



The Institute of Commercial Forensic Practitioners

Practice Note:

Guidelines for the Protection of Witnesses and Whistle- blowers

14 July 2022

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Introduction

1. This practice note¹ is issued by the Board of the Institute of Commercial Forensic Practitioners (ICFP) in terms of its Memorandum of Incorporation read with the ICFP Code of Ethics and Rules of Conduct. This practice note is applicable to all practising members of the ICFP. This practice note will take effect on 14 July 2022.

Purpose and nature

2. The purpose of this Practice Note is to provide practical guidance to commercial forensic practitioners (CFPs) regarding the protection of persons who come into contact with CFPs in the context of commercial forensic investigations and who may face threats or be subjected to reprisals as a result of such interaction like witnesses and, specifically, whistle-blowers.
3. This Practice Note does not replace the ICFP's Information Gathering Standards and should be read in conjunction therewith.
4. Due to the unique nature, sensitivity and circumstances of commercial forensic investigations, no guideline or operating procedure can cater for every situation. This Practice Note is not intended to codify practical rules, nor to address all relevant matters associated with the protection of witnesses and whistle-blowers. It is primarily principle-based and rather aims to provide conceptual guidance and to assist with the application of professional judgment. The guidance contained herein is intended to show what would generally be expected from a CFP, to clarify the meaning of

¹ A 'practice note' is defined by Lexico as "A note published by the authority of a court, judge, or other official body (sometimes under express statutory provision), usually indicating how procedures should be handled".

relevant Standards and Codes of Conduct, and to assist CFPs in resolving questions of how to apply the said Standards and Codes of Conduct in particular situations. It, however, remains the responsibility of CFPs to act in accordance with the applicable ICFP Code of Ethics, Rules of Conduct, Standards and prevailing law, whilst taking into account the specific facts and circumstances of each particular case.

Definitions

5. For purposes of this Practice Note, the following terms/concepts are defined:
- a) **'persons who assist with commercial forensic investigations'** (excluding the CFPs involved with the investigation itself) may include:
 - (i) Victims of economic crime, witnesses, whistle-blowers and sources of information relevant to commercial forensic investigations;
 - (ii) Persons aiding CFPs in the course of commercial forensic investigations, such as office assistants, interpreters, IT - personnel, drivers, etc.;
 - (iii) Persons who are at risk by virtue of their association with a person belonging to any of the groups described above, such as family members or friends;
 - b) **'Commercial forensic practitioners'** or **'CFPs'** refers to full and associate members of the Institute of Commercial Forensic Practitioners.

Rationale for this Practice Note

6. The ICFP and its members acknowledge that:
- a) Witnesses and whistle-blowers play a cardinal role in the detection, investigation and prosecution of commercial crime and related irregularities. As such, CFPs rely on, and often extensively utilise, the information gained from such persons;
 - b) Whistle-blowers are particularly exposed to adverse consequences flowing from their whistle-blowing in South Africa, including *inter alia*

harassment, victimisation, occupational detriments and even being subjected to physical violence or being murdered;

- c) Ensuring that people can safely and effectively report on crimes, like fraud and corruption, is a basic and fundamental requirement for reducing the prevalence of such crimes;
- d) Protected whistleblowing channels alone (i.e. platforms that only protect the identity of whistle-blowers) are not the answer. Measures should be put in place to encourage citizens to “blow the whistle” safely and effectively, and which provide adequate protection throughout the whole process;
- e) Building a trust relationship is crucial – we need to firm up on how to instil confidence in whistleblowing and those persons who assist with commercial forensic investigations;
- f) CFPs can play a central role in the protection of persons who assist with commercial forensic investigations;
- g) CFPs should, however, always remain professional, i.e. independent, impartial and objective factfinders. Our focus is evidence gathering through proper, fair and unbiased investigations that can be relied upon and trusted to produce admissible evidence.

- 7.** The ICFP and its members take note of the rights and duties as set out in the South African legal framework for the protection of whistle-blowers, including but not limited to, the Constitution of the Republic of South Africa, 1996, the Protected Disclosures Act 26 of 2000, the Labour Relations Act 66 of 1995, the Companies Act 71 of 2008, and section 45 of the Cybercrimes Act 19 of 2020, as well as South Africa’s obligations in terms of United

Nations Convention Against Corruption and the African Union Convention on the Preventing and Combating of Corruption.

