

MEMORANDUM OF UNDERSTANDING

between the

Jersey Data Protection Authority/Information Commissioner

and

Office of the Children's Commissioner for Jersey

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Definitions

In this Memorandum of Understanding, unless the context requires otherwise:

“applicable law”	means any law (statutory, common, or customary) applicable to Jersey to a matter covered by this MoU;
“Children’s Commissioner” or “CCJ”	means the Children’s Commissioner for Jersey (appointed pursuant to Article 3 of the Commissioner for Children and Young People (Jersey) Law 2019);
“Controller”	means the same as defined in Article 1 of the Data Protection (Jersey) Law 2018;
“DPJL 2018”	means the Data Protection (Jersey) Law 2018 (as may be amended from time to time);
“DPAJL 2018”	means the Data Protection Authority (Jersey) Law 2018 (as may be amended from time to time);
“FOI Law”	means the Freedom of Information (Jersey) Law 2011 (as may be amended from time to time);
“GDPR”	means the General Data Protection Regulation (EU) 2016/679;
“Information Commissioner”	means the Information Commissioner for Jersey (appointed pursuant to Article 5 of the Authority Law);
“JDPA”	means the Jersey Data Protection Authority;
“JOIC”	means the Jersey Office of the Information Commissioner, which is the operating name of the JDPA;
“MoU”	means this memorandum of understanding;
“Parties”	means the JCC and the JDPA/Information Commissioner;
“Person”	means a natural person, legal entity, partnership, or unincorporated association;
“Receiving party”	means either party receiving information from the other under this MoU;
“Sending Party”	means either party when sending information to the other under this MoU.

Memorandum of Understanding (“MoU”)

between the

**Jersey Data Protection
Authority
 (“JDPA”)/Information
Commissioner**

-and-

**Children’s Commissioner
for Jersey
 (“CCJ”)**

Recitals

- A. The JDPA is a statutory body established under the Jersey Authority Law to act as Jersey’s independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals. The JDPA consists of the Authority, the Information Commissioner, and the staff of the office. The operational name for the Information Commissioner and staff of the office is the JOIC.
- B. The JDPA is empowered to take a range of regulatory action for breaches of the DPJL 2018, the Authority Law and the Freedom of Information (Jersey) Law 2016 (the “**FOI Law**”).
- C. Part 4 of the Authority Law places a broad range of statutory duties on the JDPA, including monitoring and enforcement of the DPJL 2018, 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 enforcement regime under the FOI Law.
- D. The JDPA’s regulatory and enforcement powers include:
 - a. Conducting assessments of compliance with the DPJL 2018, the DPAJL 2018 and the FOI Law;
 - b. Issuing information notices requiring individuals, controllers, or processors to provide information in relation to an investigation;
 - c. 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 data protection legislation and other information rights obligations;
 - d. Administering fines by way of penalty notices in the circumstances set out in Article 26 of the Authority Law;
 - e. Issuing decision notices detailing the outcome of an investigation under the FOI Law;
 - f. Certifying contempt of court should a public authority fail to comply with an information notice, decision notice or enforcement notices under the FOI Law;
 - g. Investigating potential regulatory matters including liaising with the Jersey Financial Services Commission where appropriate; and
 - h. Investigating potential criminal offences and liaising with the States of Jersey Police where appropriate.

- E. The Children's Commissioner is a statutory body established under Art.3 of the Commissioner for Children and Young People (Jersey) Law 2019. It is independent of the Minister for Children, the Chief Minister, and the Government of Jersey.
- F. The Children's Commissioner promotes and protects children and young people's rights and works for every child and young person in Jersey who is:
- Under the age of 18
 - Under the age of 25 if they have a disability, have been care experienced or have been involved with the youth justice system
 - Placed off-island for their care or treatment

Their powers include:

- Providing children and young people with information about their rights. Supporting children and young people to complain.
- Collaborating with people and organisations who provide services to help them to solve any problems or complaints at the earliest opportunity.
- Asking for information from people providing services to children and young people.
- Visiting places where children and young people are cared for, accommodated, or receive services and speak to them.
- Investigating cases where the rights of children and young people have not been respected and suggest how things could be improved.
- Going to court for children and young people in certain circumstances.

