must be created on CSAS and included in all hearing papers.

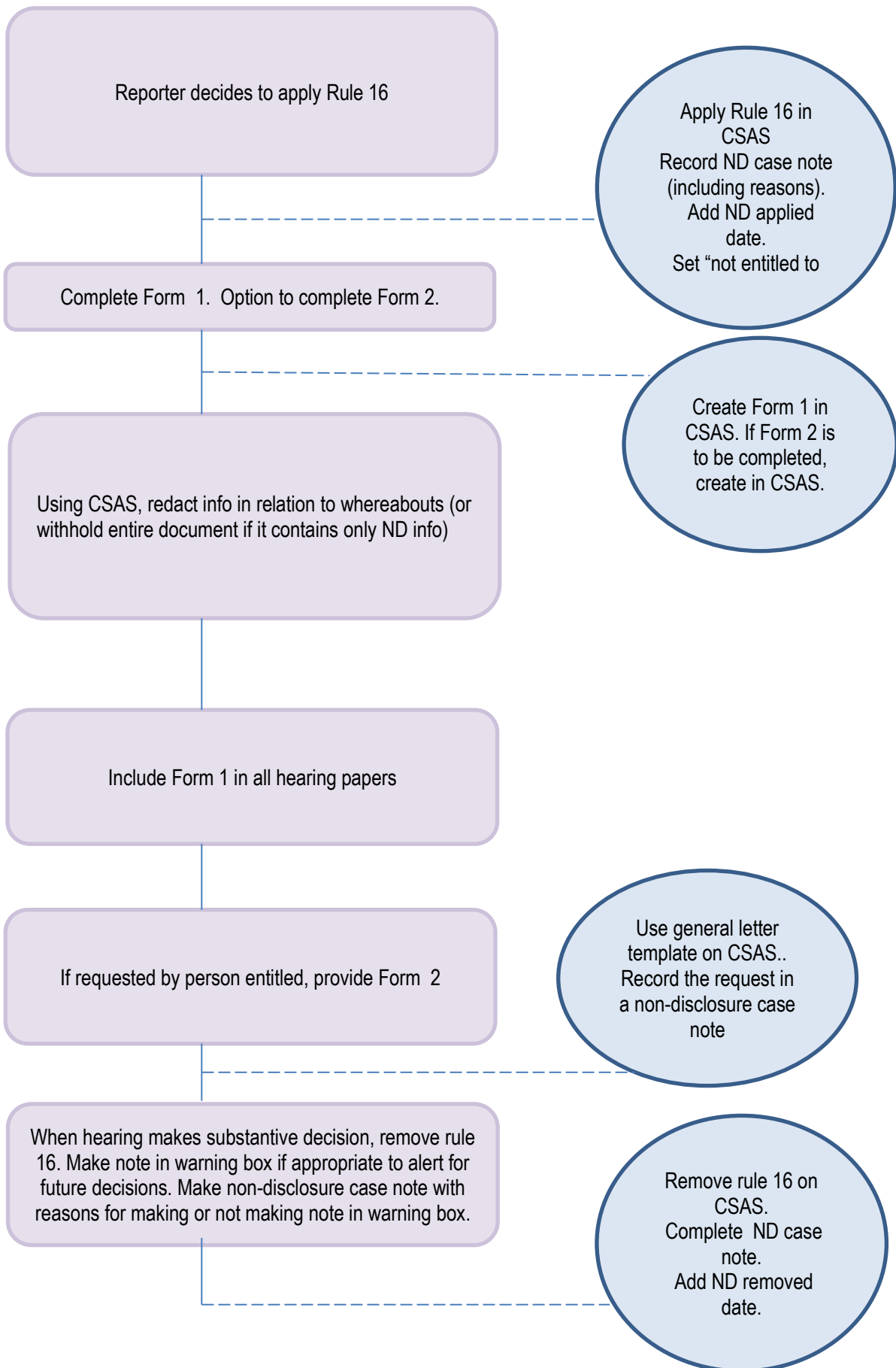
4. Section 178

- 4.1 Process Chart F summarises the process to be followed by Localities when a hearing withholds information under section 178.
- 4.2 The reporter is to seek advice from the Practice Team on what is the most appropriate approach to take to recording the situation on CSAS, and what information to provide in notification of hearing outcome or in hearing papers for any subsequent hearing.