8. In line with section 13 of the United Nations Convention Against Corruption, the ICFP and its members undertake to:
 - a) Endeavour to adopt, maintain and strengthen systems for the protection of whistle-blowers within its means and where appropriate, in accordance with the fundamental principles of the South African legal system; and
 - b) Undertake public information activities, as well as public education programmes that respect, promote and protect the freedom to seek, receive, publish and disseminate information concerning commercial crime.
9. The ICFP and its members accept that whistle-blowers, in particular, have a just expectation to:
 - a) Be listened to, neutrally and open-mindedly;
 - b) Be respected and treated fairly;
 - c) Confidentiality and anonymity, where applicable or so requested;
 - d) Have a process in place for the whistle-blower to know what will happen before blowing the whistle;
 - e) Continue to be valued as an employee and not be disadvantaged in their place of employment;
 - f) Be kept in the information loop and to receive regular updates if there is an investigation;
 - g) Enjoy sufficient protection afforded by the law;
 - h) Receive assurance that they will not face retaliation;

- i) Effective speak-up policies in organisations.

Key concepts

- 10.** This document accepts and endorses the following key concepts (as adopted from the United Nations Manual on Human Rights Monitoring, in particular Chapter 14 thereof relating to the Protection of Victims, Witnesses and Other Co-operating Persons):

10.1 Ensuring protection is a shared responsibility of:

- a) *Primarily, the State who bears the responsibility for protecting the rights of all persons under its jurisdiction. Any person whose rights have been violated must be able to obtain redress through competent national judicial, administrative or legislative authorities;*
- b) *The victims, witnesses, whistle-blowers and other co-operating persons who may face threats or be subjected to reprisals. Often individuals make their own choices about which risks they believe are acceptable or unacceptable vis-à-vis the actions they consider important to take. Such an assessment is personal and evolves over time; it is mainly based on subjective perceptions, the ability to analyse the surrounding political, social and security environments and estimates of potential consequences. If duty bearers and other actors have limited means to protect them efficiently, it is essential for individuals to adopt strategies to prevent and/or minimise the risk of harm they may be exposed to in a given situation and primarily rely on themselves for their protection; and*

- c) *Those who can positively or negatively influence the safety and well-being of co-operating persons and who are able to directly or indirectly strengthen their protection.* The mere presence of CFPs may affect a person's perception of safety and lead individuals to take actions they think are safe. CFPs have a professional obligation not to jeopardise the life or security of co-operating persons and to assist in protecting them if they face threats or are subjected to reprisals for having co-operated with the CFP or for being suspected of having done so.

10.2 The protection of victims, witnesses, whistle-blowers and other co-operating persons is an integral aspect of all phases of forensic investigations, from the initial whistle-blower's report, the gathering of information and interviewing, through to the reporting phase and subsequent court procedures.

10.3 Prevention is key in protecting victims, witnesses, whistle-blowers and other co-operating persons. At a minimum, it requires respecting fundamental principles and methods of work, which enable forensic practitioners to undertake their work in a manner that does not jeopardise the safety of those who come in contact with them. Where there is a risk, it must be carefully assessed and weighed against the expected benefits of the activity in question.

10.4 Victims, witnesses, other co-operating persons, and in particular whistle-blowers, in both the private and public sector, need to understand the laws that aim to protect them. They need to know how to document retaliation, the injury it causes, and the level of evidence necessary to secure relief and damages. In summary they need to know how to

blow the whistle and against what occupational detriments they are protected (see the PDA, LRA and Companies Act).

10.5 Critical to successful disclosure is:

- knowing how and when to hire an attorney,
- where to bring a complaint,
- who can lend support,
- what constitutes a valid complaint,
- when are you ready to disclose, and
- what potential consequences it may have.

Therefore, this is a multifaceted effort that requires expertise that most whistle-blowers do not normally have. Generally, employees are experts in their given field, not in the law or the applicable judicial proceedings involved. They face a multitude of challenges on various fronts including their own institution with its legal team, the negative stigma attached to whistleblowing, retaliation and its psychosocial damages while experiencing ongoing exposure to a hostile work environment. The right preparation and legal strategy can help the employee find the best possible outcome (if not the desired one) to settle their case, obtain compensatory or injunctive relief and damages.

Guiding principles

- 11.** The following guiding principles, as adopted from the United Nations Manual on Human Rights Monitoring, Chapter 14 on the Protection of Victims, Witnesses and Other Co-operating Persons, need to be pursued:

11.1 Respect for confidentiality

11.1.1 Any breach of confidentiality can have serious consequences for the person providing the information or for those implicated; for the credibility and safety of CFPs; for the confidence enjoyed during the forensic investigation; and for the effectiveness of forensic investigations.

