

Memorandum of Understanding between the Information Commissioner and the Deputy Keeper of the Public Record Office of Northern Ireland

Introduction

1. This Memorandum of Understanding (MoU) establishes a framework for cooperation and information sharing between the Information Commissioner ("**the Commissioner**") and the Deputy Keeper of the Public Record Office of Northern Ireland (**PRONI**), collectively referred to as "**the parties**" throughout this document. In particular, it sets out the broad principles of collaboration and the legal framework governing the sharing of relevant information and intelligence between the parties. The shared aims of this MoU are to enable closer working between the parties (including the exchange of appropriate information), so as to assist them in discharging their statutory, regulatory or supervisory functions. Any reference to the Commissioner shall include his statutory successors.

2. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or PRONI. The parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review. It does not – and cannot – affect the various regulatory or supervisory relationships existing under statute between the parties.

Overall purpose

3. The purpose of this MoU is to:

- Facilitate contact and discussion on matters of common interest, particularly by sharing knowledge, information, expertise and best practice.
- Ensure appropriate consultation in areas of policy and guidance development of mutual interest.

The role and function of the Information Commissioner

4. The Commissioner is a corporation sole appointed by His Majesty the King under the Data Protection Act 2018 to act as the UK's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.

5. The Commissioner is empowered to take a range of regulatory action for breaches of the following legislation:

- Freedom of Information Act 2000 (FOIA);
- Environmental Information Regulations 2004 (EIRs);
- Re-use of Public Sector Information Regulations 2015;
- Environmental Protection Public Sector Information Regulations 2009 (INSPIRE Regulations);
- Data Protection Act 2018 (DPA);
- UK General Data Protection Regulation (UK GDPR);
- Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR);
- Investigatory Powers Act 2016;
- Enterprise Act 2002;
- Security of Network and Information Systems Directive (NIS Directive); and
- Electronic Identification, Authentication and Trust Services Regulation (eIDAS).

6. Article 57 of the UK GDPR and section 115(2)(a) of the DPA 2018 place a broad range of statutory duties on the Commissioner, including monitoring and enforcement of the UK GDPR, promotion of good practice and adherence to the data protection obligations by those who process personal data. These duties sit alongside those relating to the other enforcement regimes outlined in paragraph 5 above.

7. The Commissioner is also responsible also for promoting good practice under section 47 FOIA. In particular the ICO promotes observance of the FOIA Codes of Practice under sections 45 and 46 ¹ and may, with the consent of an authority, assess whether good practice is being followed².

8. The Commissioner is required to consult the Deputy Keeper of the Public Record Office of Northern Ireland about the promotion of observance of the records management Code of Practice³ by bodies subject to the Public Records Act (Northern Ireland) 1923 (PRA NI). The Commissioner is also required to consult the Deputy Keeper before issuing a practice recommendation to one of those bodies⁴.

9. The Commissioner's regulatory and enforcement powers include:

- Issuing decision notices detailing the outcome of an investigation under FOIA or EIR;

¹ FOIA s47(1)

² FOIA s47(3)

³ This is the Code of Practice issued under FOIA s46. A separate Code under s45 sets out good practice in relation to request handling.

⁴ These consultation requirements are at FOIA s47(5)(b) and s48(4)

- Issuing information notices requiring public authorities, individuals, controllers or processors to provide information in relation to an investigation;
- Conducting assessments of compliance with the DPA, UK GDPR, PECR, eIDAS, the NIS Directive, FOIA and EIR;
- Issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of the information rights obligations they regulate;
- Certifying contempt of court should an authority fail to comply with an information notice, decision notice or enforcement notice under FOIA or EIR;
- Administering fines by way of penalty notices in the circumstances set out in section 155 of the DPA;
- Administering fixed penalties for failing to meet specific obligations (such as failing to pay the relevant fee to the Commissioner); and,
- Prosecuting criminal offences related to the information rights legislation they regulate before the Courts.

10. Regulation 31 of PECR, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, also provides the Commissioner with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach PECR. This includes, but is not limited to, breaches in the form of unsolicited marketing which falls within the ambit of PECR, including automated telephone calls made without consent, live telephone calls which have not been screened against the Telephone Preference Service, and unsolicited electronic messages (Regulations 19, 21 and 22 of PECR respectively).