⁶¹ See Appendix 2 on non-disclosure note recording.

APPENDIX 4 - Process Charts

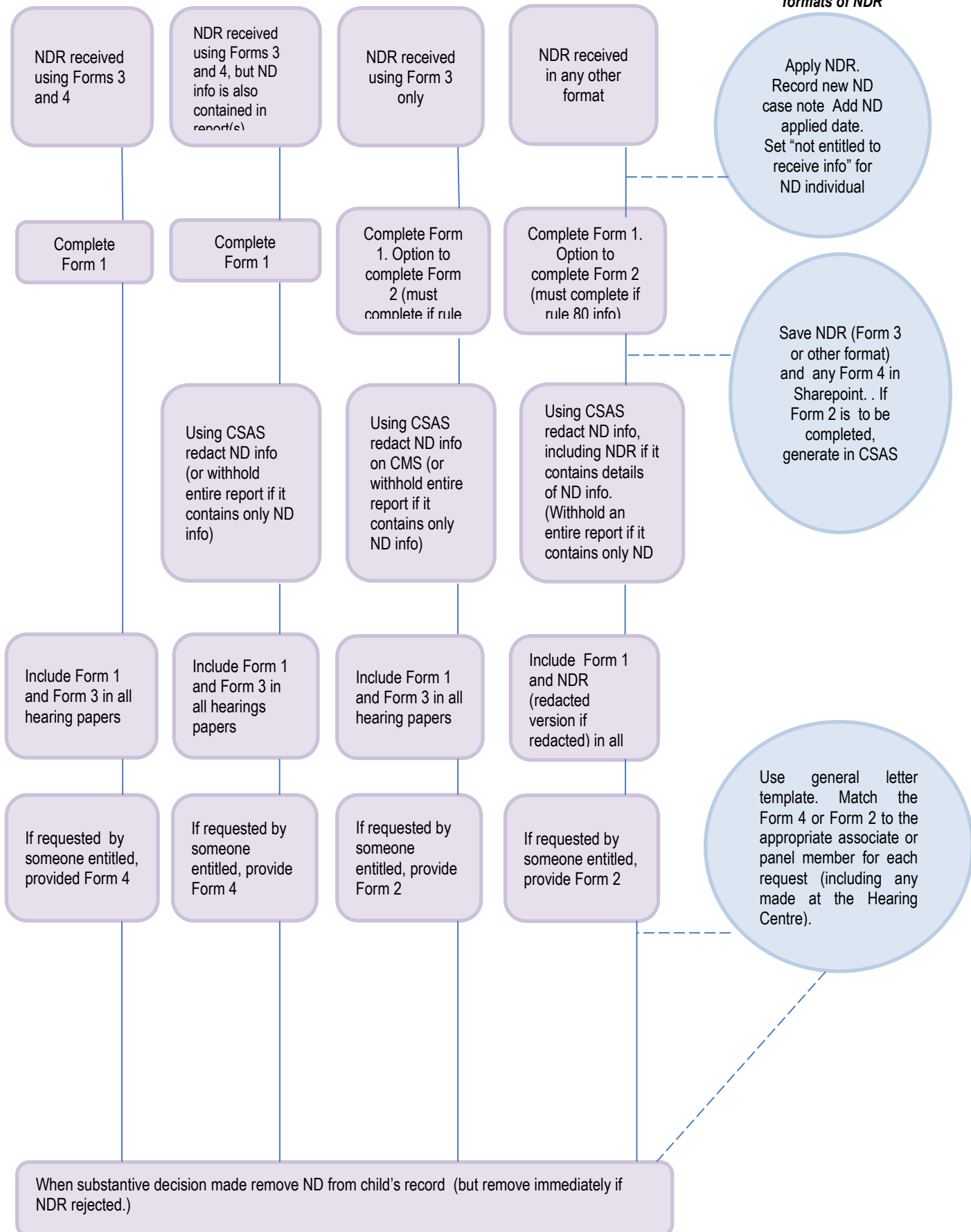
Rule 16



Non-disclosure Request – Information Relating to an Address

Select one column depending on format of NDR

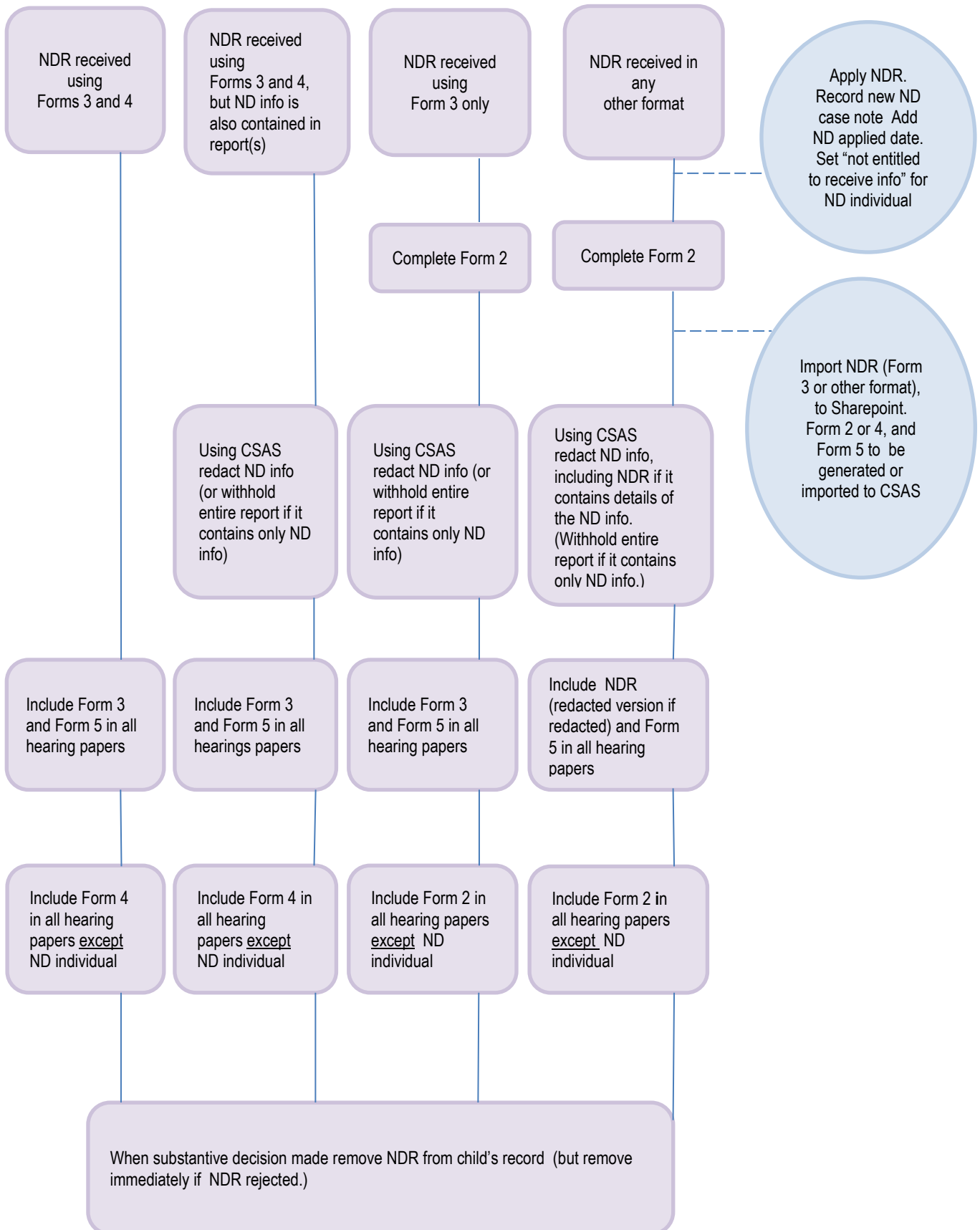
These tasks apply to all formats of NDR



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

ND Process D – Measure in order , post hearing

