

BIRMINGHAM CITY COUNCIL

Policy -

Publicising Fly-tipping and Environmental Crime Cases

2021

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1. Introduction

Birmingham City Council has set a priority of working with residents and businesses to improve the cleanliness of the City. Achieving this will require a collective effort from individuals, communities, businesses, landowners, broader Council and other public services as well as specifically those who deliver waste collection and clearance activities. The Council uses three approaches to help improve street cleanliness and these are: ensuring effective street *cleaning* and rubbish removal; *engaging* with residents and businesses to support proper waste disposal practices; and *enforcing* the law to deter and tackle environmental offences like fly-tipping.

Fly-tipping and associated environmental crime impacts on the quality of the environment. It causes blight in the communities where people live and work and dealing with the defacement is costly and time consuming. The Environmental Protection Act 1990, The Clean Neighbourhoods and Environment Act 2005 and The Anti-Social Behaviour, Crime and Policing Act 2014 are the main statutory provisions which give local Councils powers to take enforcement action over environmental offences. Taking enforcement action is intended to address offender behaviour, but also to deter others from committing environmental crime.

Enforcement is the process of ensuring compliance with laws, regulations, rules and standards. This policy supports the Council's existing Enforcement Policy which governs how regulatory action is carried out and describes how fairness, proportionality, transparency and consistency are to be achieved and sets out how decisions are made:

[\[https://www.birmingham.gov.uk/downloads/file/405/regulation_and_enforcement_-_enforcement_policy\]](https://www.birmingham.gov.uk/downloads/file/405/regulation_and_enforcement_-_enforcement_policy)

Taking enforcement action often requires support from third parties, for example evidence provided by eyewitnesses, and investigation assistance from law enforcement or other relevant partners. The ability to enforce the law requires suspect offenders' identity and whereabouts to be established.

Many instances of fly-tipping are unwitnessed. For those that are, witnesses may not want to make a formal statement. This is especially the case for fly-tipping in the street where the offender may be a neighbour of the eyewitness. This affects the Council's ability to investigate crimes and to appropriately deal with offenders,

which is vitally important to the Council's efforts to reduce fly-tipping and environmental crime.

This Policy is designed to assist with the identification of suspect offenders, where investigatory lines of enquiry have been exhausted, through the publication of the details of incidents, cases and suspects, and where it is legally appropriate.

2. Scope of the Policy

This policy covers:-

- The publication of images or descriptions of individuals who commit or who are suspected of committing fly-tipping and environmental crime where they cannot be identified through any other reasonable lines of enquiry and where it is deemed appropriate and proportionate. [It is not intended that images or descriptions of persons legally defined as 'juveniles' i.e. under 18 years of age will be published].
- The publication of images or descriptions of incidents where no individual or group is identifiable, for example images or description of a vehicle which is used to offend or where characteristic material is dumped.
- The publication of the details from enforcement outcomes concluded at court, including the name and/or images showing the nature of the criminal activity, where it is deemed appropriate and proportionate. [The principal avenue for publication will continue to be via *court reporting* following the conclusion of court hearings and through the details already published on an ongoing basis as part of the Council's Licensing and Public Protection Committee report entitled Prosecution and Cautions].

This approach will enable the Council and its partner law enforcement agencies to raise awareness over the action taken. It will also actively encourage local communities and businesses to take a stand against the inconsiderate behaviour of a minority of environmental offenders.

This policy covers the publication of private information under defined criteria relating to the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

3. Aims of the Policy

The primary aim is to enable the publication of information related to fly-tipping and environmental crime in support of law enforcement enquiries. The secondary aim in publicising information from enforcement outcomes concluded at court is in assisting with the prevention of offending behaviour. The purpose of this policy is to assist the Council in deciding whether publication is necessary and proportionate. This policy provides a framework for assessing fairness, lawfulness and transparency to:

- Provide clear and consistent guidance in establishing if it is necessary and proportionate to make a disclosure via publication.
- Ensure openness in the reporting of criminal investigations and proceedings.
- Ensure that the Council acts in accordance with general public law principles, and with national guidance.
- Ensure that the Council fully considers and is compliant with the relevant data protection, privacy and human rights requirements, (including certain limited individual's rights under Part 3 of the DPA 2018).
- Ensure that the Council acts in a way that achieves the purpose of the policy and to reduce fly-tipping.

4. General Principles of using publicity to assist law enforcement

The ability for the Council to publicise images and descriptions relating to fly-tipping and environmental crime is governed by several statutory provisions. Images include CCTV, photographs and other similar media. Processing imagery is lawful where the purpose is for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, as these fall under the scope of the Law Enforcement Directive (LED (EU2016/680) which was brought into UK law by Part 3 of the Data Protection Act 2018. This complements the UK General Data Protection Regulation which sets out requirements for processing personal data relating to criminal convictions and offences.

