

BIRMINGHAM CITY COUNCIL

Proposed 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 and 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 and The Anti-Social Behaviour, Crime and Policing Act 2014 are the main statutory provisions which allow local councils to take enforcement action against 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 and the policy describes how fairness, proportionality, transparency and consistency are to be achieved. The Council has an Enforcement Policy which governs how regulatory action, including 'enforcement' is carried out. The policy sets out how decisions are made and the approach to enforcement.

[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 other law enforcement 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 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 and this is vitally important in the councils' 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, where it is legally appropriate.

2. Scope of Policy

This policy covers:-

- The publication of images or descriptions of individuals or groups of people 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. [It is not intended that images or descriptions of persons legally defined as 'juveniles' i.e. 17 years or younger 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 where it is deemed appropriate and proportionate. [The principle 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 and to actively encourage local communities and businesses to take a stand against the inconsiderate behaviour of a minority of people, whose actions blight a local area.

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. The 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).
- 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. 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 any thing 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 [suspect] 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 take into account 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 exhausted or ruled out for legal reasons.

Collateral intrusion 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 the 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 the easier it will be to justify the release as being proportionate. The 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 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.

Prior to any publication the council will notify Community Safety Partnership leads to minimize the risk that publication might compromise unrelated anti-social behaviour or policing enquiries or investigations. In all cases involving attempts to identify or locate an unknown suspect, publication of personal information will only be done if it is considered to be 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:
 - i. Release of information is being made in connection with a recently concluded court case and being done in conjunction with release of information through other channels, for example through press releases. Any publication would have due regard to relevant media law as well as journalistic and Ministry of Justice guidelines which govern the reporting on court cases.
 - ii. 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/tension.
- 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 images are to be used such as CCTV images, these can 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 must be clear and innocent parties are suitably obscured before images are disclosed to the media or published on the council's website or other approved media portal.
- Release of personal information will only be undertaken if it is in support of a lawful purpose or forms part of court reporting arrangements, and where publication has been authorised by the council's Legal Services.

The process for publicising fly-tipping and environmental crime will be the same, irrespective of whether the council is seeking to identify a suspect, or where a case has been successfully prosecuted.

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 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.

Where the individual is known, it is unlikely to be appropriate to release the image, although there are always exceptions and the council will seek specific legal advice before images of known individuals are released. Other means of tracing the individuals will need to have been attempted.

Progression to publication involves four stages with the outcome of each stage recorded via a Publication Risk Matrix (PRM), shown in Appendix A:

Stage 1: - The Officer in Charge (OIC) of the investigation comments regarding operational factors, including whether any operational or investigatory risks to publication have been established; that all reasonable lines of enquiry have been examined, and that they are satisfied over the proportionality and necessity for publication. Any decision to forward to stage 2 will be managed within the councils Waste Enforcement Unit.

Stage 2: - The PRM is forwarded to the relevant Community Safety Partnership Lead to assess, with police colleagues if necessary, as to whether any cross investigatory issues are present.

Stage 3: - The PRM is forwarded to the councils Legal Services so that an assessment on data protection, privacy and public interest matters can be made. Progression to stage 4 cannot take place without Legal Services approval for publication.

Stage 4: - The PRM is forwarded to the council's Communications team who are responsible for imagery management and publication

(The PRM is retained as disclosable material under the Criminal Procedures and Investigations Act 1996).

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

The policy and arrangements for publication principally support criminal investigation enquiries. Dealings with suspects, including interviews and identification are governed by the Police and Criminal Evidence Act 1984 and 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 of images.

Information supplied to the OIC/Waste Enforcement Unit will remain confidential to any investigation enquiries. If an individual featured in any published images comes forward and is subsequently eliminated from enquiries, the 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 a number of statutory provisions, including Section 115 of the Crime and Disorder 1998; Section 108 of the Environment Act 1995, Parts 2 and, or 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. Monitoring Arrangements and Review of Policy

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

We will review this policy and update it to reflect changes in its source documents and controlling bodies annually. We will also review its effectiveness in supporting the Council's and the community's priorities.

We will consult with stakeholders before and after making any changes to this policy.

Appendix A

Publication Risk Matrix (PRM)

PUBLICATION RISK MATRIX

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

This pro-forma must be completed and progressed through Stages 1 – 4. Publication of imagery cannot be undertaken unless all four stages are completed.

The Officer in Charge of the investigation (or Waste Enforcement Unit Manager) retains control of this matrix in terms of the Criminal Procedures and Investigations Act 1996.

The OIC/WEU retains legal responsibility for contact with/liaison with suspects or witnesses.

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STAGE 1: - To be completed by the OIC / WEU

Option A: - Identifying or tracing suspects

1. Summary of the investigation (To provide sufficient context to officers completing Stage 2,3 and 4):
2. Summary of imagery proposed to be published:
3. Brief description of what reasonable lines of enquiry have been progressed to identify/trace suspect(s)
4. Have all reasonable lines of enquiry been exhausted to trace/identify the suspect? [YES / NO]
5. Is publication proportionate and necessary? [YES / NO]
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 intrusion or other concerns which need to be flagged to Stage 2,3 or 4 officers

The release of any publicity, including images must be necessary for a legitimate purpose. State which apply

Purpose	Yes/No	Comments
prevention, 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		
Raising awareness - Deterring offenders		
Raising awareness - Reassuring and informing the public		

Option B if applicable: - Publication of details of successful court outcomes

8. In terms of a successful prosecution outcome, describe why further processing of the details of the case [beyond those details processed following the court hearing and publication in the Licensing and Public Protection Committee] would be in the public interest.

OIC (Name, signature, date): -

STAGE 2: - To be completed by the Community Safety Partnership Lead

9. Are there any reasons known to the CSP which suggest publicity could adversely affect the safety of an individual or business or council employee if the imagery described under Stage 1 were to be publicised? [YES / NO]
10. Are there any reasons known to the CSP (or reasons suggesting a necessity to check with police colleagues) which suggest publicity could adversely affect ongoing or prospective enquiries or enforcement in the area where the imagery relates to? [YES / NO]
11. Briefly describe any comments that you feel will be of assistance to Stage 1,3 or 4 officers.

CSP Lead (Name, signature, date): -

STAGE 3: - To be completed by the Legal Services Lead

12. From Stage 1 and 2 are you satisfied that:

Purpose	Yes/No	Comments
There is a <i>lawful purpose</i> to publicise?		
That there is a sufficient <i>proportionality</i> case?		
That there is a sufficient <i>necessity</i> case?		
That publication is in the <i>public interest</i> ?		
Are mitigations or further safeguards necessary, for example relating to collateral intrusion and obscuring identities etc.		

Option A: - Identifying or tracing suspects

13. Is publication approved? [YES / NO]

Describe any publication requirements/restrictions that Stage 4 officers need to be aware of or to follow.

Option B if applicable: - Publication of details of successful court outcomes

14. Is publication approved? [YES / NO]

Describe any publication requirements/restrictions that Stage 4 officers need to be aware of or to follow.

Legal Services Lead (Name, signature, date): -

STAGE 4: - To be completed by the Communications/Media Lead

15. Have Stages 1 to 3 been completed? [YES / NO]
16. Has publication been authorised by Legal Services? [YES / NO]
17. Have any publication requirements/restrictions been completed? [YES / NO]
18. Publication START date:
19. Publication END date:

Communications / Media Lead (Name, signature, date): -