Hearing includes non-disclosure measure in an order. Reporter records measure in full and ensures an Annex is created by applying the process in the SOM

Hearing reporter decides info additional to the address, if any, to be withheld.

Complete Form 1

Record ND measure
Record new ND case note
Add ND applied date.
Set "not entitled to receive info" for ND individual
Record in ND case note whether information additional

Check content of sibling tab & link any missing siblings.
Check correct banner appears For each sibling, add ND note.

Complete redaction tasks. If necessary, redact order and ROP to remove address (and name if necessary). Redact reasons for decision if necessary.

When notifying hearing outcome:

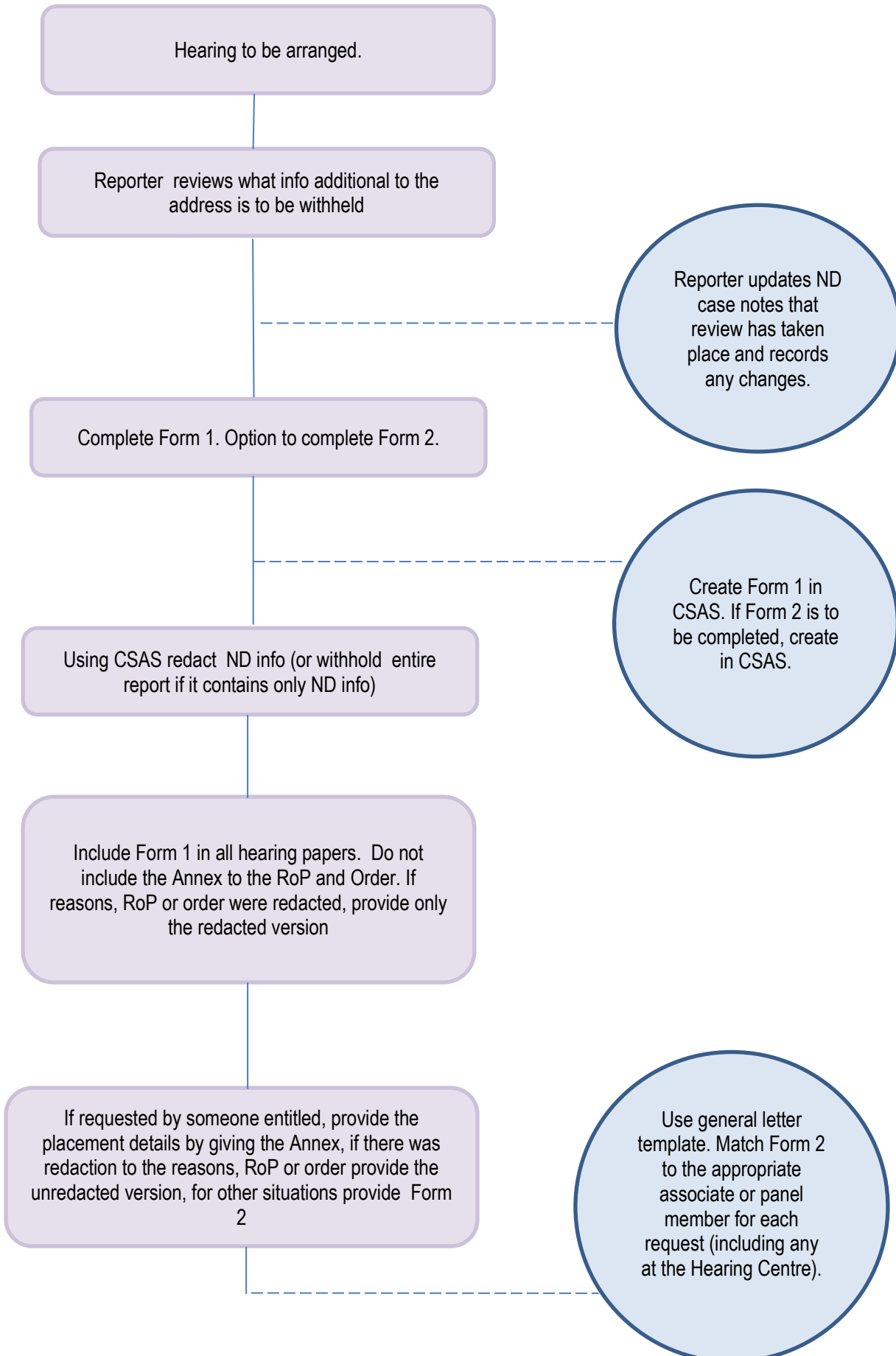
- Provide to all parties the ROP & order - without the Annex - and Form 1. (If SAA, provide the redacted ROP and order.) If reasons were redacted, provide only redacted reasons.

