



DATA SHARING AGREEMENT - CHECKLIST



Guidance for Organisations

This document is purely for guidance and does not constitute legal advice or legal analysis. It is intended as a starting point only, and organisations may need to seek independent legal advice when renewing, enhancing or developing their own processes and procedures or for specific legal issues and/or questions.



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Data Sharing Agreement /Checklist

'Data sharing' is the disclosure of data from one or more organisations to a third party organisation or organisations, or the sharing of data between different parts of an organisation. (Information given by controllers to processors, which the processors deal with in accordance with the controller's instructions is a different relationship and outside the scope of this guidance note. For specific information relating to the controller/processor relationship and the specific legal arrangements that need to be in place please see our separate **guidance note**.)

Any data controller who is involved in the sharing of personal data should adopt an approach which ensures that personal information is collected and shared in a way that is fair, transparent and in line with the rights and expectations of the people whose information you are sharing.

Data sharing can take the form of:

- A reciprocal exchange of data;
- A one way transmission of data;
- One or more organisations providing data to a third party or parties;
- Several organisations pooling information and making it available to each other;
- Several organisations pooling information and making it available to a third party or parties;
- Exceptional, one-off disclosures of data in unexpected or emergency situations;
- Different parts of the same organisation making data available to each other;
- An organisation provide another with access to personal data held on its own systems.

TIP

Data Sharing arrangements should be embodied in a legal document. The parties involved in this type of arrangement should establish a bespoke legal document setting out their respective roles and responsibilities.

Some data sharing doesn't involve personal data, for example where only statistics that cannot identify anyone are being shared. The Data Protection (Jersey) Law 2018 does not apply to that type of sharing because it does not involve 'personal data' (for more information on what constitutes 'personal data' please see our separate **guidance note**.)

There are the two main types of data sharing which requires careful consideration and execution:

- Systematic, routine data sharing where the same data sets are shared between the same organisations for an established purpose;
- Exceptional, one-off decisions to share data for any of a range of purposes.

Different approaches apply to these two types of data sharing. Before sharing any of the personal data you hold, you will need to consider all the legal implications of doing so including whether it is necessary to share that information.

The **record of sharing** checklist will assist you in identifying the issues you need to consider when deciding whether to share personal data.

Primarily, any data controller must, when deciding whether to enter into an arrangement to share personal data (either as a provider, a recipient or both), have identified the objective that it is meant to achieve.



The data controller should consider the potential benefits and risks, either to individuals or society, of sharing the data. Additionally, an assessment of the likely results of not sharing the data should be undertaken and documented.

In clarifying the clear sharing objective(s) and exactly what is the sharing meant to achieve, will also assist you in identifying and documenting the following;

- What data you need to share and who with;
- What information needs to be shared? You shouldn't share all the personal data you hold about someone if only certain data items are needed to achieve your objectives;
- Who requires access to the shared personal data? Employ a 'need to know' principle. This should also address any necessary restrictions on onward sharing of data with third parties;
- When should it be shared? Set out whether the sharing should be an on-going, routine process or whether it should only take place in response to particular events;
- How should it be shared? Address the security surrounding the transmission or accessing of the data and establishing common rules for its security;
- Detail how if the sharing is achieving its objectives? Evaluate if it is still appropriate and confirm that the safeguards still match the risks;
- What risk does the data sharing pose? Is any individual likely to be damaged by it? Is any individual likely to object? Undertake a **data protection impact assessment**;
- Could the objective be achieved without sharing the data or by anonymising it?

If you are receiving the data:

- Are you confident about the source of the data and that the person providing it to you can explain:
 - » The lawful basis upon which it was obtained;
 - » How it was collected;
 - » What data subjects were told about any sharing;
 - » Whether the information is accurate and up-to-date;
 - » Whether you have only been provided with what is necessary for your purposes.

The Data Protection (Jersey) Law 2018 requires that personal data be processed fairly and that data subjects should be made aware about how their information is being processed. In a data sharing context, a privacy notice should at least tell the individual;

- Why you are going to share personal data,;
- Who you are going to share it with – this could be actual named organisations or types of organisations.

TIP



The Data Protection (Jersey) Law 2018 affords individuals certain rights over their personal data.

These include:

- The right to access personal data held about them.
- The right to know how their data is being used.
- The right to object to the way their data is being used.

Ensure that your agreement considers this aspect of your obligations.

Jersey Office of the Information Commissioner, 2nd Floor, 5 Castle Street, St Helier, Jersey JE2 3BT

Telephone number: +44 (0) 1534 716530 | **Email:** enquiries@jerseyoic.org