11.1.2 CFPs are urged to have a clear policy on confidentiality, which should include that:

- a) Given the particular circumstances of the matter, victims, witnesses and other persons co-operating with CFPs – and specifically whistle-blowers - have to be informed of the policy on confidentiality before being requested to provide information;
- b) Confidentiality covers the identity of the co-operating person, as well as the information provided, unless specific consent has been obtained for the use thereof;
- c) It should also cover information on the protective measures taken to strengthen the protection of a person at risk;
- d) Victims, witnesses, whistle-blowers and co-operating persons have to give their informed consent for the use of the information they provided to the CFP. CFPs have an obligation to make such persons fully aware of the potential implications of such decision on their safety and well-being. The consent needs to be specific (e.g. only to report internally, or to report publicly without revealing their identity);
- e) With regard to children, persons with disabilities or persons who may not be sufficiently familiar with concepts like confidentiality

and consent, special efforts should be made to ensure that such persons understand these concepts, are not consulted without a parent/guardian present and are able to provide informed consent;

- f) Even if consent to disclose information to third parties (e.g. the authorities) is granted, CFPs have an obligation to assess the potential implications of that action on the safety of the person providing the information and of those implicated. If there is a risk of endangering any of them, CFPs should not disclose the information or should disclose it in a manner that removes or mitigates the risk (e.g. providing information on a general pattern without revealing specific details).

11.1.3 In all cases, confidentiality must be respected regardless of the conditions in which the information was obtained – whether confidentiality was explicitly requested by the co-operating person, was implied, or was guaranteed, explicitly or otherwise. If the conditions under which the information was provided are unclear, the identity of the person and the information provided should be considered confidential until specific consent is given for the use of the information.

11.1.4 The safety of victims, witnesses, whistle-blowers and other co-operating persons must be of paramount concern to CFPs. Accordingly, confidentiality as a measure to protect their safety, with the requirement of not disclosing their identity, should take preference over other interests, including the prosecution of criminals. The principle of confidentiality also applies in the case of requests for information from the authorities, explicit

informed consent needs to be obtained to forward information they provided or to reveal their identity, if and when such a request is made.

11.2 Do no harm

11.2.1 In all circumstances and at all times, CFPs have an obligation not to jeopardise the life, safety, freedom and well-being of victims, witnesses and other co-operating persons. The best protection CFPs can provide to co-operating persons is to be aware of the potential risk of harm and to exercise good judgment, caution and sensitivity in all their interactions. CFPs' lack of care or negligent behaviour, along with a failure to understand the operational context, can put persons who come into contact with the forensic investigation at risk.

11.2.2 While undertaking forensic investigations, CFPs have the responsibility to balance the need to gather information with the potential risk of harm to those who may provide such information. They should always assess whether it is necessary to establish contact with a person who may be placed at risk as a result of that contact. Contact should not be attempted if the CFPs determine that they will not be able to ensure the safety of a co-operating person, if the risk of harm is too high, or if CFPs do not have sufficient information to make an informed determination on the level of risk.

11.3 Do not raise expectations

11.3.1 CFPs should never make promises that they cannot keep. They need to be aware of what they can effectively do, and not do, to

avoid putting co-operating persons at risk and to ensure their protection. Upon establishing contact and before proceeding with the gathering of information, CFPs have to inform victims, witnesses, whistle-blowers and other co-operating persons of the limitations of guaranteeing their protection, as well as reporting duties that may be applicable for instance section 34 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004. Co-operating persons need to take this into account when deciding whether or not they wish to continue being in contact with CFPs.

11.4 Participatory assessment

11.4.1 Victims, witnesses, whistle-blowers and other co-operating persons are often their own best protectors. They are acutely aware of their security environment so as to be able to assess the threats they face, or may be facing, as a consequence of having established contact with a CFP. In other cases, however, co-operating persons may not be able to make such a sound judgment because they are overconfident, are in denial, or underestimate a particular risk situation, or simply because they lack information or experience. In either event, CFPs must follow a participatory approach to protection by taking into account the knowledge and views of co-operating persons and by involving them in the risk and threat assessment and the choice of measures to be taken to ensure their safety.

