



Criminal Use of Firearms

BRIEFING PAPER **ANONYMITY IN INVESTIGATIONS**

INVESTIGATION ANONYMITY ORDERS

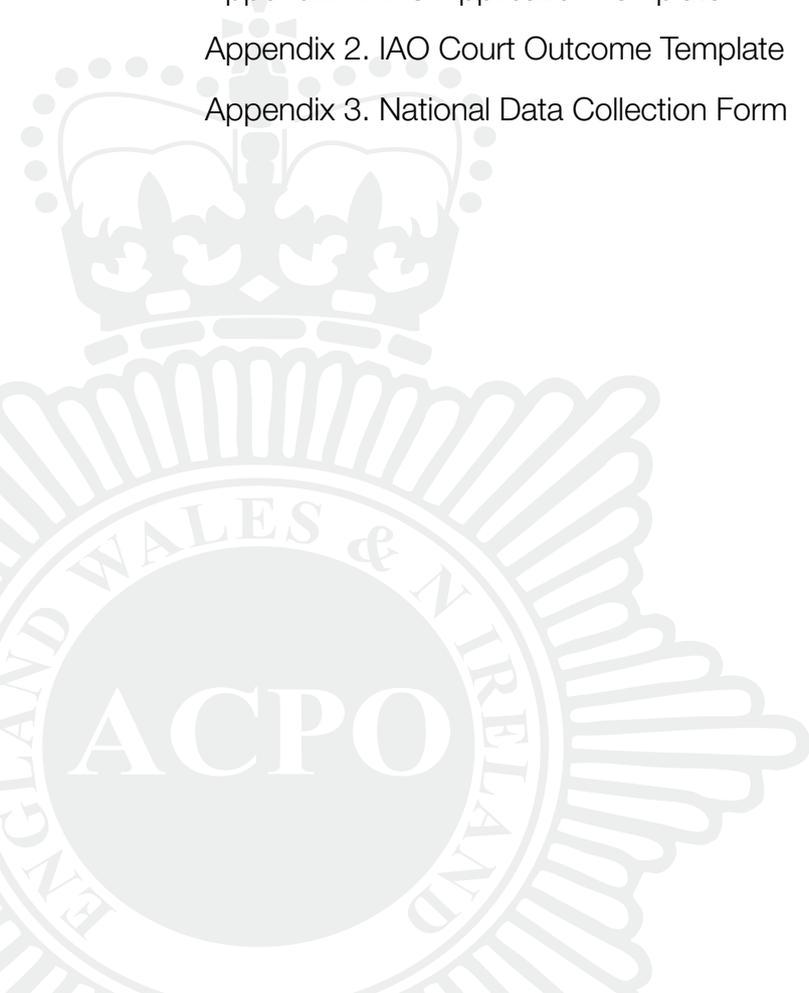
CORONERS AND JUSTICE ACT 2009





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Foreward

The Coroners and Justice Act 2009 Part 3 Chapter 1, Anonymity in Investigations (Sections 74-85), introduces Investigation Anonymity Orders (IAOs). IAOs were proposed by ACPO Criminal Use of Firearms (CUF) in response to an identified gap in the service provided to witnesses in gang-related gun and knife homicides, where fear of reprisals impacts on members of the public's willingness to provide evidence in these types of investigations.

This briefing paper summarises the conditions and process for making an IAO to a justice of the peace. IAOs prohibit the disclosure of information relating to the identity of an individual who is able to assist a 'qualifying criminal investigation' and thus reassure and give confidence to witnesses at an early stage, that their identity will be protected throughout the investigation and thereafter, by a court order.

It is vital that we ensure these orders are being used effectively to encourage witnesses to come forward with information that will assist in bringing offenders to justice. It is therefore important to note that Section 83 of the Act requires the Secretary of State to review the use of IAOs and prepare a review report which must be laid before Parliament by 6 April 2012.

To inform this review report, police forces and agencies are asked to monitor their use of IAOs and submit information centrally using the data collection form provided in Appendix 3 of this briefing paper. This should be completed for all instances where an IAO application is considered and/or made and submitted via e-mail to ACPO CUF at: **acpoiao@west-midlands.pnn.police.uk**.

