



Sharing information between police and social services

in crime preventive work with children and young people

The Swedish National Council for Crime Prevention (Brå) --- centre for knowledge about crime and crime prevention measures

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Summary

Sharing information and the question of confidentiality between government agencies and municipalities is a question that actors collaborating in crime prevention are grappling with. There has long been a desire to facilitate for social services and the police to share confidential information for crime preventive purposes. In 2013 this led to the introduction of a provision in Chapter 10, Section 18a of the Public Access to Information and Secrecy Act (OSL 10:18 a) permitting confidentiality to be breached in order to share information for purposes of local crime prevention. Under the new provision, social services staff may, under certain circumstances, divulge information concerning an individual under the age of 21 to the police in order to prevent crime.

Brå has been tasked by the Government with studying the preconditions for sharing information between police, social services and other actors in order to prevent crime. The background to this mandate is that restrictions on opportunities to share information due to confidentiality have recurrently been raised as an obstacle in local crime prevention efforts. However, there is a lack of an overall picture of the extent to which there are challenges and needs for change.

This study has examined the circumstances in which information can be shared between the police and social services, and to a certain extent other actors, in crime preventive work concerning children and young people. It has also examined how the provision allowing confidentiality to be breached in Chapter 10, Section 18 a, OSL is being applied in practice. Brå has surveyed the information sharing problems identified by the police and social services, their awareness of and application of the confidentiality legislation, as well as their needs, strategies and suggestions as to how to solve the problems. The data on which the study is based include interviews with 118 people, conducted with representatives of national and regional organisations and with relevant actors in seven different municipalities. The report is also based on a survey sent to the Swedish Police Authority and heads of social services units in **half of Sweden's municipalities. Finally, lawyers in the Swedish Police Authority's legal departments in the seven regions have answered four problem-oriented questions.**

Perceived obstacles in the confidentiality legislation are unclear

The study confirms that many actors consistently view confidentiality legislation as an obstacle to sharing information in crime prevention work. Of the survey respondents, 62 percent of the police officers and 47 percent of the heads of social services units have perceived confidentiality legislation as an obstacle in the past year. The report reveals a multi-faceted picture including a lack of knowledge, uncertainty and varying interpretations of existing legislation. As a consequence of limited knowledge of the legislation under which other actors operate, there are also incorrect expectations of the possibilities to exchange information in crime prevention cooperation. The confidentiality legislation was seen as less of a barrier in small towns and rural municipalities as a result of more established contact routes and forms of collaboration as compared to major cities. This is significant because information sharing is often based on personal contacts rather than function. Furthermore, colocation was also considered conducive to crime preventive exchange of information.

A lack of established practice and guidance entails an obstacle to sharing information

Our main conclusion is that the frustration that many police and social services employees have expressed in interviews and in the survey has to do with a lack of guidance on how the law is to be interpreted in individual cases, rather than the provisions themselves. The actors are forced either to evaluate the grounds for sharing information in each individual case, which is seen as time consuming and demanding, or to share information in ways they feel are legally uncertain. Social services officials express pressure to help to prevent crime. At the same time, there is prevailing uncertainty regarding how confidentiality legislation is to be applied, when information is expected to be shared, and, if so, which information. This often leads to information not being shared between agencies in the kinds of situations exemplified in the legislative preparatory work.

It is rare that a person denied information requests an official decision from the agency, against which an appeal could be brought. One conceivable reason could be that the information requested may be needed immediately to resolve an emergency situation, thus making a time consuming appeals process irrelevant. However, since a denial is usually unchallenged at agency level, a more restrictive norm than originally intended by the legislator may be reproduced.

The fact that these appeals are rarely pursued within the agencies and tried in courts means that the boundaries of confidentiality breaching provisions are rarely subjected to legal testing. Because there are few examples in which the application of crime preventive confidentiality breaching provisions have been tested in court, case law is lacking.

There is an underlying tension linked to the question of sharing information, which is founded in the different mandates and professional perspectives of the social services as compared to those of the police, despite the fact that they are often working with the same individuals. Furthermore, there is an imbalance in that social services are subject to stricter confidentiality rules than the police, while it is typically the Police Authority that requests more information. The legislation is designed such that confidentiality is the default in social services, while for the police the default is publicity. When it comes to suggestions for improvement, interviewed actors wish for legal solutions that entail that they would not be obligated to make assessments on a case-by-case basis.

Uncertainty prevents application and consistency

While many interviewees find the confidentiality legislation to be complex, in our survey, three out of four heads of social services units stated that they have satisfactory legal support. Among police respondents, one in two stated that they have access to satisfactory legal support. Among local police officers, however, fewer felt that they had satisfactory support.

Even the lawyers who are to provide support in the application of confidentiality legislation consider that it is complex. In some cases, the legislation was regarded as unclear, but in other cases difficulties seemed to revolve around its application. Municipal lawyers, as well as lawyers in the legal departments of the police regions gave varying answers as to which laws can be applied in recurring problematic scenarios.

