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The Information Commissioner's response to The Executive Office consultation on a 'Strategic Framework to End Violence Against Women and Girls and Foundational Action Plan'

Introduction

1. The Information Commissioner's Office (ICO) welcomes the opportunity to respond to the above consultation. This Office has responsibility for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018) and additional information rights legislation.

2. This consultation is in relation to a new draft Strategic Framework to End Violence Against Women and Girls (EVAWG) and Foundational Action Plan, being led by the Executive Office (TEO). The consultation states that this framework has been co-designed with over 50 partners from across government, community and voluntary sectors and organisations, as well as wider society. Its aim is to set the agenda for government and society in Northern Ireland to end violence against women and girls.

3. Please note that many of the themes/questions included in the consultation fall outside of the scope of the ICO's regulatory role. For this reason, the following comments are focused solely on the information rights elements of the document.

General Observations

4. There are aspects of the EVAWG framework and action plan that are closely aligned with the Information Commissioner's Opinion *'Who's Under Investigation? The processing of victims' personal data in rape and serious sexual offence investigations'* (particularly the Priority Areas under Outcome 5). We would recommend that TEO consider this Opinion, and the recommendations therein, when working towards finalising this framework and action plan.

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Involvement of Data Protection Officer

5. Given the sensitive nature of the information that organisations may be processing as part of the EVAWG framework, it is important that organisations seek expert advice from their Data Protection Officer (DPO). Part of the DPO's role under the UK GDPR is to advise and inform their organisation of their obligations under data protection laws.

6. This is particularly important given some of the data sharing arrangements and research proposals included in both the framework and associated action plan.

Data Protection by Design and Default

7. All organisations processing personal data as part of the EVAWG framework will need to comply with data protection by design and default under Article 25 of the UK GDPR during the drafting and implementation of the framework. Implementing technical and organisational measures at the initial phases of the design process can lead to the safeguarding of privacy and data protection principles from the onset.

Data Protection Impact Assessments

8. One of the main ways of ensuring a data protection by design and default approach is to carry out a Data Protection Impact Assessment (DPIA). A DPIA can help data controllers identify and minimise the data protection risks of a project or processing operation. Article 35(1) of the UK GDPR sets out that: *"Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purpose of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data".*

9. We note that there are proposals to create a *"Knowledge and Network Hub"* within TEO to provide an accessible central resource on EVAWG research, communication, and engagement data. This will likely involve the processing of highly sensitive

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personal data which, if lost, stolen, disclosed, or used inappropriately could lead to a high risk to the rights and freedoms of women and girls.

10. Undertaking a DPIA will aid the process by providing clarity on areas such as, what kind of personal data is processed and why; the role of the different organisations involved; who will have access to data; whether sharing and further processing is necessary, proportionate and lawful. A DPIA will also help TEO and other relevant controllers to potentially identify less risky ways to use and share this personal data, whilst still meeting the overall objectives of the EVAWG framework.

11. It is therefore recommended that a DPIA is carried out on this aspect of the EVAWG framework and any other relevant proposals that TEO believe may pose a high risk to individuals. A DPIA will help ensure that proposals improve outcomes for individuals, whilst also protecting their personal data rights.

12. It is important to note that should a DPIA identify a high risk that cannot be mitigated, the ICO must be consulted with in relation to the proposed processing, in accordance with Article 36(1) of the UK GDPR. For information on how to do this, please refer to this section of our website.

Data Sharing / Sharing Best Practice

13. There are data sharing references and inferences throughout the draft framework and action plan. For instance, Priority Area 6.2 references the need for data capture and data sharing mechanisms to be comprehensive, joined-up, and able to gather *"consistent and high-quality information to use across the system".*

14. Furthermore, it is indicated in both the framework and action plan that there are plans to support general frontline services so that they are effective in identifying VAWG and make appropriate referrals (Priority Area 4.1).

15. Data protection law enables organisations to share personal data securely, fairly and proportionately. It will be important for

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organisations engaged in data sharing as part of the EVAWG framework to bear in mind the ICO's Data Sharing Code of Practice, which goes into more detail on the steps that organisations need to take to share data, while protecting people's privacy.

