

Domestic Memorandum of Understanding production procedure

Document name	Domestic Memorandum of Understanding production procedure
Version number	V3.6
Status	Published
Department/Team	Risk and Governance
Relevant policies	DPIA Policy
Distribution	External
Author/Owner	Chris Braithwaite
Approved by	Claire Churchill
Date of sign off	December 2023
Review by	December 2024
Security classification	Official

Key messages

The main objective of this procedure is to provide:

- a clear procedure for managing requests for, and the drafting of, Memorandums of Understanding (MoUs) concerning information sharing with external stakeholders.
- This document also aims to ensure that, once agreed, MoUs are regularly reviewed and, where appropriate, are easily available to both staff and members of the public.

Does this procedure relate to me?

Anyone who is considering producing an MoU should read this document. In addition, all Information Asset Owners should read this document.

If you believe there is a need to develop an international MoU, the International Directorate will lead on this work. You must contact [the International Directorate](#) to progress this. However, the principles of this procedure still apply as guidelines.

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1. Introduction

- 1.1. MoUs are formal agreements between two or more parties to establish an official (but not legally binding) relationship. For the ICO they will usually relate to the sharing of information for regulatory purposes.
- 1.2. MoUs are a key part of information management and therefore ownership of them should be considered as a key part of the responsibilities of an Information Asset Owner (IAO).

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2. What is a MoU and when is it useful?

- 2.1. MoUs are formal agreements between two or more parties to establish an official (but not legally binding) relationship. For the ICO they will usually relate to the sharing of information for regulatory purposes.
- 2.2. A MoU sets out the broad principles of collaboration or the framework governing the sharing of relevant information and intelligence between the parties. It also sets out the shared aims of the MoU, which is usually to enable closer working between the

parties, including the exchange of appropriate information, so as to assist in the discharging of regulatory functions.

- 2.3. Where appropriate, MoUs are published on the ICO's website [here](#).
- 2.4. This process primarily applies to MoUs with UK-based stakeholders. Separate work to refresh and develop international MoUs is ongoing. This process will be updated to reflect this work once established. The broad process and principles still apply to international stakeholder MoUs.

3. What is a MoU not? When is a MoU not beneficial?

- 3.1. A MoU does **not** give rise to legally binding obligations on the part of any party involved in it. The arrangements set out in a MoU are always subject to what is permitted and required by law. In line with this, a MoU is also always a discretionary agreement. Therefore, a MoU is not appropriate to resolve existing problems in getting information from another organisation.
- 3.2. A MoU is also **not** a data sharing agreement. If you exchange sufficient quantities of personal data to warrant entering a data sharing agreement, that is a separate procedure. To do this, you should consult with Legal (Regulatory Advice and Commercial), the Information Management Team and Information Security.

4. Who is responsible for developing MoUs?

- 4.1. As Information Asset Owners, Directors are responsible for deciding whether a MoU is needed and the development of MoUs, where required, is the responsibility of their area. Where a MoU spans multiple Directorates, all Directors involved are jointly responsible for the development of the MoUs. The actual tasks of drafting MoUs can be delegated within these Directorates, but responsibility will always remain with Directors.
- 4.2. The exception to this is international MoUs. The International Directorate will always be responsible for developing these. You must contact _____ to progress any international MoUs. However, the principles of this procedure still apply as guidelines.
- 4.3. Intelligence, Relationship Management and the Risk and Governance Team may provide limited advice on aspects of the

development of MoUs, but there is no dedicated resource within the ICO to draft MoUs.

5. How do you decide whether to develop a MoU?

5.1. Once you have considered the sections above as to whether a MoU may be appropriate, the following criteria should be considered when deciding whether or not to develop a MoU and/or a Data Sharing Agreement:

- First and foremost, the priority assigned to the relationship via cross-office stakeholder mapping (where one has been assigned).
- The commitment of the other organisation to the MoU.
- The expectation of regular and on-going information sharing between the two organisations (including personal data).
- A need to clarify how shared data will be handled, e.g. the data is special category data, or the data relates to our law enforcement functions.
- The expectation of having to make decisions on access (under data protection, freedom of information, or other legislation).
- The existence of a legislative requirement for a MoU.

5.2. If none of the above criteria are relevant then a less formal agreement may be more suitable, such as project specification or cooperation agreement. Typically, MoUs are usually with other regulatory bodies or public sector organisations.

5.3. It would also be useful at this stage to consider if the partnership will include:

- Data processing that is likely to result in a high risk to individuals then also consider a data protection impact assessment. You should complete a [DPIA screening assessment](#) to demonstrate that compliance issues have been considered. You should contact the Information Management Team to conduct this screening.
- Regular sharing of large amounts of personal data. As stated earlier, you should then also consider a data sharing agreement.