Purpose and Principles

1. This Memorandum of Understanding (MoU) establishes a framework for cooperation and information sharing between the JDPA and the CCJ (the **Parties**). 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, to assist them in discharging their regulatory functions.
2. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the JDPA or the CCJ. The parties have determined that they do not exchange enough personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

Purpose of information sharing

3. The purpose of the MoU is to enable both the JDPA and the CCJ to share relevant information which enhances their ability to exercise their respective functions.
4. 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 the DPJL 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

5. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the Parties agree that they will alert each other to any potential breaches of the legislation regulated by the JDPA, within the context of this relationship, discovered whilst undertaking regulatory duties, and provide relevant and necessary supporting information.
6. Similarly, although again subject to any legal restrictions on the disclosure of information, the JDPA will, at its discretion, alert the CCJ to any matters that may fall within the remit of the CCJ within the context of this relationship and provide relevant and necessary supporting information.
7. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the parties will:
 - a. Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and
 - b. Consult one another on any issues which might have significant implications for the other organisation.

8. 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 comply with any governance requirements in particular relating to security and retention, and process personal data in accordance with the statutory rights of individuals.
9. Information exchange will normally be responsive and will specifically relate to concerns as they arise. The parties may also wish to proactively share emerging themes or trends.
10. There will be a two-way sharing of information, which may be volunteered by one regulator to the other or provided in response to a particular request.

Legal basis for sharing information

Information shared by the CCJ to the JDPA

11. The JDPA's statutory functions relate to the legislation set out at paragraph 4, and this MoU governs information shared by the CCJ to assist the JDPA to meet those responsibilities. To the extent that any such shared information is to comprise personal data, as defined under the DPJL 2018, the CCJ is a Data Controller so must ensure that it has legal basis to share it and that doing so would otherwise be compliant with the data protection principles.
12. Schedule 2 Part 2 para.13 of the DPJL 2018 may provide a legal basis for the CCJ to share information with the JDPA. Under this particular provision, the CCJ is not prohibited or restricted from disclosing information to the JDPA by any other enactment or rule of law provided it is "information necessary for the discharge" of the CCJ's functions.
13. It is an offence under Art.31 of the Regulation of Care (Jersey) Law 2014 for CCJ to disclose confidential personal information, unless a 'defence' under Art.32 of that law is engaged. Even where a defence is engaged, CCJ will only disclose confidential personal information to the JDPA where it is lawful to do so, and where the public interest in sharing the information outweighs any likely impact upon privacy.

Information shared by the JDPA to the CCJ

14. The JDPA, during the course of its activities, will receive information from a range of sources, including personal data. It processes all personal data in accordance with the principles of the DPJL 2018 and all other applicable legislation. The JDPA may consider that certain of the information it holds, which may include personal data, ought to be shared with the CCJ as it would assist them in performing their functions and responsibilities.
15. Art.8 of the DPJL 2018 states that the JDPA 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 has been obtained, or provided to, the JDPA in the course of, or the purposes of, discharging its 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. Art.8(2) of the DPAJL 2018 sets out the circumstances in which the JDPA will have the lawful authority to share that confidential information with CCJ. In particular, it will be lawful in circumstances where:

- a. The sharing was necessary for the purpose of the JDPA discharging its functions (Art.8(2)(c));
- b. The sharing was made for the purposes of criminal or civil proceedings, however arising (Art.8(2)(d)); or
- c. The sharing was necessary in the public interest, taking into account the rights and freedoms or legitimate interests of any person (Art.8(2)(e)).