Several associated statutory provisions provide legal frameworks for conducting law enforcement enquiries, discharging statutory functions of the Council and sharing information between regulators and these include:

- Crime and Disorder Act 1998 – Section 115 provide statutory agencies, including the Council, with the ability to disclose information in any case where the disclosure is necessary or expedient for the purposes of any provision of this Act.
- Criminal Justice and Public Order Act 1994 – Section 163 enables a local authority to provide apparatus for recording visual images of events occurring on any land in their area to promote the prevention of crime or the welfare of the victims of crime.
- Local Government Act 1972 – Section 111 provides local authorities with the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

There must be a balance between the rights of an individual [including a person suspected of committing a crime] and those of the wider community. Any decision to publicise an image must be for a legitimate purpose, be necessary and proportionate.

Any decision to publicise an image must consider the reasonably foreseeable impact on victims or witnesses. Safety and threat assessment consideration will take precedence over any publication proposal. Law enforcement and other partners should be consulted, where relevant, for example where policing, anti-social behaviour, child protection, or wider safeguarding aspects form part of an investigation. Publication considerations may include the following elements in support of decisions based on the Law Enforcement Directive (LED (EU2016/680) incorporated into Part 3 of the Data Protection Act 2018:

- Prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties
- Encouraging witnesses and/or victims to come forward
- Discouraging offenders
- Reassuring and informing the public
- Reinforcing confidence in the criminal justice system
- Identification of suspects and offenders
- Raising public awareness

The Council recognises that poor quality static or video images increase the risks of misidentification and therefore this risk factor will form part of publication considerations.

For publication of an image to be *necessary* in pursuit of a legitimate purpose, all other reasonable lines of enquiry for identifying and/or tracing a suspect will have been explored or ruled out for legal reasons.

The effect on third parties must be assessed and mitigated as part of all considerations and decisions to publicise imagery. [It is anticipated that only the minimum necessary details are released and personal data relating to a third party, unconnected with an investigation or person not considered to be a suspect is obscured from any publicised material].

All the circumstances of a case must be taken into account when considering whether it is proportionate to publicise images. The nature and circumstances of the offence is highly relevant, and the more serious the offence, or scale of the offence the easier it will be to justify the release as being proportionate. The minimum baseline threshold for consideration of publication where no other reasonable identification/tracing lines of enquiry exist is where it would be appropriate to issue a fixed penalty notice in respect of the offence. This includes the 'fly-tipping' fixed penalty under Section 33 of the Environmental Protection Act 1990. [It is not envisaged that publication would be considered for civil penalty offences relating to advancement of household waste under Section 46 of the Environmental Protection Act 1990 or littering from vehicles under The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018]. The following factors may also be considered:

- Nature of the offence
- Vulnerability of any potential victims
- Level of impact on the environment
- Level of impact on the public/community and/or individuals
- Prevalence of local crime
- Repeat offending
- Public interest

5. Procedure for publicising fly-tipping and environmental crime offences.

In all cases, publication of personal information will only be done if it is in the public interest. The following criteria, which are not exhaustive, may be used as a basis for assessing public interest and appropriateness of publication:

- Publicising is in the public interest either due to the scale, location or impact of the offending behaviour.

- If a successful prosecution has been achieved at court and the other criteria have been considered, publicity may still be used. The criteria for publication would be based upon the following:
 - Release of information is being made in connection with a recently concluded court case and potentially being done in conjunction with the release of information through other channels, for example through press releases. Any publication would have due regard to the Ministry of Justice guidance on *Publicising Sentencing Outcomes* which is guidance for public authorities on publicising information (including via the internet) about individual sentencing outcomes within the current legal framework:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/487464/20150413-Publishing_Sentencing_Outcomes_MoJ_Guidance_HQMCSPA-O.pdf.
 - Release of information which references court outcomes and interventions against fly-tipping and environmental crime offending more generally, for example through the city's network of digital information screens. Publication will be limited to outline details for the nature of the incident, its location and sanction imposed by the court. Information identifiable to an offending individual or business would not ordinarily form part of publication as to do so may breach legal duties and the purpose of this policy is not to 'name and shame' a person or company.
- No publication will be considered where a suspect in an investigation enquiry is known or believed to be under the age of 18 or to have a vulnerability that may put them [or their household or business] at risk.
- No publication will be considered where there is a foreseeable risk that release of information could adversely impact on community cohesion or add to community tensions.
- In circumstances where fly-tipping and environmental crime affects privately owned land, specific consideration will be given to the views of the landowner affected. This is to mitigate the risk from publication of imagery that identifies a victim as they may not wish to be identified.
- Where still or video images are to be used, these will ordinarily only be published where they have been obtained through a public body, such as the Council or Police and not a third party, such as a private individual or private business. Images of third parties will be suitably obscured before images are disclosed to the media or published on the Council's website or other approved media portal.