The importance of collating this information centrally to accurately reflect the utility of IAOs cannot be overemphasised. If it cannot be shown that IAOs are being used appropriately on a regular basis and are of practical use, there is a risk that their availability will be withdrawn at the review stage.

It is also vital that feedback is provided on cases where an IAO would have been of benefit to an investigation but where the stipulations imposed as part of the application criteria have prevented an application being made.

If it is shown that there are a significant number of cases where the stipulations have prevented an application being made, then it will be possible to lobby for these constraints to be amended at the review stage.

The review period is crucial for refining the provisions and use of IAOs in the future to ensure that they fit the needs of criminal investigations and that we deliver the best possible service to our communities.

ACC Susannah Fish OBE
ACPO Lead – Criminal Use of Firearms



1. Introduction of Investigation Anonymity Orders

Encouraging potential witnesses to come forward and provide a statement with a view to giving evidence at trial, is widely acknowledged to be one of the most difficult aspects of successfully prosecuting crimes of murder/manslaughter, particularly where guns or knives have been used. To address this issue, ACPO Criminal Use of Firearms (CUF) proposed the introduction of Investigation Anonymity Orders (IAO) to be used during an investigation of a gang-related death caused by a gun or knife when potential witnesses are actively being sought. These orders are designed to reassure witnesses who have fears for their safety that their identity will be protected during and after the investigation.

Provisions for the use of IAOs are outlined in Part 3 Chapter 1 of the Coroners and Justice Act 2009 (sections 74-85) which came into force on 6 April 2010. An application for an IAO can be made by the police or CPS to a justice of the peace in a magistrates court during the course of an investigation into an offence of murder or manslaughter where death has been caused by a firearm or knife ('qualifying criminal investigation'). The application prohibits the disclosure of information that:

- a) Identifies a specified person as a person who is, or was, able or willing to assist a specified qualifying criminal investigation; or
- b) Might enable the specified person to be identified as such a person.