Functions and powers of the PRONI

11. The Public Record Office of Northern Ireland (PRONI) is the official archive and record office for Northern Ireland with a statutory remit to receive, preserve and make available public records and privately deposited archives.

12. PRONI must adhere to their legal obligations under the following legislation:

- Public Records Act (Northern Ireland) 1923
- Disposal of Documents Order (Northern Ireland) No. 167 1925
- The Public Records, Certified Imperial Records Order (Northern Ireland) No. 170 1925
- The Court Files Privileged Access Rules (Northern Ireland) 2016

- Freedom of Information Act 2000 (FOIA);
- Environmental Information Regulations 2004 (EIR);
- Data Protection Act 2018 (DPA);
- General Data Protection Regulation (UK GDPR);
- Code of Practice on the Management of Records (Section 46 of FOIA)

13. PRONI provides information management guidance to support public record-transferring bodies to meet their responsibilities in accordance with the PRA(NI) 1923, the DPA 2018 and FOIA 2000. Alongside the section 46 Code of Practice, bodies in Northern Ireland should conform to guidance published by the PRONI which gives practical advice on information management as it relates specifically to public record keeping in Northern Ireland.

Purpose of information sharing

14. The purpose of the MoU is to enable the parties to share relevant information, which enhances their ability to exercise their respective functions.

15. This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach their statutory responsibilities. In particular each party must ensure that any disclosure of personal data pursuant to these arrangements fully complies with both the UK GDPR and the DPA 2018. The MoU sets out the potential legal basis for information sharing, but it is for each party to determine for themselves that any proposed disclosure is compliant with the law.

Principles of cooperation and sharing

16. The parties recognise that they have complementary expertise and overlapping interests. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the parties will endeavour to co-operate and work together insofar as their respective roles permit. They will share knowledge, expertise, best practice and intelligence in relation to matters of mutual interest and, if there is an overlap or a mutual interest in a policy area, they will consult as appropriate.

17. The parties are committed to the principle of good communication with each other, especially when one organisation's work may have some bearing on the responsibilities of the other organisation. The organisations

will seek to alert each other as soon as practicable to relevant developments and issues within their area of responsibility, subject to complying with any relevant legal requirements applying to the disclosure of information.

18. The parties will comply with the general laws they are subject to, including, but not limited to, local data protection laws; the maintenance of any prescribed documentation and policies; and they will comply with any governance requirements, in particular relating to security and retention, and process personal data in accordance with the statutory rights of individuals.

Promotion of good practice

19. The parties both provide online guidance to help public authorities understand and meet their statutory obligations. Both organisations agree to provide links to relevant guidance produced by the other organisation, and to encourage public authorities to use guidance produced by the other organisation, where appropriate.

20. The parties also provide guidance to data controllers and processors subject to the UK GDPR and the Data Protection Act 2018.

21. The parties agree that when producing guidance that is relevant to the responsibilities of the other organisation they will consult the other organisation.

22. The parties agree that when they receive a request for policy advice that raises issues relevant to the responsibilities of the other organisation they will consult the other organisation.

23. When improvements in a public authority's practice are required to conform to the Codes of Practice under sections 45 and 46 of FOIA, the Commissioner may issue a Practice Recommendation to the public authority. When the required improvements relate to records management, and / or archive services, the Commissioner will consult PRONI, if the public authority is subject to PRA NI. The final decision as to whether a Practice Recommendation should be issued and on its contents will be taken by the Commissioner.

24. When the Commissioner considers a more appropriate course of action would be for the public authority to sign an Undertaking in relation to the good practice of records management and / or archive services referred to in paragraph 22, the Commissioner will consult PRONI, if the body is subject to PRA NI. The final decision as to whether an Undertaking should be sought and on its contents will be taken by the Commissioner.

25. The parties' engagement in international networks and organisations promoting good practice in the management of records and archives and public access to them may prompt joint working within or between such networks. These may include, but not necessarily only include, the International Committee of Information Commissioners, the International Council on Archives.

