**Introduction**

This note is intended to assist researchers in circumstances where the collection of data may reveal evidence of criminal or illegal activity. This may be because the research relates directly to criminal behaviour or may arise incidentally in a research area not specifically related to crime. The question may then arise as to whether this should be disclosed to appropriate authorities.

The note should be read in conjunction with the University’s:

* **Code of Practice on Research** - <http://www.birmingham.ac.uk/Documents/university/legal/research.pdf>
* **Data Protection and Human Research Toolkit** - <https://intranet.birmingham.ac.uk/legal-services/documents/staff/Research-Toolkit-V1-1.pdf>
* **Code of Ethics** - http://www.birmingham.ac.uk/Documents/university/legal/code-of-ethics.pdf

**1 Disclosure and breach of confidentiality**

Researchers will sometimes collect information or data that appears to disclose criminal or illegal activity. In some cases there could be a legal obligation to inform the authorities (see section 2 below). In cases where there is any doubt as to whether a legal requirement to disclose information exists, the University’s Legal Services should be consulted. However, even if there is no legal obligation to report an activity, researchers may still find themselves in possession of information about acts that could potentially harm the participants themselves, specific third parties or the public. This is a complex area which can raise some difficult issues, and researchers are advised to consult professional guidelines and discuss the issues and seek advice from appropriate colleagues (including supervisor, Head of School, Legal Services), if they feel that there is the potential for a need to break participant confidentiality.

**1.1 Harm to participants**

Participants may during the course of the research reveal that they are distressed (either as a result of the research or incidentally), that they require support or assistance with health, economic, political persecution, mental or child protection issues, or that they are vulnerable or at risk of harm. If a researcher feels that it is necessary to break confidentiality, they should discuss this with the participant first and explain their concerns, unless doing so would be likely to increase the risk to the participant, the researcher or a third party. In discussing the issue with the participant, the researcher may be able to provide the participant with information about appropriate support or counselling, or may be able to encourage the participant to talk to a third party regarding the issue, to avoid the need for the researcher to breach confidentiality. This might be possible in a refugee community, for example, or where there are appropriate NGOs providing support to vulnerable groups.

In some cases participants may reveal to the researcher that they have been involved in criminal activities that could result in future prosecution, and such information may subsequently be required by the police. Researchers should ensure that participants are made aware of this possibility and may wish specifically to ask participants not to inform them of instances of illegal activity for which they have not already been convicted.

**1.2 Harm to third parties**

In some cases participants may reveal information about third parties who are not involved in the research and have therefore not given consent. It is recognised that even if there is no legal duty to disclose, this may cause moral dilemmas. There may also for example be a legal obligation to report activities undertaken by the third party, or the third party may become aware that the information had been disclosed to the researcher.

**1.3 Consent and limits of confidentiality**

In all cases where there is a potential for the need to breach confidentiality, it is important that researchers make the limits of confidentiality clear to participants when seeking their consent to take part in the research. Researchers should discuss with participants who will have access to the data, how it will be stored and the use to which it will be put. They should also make it clear if there are any circumstances or constraints that might make it necessary to pass information on to legal or other authorities. Any limits to confidentiality should be explained verbally as well as being made clear in the participant information sheet and consent form.

**2 Legal duties of researchers to reports criminal activity**

Although there is generally no criminal liability for failing to act in a certain situation, UK law does impose a duty to act in certain circumstances and some such cases that may be relevant to researchers are set out below:

**2.1 Terrorist Activities**

Under the Terrorism Act 2000 a mandatory duty applies to all citizens to report information on the preparations and activities of terrorists based on information received in the course of their business or employment [section 19]. In addition there is a general duty on all citizens to report any such information to the Police.

**2.2 Failure to report an act of treason**

Misprision of treason is an offence under the common law of England and Wales and the common law of Northern Ireland, where a person knows that treason is being planned or committed and does not report it as soon as s/he can to a justice of the peace or other authority.

**2.3 Coroners**

There is a duty on all citizens to give information which will inform a Coroner of circumstances when an inquest should be held.

**2.4 Safeguarding Vulnerable Adults/Child Protection**

Although only Local Authority Social Services Departments are under a legal obligation to investigate allegations of abuse, it is not difficult to see that, especially in activities in regulated settings (e.g. placements in schools, hospitals, care homes) staff may become aware of allegations of abuse. The guidance of the relevant professional body must be considered carefully, as there is likely to be a clear expectation (or even professional duty) to ensure reporting of such cases. The University is expected to cooperate with the local Safeguarding Authorities and share any relevant information. Such matters should be referred to the Director of Legal Services as the University’s Senior Child Protection Officer (see the University’s Safeguarding Children & Young People policy).

**3 Data Protection and Confidentiality**

It is likely that any participants involved in research will be advised that their data will be treated in confidence and/or suitably anonymised. But for the statutory exceptions above, this means that no disclosure of personal data concerning the participant can ordinarily be made. The Data Protection Act 1998 does permit disclosure in certain limited situations, most notably to protect the individual’s “vital interests”. However the Information Commissioner takes the view that this condition “only applies in cases of life or death, such as where an individual’s medical history is disclosed to a hospital’s A&E department treating them after a serious road accident”. Notwithstanding the Data Protection legislation, there remains no obligation to make such disclosure. Advice on specific cases should be sought from the Information Compliance Manager in Legal Services, preferably at the time the consent form is being drafted.

**4 Foreign Jurisdictions**

Note that the general situation in other European countries is radically different to that in England and Wales. All citizens, including researchers and academics are subject to a mandatory duty to report serious criminal offences. Further afield, the enforcement of legislation in this area is extremely patchy and unclear. In Anglophone Africa it is probably sensible to assume that the general UK guidelines are broadly similar. In Kenya, for example, there is similar legislation regarding terrorism and should the situation arise with regard to any of the UK statutory offences outlined above, then it would be prudent to take the appropriate action in reporting to Government.

Having said that, the question arises of how to interview those who are opposed to government (e.g. rebel or insurgent groups) where it is already known that they oppose the government, i.e. may be subject to a treason clause similar to that above. There is a difficulty – and a sensitivity - in deciding whether there is any purpose in reporting individuals to the government and, indeed, the individuals in question may not be worried about this if they are already known rebels. In most cases, in practice, the issue of what can and cannot be attributed to the subject should be discussed in any event. Information about a country’s culture and risks is available through the University’s Travel Insurance website.