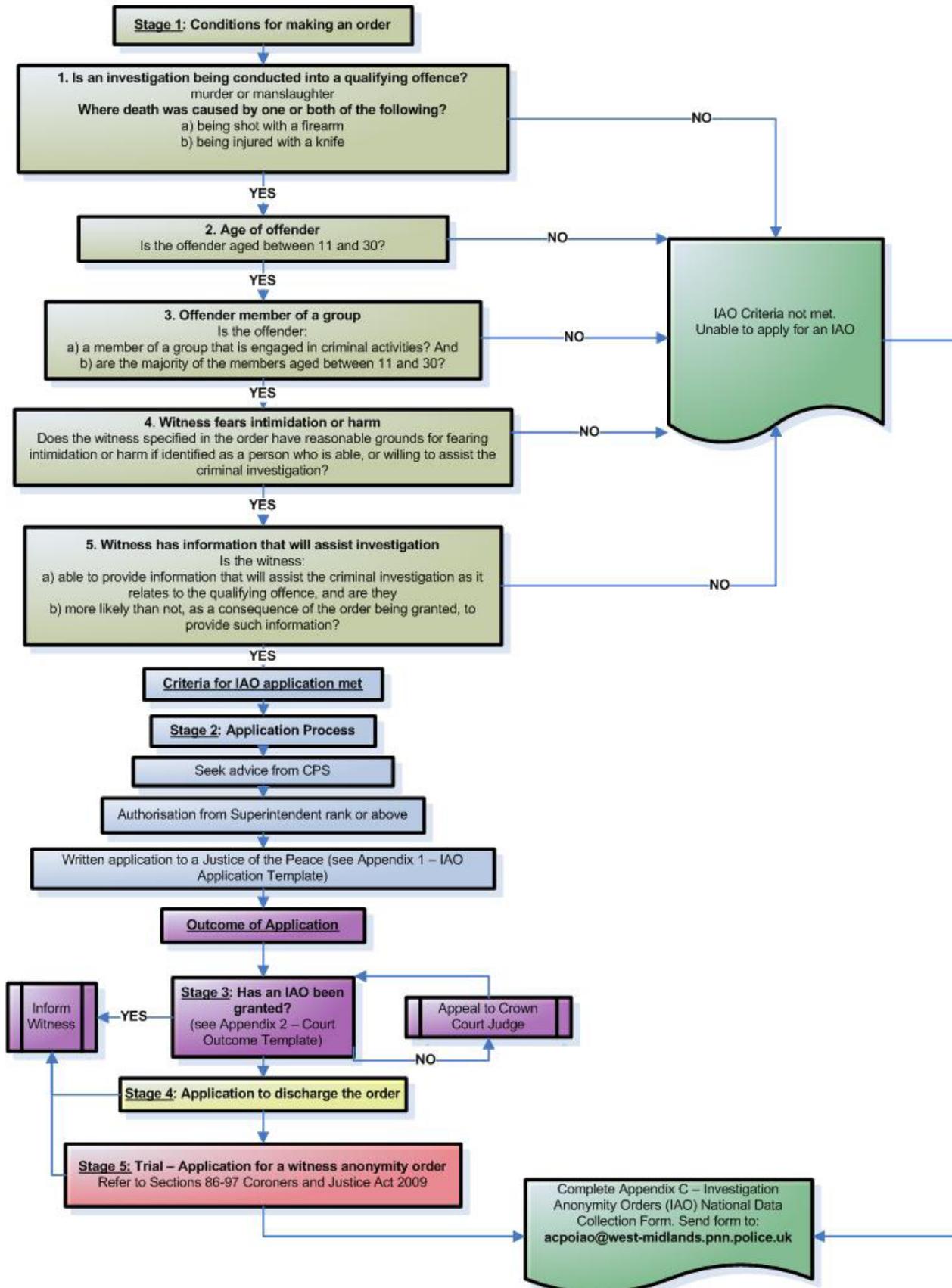
This briefing paper summarises the conditions and process for making an order, including appeal and discharge, and also outlines the importance of the national review being carried out on the use of IAOs that will inform the report that is to be laid before Parliament by the 6 April 2012.

2. The Process

The process for applying for an IAO is depicted in Figure 1. The process can be broken down into five stages:

1. Decision to apply – conditions for making an order;
2. Application process;
3. Outcome of application;
4. Discharge;
5. Trial - Application for a witness anonymity order.

Figure 1: Investigation Anonymity Order (IAO) Process





2.1 Decision to apply: Conditions for making an order

To apply for an IAO the following five conditions must be met:

1. An investigation is being carried out into a qualifying offence, murder or manslaughter where death has been caused by a firearm or knife;
2. The person likely to have committed the offence is aged between 11 and 30 at the time the offence was committed.
3. The person likely to have committed the offence is a member of a group engaged in criminal activity and the majority of the members are aged between 11 and 30;
4. The witness has reasonable grounds to fear intimidation or harm if identified.
5. The witness has information that will assist the investigation and, without an order would probably not provide this information.

These conditions are outlined in more detail in the following sections.

2.1.1 Qualifying offences

An investigating authority must be conducting an investigation into a qualifying offence. A qualifying offence is defined as murder or manslaughter where death has been caused by one or both of the following:

- a) Being shot with a firearm (s.57 Firearms Act 1968 c.27);
- b) Being injured with a knife (s.10 Knives Act 1997 c.21).

Investigating authorities as defined by the Act are:

- a) A police force in England and Wales;
- b) British Transport Police (BTP);
- c) Police Service of Northern Ireland (PSNI);
- d) Serious and Organised Crime Agency (SOCA);

2.1.2 Age of offender

To meet the IAO criteria the person likely to have committed the qualifying offence must be aged between 11 and 30 at the time the offence was committed.

2.1.3 Offender member of a group

The person likely to have committed the qualifying offence must have been a member of a group at the time the offence was committed and:

- a) It is possible to identify the group from the criminal activities that its members engage in; and
- b) The majority of the persons in the group must be aged between 11 and 30.