11.5 Know the local context

11.5.1 CFPs need to know and understand the local, regional and national context, as well as industry/sector specific threats, of the

environment in which they operate, because protection is context-based and context-specific. There is neither a blueprint nor a single correct approach to deal with protection concerns or to improve the safety of victims, witnesses, whistle-blowers and other co-operating persons. The appropriate protection strategy will depend on the political and security environment, the commitment of the authorities, the national witness protection framework, and the capacity and resources of the investigators, amongst other contextual factors.

11.6 Regular risk assessment and review of monitoring objectives

11.6.1 CFPs should assess the level of threat and risk of harm to victims, witnesses, whistle-blowers and other co-operating persons before, during and after establishing contact with them. They need to be aware that certain situations, particularly where there is a conflict, can evolve quite suddenly and unexpectedly, or may even continue after they have given evidence in a court or hearing. It is therefore essential for CFPs to gather relevant information (see previous section) that can affect the safety and well-being of co-operating persons as frequently as deemed necessary or possible. They should review and adjust their investigation strategies based on this regular assessment.

Preventative measures

12. Prevention is key in the protection of victims, witnesses, whistle-blowers and other co-operating persons. It involves respecting fundamental principles and methods of work that enable CFPs to undertake forensic

investigations in a manner that does not jeopardise the safety of those who come into contact with them. Preventative measures should be taken throughout the forensic investigation, but in particular when gathering information. It is in this phase wherein co-operating persons may be more easily exposed to risk.

12.1 Planning

12.1.1 In the context of forensic investigations, the planning phase entails determining what information needs to be gathered, where, how and from whom.

12.1.2 CFPs should carefully plan the information gathering process, particularly when deciding to establish contact with victims, witnesses, whistle-blowers or other sources and proceeding with interviews.

12.1.3 This phase requires CFPs to constantly balance the potential risk of harm to co-operating persons against the expected benefits of the activity in question, and review and adjust the forensic investigation objectives and methodology accordingly.

12.1.4 Properly planning of monitoring activities require CFPs to have an understanding of the national, regional and local context, and specifically the legal framework, in which they operate.

12.1.5 Contextual information will make them aware of relevant political, social and cultural dimensions, and of key factors in the country that may have a positive or negative impact on the safety and well-being of victims, witnesses, whistle-blowers and other co-operating persons.

12.1.6 Another important element to consider is the capacity and commitment of the authorities, or other duty bearers, to not only respect their human rights obligations, but also properly respond to any protection concerns that may arise from the interaction of CFPs with victims or witnesses.

12.1.7 It is also useful to be aware of any existing resources at community level, such as local protection networks, which may be able to provide advice and assistance to CFPs when establishing contact with victims, witnesses, whistle-blowers or other sources of information, and/or support the latter if they face threats or are subjected to reprisals.

12.1.8 In the planning phase, it is particularly important to consider:

- (a) The victims, witnesses, whistle-blowers and sources to contact
 - Who should be prioritised during the information gathering process?
 - Is the victim, witness, whistle-blower or source to be contacted vulnerable or part of a group with special needs (e.g., a child, a person with disabilities, a detainee)?
 - Is the victim, witness or source accessible?
 - Is there a need for an interpreter?
- (b) The risk of harm
 - Is the victim, witness, whistle-blower or source likely to face threats or be subjected to reprisals?
 - What are the security and/or vulnerability factors that may expose him or her to the risk of harm?

- Is there a history of intimidation?
 - What is the capacity and/or commitment of the authorities or duty bearers to respond to protection concerns?
 - Can preventative or protective measures be taken to minimise the risk of harm?
 - Can the information likely to be gathered from the victim, witness, whistle-blower or source be obtained elsewhere?
 - What self-protection measures is the victim, witness, whistle-blower or source able to take?
- (c) The initial contact and method of communication
- What is the most appropriate and safest method to establish contact and communicate with the victim, witness, whistle-blower or source? (Communication via email may for instance be compromised where the suspect is connected with employees in the IT department from where email may be accessed. Alternative methods of communication could be considered, e.g. WhatsApp or Telegram (which is encrypted) or private email addresses)
 - Should contact be established directly or through a third-party/intermediary?
 - Should interaction with the victim, witness, whistle-blower, or source be visible or discreet?
- (d) The interview and follow-up
- Where will the interview take place?
 - Can the venue guarantee confidentiality?

- In what mode will the interview be conducted, face-to-face, telephonically or online?
- Is it possible to maintain regular contact with the victim, witness, whistle-blower or source after the interview?