16. In addition to this, as the framework also focuses on proposals to end violence against girls under 18 years old, organisations should be minded to refer to our child safeguarding guidance in cases were information needs to be shared for safeguarding purposes.

Data Security

17. Priority Area 2.3 of the framework indicates that TEO intend to create *"a unified platform for sharing effective evidence-based materials"* in terms of work undertaken by youth and community sectors. It is unclear whether personal data will be uploaded onto this platform. If this is the intention, there are certain security considerations that need to be accounted for.

18. Data protection law requires organisations to process personal data securely, with appropriate organisational and technical measures in place. The security measures must be *'appropriate'* to the nature, scope, context and purpose of the processing, and the risks posed to the rights and freedoms of individuals.

19. This means that TEO should consider factors such as available technology and the cost of implementation. These measures must ensure a level of security appropriate to the nature of the data being protected and any resulting harms.

20. Furthermore, as the EVAWG framework has been co-designed across the government, community and voluntary, and private sectors, it is possible that a range of organisations will have access to such a platform. If this is to be controlled by a password protected portal, again there are considerations that need to be taken.

21. When it comes to password protection, please note that there are no specific provisions on passwords in the UK GDPR. However,

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the security principle requires controllers to take appropriate technical and organisational measures to prevent unauthorised access to data. This means when considering a password setup to protect access to a system that processes personal data, that setup must be *'appropriate'*.

22. In addition to security, if the intention is to upload any personal data onto such a platform, then consideration should be given to data sharing and appropriate measures should be in place to ensure this is done in a compliant manner. Please see section above entitled *'Data Sharing / Sharing Best Practice'*.

Data and Research

23. There are several references to research in the strategic framework. For example, Priority Area 4.1 indicates that there will be a focus on undertaking *"research to identify prevalence of violence against women and girls among those at risk who do not access services and to use it to develop appropriate interventions and support pathways"*.

24. As part of these considerations, organisations conducting research as part of the strategic framework should bear in mind the research and statistics exemption set out within Schedule 2, Part 6, Paragraph 27 of the DPA 2018.

25. It will also be important for controllers to be mindful of whether the data they are processing constitutes personal data or not, and the safeguards that may need to be in place for individuals participating in research (for more information, please refer to the heading *'Anonymisation and Pseudonymisation'*).

Anonymisation and Pseudonymisation

26. There are proposals outlined in the framework which refer to the collection of sensitive information. Consideration should therefore be given to adopting privacy enhancing techniques to comply with the data minimisation principle. This will be of particular importance when it comes to collecting qualitative data from people with lived experience of VAWG (Priority Area 6.2).

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27. In relation to this, information should be anonymised when personal data is not necessary for the relevant task(s) and re-identification is not required. During the anonymisation process, it will be important to consider personal information and identification in its broadest sense, taking into consideration the ability to identify a particular individual through direct and/or indirect identifiers which *'link'* or *'relate'* to a singular person. Controllers will also need to be mindful of *'jigsaw'* identification whereby identification occurs through non-identifying information from a single source being combined with information from another recipient and/or system.

28. Pseudonymisation is a technique to replace, remove or transform information that identified individuals. This should be considered when information must remain personal whist also maintaining the confidentiality of an individual's identity.

Training and Guidance

29. Under Priority Area 4.1, it states that TEO will develop and deliver, in partnership with professional training bodies, a training framework targeted at professionals in general frontline services who come into contact with the at-risk population of women and girls in their work.

30. Due to the highly sensitive information that frontline services typically deal with, it is important that the framework considers including appropriate data protection training for staff, which is reviewed at regular intervals. This will be important in ensuring that at-risk women and girls' personal information is protected.

31. In addition to this, TEO may wish to remind controllers who will be processing such information of the need to have in place data protection policies and guidance for the ongoing management and retention of personal information relating to at-risk women and girls.

Witness / Victim Data

32. It is welcomed that the strategic framework highlights the need to increase awareness of the needs of women and girls involved in legal proceedings (Priority Area 5.1). We are also encouraged

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to see that reference has been made to the need for improved consistent data capture across justice system to ensure better understanding of cases involving VAWG (Priority Area 5.3).

