

**MEMORANDUM OF UNDERSTANDING**

**between the**

**Jersey Data Protection Authority**

**and**

**the Guernsey Office of the Data Protection Authority**

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## Definitions

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

<b>“Applicable Data Protection Laws”</b>	means any law, regulation or requirement applicable in Jersey and Guernsey from time to time, and where the context permits includes: <ul style="list-style-type: none"><li>(a) any law, regulation or order in force anywhere in the world; and</li><li>(b) any rule, direction, requirement guidance or policy made or given by or to be taken into account by an Authority;</li></ul>
<b>“Authority”</b>	means the GDPA and/or the JDPA;
<b>“Authority Law”</b>	means the Data Protection Authority (Jersey) Law 2018 (as may be amended from time to time);
<b>“Commissioner”</b>	means the Information Commissioner for Jersey (appointed pursuant to Article 5 of the Authority Law) and the Data Protection Commissioner for Guernsey (appointed pursuant to [Schedule 6, para 5]);
<b>“Covered Privacy Contravention”</b>	means conduct that would be in contravention of the Applicable Data Protection Laws of one Authority’s country and that is the same or substantially similar conduct that would be in contravention of the Applicable Data Protection Laws of the other Authority’s country;
<b>“DPJL 2018”</b>	means the Data Protection (Jersey) Law 2018;
<b>“GDPL 2017”</b>	means the Data Protection (Bailiwick of Guernsey) Law, 2017;
<b>“GDPA”</b>	means the Office of the Data Protection Authority in the Bailiwick of Guernsey;
<b>“GDPR”</b>	means the General Data Protection Regulation, regulation (EU) 2016/679;
<b>“Islands”</b>	means the Bailiwick of Jersey (“ <b>Jersey</b> ”) and the Bailiwick of Guernsey (“ <b>Guernsey</b> ”);
<b>“JDPA”</b>	Means the Jersey Data Protection Authority;
<b>“JOIC”</b>	means the Office of the Information Commissioner in Jersey;
<b>“MoU”</b>	means this Memorandum of Understanding;
<b>“Person”</b>	means a natural person, legal entity, partnership or unincorporated association;
<b>“Request”</b>	means a request for assistance under this Memorandum;

**“Receiving Authority”**

means the Authority to whom a request for assistance is made under this MoU; and

**“Requesting Authority”**

means the Authority making a request for assistance under this MoU.

## Memorandum of Understanding ("MoU")

between the

**Jersey Data Protection  
Authority ("JDPA")**

**-and-**

**Guernsey Data Protection  
Authority ("GDPA")**

### Recitals

- A. The JDPA is a statutory body established under the 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 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 Authority Law 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 GDPA is a statutory body established under the Data Protection (Bailiwick of Guernsey) Law, 2017 to act as Guernsey's independent regulator to uphold data protection rights. The GDPA consists of the Authority, Data Protection Commissioner and the staff of the office.

- F. The GDPR is empowered to take a range of regulatory action for breaches of the GDPR 2017 and other applicable legislation including the Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinances, 2018, and the Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018.
- G. Part XII of the GDPR 2017 places a broad range of statutory duties on the GDPR, including monitoring and enforcement of the GDPR 2017, promotion of good practice and adherence to the data protection obligations by those who process personal data.
- H. The GDPR's regulatory and enforcement powers include:
  - a. conducting assessments of compliance with the GDPR 2017 (and any subordinate legislation);
  - b. issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
  - c. issuing 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;
  - d. administering fines by way of penalty notices in the circumstances set out in Section 74 of the GDPR 2017;
  - e. investigating potential criminal offences including liaising with the States of Guernsey Police.

### **Purpose and Principles**

- 1. The purpose of this MoU is to provide a framework for the working relationship between the Authorities. In particular, it establishes a framework for the exchange of relevant information to enable or assist the Authorities to carry out their respective statutory functions. This MoU also seeks to establish a working framework for the development of this relationship in practice.
- 2. The Authorities enter into this MoU to *inter alia*:
  - a. enhance the exchange of information and cooperation between the Authorities;
  - b. promote cross-border cooperation in investigation and enforcement; and
  - c. assist each other in training, education, promotion, policy and compliance activity.
- 3. The MoU does not modify or supersede any Applicable Data Protection Laws, regulations and requirements and any obligation herein shall be construed as being subject to any Applicable Data Protection Laws, regulations and requirements. Notwithstanding any other provision of this MoU, this MoU does not create any enforceable rights. This MoU does not affect any arrangements either of the Authorities may have under other MoUs.

