

PRACTICE DIRECTION NO. 2 OF 2024

DISCLOSURE BY ELECTRONIC METHOD (CRIMINAL PROCEEDINGS)

This Practice Direction is issued by the Honourable Chief Justice and applies to all proceedings in the Home Circuit Superior Criminal Courts of Trial and the Rural Circuit Superior Criminal Courts of Trial.

These directions provide guidance for the Prosecution in discharging its disclosure obligations, thereby leading to greater efficiency and effectiveness in court proceedings.

This Practice Direction comes into effect on Friday, June 28, 2024, and will continue in effect until revoked or amended and is to be cited as Practice Direction No. 2 of 2024, Disclosure by Electronic Method (Criminal Proceedings).

1. GENERAL

1.1 The Home Circuit Superior Criminal Courts of Trial comprises the Supreme Court of Judicature (Criminal Division), the Circuit Court Division of the Gun Court, and the High Court Division of the Gun Court sitting at the Supreme Court of Judicature, Public Building East, King Street, Kingston.

1.2 The Rural Circuit Superior Criminal Courts of Trial comprises the Supreme Court of Judicature (Criminal Division), the Western Regional Gun Court, the Circuit Court Division of the Gun Court, the High Court Division of the Gun Court sitting in any parish other than the parishes of Kingston and St. Andrew.

1.3 The general laws, rules, and principles governing the duty of disclosure are relevant to the application of this Practice Direction.

2. DEFINITIONS

2.1 In this Practice Direction: -

“Disclosure by electronic method” includes disclosure by way of email, thumb drives, CD-ROMS, and hyperlinks.

“Disclosable/disclosed material” includes any information, document, data, or other material that the prosecution has a duty to disclose.

“Metadata” includes descriptive information about disclosable data such as the time and date of creation, author or creator, file size, file name, date modified, and location.

3. Electronic Disclosure

- 3.1 With immediate effect, the primary method of disclosure in criminal proceedings shall be electronic.
- 3.2 The prosecution shall indicate to the Court the electronic method(s) of disclosure to be employed in each case at the first case management hearing unless otherwise ordered by the Court.
- 3.3 The Court must be provided with a copy of all disclosable materials in the same format and manner as originally provided to the defence. Where disclosure was effected via hyperlinks or email communications, access must be granted via the email address provided by the Registrar.
- 3.4 The defence has a right to inspect the original of all material disclosed by way of electronic method and the prosecution shall fulfill any such request made in writing within seven (7) days of receipt thereof.
- 3.5 Unless the Court directs otherwise, inspection of the electronically disclosed material must be done before the trial readiness hearing.
- 3.6 The prosecution will be deemed to have discharged its disclosure obligations on the date and time when the defence was granted access to the material.
- 3.7 Where the defence chooses to make disclosure this Practice Direction applies with such modifications as are necessary.

4. Duties of the Parties

- 4.1 The prosecution shall:
- (a) disclose all material relevant to each case, save for where the legal exceptions to disclosure apply, and do so within the timelines established by the Court.
 - (b) disclose material, in so far as is possible, in the format received, and where appropriate take all reasonable steps to ensure that it is unmodifiable, easily navigable, and, where possible, searchable.
 - (c) where applicable, having regard to the nature of the disclosable material, ensure that the original metadata is preserved to maintain the authenticity and integrity of the data.
 - (d) organize and index the disclosed material, and where there are multiple defendants and counts there must be an indication of the relationship between the defendants and counts.

(e) file and serve a schedule of the disclosed material which must include:

- (i) the date and time of disclosure,
- (ii) the title and description of each file(s), and
- (iii) where necessary, the file size or length.

(f) Immediately notify the defendant in writing if it experiences any issue with sending disclosable material via the selected electronic method.

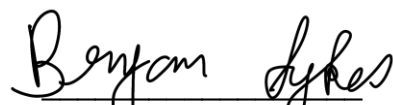
4.2 The defence shall:

- (a) provide all the relevant information required by the prosecution to facilitate receipt of the disclosable material via the method chosen by the prosecution.
- (b) immediately notify the prosecution in writing of any issue(s) experienced in accessing the disclosed material but this does not include the proficiency of defence counsel in using the technology to access the material and neither does it include outdated or inadequate software and hardware.

5. The Court must give effect to this Practice Direction by:

- (a) giving directives to the parties at the earliest stage to ensure that the objectives are met.
- (b) resolving all disputes related to disclosure as they may arise.
- (c) ensuring that the prosecution and defence adhere to the established disclosure timelines and protocols.

DATED THE 28TH DAY OF JUNE 2024


Bryan Sykes OJ, CD
Chief Justice of Jamaica