12.2 Prioritising among contacts

12.2.1 When deciding whom to contact/interview, CFPs should prioritise the victims, witnesses, whistle-blowers or sources that are likely to provide relevant information to fulfil the forensic investigation and, particularly, those who are likely to be accessible.

12.2.2 The fact that victims, witnesses, whistle-blowers or sources may be part of a group with special needs should also be considered. Children, victims of violence, internally displaced persons and, in some contexts, women or rural populations, among others, require particular skills and additional preparation on the part of CFPs.

12.2.3 Firstly, CFPs have to determine if it is possible to establish contact with the identified victims, witnesses, whistle-blowers or sources, based, on the one hand, on the available human and material resources and, on the other, on the security conditions and physical accessibility of their location.

12.2.4 Secondly, CFPs have to determine if the identified victim, witness, whistle-blower or source may face threats or be subjected to reprisals as a result of his or her interaction with the forensic investigators, by undertaking a specific risk and threat assessment. For example, an eyewitness is likely to be more at risk than a person who is a secondary source.

12.2.5 Several aspects need to be considered to assess the level of risk:

- the security environment and other factors related to, for instance, the location or the identity of victims, witnesses, whistle-blowers or sources (e.g., are they part of a group with special needs?);
- the existing threats; and
- the history of intimidation.

12.2.6 The level of risk will also depend on the capacity for self-protection of the identified victims, witnesses, whistle-blowers or sources, along with the ability of the authorities or duty bearers to respond to any protection concerns that may arise. Based on these elements, CFPs should be able to conclude whether there is a risk of harm and if such a risk can be reduced through preventive/protective measures during the initial contact, interview and follow-up.

12.2.7 If there is a risk of harm, CFPs should establish whether the information likely to be obtained from the prioritised victim, witness, whistle-blower or source can be gathered elsewhere or through means that do not require a meeting in person. If the information is available from other reliable sources and the risk of harm is too high, CFPs should avoid establishing contact.

12.2.8 Even when taking preventive measures to protect victims, witnesses, whistle-blowers or sources, a risk of harm may still exist and needs to be taken into account. When there is a strong indication that interaction with the CFP could potentially lead to threats or retaliation, CFPs should not attempt to make contact.

12.3 Initial contact

12.3.1 When establishing the initial contact, CFPs must keep in mind that the safety and well-being of victims, witnesses, whistle-blowers or sources greatly depend on them. It is thus essential to assess the conditions in which contact can take place without risk. The focus should be on protecting their identity and ensuring that it is not widely known that they have been in contact with a CFP.

12.3.2 In some contexts, the mandate and the activities of the CFPs will already be known; in other cases, CFPs may have to make an additional effort to clarify these. The level of awareness and credibility among the local population/community of the work of the CFPs, coupled to access to a network of partners, will influence how the initial contact may be made.

12.3.3 CFPs can contact victims, witnesses, whistle-blowers or sources directly or through a third-party/intermediary, such as a trusted person in the community or business entity.

12.3.4 They also need to be prepared to deal with situations in which victims, witnesses, whistle-blowers or sources themselves take the initiative, for example, by visiting the office of the CFP or engaging with CFPs during on-site visits. To the extent possible, CFPs should quickly assess the risk of harm that can result from such unplanned interaction and be prepared to either conduct an interview on the spot or agree on a follow-up contact according to certain modalities to prevent harm.

12.3.5 When establishing contact, CFPs should remember that:

- Victims, witnesses, whistle-blowers or sources should be treated at all times with the utmost respect, dignity and professionalism;
- Preventive and protective measures should be scrupulously adhered to before, during and after contact with victims, witnesses, whistle-blowers or sources;
- Upon contact, victims, witnesses, whistle-blowers or sources should be duly informed of the mandate and activities of the commercial forensic investigation, and made aware of the principle of confidentiality; and
- A clear and accurate explanation should be given on the limitations of the CFPs to provide protection if those who come into contact with CFPs face threats or are subjected to reprisals. Expectations have to be carefully managed and no unreasonable expectations should be raised.

12.4 Direct contact

12.4.1 Direct contact may be established in a variety of ways. CFPs may either travel to the location where the victim, witness, whistle-blower, or source is, or arrange to meet him or her at the office of the CFP or at a third party or neutral location.

12.4.2 CFPs also have to decide on the best time to meet and should be reasonably flexible to be available after working hours if this could provide more protection.