If requested by person entitled, produce annex, and provide annex and, if reasons, RoP or order were redacted, provide the unredacted versions.

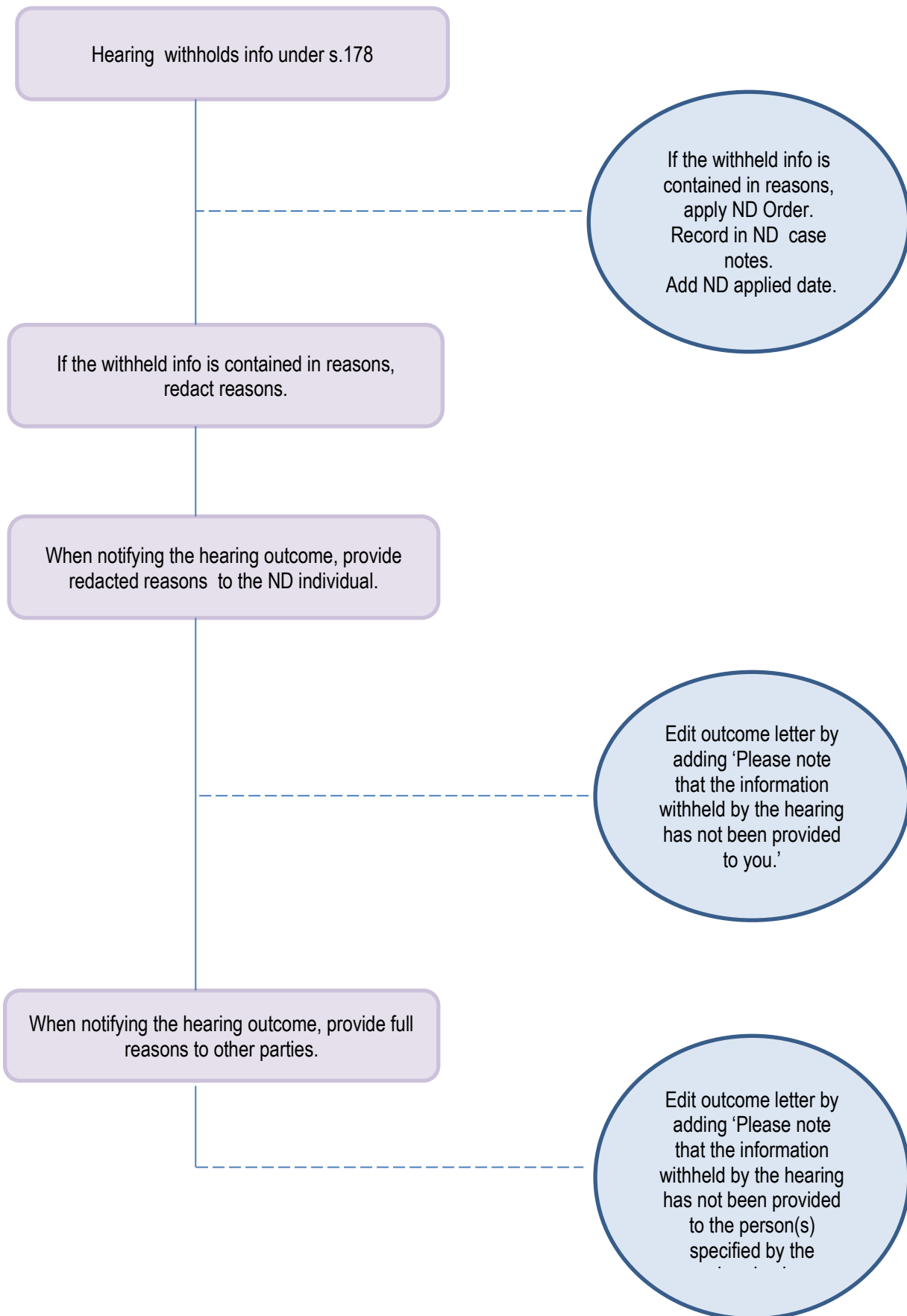
Use general letter template. Update ND case notes with all requests.