Assessment of good practice

26. The Commissioner will carry out a number of assessment and audit programmes, which assess compliance with relevant statutory obligations, policies, standards and guidance, and also to highlight good practice. During the course of this work, and where appropriate, the Commissioner will inform or consult PRONI in order to take into account any engagement a public authority has had with PRONI, any intelligence held by PRONI regarding compliance or relevant guidance and support provided by PRONI - and to share good practice.

27. If the Commissioner proposes to issue a Practice Recommendation to a public authority which relates to conformity with the code of practice under section 46 in respect of records which are public records for the purposes of the PRA(NI) 1923, the Commissioner will, under section 48(4) consult PRONI.

28. If the Commissioner proposes to issue an Information Notice to a public authority in order to obtain more information concerning its current practice than the public authority has provided, and the information sought relates to the code of practice under section 46 in respect of records which are public records for the purposes of the PRA (NI) 1923, the Commissioner will consult PRONI.

29. If an assessment of the practice of archives services in relation to the Code of Practice under section 45 of the FOIA appears to the Commissioner to raise general issues concerning archives policy and professional practice, the Commissioner will highlight these to PRONI.

30. In all of these proposed actions, the final decision on the appropriate course of action will be taken by the Commissioner.

Legal basis for sharing information

31. This MoU is without prejudice to any legal or administrative arrangements in place for co-operation of either organisation with other parties in the exercise of their duties. These include, but are not limited to, the Department for Science, Innovation and Technology, the

Department for Communities, the Scottish Information Commissioner, the First Tier Tribunal (Information Rights) and the Cabinet Office.

Information shared by PRONI with the Commissioner

32. The Commissioner's statutory function relates to the legislation set out at paragraphs 4 and 5, and this MoU governs information shared by PRONI to assist the Commissioner to meet those responsibilities. To the extent that any such shared information is to comprise personal data, as defined under the UK GDPR and DPA 2018, PRONI is a data controller so must ensure that it has the legal basis to share it and that doing so would otherwise be compliant with the data protection principles.

33. Section 131 of the Data Protection Act 2018 may provide a legal basis for PRONI to share information with the Commissioner. Under this particular provision, PRONI is not prohibited or restricted from disclosing information to the Commissioner by any other enactment or rule of law provided it is "information necessary for the discharge of the Commissioner's functions".

Information shared by the Commissioner with PRONI

34. The Commissioner, during the course of his activities, will receive information from a range of sources, including personal data. He will process all personal data in accordance with the principles of the UK GDPR, the DPA 2018 and all other applicable legislation. The Commissioner may identify that information he holds, which may include personal data, ought to be shared with PRONI as it would assist them in performing their functions and responsibilities.

35. Section 132(1) of the DPA 2018 states that the Commissioner can only share confidential information with others if there is lawful authority to do so. In this context, the information will be considered confidential if it has been obtained, or provided to, the Commissioner in the course of, or the purposes of, discharging his functions, relates to an identifiable individual or business, and is not otherwise available to the public from other sources. This therefore includes, but is not limited to, personal data. Section 132(2) of the DPA 2018 sets out the circumstances in which the Commissioner will have the lawful authority to share that information with PRONI. In particular, it will be lawful in circumstances where:

- The sharing was necessary for the purpose of the Commissioner discharging his functions (section 132(2)(c));

- The sharing was made for the purposes of criminal or civil proceedings, however arising (section 132(2)(e)); or
- The sharing was necessary in the public interest, taking into account the rights, freedoms and legitimate interests of any person (section 132(2)(f)).

36. The Commissioner will therefore be permitted to share information with PRONI in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined above. In doing so, the Commissioner will identify the function of PRONI with which that information may assist, and assess whether that function could reasonably be achieved without access to the particular information in question. In particular, where the information proposed for sharing with PRONI amounts to personal data the Commissioner will consider whether it is necessary to provide it in an identifiable form in order for PRONI to perform its functions, or whether disclosing it in an anonymised form would suffice.

37. If information to be disclosed by the Commissioner was received by him in the course of discharging his functions as a designated enforcer under the Enterprise Act 2002, any disclosure shall be made in accordance with the restrictions set out in Part 9 of that Act.

38. Where information is to be disclosed by either party for law enforcement purposes under section 35 (4) or (5) of the DPA 2018 then they will only do so in accordance with an appropriate policy document as outlined by section 42 of the DPA 2018.