12.4.3 Local staff of the CFP's firm may play a crucial role in establishing direct contact as they can discreetly blend in with the community. In some cases, however, victims, witnesses, whistle-blowers or

sources may be more willing to engage with CFPs from other regions/offices rather than with local staff, because of a lack of confidence or other existing tensions, for example, between different ethnic groups. CFPs should be aware of these contextual factors to determine who would be the best interlocutor.

12.4.4 When it has been agreed that a victim, witness, whistle-blower or source will meet a CFP at the CFP's office, his or her name should ideally not be registered at the security gate. Outsiders may easily access the information of such records, which may expose those who come to visit CFPs to risk of harm.

12.4.5 CFPs can also attempt to establish direct contact with a victim, witness, whistle-blower or source in a manner that may seem coincidental. Some background research may be required to create such an opportunity, but it may be a useful technique to minimise exposure. For example, CFPs could participate in the same social event as a source and approach him or her on that occasion to request a meeting at a later time and different location. However, CFPs should engage in conversation without ever compromising the safety of the person. When feasible, particularly if such an encounter takes place in a more private setting, CFPs may explore the possibility of gathering information at that moment, but the person approached must know why he or she is speaking with the CFP, and the location must guarantee confidentiality.

12.5 Contact through intermediaries

12.5.1 A good network of partners and contacts is essential in any process of information gathering conducted by CFPs.

12.5.2 Key individuals within communities or business entities (e.g., head of the local farmers' cooperative or local school principal), representatives of local civil society organisations, or journalists are instrumental not only in identifying victims, witnesses, whistle-blowers or sources, but also in facilitating their contact with CFPs and in arranging interviews. These contacts are equally essential in providing advice to CFPs on the best manner to establish direct contact and on how to ensure the safety of victims, witnesses, whistle-blowers or sources.

12.6 Unplanned contact

12.6.1 Victims, witnesses, whistle-blowers or sources often turn up at the office of the CFPs to report their suspicions or to raise their concerns and request the support of CFPs. In such unplanned situations, CFPs should discuss with them any harm that could result from their visit. CFPs should be able to assess the level of risk and provide advice on any measures that they should take upon leaving the office of the CPF and/or in a follow-up contact/meeting with CFPs.

12.6.2 Unplanned contact with victims, witnesses, whistle-blowers or sources can also occur during on-site visits. To the extent possible, CFPs should anticipate such situations. When approached by someone, CFPs have to quickly assess the surrounding environment and observe the possible presence of

anyone who could expose the person to perpetrators or their allies, for example, security agents. When a situation is deemed too risky, CFPs should decline to engage with the person who approaches them and agree on a modality for follow-up contact.

12.7 Using discretion or visibility

12.7.1 Meetings and interviews with victims, witnesses, whistle-blowers or sources can be either visible or discreet. Both approaches have pros and cons for the safety of those contacted. For each specific situation, CFPs should assess which approach offers the most protection.

12.7.2 However, when opting for visibility, CFPs must first discuss this with the victims, witnesses, whistle-blowers or sources concerned and obtain their informed consent.

12.7.3 CFPs often choose discretion as the standard approach to protection. It implies making all efforts to draw the least possible attention to individual victims, witnesses, whistle-blowers, sources or other co-operating persons.

12.7.4 Such an approach is usually followed in all interactions during and after the information gathering phase, particularly when establishing the initial contact, organising or proceeding with an interview and follow-up. The focus is on protecting the identity of the person concerned and adhering to strict preventive or protective measures to avoid exposing him or her, or the contact with CFPs, to others who may pose a threat or cause harm.

12.7.5 In certain situations, visibility is a better option, as it may illustrate a determination to address the matter being

investigated, to deter and put a stop to the continuation of the irregularities being investigated and to also build local trust and credibility.

12.8 Minimising exposure

12.8.1 It is sometimes very challenging for CFPs to go unnoticed when travelling in certain areas, for instance, in the way they may be dressed. Without ever undermining their own security, CFPs should, in the course of their investigations, take measures to reduce the exposure of communities in general and that of specific individuals in particular.

12.8.2 Unless a visibility approach would be more beneficial, CFPs can consider:

- a) Not being vocal about the purpose of a visit to a certain location or the person they are meeting/interviewing;
- b) Parking your vehicle at a distance or at a different location, where it may not be conspicuous, and walking to the venue of the meeting/interview;
- c) Blending in with the local environment as much as possible (like dressing the same as they);
- d) Requesting trusted partners or an intermediary in the community to facilitate the meeting/interview by contacting the victim, witness, whistle-blower or source directly and accompanying him or her to a predetermined private venue;
- e) Entering the agreed venue beforehand and separately from the victim, witness, whistle-blower or source.