Current Measure in an Order – Arranging Hearing

ND Process E- Current measure in order – arranging hearing



Section 178



APPENDIX 5 - 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

Current address of (specify relevant person)

Name of current carer(s)

Name of proposed carer(s)

Address of proposed placement

Child's school/nursery

Child's GP/Health Centre

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.

An order made by a children's hearing or sheriff prohibits disclosure of the information.

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.

The children's hearing withheld information.

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:
----------------	----------------

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.⁶²

⁶² If the request is about information in papers for a pre-hearing panel, the pre-hearing panel will consider the request.

APPENDIX 6 - 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 under a CSO. If the panel members do not have and consider the rule 80 information it will not be competent for the hearing to make or vary a CSO to require the child to reside at the recommended placement. 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 it can justify the recommendation. It is not entirely clear whether a hearing must apply a test of likely significant harm before making a non-disclosure measure but whatever the test such a decision requires strong justification given the extent of the significant interference with the article 8 rights of the parents and child. The same applies to any recommendation to continue a non-disclosure measure. Likely significant harm will provide adequate justification. Reluctance by a carer to share their address does not provide justification. SCRA is aware that the National Convener expects panel members to apply the general welfare test when considering making a non-disclosure measure, but recognises the need for the decision to be adequately justified.
- 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 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.

APPENDIX 7 - Documents to be Provided where a Non-disclosure Provision Applies

	Panel Members and Others	ND Individual
Rule 16	<ul style="list-style-type: none"> Redacted documents Form 1 	Same as panel members and others
ND Request - Address	<ul style="list-style-type: none"> The non-disclosure request (Form 3 or whatever other format was used), redacted if necessary Form 1 	Same as panel members and others
ND Request - Other	<ul style="list-style-type: none"> The non-disclosure request (Form 3 or whatever other format was used), redacted if necessary Form 5 The full information (Form 4 if provided or otherwise Form 2) 	Same as panel members and others except without the full information (Form 4 or Form 2)
ND Measure - post hearing	<ul style="list-style-type: none"> Main body of order, decisions and reasons, redacted if necessary. (Annex not to be provided). Form 1 	Same as panel members and others,
ND Measure - pre hearing	<ul style="list-style-type: none"> Redacted documents Where annex approach taken, main body of order, decisions and reasons, redacted if necessary. (Annex not to be provided). Form 1 	Same as panel members and others