- Publication relating to suspects or defendants, which is not governed by specific national guidance, would have due regard to approaches and decision making operated by relevant law enforcement agencies, including the Police.
- Release of personal information will only be undertaken if it is in support of a lawful purpose or forms part of court reporting arrangements.

Care will be taken when releasing images of unknown suspects to ensure that the wording accompanying the image is accurate in the context that a 'suspect' is a *person suspected of involvement with a crime but who has not been charged, summoned to court or convicted of the offence alleged*. Officers will take all reasonably necessary steps to ensure that they have a high degree of confidence that the person in the image is a clear suspect in the investigation as opposed to a 'person of interest' who may be able to assist an enquiry.

Where the suspect is known, it is unlikely to be appropriate to release their image unless other means of tracing the individual have been attempted. There are always exceptions and the Council will seek specific legal advice before publication of images of known individuals is considered. Prior to any publication the Council will notify the Council's Community Safety team to minimize the risk that publication might compromise unrelated anti-social behaviour or policing enquiries or investigations. They will engage with Birmingham Community Safety Partnership (BCSP) agencies to assist with this.

Progression to publication involves three stages with the considerations and decisions of each stage recorded via a Publication Risk Matrix (PRM), shown in Appendix 1.

Stage 1: - The Officer in Charge (OIC) of the investigation within the Council's waste enforcement team comments regarding operational factors which support or lead away from supporting publication. Where necessary, the OIC will consult with the Council's Legal Services team if legal queries have arisen, which are relevant to any consideration over publication.

To aid decision making, the framework and checklists set out in the following guidance documents, so far as they are relevant, will be used in respect of publication considerations: -

- Ministry of Justice *Guidance on Publicising Sentencing Outcomes* (<https://assets.publishing.service.gov.uk/government/uploads/system>

/uploads/attachment_data/file/487464/20150413-Publishing_Sentencing_Outcomes_MoJ_Guidance_HQMCSPA-O.pdf

- Association of Chief Police Officer of England, Wales & Northern Ireland *guidance on the release of images of suspects and defendants* (<https://library.college.police.uk/docs/acpo/ACPO-Guidance-Release-Images-Suspects-Media.pdf>)

Any decision to progress to stage 2 will be managed within the Council's waste enforcement team.

Stage 2: - The Council's Community Safety team will be notified of the publication proposal. The primary purpose of this is to ensure that relevant Birmingham Community Safety Partnership (BCSP) agencies can comment regarding relevant risk factors to publication or advise to halt publication in appropriate situations, and specifically in respect of identifying or tracing suspects. Examples, of relevant risk factors include where BCSP agencies have information relating to the vulnerabilities of suspects or victims or where there are cross-agency investigatory considerations that may not be known or available at stage 1 of this process.

It is unlikely that either the Community Safety team and relevant BCSP agencies will need to comment on publication of material relating to sentencing outcomes, including information which may already be in the public domain or that becomes public during court proceedings.

Any decision to progress to stage 3 will be managed within the Council's waste enforcement team and be subject to no contra-indicators to publication being received from the BCSP.

Stage 3: - The Council's Communications team comment regarding press considerations which lead away from supporting publication.

The communications team manage publication, including the preparation, posting and distribution of imagery through recognised media portals. This also includes management of processes to remove publicised images from Council-controlled media platforms.

Any decision to progress to publication will be managed within the Council's Communication team and be subject to there being no contra-indicators to publication from stage 1 and stage 2, and there being no journalistic or other reporting restrictions.

6. Arrangements relating to the identification of suspects through publicising images or descriptions of persons or incident details

The Council is governed by the requirements of the Police and Criminal Evidence Act 1984 which includes controls over how and when identification processes can be used. The Waste Enforcement Unit or relevant officer in charge of a specific fly-tipping/environmental crime investigation will be the point of contact for any information ['leads'] resulting from publication. Incoming information will remain confidential to any investigation enquiries. If any individual featured in published images comes forward or is and is subsequently eliminated from enquiries, the Council's communications team will be informed immediately so that any necessary updates or redaction to published material can be made.