Where it is suspected that the qualifying offence was committed by two or more offenders, it is sufficient that the conditions are met in relation to one of the offenders.



2.1.4 Witness fear of intimidation or harm

To meet the IAO criteria the person to be specified in the order must have reasonable grounds for fearing intimidation or harm if identified as a person who is, or was, able or willing to assist the criminal investigation.

In addition the person must be:

- a) Able to provide information that would assist the criminal investigation as it relates to the qualifying offence; and
- b) More likely than not, as a consequence of an order being granted, to provide such information.

2.2 Application process

An application for an IAO can be made to a justice of the peace by any of the following individuals:

- The Chief Officer of police of a police force in England and Wales who is conducting the qualifying criminal investigation;
- The Chief Constable of BTP where BTP is conducting the qualifying criminal investigation;
- The Chief Constable of PSNI where PSNI is conducting the qualifying criminal investigation;
- Director General of SOCA where SOCA is conducting the qualifying criminal investigation;
- Director of Public Prosecutions (DPP);
- Director of Public Prosecutions for Northern Ireland;
- Director of Revenue and Customs Prosecutions.

Any of these individuals may delegate the function to be exercised on their behalf. For police forces, this will usually be an officer of Superintendent rank or above.

2.2.1 Giving notice of the application

The application process should be fully explained to the person for whom an IAO appears to be appropriate. At this initial stage, it should be explained that the investigation team will seek authorisation for an application to be made to a justice of the peace from the relevant designated person (Superintendent rank or above). No guarantees should be made that an order will be granted by a justice of the peace.

The person to be specified in the order should be kept informed of the progress of the application.

There is no requirement to inform the person suspected of the offence or their legal representative of the application.



2.2.2 Authorisation

It is anticipated that the majority of IAOs will be required during the investigation stage. The police will, therefore, be primarily responsible for making an IAO application. However, due to the serious nature of the qualifying offence and the impact upon the trial process, the CPS should be consulted, where practical, before an application is made to a justice of the peace .

An IAO application must be authorised in writing by an officer of the rank of Superintendent or above. The authorising officer must be satisfied that the conditions for making the order are met before authorisation is made.

A record should be made in the SIOs policy book detailing the reasons for supporting or rejecting the application and the person to be specified in the order should be notified of the authorising officer's decision.

2.2.3 Record keeping and document security

To ensure procedural accountability, record keeping should commence immediately and access to any material that refers to the identity of a person subject to an IAO, including statements, risk assessments, records of investigation, transcripts, video and audio recordings and so on, should be restricted to those who need to use the information to protect the person's identity or safety, or for other legitimate investigative purposes.

The Government Protective Marking Scheme (GPMS) should be used in all documentation and materials connected to the application.

2.2.4 Application to a justice of the peace

Once authorised by an officer of the rank of Superintendent or above, an application for an IAO should be submitted in writing to a justice of the peace. To assist this process an application template is provided in **Appendix 1 (Investigation Anonymity Order Application Template)**.

The applicant should make a preliminary request to the justice of the peace to withhold the identity of the person who will be specified in the IAO, and their wish to refer to them using either a pseudonym or other reference.

A justice of the peace may determine the application without a hearing. If a decision is made without a hearing, the designated officer in relation to that justice must notify the applicant of the outcome as soon as practicable and the investigation team must then notify the witness.

2.3 Appeal process

Where a justice of the peace refuses an application, the applicant may appeal against that refusal to a judge of the crown court. To lodge an appeal, the applicant must have indicated in their IAO application, (or if there is a hearing, during the course of that hearing) that the applicant intends to appeal any refusal to make an order. If notice has not been given it is not possible for there to be an appeal. The application template in Appendix 1 contains the relevant notice regarding appealing the refusal of an IAO.

To protect the specified person's identity between refusal and appeal, the justice of the peace must make an interim order to cover the time period before the application is heard before a judge of the crown court.



The appeal process should be explained to the individual named in the application to build confidence and provide reassurance.