The lack of clarity results in sharing both too much and too little information, in both strategic and operational contexts. In many cases, a lack of certainty blocks information between

agencies due to a desire to “be on the safe side”. In other cases, finding the legislation hard to interpret means that actors risk breaching confidentiality without legal backing for doing so.

As the confidentiality legislation is viewed as complicated, many civil servants are afraid of making mistakes due to the personal responsibility according to the penal provision on breach of confidentiality. The fact that case officers, however, rarely risk any criminal liability if the information is not passed on, leads to confidentiality breaching provisions failing to be utilised to their fullest extent.

In municipalities in which police and social services consider their collaboration successful and where long-term personal contacts have been forged, respondents in interviews and focus groups said that they are operating in a grey zone where information is shared about individuals while there is uncertainty as to whether or not this is legal. At the other end of the spectrum we find municipalities where very little information is shared, due to confidentiality, sometimes even though provisions exist which would allow confidentiality to be breached in order to share information which other agencies might have found helpful.

In some cases, social services have chosen not to participate in local crime prevention efforts when they considered that too much information was being shared. Social services respondents stated that they did not want to jeopardise the trust of their clients. Others, however, stated that clients assume that agencies share information and thus the fear of losing trust should not be overestimated. However, how and when the trust of children, young people and their parents or carers is actually affected by the sharing of information between agencies is a question on which there is limited research.

Restrictive application of provisions that permit confidentiality to be breached for purposes of crime prevention

Part of Brå's mandate from the Government involved evaluating the application of the provision on breaching confidentiality in Chapter 10, Section 18a, OSL, introduced in 2013. Under this provision, officials in social services may provide information on individuals who are under the age of 21 to the Police Authority for crime prevention purposes.

The report shows that awareness of the provision, and how it is to be applied, is low among both police officers and social services staff in the seven municipalities in which in-depth interview studies were conducted. Although the provision was introduced in 2013, it was clear that there have been difficulties in publicising its existence and how it is to be applied. Interviews showed that there was widespread uncertainty, firstly regarding which information the provision applies to and secondly in which situations it is applicable. Clarity in the text of the statute was sought regarding when information is expected to be shared, even though the information sought, primarily by the police, largely matches that cited as examples of information that could be shared in the preparatory work of Chapter 10, Section 18a, OSL. This concerns, for example, the location of an individual or where they are usually found. Despite this existing possibility, police officers still voice a need to be given this information. In other words, it would appear that the legislation is not being applied to the extent that the legislator might have anticipated.

The purpose of not specifying in more detail the information that can be passed on in the provision itself was partly to provide scope for flexibility, and partly to ensure that the aspects of protection of privacy were sufficiently guaranteed. Setting out specific information that could be shared was considered limiting rather than facilitating, for the social services. At the

same time, the legislator asserted that the provision was not intended to lead to routine sharing of information because there are certain conditions that must be met for information to be able to be passed on. However, all in all, this has led to the provision not being used in the cases discussed and exemplified in the preparatory work either. Needs for improvement thus have to do with developing practices and working methods on applying the provision before we can conclude whether or not it is sufficiently effective.

Aspects other than legislation also play a role

There are collaborative agreements on crime prevention in almost all of Sweden's municipalities. The vast majority of respondents to our survey among the police and social services also participated in some form of collaboration with other actors. However, there were differences in terms of how much collaboration took place at overarching level or focused on particular individuals. In cases where collaboration was said to be limited, the reasons cited included a lack of resources and differing views of whether or not it was possible to share confidential information between the organisations. There is frustration, mainly on the part of the police, that social services, in their view, do not want to share information with them. As police officers often see it, they are striving for the same goals as social services, and social services and the police are both tasked (in different ways) with preventing young people from being drawn into crime. The police therefore felt that sharing information should not be a problem. At the same time, the study shows that in some municipalities social services do not participate in collaborative forums because they feel that there is limited understanding of the work of social services and their role. Where there is a lack of knowledge and understanding of each other's different organisations, there is also a risk that sharing information becomes a goal in its own right. This matches results of previous research which has shown that limited awareness of legislation and the mandates and working methods of the agencies with which one collaborates also limits the effects.

However, the study also shows that the information requested is deemed relevant and appropriate; requests are not made for more information in general. Some resistance to receiving information has to do with a lack of preparedness and capacity on the part of the recipient organisation, in other words a lack of resources to follow up the information received.

National guidelines are needed for sharing information between municipalities

Sharing information between municipalities is frequently seen as problematic. One example is when young people active in crime move between municipalities, where the question of privacy and confidentiality is one aspect that comes into play. While police respondents consider that information about a person engaged in criminal activity moving into the municipality should be shared with the police in the receiving municipality, some social workers consider that whether or not information should be passed on in such circumstances is dependent on the consent of the individual, who would have a worse chance of starting a new life were they to be the subject of police attention in the new location.

