



**AVON &
SOMERSET**
POLICE & CRIME
COMMISSIONER



DATA SHARING AGREEMENT / JOINT WORKING PROTOCOL

The Parties

AVON AND SOMERSET CONSTABULARY ("THE CONSTABULARY")

THE OFFICE of the POLICE AND CRIME COMMISSIONER FOR AVON AND SOMERSET ("OPCC")

Purpose:

The purpose of this document is to set out the terms and conditions under which information held by the Constabulary will be lawfully shared with the OPCC and vice versa.

This agreement recognises that effective joint working is vital in the prevention and detection of crime, support to victims and witnesses and meeting the expectations of the public.

This agreement has been developed with reference to Data Protection Act Legislation (UKGDPR and Data Protection Act 2018), the Police Reform and Social Responsibility Act 2011, Police (Complaints and Misconduct) Regulations 2020 and the Policing Protocol 2011.

Definitions:

The following words and phrases used in this Protocol shall have the following meanings except where the context otherwise requires:

Purpose means the purpose of the protocol

Controller means the legal or natural person, an agency, a public authority, or any other body who, alone or when joined with others, determines the purposes of any personal data and the means of processing it

Data Protection Legislation means (i) the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy and (iii) all applicable Law about the processing of personal data and privacy.

UK GDPR means the UK General Data Protection Regulation

Special Categories of Personal Data has the same meaning as in Article 9 of UKGDPR.

Human Rights Act - Means The Human Rights Act 1998 which sets out the fundamental rights and freedoms that everyone in the UK is entitled to. It incorporates the rights set out in the European Convention on Human Rights (ECHR) into domestic British law.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by either party, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Subject Rights Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their personal data or request amendment or deletion.

Freedom of Information Request means a request for non personal information or organisation data under the terms of the Freedom of Information Act 2000.

Police Data means any Data including Personal Data and Special Categories of Personal Data, to be shared between Controllers.

Party means a Party to this Contract.

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted.

Complaints Regulations means the Police (Complaints and Misconduct) Regulations 2020.

The need to share information:

The PCC is required by law to hold the Chief Constable to account for the effective and efficient policing by the Constabulary.

The PCC is specifically tasked to:

- Secure the maintenance of the Constabulary.
- Secure that the Constabulary is efficient and effective.
- Hold the Chief Constable to account for the performance of the Constabulary and for the exercise of the functions under the direction and control of the Chief Constable.
- Set the Police budget, the police share of Council tax and the local 'Police and Crime Plan which sets out the overall strategy for Policing in the Constabulary area.
- Monitor and take a role in Police Complaints. The PCC became legally responsible for independently reviewing the outcome and handling of expressions of dissatisfaction (complaint) against the Constabulary.

In order to successfully fulfil these functions, the PCC will need to be supplied by the Constabulary with relevant information about policing matters. The PCC will receive complaints and enquiries about policing matters and other matters within the role of the PCC that will require liaison with the Chief Constable and Constabulary Officers/Staff and sharing of information to ensure public confidence and the best service to the public.

Legal Basis for sharing:

Section 36 of the Police Reform and Social Responsibility Act 2011 requires that the Chief Officer of Police must give the PCC such reports on policing matters that the PCC may require the Chief Officer to give. The Act also states that such information must be in a form (if any) specified by the PCC (the elected local policing body). The Policing Protocol provides that:

"In order to enable the PCC to exercise the functions of their office effectively, they will need access to information and officers and staff within their Force area. Such access to any information must not be unreasonably withheld or obstructed by the Chief Constable and / or fetter the Chief Constable's direction and control of the Force."

Where information is shared between the parties to this Agreement any transfer of information must be compliant with the Data Protection legislation and the Human Rights Act, as must any further processing of that information by either party.

Policy Oversight:

The disclosure of information will, in the main, be undertaken by individuals from either organisation and they will individually be responsible for ensuring that their actions are in accordance with the terms of this document and the relevant legislation.

However, in addition, general oversight of the operation of this Agreement and the sharing of information pursuant to it will be undertaken jointly by the following roles on behalf of each organisation:

- Joint Data Protection Officer – Constabulary and OPCC
- Chief of Staff – OPCC

They will also be responsible for periodic reviews of this document to ensure continued relevancy and accuracy in the light of practical working experience and future developments.

Vetting

All members of the OPCC will be vetted to a minimum of RV level, with some roles requiring MV. This is in line with the Constabulary vetting procedure and the Authorised Professional Practice.

What information may be shared?

Information that is relevant and necessary in order for the PCC to undertake the functions defined in the Policing Protocol Order is potentially able to be shared. This will include both non-personal and personal data.

Sharing will not take place where there are any specific legal restrictions or where it would fetter, restrict or restrain the Chief Constable's direction and / or control of the Constabulary, or where it may prejudice ongoing or potential investigations and / or prosecutions by the Constabulary or other agency. The Constabulary will also not share material outside of the vetting level requirements.

The PCC will also wish to share data with the Constabulary where it supports a policing purpose or where it is necessary to carry out the functions of the PCC.