2.4 Discharge process

Applications to discharge an order must be made to a justice of the peace by the person who applied for the original order.

There will always be an oral hearing when considering an application to discharge.

An application to discharge may not be made unless there has been a material change of circumstances, for example if the person is no longer in fear of intimidation or harm.

An application to discharge an order can be made by:

- a) The person on whose application the order was made;
- b) DPP;
- c) Director of Revenue and Customs Prosecutions;
- d) DPP for Northern Ireland;
- e) The person specified in the order.

If an application to discharge is made by a person other than the person specified in the IAO, the justice of peace may not determine the application unless:

- a) The person specified in the order has had an opportunity to oppose the application; or
- b) The justice of peace is satisfied that it is not reasonably practicable to communicate with the person.

In addition to the applicant, any person eligible to apply for the discharge of an order is entitled to be party to the hearing.

A party to the proceedings may appeal to a judge of the crown court against the justice of the peace's decision.

If during the proceedings, a party indicates an intention to appeal against the decision to discharge an IAO, the justice of the peace must ensure that the order is not discharged until the appeal is determined or the order is otherwise disposed of.

2.5 Trial - Application for a witness anonymity order

Witnesses that have been granted an IAO will not automatically be granted anonymity at trial. If the matter proceeds to trial then a witness anonymity order must be applied for to protect the witness during and after the trial.

Sections 86-97 of the Act make provisions for witness anonymity orders, which came into force on 1 January 2010. These sections permanently replace the Criminal Evidence (Witness Anonymity) Act 2008. The new provisions are, in the main, very similar to the previous ones but



there is now more scope for the variation and discharge of witness anonymity orders.

Guidance on witness anonymity orders is provided by the CPS at: http://www.cps.gov.uk/publications/directors_guidance/witness_anonymity.html.

The National Policing Improvement Agency (NPIA) is currently developing a national victim and witness framework which will include guidance on witness anonymity. In the meantime, guidance is provided in *NPIA (2009) Briefing Paper Witness Anonymity* which was developed as interim advice in response to the House of Lords Judgment in *R v Davis* [2008] UKHL 36 and the implementation of The Criminal Evidence (Witness Anonymity) Act 2008, which as already outlined has now been replaced by the provisions set out in Sections 86-97 of the Coroners and Justice Act 2009.

It is important to note that if an application for trial anonymity is refused the witness cannot be called to give evidence until the IAO has been discharged.

2.6 Sanction for contravening an order

The Act creates an offence of disclosing any information which could lead to the identification of the person specified in an IAO.

A person guilty of an offence under the Act is liable:

- On summary conviction to imprisonment for a term not exceeding the relevant period (twelve months for England and Wales and six months for Northern Ireland) or a fine not exceeding the statutory maximum, or both;
- On conviction on indictment, to imprisonment for a term not exceeding five years or a fine, or both.

3. Review of Use

Section 83 of the Act requires the Secretary of State to review the operation of IAO provisions and prepare a report of that review which must be laid before Parliament by 6 April 2012.

To ensure that an effective report is placed before Parliament, police forces and agencies are being asked to monitor their use of IAOs over the period before the report is due, so that this information can be used to inform the review.

Accurately reflecting the utility of IAOs is vital because if it cannot be shown that they are being used appropriately on a regular basis and are of practical use, there is a risk that their availability will be withdrawn at the review stage.

In addition to collating information on all instances where IAOs have been applied for and granted, it is essential that feedback is provided on cases where an IAO would have been beneficial to an investigation but where the stipulations imposed have prevented an application being made. This would include for example, attempted murder, or where the person likely to have committed the offence fell outside of the specified age range (11 to 30), or if it cannot be proved that the offender was likely to have been part of a group engaged in criminal activities and the majority of the members of the group were aged between 11 and 30 at the time the offence was committed.



If it is shown that there are a significant number of cases where the stipulations have prevented an application being made then it will be possible to lobby for these constraints to be amended at the review stage.