12.8.3 In order to deflect attention, CFPs can also plan to interview a wider number of individuals in the same community (even if irrelevant to the primary objective), so as not to single out the one person they actually want to contact. This method also prevents a specific individual from being identified as the source of information. There is some safety in numbers, and it follows the assumption that it is easier to retaliate against one individual than against many. Nonetheless, it may be possible that all those who were contacted will suffer reprisals or that one person in the community is subjected to harm to put others off from co-operating with CFPs.

12.9 Organising and conducting interviews

12.9.1 A range of preventive measures should be taken when organising and conducting interviews with victims, witnesses, whistle-blowers or sources. Finding an adequate venue to hold the interview is one of the most important aspects.

12.9.2 The venue of the interview should protect the identity of the interviewee, ensure his or her safety and guarantee the confidentiality of the information provided.

12.9.3 The decision on the venue should be based on a discussion with the interviewee, but also take into account the views of other co-operating persons and partners, and the experience gained by CFPs while working in the area.

- 12.9.4 It is important to ask the interviewee where he or she would feel more comfortable and safer to talk. If the location suggested is not appropriate – because there is a risk of harm that the interviewee is unaware of or is disregarding – CFPs should not hesitate to propose an alternative, safer venue.
- 12.9.5 CFPs can enhance the confidentiality of the interview by arranging it in a place where it cannot easily be overheard, or where there are no video cameras or other surveillance equipment.
- 12.9.6 Participants in the interview should also be kept to a minimum; besides the interviewee, the number of CFPs should, where possible, ideally not exceed two, and, when required, an interpreter should be present. All other persons (e.g., friends, colleagues, neighbours or even family members) should be asked to leave before the interview begins, unless, for instance, the interviewee is a child or specifically requests the person to remain. Furthermore, the fewer people around, the less the interviewee will feel pressured or influenced in what he or she should say.
- 12.9.7 In some instances, it may be appropriate to conduct the interview at the office of the CFP, as, in principle, this environment is easier for CFPs to control. If this is not a satisfactory option, CFPs may consider other locations, such as hotels, restaurants with private rooms, or even private houses, if deemed safe.
- 12.9.8 When CFPs are not familiar with the venue, they should arrive early to assess the surrounding environment and determine if it

is appropriate. If not, they should immediately postpone the interview and agree on a different location.

12.9.9 During the interview, CFPs and the interpreter, if present, should never refer explicitly to statements made by other victims, witnesses, whistle-blowers or sources. Such an error may endanger previous contacts and make the interviewee worry about the confidentiality of the information he or she provides.

12.9.10 When concluding the interview, it is essential for CFPs to:

- a) Obtain informed consent on the use of the information provided. The type of consent given by the interviewee should be clearly stated on the report of the interview;
- b) Discuss with the interviewee what preventive or protective measures he or she may take to avoid any reprisals as a result of the interaction with CFPs. For example, CFPs can advise the interviewee to always inform someone about his or her whereabouts, or to take other self-protective measures;
- c) Clearly inform the interviewee of the limitations of the CFPs in providing protection if he or she faces threats or is subjected to reprisals;
- d) Provide the interviewee with useful contacts in the community or business that could offer different types of assistance (e.g., protection networks) and/or of local authorities, if these can be trusted; and
- e) Discuss with the interviewee a method to keep in touch. CFPs should give a contact number that is accessible at all

times and inform the interviewee of the location of the CFP's office.

12.10 Regular monitoring

12.10.1 It is essential to regularly monitor the safety and well-being of victims, witnesses, whistle-blowers or other sources that have come into contact with CFPs, who are deemed to be at risk, to assist with their protection.

12.10.2 However, limited resources and difficulties in accessing certain areas may mean that CFPs are not able to be in regular contact with, or easily access the victims, witnesses, whistle-blowers or other sources. CFPs should identify those who may be more at risk and, at the initial contact and interview stages, develop a mechanism to maintain regular contact.

12.10.3 The best manner to establish contact and regularly engage with a victim, witness, whistle-blower or another source, as well as any other important considerations regarding his or her protection, should be recorded in detail in the corresponding file. This information is useful to ensure that follow-up contact is maintained without risk of harm and to inform CFPs who may take over the file.