7. Working with partners and data sharing

Fly-tipping and environmental crime offences and offenders are not confined to geographic borders. Where appropriate to the prevention, apprehension, or detection of crime, information proposed for publication and information received following publication will be shared with relevant law enforcement partners. [Information and intelligence sharing arrangements are permitted under several statutory provisions, including Section 115 of the Crime and Disorder 1998 and Parts 2 and 3 of the Data Protection Act 2018].

8. Equal opportunities and diversity

The Council recognises the diversity of our community and enforcement activities will have due regard to the Equality Act 2010. The purpose of this policy is to ensure that decisions are made transparently and to eliminate unfair or inequitable decisions. Section 42 of the Data Protection Act 2018 details the safeguards which the Council, as a Competent Authority must apply when undertaking sensitive (racial or ethnic origin or health etc.,) data processing.

9. Rights of Data Subjects

The rights of data subjects will be respected by the Council in accordance with the requirements of the UK GDPR and the Data Protection Act 2018. More details about individual rights are available from the Council's website at: - (https://www.birmingham.gov.uk/info/20154/foi_and_data_protection/1717/individuals_rights_request)

The Council will follow the guidance of the Information Commissioner's Office on complying with those rights, in particular its guidance on responding to requests: - (<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>).

10. Monitoring arrangements and review of the Policy

The Council will monitor the activities set out in this policy through established reporting and management processes.

The policy will be reviewed annually by the Operational Manager of the Waste Enforcement Unit to ensure that it reflects the Council's and community's needs and updated to reflect any changes relevant to its source documents and guidance used. The Council will consult with stakeholders before making any changes to this policy. Any changes will be subject to the formal approval of the relevant Cabinet Member.

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PUBLICATION RISK MATRIX

<p>There must be a balance between the rights of the suspect or convicted individual and those of the wider community. Any decision to release an image must be for a legitimate purpose, be necessary and proportionate.</p>

This pro-forma must be completed and progressed through Stages 1 – 3.

Publication must not be undertaken unless all three stages are completed.

STAGE 1: - Investigatory Officer Lead

Lead team - Waste Enforcement Unit

Option A: - Identifying or tracing suspects

1. Summary of the investigation (To provide enough context to officers completing Stage 2 and 3):

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2. Description of imagery proposed to be published:

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3. Brief description of what lines of enquiry have been progressed to identify/trace suspect(s)

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4. Have all reasonable lines of enquiry, relevant to the investigation been examined to trace/identify the suspect? [YES / NO]

5. Is publication legitimate, proportionate and necessary? (Release of any publicity must be necessary for a legitimate purpose. State which apply):

Purpose	Comments
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Investigation, detection or prosecution of criminal offences or the execution of criminal penalties	
Identification and/or tracing of suspects	
Raising awareness - encouraging witnesses and/or victims to come forward; reassuring and informing the public; and deterring offenders	

6. Is the imagery of sufficient quality to mitigate misidentification risks and to offer a realist prospect of potential identification if published? [YES / NO]

7. Briefly describe any collateral / third party impacts or other concerns which need to be flagged to Stage 2 or 3 officers and mitigations recommended/necessary prior to publication, for example pixelation of faces or vehicle registration details etc

The Stage 1 and/or Stage 3 lead officers should ensure that the ACPO guidance checklist relating to publishing images of suspects is completed before publication (see *Table 2, Stage 3*).

Option B: - Publication of imagery/details of court outcomes

8. Court sanctions are a matter of public record and baseline outcomes are published through the Council’s Licensing and Public Protection Committee (L&PPC). Additionally, information may be published through external avenues that the Council has no control over, for example, formal court reporting by journalists.

The release by the Council of any additional publicity, including images which go beyond the basic information reported through the L&PPC must be legitimate, proportionate and necessary. Assessment of publication is based on the Ministry of Justice checklist.

The Stage 1 and/or Stage 3 lead officers should ensure that the MoJ guidance checklist relating to reporting court outcomes is completed before publication. (see *Table 1, Stage 3*).

Taking the above into account, is the decision to publicise the conviction or suspects or incident details? YES/NO

WEU manager/deputy (Name, signature, date): -

STAGE 2: - Community Safety Partnership

Lead team – Community Safety team (who host Birmingham Community Safety Partnership)

The BCSP considerations are unlikely to be necessary in relation to publication of court sentencing outcomes, including imagery. There are always exceptions and the stage 1 lead officer will liaise with the Community Safety lead where necessary.

The BCSP consideration is required for proposed publication relating to identifying or tracing suspects. The Community Safety team will engage with BCSP agencies to identify potential risk factors.