33. However, whilst the intention is to have more consistent data collection, it is important that victims and witnesses are assured that the personal information they reveal either to the police or courts will be handled appropriately, in accordance with data protection legislation. This includes it being held securely and retained no longer than necessary, in accordance with the law.

34. In addition, our Information Commissioner's Opinion *'Who's Under Investigation?'* referenced growing evidence which suggested that intrusive practices to information gathering in cases of rape and serious sexual offences contribute to individuals withdrawing from the legal process.

35. As such, it is important to be aware that Article 5(1)(c) of the UK GDPR sets out the principle that data processing should be adequate, relevant and limited to what is necessary. This means that personal data must be collected when it is necessary and proportionate to do so.

36. TEO also notes that many of the issues outlined in Outcome 5 have been recognised and addressed by other strategies and statutory bodies. As such, the framework highlights the need for collaboration to avoid duplication and to ensure the needs of victims and survivors are addressed.

37. The *'Who's Under Investigation?'* Opinion makes recommendations for appropriate policy, guidance, training and other documentation for the ongoing management and retention of personal information relating to victims. This aims to ensure consistency with the opinion and compliance with DP legislation. We will therefore continue to engage where appropriate with TEO as we work to progress with the recommendations as outlined in this report.

Vulnerable Individuals

38. It is important to note that individuals have experienced violence are likely to be vulnerable. Furthermore, as the EVAWG

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framework and action plan specifically refers to children and young people, this is considered to be an additional vulnerability. The UK GDPR states that *"children merit specific protection with regard to their personal data"*.

39. TEO must work to ensure that the needs of vulnerable individuals are met through the strategic framework. The ICO's Strategic Plan (ICO25) is concerned with ensuring a better understanding of how the personal information of vulnerable individuals is used and accessed, with specific reference to children.

40. TEO (and other relevant organisations) must therefore ensure that such individuals are aware of how their personal information is being used as part of the strategic framework. For example, when passing on referrals, sharing information and conducting research. In addition to this, their rights in relation to this processing must also be communicated.

41. The right to be informed and the importance of providing appropriate privacy information will be crucial to meeting the needs of these individuals.

42. For all individuals, Article 12 of the UK GDPR requires organisations to provide information to them in a way that is concise, transparent, intelligible, easily accessible, and uses clear and plain language. In relation to children's personal data, particular care must be taken to ensure that the information provided to them is appropriately written, using clear and plain language that a child would understand.

Oversight and Accountability

43. In the Section entitled *'Our Approach to Delivery'* it is noted that TEO are putting in place interim governance and accountability structures to assist in the delivery of the EVAWG framework. It is our understanding that this will include an *'Oversight Board'*, *'Programme Board'* and *'Cross Departmental Liaison Groups'*, all of which have differing responsibilities in regard to programme delivery.

44. It is unclear whether these groups will have access to personal

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data as part of the framework's proposals. TEO may need to ensure that each group is aware of their role/responsibilities in respect of any personal data they might have access to. This includes clarifying whether these groups will be acting as a controller, joint controller or processor.

45. Additionally, it is important to have in place appropriate governance arrangements. This will include assessing whether there is a need to have data sharing agreements or controller/processor contracts in place.

46. The consultation also states that as *"delivery progresses, these arrangements may change"* to better reflect the needs of stakeholders. We would like to remind TEO that accountability obligations are ongoing and that these must be reviewed and updated as necessary (Article 24(1) of UK GDPR). As such, any changes to the delivery arrangements should trigger a review of data protection measures to see if they are still fit for purpose.

Conclusion

47. Given the aforementioned links between the EVAWG framework and action plan, the Information Commissioner's Opinion *'Who's Under Investigation?'*, our office is keen to provide further assistance to TEO on this area and any others of a similar nature. This is particularly pertinent given our recent reprimands to organisations for data breaches affecting victims of domestic abuse and the commitments set out within ICO25 to protect the most vulnerable.

48. Should TEO require clarification on any of the points made within this consultation response, please do not hesitate to contact us on 0303 123 1114 or by email at ni@ico.org.uk.

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