3.1 Information to be collected

To gather information that will inform the review report, ACPO CUF has requested that all forces put in place arrangements to record and submit information centrally regarding:

- Applications for IAOs;
- Their discharge;
- Any appeal relating to application or discharge;
- Any proceedings for contravention of an order;
- Whether the witness would have come forward and/or provided information with out being granted an IAO;
- Qualitative assessment of the usefulness of the information provided by the person specified in the order;
- Occasions where an IAO would have been of use but the specified criteria prevented an application being made.

In the event of any CPS applications, the same information should be collated and submitted.

To assist the recording of information required to inform the review report, a data collection form is provided in Appendix 3. This should be completed for all instances where an IAO application is considered and/or made. Once completed the form should be submitted to ACPO CUF via e-mail: acpoiao@west-midlands.pnn.police.uk.

Further Information

The Coroners and Justice Act (2009).

http://www.opsi.gov.uk/acts/acts2009/ukpga_20090025_en_1

Crown Prosecution Service (2009). *Director's Guidance on Witness Anonymity.*

http://www.cps.gov.uk/publications/directors_guidance/witness_anonymity.html#a02

NPIA (2009). *Briefing Paper Witness Anonymity.* London: NPIA.

<http://www.npia.police.uk/en/13003.htm>



Appendix – Investigation Anonymity Order Templates

- 1. Investigation Anonymity Order Application Template**
- 2. Investigation Anonymity Order Court Outcome Template**
- 3. National Data Collection Form**

The templates are available to download in word format from POLKA Criminal Use of Firearms/ Documents/ACPO CUF/IAO or via email request from acpoiao@west-midlands.pnn.police.uk



GPMS to be used when complete

Appendix 1. IAO Application Template

INVESTIGATION ANONYMITY ORDER APPLICATION

Coroners and Justice Act 2009

COUNTY OF

PETTY SESSIONAL DIVISION OF..... CODE.....

L Aid BY, [specify name of applicant/position/organisation], WHO STATES ON OATH (OR AFFIRMATION) THAT THIS APPLICATION SATISFIES THE CONDITIONS AS SPECIFIED UNDER SECTION 78, PART 3, CHAPTER 1 OF THE CORONERS AND JUSTICE ACT 2009.

- THAT THEY ARE CONDUCTING AN INVESTIGATION INTO A QUALIFYING OFFENCE OF MURDER/MANSLAUGHTER; AND

THE DEATH WAS CAUSED BY ONE OR BOTH OF THE FOLLOWING:

- a) BEING SHOT WITH A FIREARM;
- b) BEING INJURED WITH A KNIFE.

- THE PERSON LIKELY TO HAVE COMMITTED THE QUALIFYING OFFENCE IS A PERSON WHO WAS AGED AT LEAST 11 BUT UNDER 30 AT THE TIME THE OFFENCE WAS COMMITTED.
- THE RELEVANT PERSON IS LIKELY TO HAVE BEEN A MEMBER OF A GROUP AT THE TIME THE OFFENCE WAS COMMITTED. AND IT IS POSSIBLE TO IDENTIFY THE GROUP FROM THE CRIMINAL ACTIVITIES THAT ITS MEMBERS APPEAR TO ENGAGE IN AND IT APPEARS THAT THE MAJORITY OF THOSE PERSONS ARE AGED AT LEAST 11 BUT UNDER 30.
- THE PERSON TO BE SPECIFIED IN THE ORDER HAS REASONABLE GROUNDS FOR FEARING INTIMIDATION OR HARM IF IDENTIFIED AS A PERSON WHO IS ABLE OR WILLING TO ASSIST THE CRIMINAL INVESTIGATION; AND THAT PERSON:
 - a) IS ABLE TO PROVIDE INFORMATION THAT WOULD ASSIST THE CRIMINAL INVESTIGATION AS IT RELATES TO THE QUALIFYING OFFENCE, AND
 - b) IS MORE LIKELY THAN NOT, AS A CONSEQUENCE OF THE MAKING OF THE ORDER, TO PROVIDE SUCH INFORMATION.