Identification and tracing enquiries forms part of most criminal investigations, but these are unlikely to necessitate rapid review of publication proposals i.e. within less than 21 days. As a result, the nominal operational time period for the BCSP to be requested to review and comment on publication proposals is set at 21 days from initial notification to them. (This review period will be extended where required).

To be completed by the Community Safety lead only where/if CSP risk factors are identified:-

9. Briefly describe any known risk factors or intelligence which are contra-indicators to publication, for example relating to:-
- Impacts or concerns relating to potential compromise of investigative operations by BCSP agencies if publication were to proceed as proposed in stage 1? or
 - Impacts or other concerns which need to be flagged to stage 1 and 3 officers [and suggested mitigations or recommended steps that should be taken] prior to publication regarding a suspect, a

Community Safety Lead (Name, signature, date): -

suspect's family or third parties?

Taking into account any comments received from the Community Safety lead [allowing at least 21 days for their review and consideration], is the decision to publicise the conviction or suspects or incident details? YES/NO

OIC or WEU manager (Name, signature, date): -

STAGE 3: - Communications Team Lead's Review

Lead team –Communications (Press and Media) team

10. Have Stages 1 and 2 been completed and is publication recommended? [YES / NO]
11. Has the MoJ guidance checklist relating to reporting court outcomes been completed? (Table 1, below) [YES / NO]

The Stage 1 and/or Stage 3 lead officers should ensure that the MoJ guidance checklist relating to reporting court outcomes is completed before publication (Table 1).

Table 1: - Questions that need to be considered when deciding whether to release imagery relating to court outcomes	
Purpose	Comments
Raising awareness - encouraging witnesses and/or victims to come forward; reassuring and informing the public; and deterring offenders	
Are any reporting restrictions in place?	

What would be the aim(s) of publicising personal information about this offender/conviction? Please tick as appropriate:	
<ul style="list-style-type: none"> To improve confidence in the CJS by reassuring the public that this crime has been brought to justice, and offender has been sanctioned 	
<ul style="list-style-type: none"> To reduce or prevent crime by deterring other potential offenders 	
<ul style="list-style-type: none"> To meet an identified need of the community to know how environmental crime is being dealt with in their ward area / city. 	
<ul style="list-style-type: none"> Other (please specify) 	
Why should this particular conviction be publicised?	
How much information needs to be published to achieve the aim?	
Would publicising this information allow a victim/ witness to be identified? Even if not, has the victim/witness been advised/consulted on publication?	
What effect would publicising this information have on the offender's family?	
Where is publication / distribution (internal and/or external) proposed?	
Would publicising this information in this way have an additional and unjustifiably adverse effect on the offender? <i>[Compared to publication beyond the monthly reporting of court action through the Council's Licensing and Public Protection Committee reports and what external media outlets may choose to report]</i>	
Taking the above into account, is the decision to publicise the conviction?	

If so, what personal information will be given out?	
Has the offender and anyone else identified in the publicity been informed?	
How long will the publicity last for (if applicable)?	

- 12 Has the ACPO guidance checklist relating to reporting images of suspects been completed? (Table 2, below) [YES / NO]

The Stage 1 and/or Stage 3 lead officers should ensure that the ACPO guidance checklist relating to publishing images of suspects is completed before publication can proceed (Table 2).

Table 2: - Questions that need to be considered when deciding whether to release imagery relating to court outcomes	
Purpose	Comments
1. Purpose in releasing image? Please tick/comment as appropriate:	
<ul style="list-style-type: none"> • a) What is the purpose in releasing the image? • b) Is it for a legitimate purpose such as the prevention or detection of crime or the prosecution or apprehension of offenders? or • c) Does it reinforce confidence in the Criminal Justice System or reassure the law abiding public? 	
2. Necessity? Please tick/comment as appropriate:	
<ul style="list-style-type: none"> • a) Have alternatives ways of achieving this purpose been tried? <ul style="list-style-type: none"> ○ - If not have they been considered? 	

<ul style="list-style-type: none"> ○ - If considered but not tried, why have they been rejected? Are they not viable or unlikely to be effective? • b) Are the details to be released the minimum necessary to achieve its intended purpose (are the details accurate and up to date) ? • c) Would the release of the image be likely to achieve the legitimate purpose? 	
<p>3. Proportionality ?</p> <p>Please tick/comment as appropriate:</p>	
<p>Taking into account all the relevant factors is releasing the image proportionate. Relevant factors will include (but are not limited to)</p> <ul style="list-style-type: none"> • nature of the offence • potential risk to the public • any relevant victim or witness issues • potential impact on the person to be identified (and their immediate family). 	

13. Proposed publication START date:

14. Proposed publication END date:

Communications Team Lead (Name, signature, date): -