39. Where a request for information is received by either party under data protection laws or FOIA, the recipient of the request will seek the views of the other party as described in the FOIA section 45 Code of Practice, where the information being sought under the request includes information obtained from, or shared by, the other party. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request as data controller in respect of that data.

Method of exchange

40. Appropriate security measures shall be agreed to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender.

Confidentiality and data breach reporting

41. Where confidential material is shared between the parties it will be marked with the appropriate security classification. Where one party has received information from the other, it will consult with the other party before passing the information to a third party or using the information in an enforcement proceeding or court case.

42. Where confidential material obtained from, or shared by, the originating party is wrongfully disclosed by the party holding the information, this party will bring this to the attention of the originating party without delay. This is in addition to obligations to report a personal data breach under the UK GDPR and/or DPA where personal data is contained in the information disclosed.

Duration and review of the MoU

43. The parties will monitor the operation of this MoU and will review it every two years. The MoU will be published on the parties' websites.

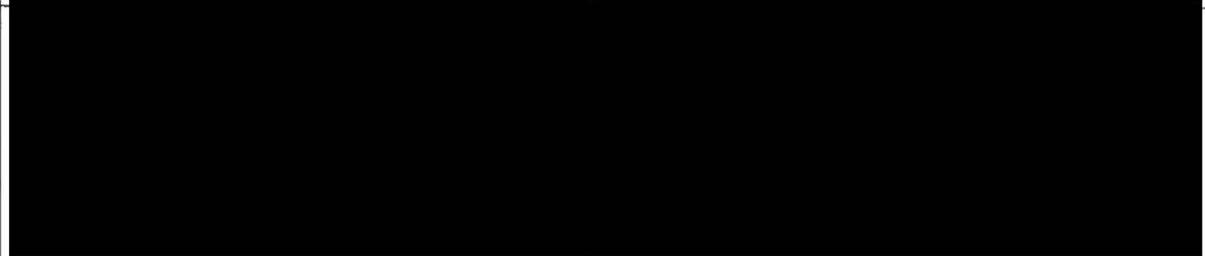
44. The Commissioner and the Deputy Keeper of the Public Record Office of Northern Ireland, will meet as appropriate to discuss matters of mutual interest and the operation of this MoU. These meetings may be appropriately deputised when necessary and will also be underpinned by regular liaison between their officials including meetings, as and when required.

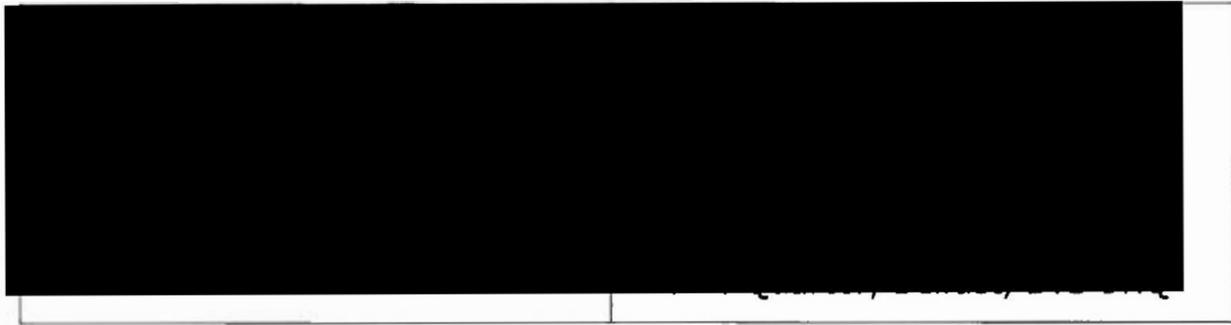
45. Any minor changes to this memorandum identified between reviews may be agreed in writing between the parties.

46. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation.

Key contacts

47. The parties have both identified a key person who is responsible for managing this MoU.

Information Commissioner's Office	Public Record Office of Northern Ireland
	



48. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.

Signatories

Warren Seddon Director of Freedom of Information and Transparency Information Commissioner's Office	David Huddleston Acting Director and Deputy Keeper of the Public Record Office of Northern Ireland