16. The JDPA will therefore be permitted to share information with the CCJ in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at paragraph 15. In doing so, the JDPA will identify the function of the CCJ with which that information may assist and assess whether that function could reasonably be achieved without access to the information in question. Where the information proposed for sharing with the CCJ amounts to personal data the JDPA will consider whether it is necessary to provide it in an identifiable form for the CCJ to perform its functions, or whether disclosing it in an anonymised form would suffice.

17. Where a request for information is received by either party under data protection laws or the FOI Law, the recipient of the request will seek the views of the other party as described in the Code of Practice issued under Art.44 of the FOI Law, 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.

No obligation to meet requests

18. This MoU is to be construed consistently with the right of either the JDPA or CCJ to decline or limit cooperation on particular matters, on the ground that to otherwise engage would be inconsistent with domestic laws, policies or priorities, or on the grounds of resource constraints or based on an absence of mutual interest.

Contact points

19. The JDPA and CCJ will designate a primary contact for the purposes of any communications under the MoU. 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 work to minimise same.

Confidentiality and breach reporting

20. 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 Sending Party.
21. All non-public information shared under this MoU will be marked as such by the Sending Party and marked with the appropriate security classification.
22. Where one party has received information from the other, it will consult (where permissible) with the other party before passing the information to a third party or using the information in an enforcement proceeding or court case and notify the Sending Party if it anticipates a legally enforceable demand for disclosure of the information.
23. Similarly, the Receiving party will notify the Sending Party if any legally enforceable demand for disclosure of the information is received, unless this is not practicable because of urgency or prohibited by law.
24. If requested by the Sending Party in relation to a legally enforceable demand for disclosure of the information, assert any legal exemptions or privileges against disclosure on behalf of the Sending Party.
25. If it is not practicable to notify the Sending Party of the receipt of a legally enforceable demand for disclosure of the information, assume the Sending Party will wish to assert any legal exemptions or privileges against disclosure.
26. Where confidential material obtained from, or shared by, the Sending Party is wrongfully disclosed by the Receiving party holding the information, this party will bring this to the attention of the Sending Party immediately. This is in addition to obligations to report a personal data breach under the DPJL 2018 where personal data is contained in the information disclosed.
27. In accordance with relevant legislation, the JDPA and CCJ will protect the confidentiality and sensitivity of all unpublished and other confidential information received from the other, and maintain effective controls designed to minimise the risk of inappropriate disclosures.
28. The JDPA and CCJ will liaise where relevant, to the extent permitted by law and having regard to their respective objectives, on responding to enquiries from the public, including freedom of information requests and will consult each other before releasing information originally belonging to the other.

Retention and disposal of information

29. The JDPA and CCJ acknowledge that any information provided under this MoU must not be retained for longer than is reasonably required to fulfil the purpose for which it was sought or for longer than permitted under the DPJL 2018 or any other regulations of

requirements. As soon as practicable after any information supplied under this MoU is no longer required, the relevant party will dispose of it in a secure manner.

Commencement, review, and termination

30. This MoU:

- a. Does not create any enforceable rights;
- b. Does not modify or supersede any applicable law;
- c. Applies only so far as it is consistent with the independent roles and statutory obligations of the parties;
- d. Takes effect once both parties have signed it; and
- e. May be terminated by 30 days' written notice from one party to the other.


31. The parties will keep the operation of this MoU under review and consult where necessary with a view to improving its operation and resolving any matters.

32. Any changes to this MoU can only be made by mutual agreement.

Publication

33. Either, or both, or the parties may make a copy of this MoU or the text of it, publicly available.

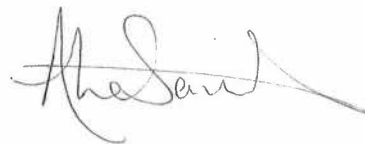
For the JDP



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Paul Vane
Information Commissioner
[DATE] 18/04/2023 .

For CCI



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Andrea Le Saint
Acting Children's Commissioner
22nd March 2023