6. What is the role of an Information Asset Owner in MoUs?

- 6.1. MoUs are a key part of information management. Therefore, they should be considered to be a key part of each IAO's role in overseeing the management of information in their area of the business. IAOs responsible for ensuring that appropriate practices and procedures are in place, and this is the reason that this procedure states that Directors are responsible for the development, management and review of MoUs (as they are the IAOs).

7. Detailed procedure

This procedure assumes that the ICO is leading on drafting the MoU. Where that is not the case you should still follow the principles set out within it.

7.1. **Identifying and agreeing the need for a MoU**

The need for a MoU may be raised in several different ways; as identified through stakeholder mapping, senior manager discussion, through any of the SLT Boards, direct requests from the other organisation or the identification of an operational need (for example, PACE teams). Initial discussion with the Intelligence Department may well help consideration.

When a need for a new MoU is identified it should be considered against the criteria with a decision of whether to proceed with an MoU being made by the relevant Director. Where appropriate, the Director may need to contact other Directors where there are cross-Directorate considerations. Where there is a significant cross-office impact, the Director may wish to inform the most relevant SLT Board, although this is unlikely.

Where an international MoU is considered you must contact
to progress this.

Once the ICO has decided to develop the MoU the other organisation should be asked to provide its formal agreement to a MoU being developed as well. Both parties should be committed to the MoU before detailed work starts.

Once there is agreement that an MoU is necessary, the relevant Director should agree who in their Directorate will be responsible for drafting the MoU.

At this point, you should inform [and](#) that a MoU is being developed. The Risk and Governance Team will help the Director to determine whether other Directors and Executive Team members need to be informed that a MoU is being developed. MoU authors should use the MoU template which is [available here](#). Current MoUs are published on the [ICO's website](#), which authors can use for reference.

7.2. **Drafting the MoU**

The starting point should generally be the template supplied by the Risk and Governance Team ([you can access the template here](#)). This template incorporates standard accessibility features and you should ensure the document remains fully accessible as amendments are made.

First draft – internal comments

The requesting Department is responsible for drafting the MoU with inputs where necessary from other departments. In formulating the first draft it is highly recommended that the ICO MoU template is the starting point. This first draft will then be circulated to interested parties in the ICO. This **must** always include Intelligence, Legal (Regulatory Advice and Commercial) and the Relationship Management Service, but other areas to consult will depend on the MoU in question. This may include the Information Management Team, Information Security, relevant Directors or Department Heads.

Second draft – external comments

Once internal comments have been received and integrated into the draft, this second draft should be passed to the partner organisation for circulation and comment at their end. Once they have commented, the draft will be returned to the ICO to consider any further amendments before drafting the third version. You may also need to consult further with ICO colleagues once you receive external comments.

Third draft – all comments considered

External comments should be assessed and the outcome of discussions incorporated into the third draft. This should be the near-final version. This will be circulated both internally and to the other organisation at the same time.

Unless there are any final substantive comments those consulted should confirm that they are content with the draft going forward to signature. From the ICO perspective, the relevant Director is responsible for approving the MoU, although where relevant they may wish to refer this to an Executive Director.

7.3. **Agreeing and signing the MoU**

Where possible, a copy of the finalised draft should be signed in hard copy (a wet signature) by the relevant ICO signatory. This should be scanned at this point before being passed to the other organisation for signing and dating at a relevant level. The signed copy can be exchanged electronically. A final electronic version will also be sent to the other organisation at the same time for their records. In circumstances where exchange of physical documents is not possible or unnecessarily onerous, this can be completed using electronic signatures.

There will be times when the Commissioner is the ICO signatory to an MoU. This will usually be the case where the MoU is being signed by the Chief Executive (or equivalent) of another organisation that is similar in size and status to the ICO. In such circumstances, the relevant Director will continue to be the owner of the MoU, but the following process should be followed for signing:

- The relevant ET member reviews and signs off the MoU.
- The draft MoU is presented to the Commissioner for review and sign off.
- The Commissioner's Private Office will arrange for the Commissioner to sign the MoU and return this to the relevant team, to arrange signature by the other party.

Once signed, a copy should be sent to (if this is a PDF document then a Word version of the final draft should also be provided). The Directorate Business Support Team will store these documents on the SharePoint system. There is no

need to store the signed hard copy other than electronically.

Any data processing relating to the MoU must be reflected within all relevant Directorate Records of Processing Activities (ROPAs).