Protection of information

13. The protection of information is closely related to the protection of victims, witnesses, whistle-blowers and other co-operating persons. Secure information management systems with controlled access should be set up

to store, manage and protect confidential and sensitive information stored in a paper-based or electronic format. Only staff who require access to such information for their work should be authorised to do so.

13.1 Safe recording of information

13.1.1 Information can be recorded using notebooks/written notes, computers, digital cameras or audio and video recorders. CFPs need to consider which of these methods can ensure the highest level of security given the overall context in which they operate.

13.1.2 As a general rule, CFPs should ensure that the identity and the personal details of interviewees are protected and kept separately from the interview report. A standardised use of codes for the identification of victims, witnesses, whistle-blowers or sources is a means of achieving this purpose.

13.1.3 CFPs normally use notebooks, as this is often more practical and also less inhibiting for interviewees.

13.1.4 Cameras and audio or video recorders may be used only with the expressed consent of the interviewee, and in situations where they do not present additional security concerns. Normally, audio or video recorders are used when there is already some rapport between the CFPs and the interviewee.

13.1.5 When using an audio recorder when interviewing an interviewee exposed to risk, CFPs should avoid recording the name of the interviewee; his or her personal details should be registered separately and in code (use of an alias may be optimal) so that no connection can be made between the recording and the interviewee. CFPs should be wary that the interviewee could be

traced through his or her voice, through the use of specific expressions or terminology, or through the description given of certain places. Extra care is needed in such situations to protect the audio recording and prevent it from being accessed by unauthorised persons or confiscated.

13.1.6 Even though cameras and video recorders can be essential tools in forensic work, their use can also easily lead to the identification of a source of information.

13.2 Safe storage and handling of information

13.2.1 The security of information may be breached because of improper storage and careless handling.

13.2.2 CFPs operating in areas in conflict or where security is volatile or where staff may be suddenly relocated, should consider keeping paperless offices.

13.2.3 More than in any other environment, all confidential and sensitive information should be securely stored, preferably in an encrypted format, on a shared drive or another secure system linked to a server from where information could be retrieved remotely. If there is no such system and the office needs to be evacuated, confidential and sensitive information should be either transported securely or destroyed. Information on computers should be properly deleted with the support of IT staff.

13.2.4 CFPs should pay particular attention to the safe storage and handling of notebooks/written notes, including those of interpreters. They have to ensure that notebooks are always

securely stored and not left unattended on top of office desks or inside vehicles. After typing up the interview notes, it is good practice to scan them and attach them to the electronic file on the matter being investigated. Similarly, photographs or audio and video recordings should be transferred to a secure encrypted storage system as soon as possible.

13.2.5 Careful consideration should be given to the disposal of confidential and sensitive information. Keep the following in mind:

- a) Any decision on disposal must always be done keeping in mind the need for having information available in possible subsequent legal proceedings;
- b) Draft interview reports, handwritten notes, and excess copies of documents that are not required or that cannot be stored safely should be shredded or otherwise destroyed;
- c) A range of people (e.g., cleaners or maintenance staff) can easily have access to such documents if they are simply discarded in a waste-paper basket or recycling bin;
- d) Likewise, CFPs should take care when disposing of disused computer equipment, as merely deleting files may not be sufficient to prevent the recovery of confidential information. When required, CFPs should seek advice from IT personnel to ensure that all information is properly erased from computers.

13.2.6 Besides ensuring that confidential and sensitive information is safely recorded, CFPs need to consider how it can be securely

transported when they are conducting their investigations. When possible, they should transmit confidential information via a secure Internet connection to their offices and not carry it with them. Based on previous experience and knowledge about an area, CFPs should attempt to anticipate any situation that may result in the forced disclosure of information. Investigations in unsafe areas or where it is expected that there will be roadblocks or checkpoints can be particularly challenging. CFPs need to plan possible courses of action to protect information when faced with such situations. While on an investigation, CFPs should also keep their laptops with them at all times.

13.2.7 CFPs should not peruse confidential and sensitive information in public places, such as in a restaurant at an airport or on public transport such as an aeroplane or train, as it could be read by others or be inadvertently left behind.

13.2.7 CFP's must also consider avoiding naming whistle-blowers in reports unless absolutely necessary. A better approach is to simply refer to Whistle-blower 1, Whistle-blower 2, etc.

13.2.8 When distributing your report (including the annexures) always firstly consider how to secure it and where it may end up. When submitting sensitive reports CFPs should ensure that these reports are adequately protected (e.g. passwords, etc.) to avoid the content being accessed by unauthorised readers.