AND THE GROUNDS FOR MAKING THE APPLICATION ARE:

[Insert details]

IF THE APPLICATION IS REFUSED, NOTICE IS HEREBY GIVEN THAT THE APPLICANT WILL APPEAL TO A JUDGE OF THE CROWN COURT AGAINST THAT REFUSAL.

THIS APPLICATION IS MADE UNDER THE PROVISIONS OF Part 3 Chapter 1, Coroners and Justice Act 2009 (Anonymity in Investigations).

Signature of informant _____

Dated the _____ day of _____

Application Authorised by (Superintendent or above) name and rank:

Signature of Authorising Officer

LAI D BEFORE ME

TIME/DATE _____

**Justice of the Peace
District Judge (Magistrates' Court)**

GPMS to be used when complete

Appendix 2. IAO Court Outcome Template

INVESTIGATION ANONYMITY ORDER

Coroners and Justice Act 2009

COUNTY OF

PETTY SESSIONAL DIVISION OF..... CODE.....

DATE _____

On this day an application supported by information was made by [specify name of applicant/ position/organisation],

for an investigation anonymity order under Part 3, Chapter 1 of the Coroners and Justice Act 2009 (Anonymity in Investigations).

I hereby grant an order of anonymity in respect of the specified person:

.....

This order relates to the criminal investigation into the death of:

.....

This order remains in force for the lifetime of the specified person unless it is discharged, under section 80(1) of the Coroners and Justice Act 2009.

It is an offence for a person to disclose information in contravention of this order.

**Justice of the Peace
District Judge (Magistrates' Court)**

DATE _____ TIME _____

GPMS to be used when complete

Appendix 3. National Data Collection Form

REVIEW OF THE USE OF INVESTIGATION ANONYMITY ORDERS (IAOs) NATIONAL DATA COLLECTION FORM						
1. INVESTIGATION DETAILS						
Force	Name:		Email:		Tel:	
Senior Investigating Officer	Operation name:		Qualifying offence:	Victim sex: Victim age:	Cause of death:	Offence location: Offender sex: Offender age:
Offence details	Brief outline of offence					
2. DECISION TO APPLY FOR IAO – CONDITIONS FOR MAKING AN ORDER						
Was an IAO considered but <u>not</u> applied for?	YES	NO	<i>If YES please complete below section. If NO and an IAO application was made please go to Section 3 Application Process</i>			
Did the stipulated IAO criteria prevent an application being made?	YES	NO	<i>If YES please provide details:</i>			
Was the age of the person likely to have committed the qualifying offence outside the specified age range (eg, aged at least 1.1 but under 30) at the time the offence was committed?	YES	NO	<i>If YES please provide details:</i>			
Was it possible to identify that the person likely to have committed the qualifying offence was a member of a group that engages in criminal activities and are aged at least 1.1 but under 30 years?	YES	NO	<i>If NO please provide details:</i>			

GPMS to be used when complete

3. IAO APPLICATION PROCESS			
Date of application	/ /	Name and Type of Court (Crown/Magistrates)	
Number of witnesses for which IAOs sought	Please provide details:		
On what grounds was the IAO sought?	Please provide a brief outline of the reasons for the application:		
4. OUTCOME OF IAO APPLICATION			
Was an IAO granted?	YES	NO	If YES – Are there any learning points you would like to outline in relation to applying for an IAO? Please provide details:
What were the reasons given by the court for not granting the application:	Please provide details of the outcome of the application:		
Was the decision appealed?	YES	NO	If YES – what was the outcome of the appeal? Please provide details:
5. INVESTIGATIVE IMPACT & OUTCOME			
Was there an impact on the investigation because the IAO was <u>not</u> granted?	YES	NO	If YES – please provide details:
Investigative Outcome	Please give investigative outcome if known at the time this form was completed or any applications for the discharge of an order:		
PLEASE INCLUDE ANY OTHER INFORMATION YOU WOULD LIKE TO ADD REGARDING THE IAO APPLICATION PROCESS			
ONCE COMPLETED PLEASE EMAIL THIS FORM TO ACPO Criminal Use of Firearms Working Group Secretariat: acpoiao@west-midlands.pnn.police.uk			