7.4. **Publishing the MoU**

Unless Freedom of Information Act exemptions apply to the release of the MoU, it will be published on the websites of both organisations, with signatures redacted. The Directorate Business Support Team will be responsible for redacting signatures and arranging publication [in the MoU library](#) on the ICO website. Where an MoU is not to be published, the exemptions being applied should be confirmed to the Directorate Business Support Team. The published version should be the final draft (without signature but with date of signing) converted into PDF.

Where there is a desire for specific communications around the signing of the MoU, such as an in-person signing or a story on the ICO website, the relevant Director should liaise with the Communications Team regarding this.

7.5. **Reviewing the MoU**

The MoU will have to be regularly reviewed, to ensure it is still relevant and to reflect any changes in legislation or practice. The Directorate Business Support Team will maintain a log of the MoUs and will initiate the process.

A commitment to the review frequency should be included within the MoU. This should usually be no less than every two years. Both organisations will be asked to check if there are any changes needed, whether because of changes in legislation or practice, and to confirm that the MoU is still relevant. If the MoU no longer seems relevant, IAOs should discuss with the other party to the MoU to agree whether this is the case. If both parties agree, the IAO should inform the Directorate Business Support Team, who will ensure that the MoU is marked as no longer active and removed from the ICO's website.

7.6. **Other issues**

Deadlines

In general, consultations on the drafts should not need more than a month each. Obviously if there are problems in meeting a deadline,

for example at Christmas, deadlines can be extended. But the aim should be to ensure that reasonable deadlines are kept to and for the whole process to take a maximum of four months.

Substantive areas of dispute

If substantive areas of dispute arise either internally or externally during the consultation process, these must be resolved before the process continues. If this is not possible at the level at which consultation is taking place, then decisions may need to be referred to more senior officials.

Lead organisation

The assumption is that the ICO is in the lead on the development process and our template is being used. Whilst this will often be the case it will not always be so. Decisions on leadership will be made by negotiation. If the ICO is not in the lead, this guidance should still be followed in principle; for example we will still need to formally agree to develop a MoU and we will need to ensure colleagues are fully consulted as part of the ICO's review of, and agreement to, the MoU. We will also need to ensure the format of the MoU document is accessible.

ICO signatory

This will be a member of staff at Director level or above, as identified by the requesting Directorate.

8. Roles and responsibilities

8.1. Directors are responsible for:

- Deciding whether a MoU is needed;
- Drafting the MoU;
- Informing other parts of the organisation of the development of the MoU;
- Consulting within the ICO on the development of the MoU;
- Consulting with the other organisation;
- Signing the MoU;
- Providing a copy signed by both parties to
for storage and publication, and
highlighting any applicable Freedom of Information Act
exemptions that prevent release of the MoU;

- Ensuring any data processing relating to the MoU is reflected within relevant Directorate ROPAs.
- Reviewing the MoU in line with the review schedule.
- As part of the review and when appropriate, agreeing with the other party that the MoU is no longer needed and, if so, informing the Directorate Business Support Team accordingly.

8.2. The Risk and Governance Team is responsible for:

- Assisting Directors in assessing whether they need to inform other Directors about the planned MoU;
- Facilitating discussion at SLT Boards where appropriate;
- Providing the MoU policy, procedure and templates, and ensuring these are kept up to date.

8.3. The Directorate Business Support Team is responsible for:

- Ensuring both a pdf and a word version of the final MoU are stored in Sharepoint; and the PDF version is published on the ICO website where applicable.
- Notifying Directors that reviews are due in line with the review schedule set out within the MoU, or regularly if there is no review schedule.
- Removing MoUs which are no longer active from the website and any relevant databases.

8.4. Other Departments are responsible for:

- Providing detailed comments on drafts where necessary

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Feedback on this document

If you have any feedback on this document, please [click this link](#) to provide it.

Version history

Version	Changes made	Date	Made by
3.6	Amended to reflect the involvement of Directorate Business Support Team in the MOU process. Additional information added about the documents that should be provided and the need for these to be accessible; and also the responsibility for exemptions and updating ROPAs. Formatting change to sections 7 and 8.	6/12/23	Kate Jackson
3.5	Added information about logistics for where the Commissioner signs the MoU and confirming responsibilities for comms. Changed references to Corporate Governance to Risk and Governance Team where appropriate	21/6/23	Chris Braithwaite
3.4	Transferred to new template. Amended title to domestic MoUs. Amended references to Info Access to be Info Management. Fixed various typos and unclear phrasing. Minor reordering to section 1 of the detailed procedure to Updated links to templates and policies. Removed reference to Information Asset Managers.	13/10/22	Chris Braithwaite

Annex – MoU process diagram

Memorandum of Understanding Process