Another aspect is that in cases where there is consensus between the actors that information ought to be shared, the obstacle is not always the confidentiality legislation itself. Instead the issue turns out to be factors such as a lack of routines or channels for sharing information. In

general, information is shared as part of collaboration involving different agencies operating in the same municipality. Between municipalities (and in some cases city districts) contact is more ad hoc and there are rarely procedures in place regarding when or whether information is to be shared.

The problem with a lack of procedures for sharing information between municipalities was also cited in interviews with school representatives who stated that it can be difficult to even get in touch with social services in different municipalities. Schools may not even be informed that social services have placed a pupil in their particular school. School representatives also raised doubts about sharing too much information with social services or the police because they feel this might jeopardise the pupil's trust in the school.

Improve the way reported concerns are handled

Reported concerns about children and young people at risk are one of the most central channels for information from the police to social services, and also from schools to social services in terms of sharing crime preventive information about children and young people. At the same time, this is an area in which there are different approaches and clarity is often lacking.

Both the police and schools would like social services to provide more feedback on reported concerns. Above all, they would like to know whether interventions regarding an individual are in progress, while some would also like more detailed information about the interventions. The lack of feedback leads to the impression that social services do not act on reported concerns, among those who provide information. However, since 2013, Chapter 26, Section 9a OSL has provided an opportunity to provide feedback to the person who has reported a concern on whether or not an investigation has been launched, or is currently in progress. If this provision were made use of more often, police and school staff would know that reported concerns are followed up, which in the long run could lead to greater trust between the parties.

Furthermore, earlier studies on variations between municipalities in terms of archiving and searchability of reported concerns were confirmed. Regulations on processing and compiling personal data restrict opportunities to know whether concerns have previously been reported that did not lead to an investigation. It emerges that there are different local procedures in terms of retaining, sorting out and tracing reported concerns. An additional problem is that there is a lack of opportunities to consider earlier reported concerns when a family moves to a new municipality.

Several agencies, including the police and schools, are obliged to report concerns to the social services if, in the course of their duty, they become aware that a child may be at risk. However, this does not concern security guards, who increasingly serve as a complement to the police. Because these officers have a duty of confidentiality, there is a risk that information about children who are at risk will fail to reach social services.

The question of reported concerns shows how necessary it is to be aware of how other agencies operate, and for information sharing to involve a commitment regarding continued contact, for both the agency giving and the agency receiving the information. Some police officers assume that earlier reported concerns are retained by social services and that these are taken into account when new reports are filed. Other police officers assume that reports are not retained and therefore keep their own copies, and append those details to any new reports.

Brå's assessments

Brå concludes that actors find that confidentiality is often an obstacle to sharing information in crime preventive work but the problems would not necessarily be solved by new legislation. A first step would instead be to meet the demands for clarification as to how the legislation should be interpreted and applied in practice.

Brå advocates that the agencies concerned, such as the National Board of Health and Welfare, the Swedish National Agency for Education, the Swedish Police Authority and the Swedish National Board of Institutional Care produce clearer guidance and guidelines on how the provisions that permit breach of confidentiality can be interpreted in work on the ground. Brå also observes that more appeals against decisions in which information sharing has been denied would lead to the development of established case law which actors can then follow.

Brå also proposes that national, joint training be produced across professional boundaries with the aim of raising the level of knowledge of individual civil servants, but also of the support functions to which case officers can turn for guidance, in the first instance, police and municipality lawyers.

Brå would like to see more research on how different groups of children, young people (and guardians) perceive different types of information sharing for crime prevention purposes. This is a key issue for several actors and many assumptions are made, but there is little research-based knowledge of potential links between children and young people's own perspectives of trust and information sharing on the part of agencies.

Brå asserts that there is a need for national guidelines for sharing confidential information between municipalities. Such guidelines would make it easier for different actors to know what is expected and in this way facilitate sharing of information both within and between municipalities.

Brå agrees with the proposals submitted by the National Board of Health and Welfare (2019) that reported concerns ought to be retained for three years and remain searchable even if they do not result in an investigation. This would make it easier to follow up individuals who have previously given rise to concern, and for more consistent treatment of cases within and between municipalities. Furthermore, the circumstances in which reports of concerns can be made searchable also between municipalities and social welfare committees should be investigated. Regarding reported concerns, it should also be considered whether feedback to the reporting agency should be made compulsory (provided that this is not inappropriate in view of the circumstances). Brå also recommends considering that the obligation to report a concern under Chapter 14, Section 1 SoL might also cover people between the ages of 18 and 20, and potentially young people over the age of 20 in youth interventions, schools or residential homes. Finally, it should be considered whether to introduce an obligation for security guards to provide information on suspicions that a child is at risk, either directly to social services or via the Police Authority.