Process for sharing Data or Police Data

The following principles should be applied when sharing information between the Constabulary and the PCC:

Specific roles within the OPCC have been reviewed as requiring direct access to some of the Constabulary Police Systems. Any request for an extension to access will be submitted via a report to the DPO who will assess the request alongside the Information Asset Owner / System owner within the Constabulary. The outcome of these will be retained and reviewed. No assertion can be made that access to specific systems will always be given. Where it is appropriate to do so, access will be granted.

Where direct access to a system is not authorised a request can be made to the Constabulary for the disclosure of information.

- Personal data may be required in order to measure performance in key areas. However where possible this will be statistical or anonymised. Where this is not possible the minimum personal data will be shared and used only for performance analysis of for the purpose that it was requested?
- Information requests will be proportionate, justified and for a clearly defined purpose and will not place an unreasonable administrative burden on either party in this agreement.
- Data shall be shared and disposed of securely. This includes but is not limited to: retention periods, breach policies, training policies and Data Protection Impact Assessments.
- Disclosure of personal data should be recorded in order to ensure that there is a simple audit trail for reference in any subsequent complaint or litigation.
- When appropriate, protective measures may be applied to the data exchanged.
- Each party will ensure that the appropriate contracts or agreements are in place to agree the processing by third parties or volunteers.
- If a request from the OPCC is refused, the Constabulary must outline the refusal and provide an indication as to whether that information would be available in the future.

Any data shared between Controllers will become their responsibility to manage in line with their Information management policies and procedures.

Use of information

Information shared under the terms of this document shall only be used for the purpose(s) for which it was provided, as otherwise required by common or statute law or as subsequently agreed between the relevant Controllers.

In addition to any statutory requirements information must be managed and processed securely on a 'need to know' basis and not further disclosed without the agreement of the originating party. In addition, where protectively marked (Government Security Classification) the recipient will undertake to manage the information in accordance with that marking.

As independent Controllers both parties are required to maintain an up-to-date notification to the Information Commissioner and are obliged to ensure that they have appropriate security measures, training, policies and operating procedures in place to enable the effective processing of personal information by their staff and/or third parties acting on their behalf. The ISO/IEC 27002:2013 Code of Practice for Information Security Management provides a baseline for security arrangements.

When the information is no longer required it must either be securely returned to the originator or securely destroyed by appropriate means.

Complaints and liability for breaches

In the event of a complaint being received about the information exchanged or the manner in which it has been used by the other organisation, the receiving party will advise the other party as soon as possible and in any event before responding to the complaint.

It is anticipated that both organisations will, where appropriate, work together to resolve complaints, however as independent Controllers each organisation retains responsibility and liability for its processing of personal data.

Each party will be accountable for any misuse of the information supplied to it and the consequences of such misuse by its employees, servants, or agents.

Breaches and any immediate action taken to mitigate the risk caused by that breach must be notified to the originating partner as soon as is practicable, and in any case, within 72 hours. Consideration should also be given as to whether there is an obligation to notify the Information Commissioner's Office (ICO) of any breach.

All breaches should be reported immediately by either party to the shared Data Protection Officer:

DPO@avonandsomerset.police.uk

Requests under the Freedom of Information Act and Data Protection Legislation

It is essential that both organisations work closely together to manage requests for information that may originate from or impact on the operations of the other party. Whilst both organisations fully embrace transparency it is recognised that there are occasions where the application of exemptions are both necessary and appropriate in the greater public interest; for example, to protect the integrity of operational policing.

Data Protection Legislation (Subject Rights)

All requests for information under the Subject Rights provisions will be dealt with by the person responsible for Data Protection within the organisation. If personal data is identified as belonging to the other party, it will be the responsibility of the receiving party to contact the other party for the originating party to determine whether the latter wishes to claim an exemption under the provisions of the Act.

Freedom of Information Act


Where a request is received for non-personal data or for third party personal data which has originated from the other party, the recipient should liaise with the 'owning' party before disclosing to ensure that there is no wish to claim an exemption under the Act.

It is recognised that at times the OPCC may utilise the subject matter experts within the Constabulary for advice and assistance in respect of requests received. However, the final decision in respect of a disclosure will rest with the receiving party as an independent Controller.


Signatories

By signing this Agreement the Police and Crime Commissioner and the Chief Constable acknowledge the requirements placed upon them when sharing information in support of the legitimate activities of either or both organisations.

Signed on behalf of Avon and Somerset Constabulary

By ...  on.....17th December 2021.....
Chief Constable Sarah Crew Date

Signed on behalf of the Police and Crime Commissioner for Avon and Somerset

By  on.....
Name, title, position PCC AaS Date 20 DEC 2021

Version control and changes:

Version	Author	Date	Changes
1.0	Legal Services	December 2018	
2.0	Kate Britton DPO	September 2021	Updates in respect of legislation, change to format, added definitions, vetting status and further clarification.

Associated Joint policies

Police and Crime Commissioner and Chief Constable for Avon and Somerset Constabulary – Joint Scheme of Governance.

Police and Crime Commissioner and Chief Constable for Avon and Somerset Constabulary – Joint Governance Framework.