### **Liaison**

- 4. The Commissioners shall, in the first instance, meet bi-annually at a time and date to be agreed.

5. The meetings will be an opportunity to discuss items of mutual interest and concern in relation to the interface and operation of the DPJL 2018, GDPL 2017, the GDPR and any other matters as the Commissioners shall deem appropriate. Each Commissioner may be accompanied by members of their respective staff, as deemed appropriate.
6. The meetings will rotate between their respective offices (and islands) and the host Commissioner will act as meeting chair and provide the secretariat function, unless agreed otherwise between both Commissioners.
7. Nothing in this MoU will prevent more frequent meetings from taking place between the Commissioners and/or their members of staff.

### **Information Sharing**

8. Both Commissioners undertake to share information about common issues, important and significant privacy events, emerging and evolving issues, and experience of and approaches to policy, compliance and promotional activities where appropriate. In particular, the Commissioners may share information on:
  - a. public attitude research;
  - b. privacy research projects;
  - c. promotional, education and training programmes and approaches;
  - d. trends, techniques and results of enforcement efforts;
  - e. audits, inspections and privacy impact assessments;
  - f. potential for parallel or joint investigations or enforcement actions;
  - g. significant privacy policy issues;
  - h. information security problems and approaches;
  - i. notable law reform developments; and
  - j. regulatory experience and developments.
9. Each Commissioner intends (where feasible and appropriate) to share with the other, on a regular basis and at an early stage of development and subject to any confidentiality requirements, information which it feels may be of interest to the other including in respect of any developments that may have implications for the other party.
10. The Commissioners intend to share experiences in relation to various techniques designed to investigate and promote compliance with privacy principles including, for example, external audit, self-audit and privacy impact assessments.

### **Cross-border cooperation in investigation and enforcement**

11. Within the constraints of the DPJL and GDPL, the Commissioners intend to cooperate in relation to complaints or investigations that may affect the other or have a cross-border element.
12. As a precursor to any transfer of a complaint, or request for cooperation in an investigation, the Authorities will consult each other. This will typically involve discussions in general terms between

the nominated liaison persons to identify if the other party will have jurisdiction in respect of a complaint or investigation of the type of issue.

13. The Authorities intend generally to share information about the range of matters set out at para.8, but particularly on their experience in complaint handling, audits and investigations and the potential to undertake joint investigations or enforcement actions.
14. The Authorities intend to explore the usefulness of developing more detailed protocols for handling complaints that may affect the other Authority or that have a cross-border element when the first such complaint occurs.

#### **No obligation to meet Requests**

15. This MoU is to be construed consistently with the right of either Authority to decline or limit cooperation on particular investigations, audits or other matters, on the ground the compliance or a request for cooperation will be inconsistent with domestic laws, policies or priorities, or on the ground of resource constraints or based on the absence of mutual interest in the investigations in questions.

#### **Requests for Assistance**

16. If a request for assistance is made, each Authority will use its best endeavours and efforts to provide assistance to the other, subject to Applicable Privacy Laws, regulations and requirements.

#### **Procedure for Assistance**

17. Each Authority will designate a primary contact for the purposes of requests for assistance and other communications under this MoU.
18. In requesting assistance in procedural, investigative and other matters involved in the enforcement of Applicable Privacy Laws across borders, Authorities will ensure that:
  - a. requests for assistance include sufficient information to enable the Receiving Authority to determine whether a request relates to a Covered Privacy Contravention and to take action in appropriate circumstances. Such information may include a description of the facts underlying the request and the type of assistance sought, as well as an indication of any special precautions that should be taken in the course of fulfilling the request;
  - b. requests for assistance specify the purpose for which the information requested will be used; and
  - c. prior to requesting assistance, the Requesting Authority to ensure that the request is consistent with the scope of this MoU and does not impose an excessive burden on the Receiving Authority.
19. The Authorities intend to communicate and cooperate with each other, as appropriate, about matters that may assist ongoing investigations.
20. The Authorities will notify each other without delay, if they become aware that information shared under this MoU is not accurate, complete, and up-to-date.



21. Subject to paras.23 to 30 below, the Authorities may, as appropriate and subject to their Applicable Privacy Laws, refer complaints to each other, or provide each other notice of possible Covered Privacy Contraventions of the Applicable Privacy Laws of the other Authority's island.
22. The Authorities will use their best efforts to resolve any disagreements related to co-operation that may arise under this MoU through the contacts designated under this section, and, failing resolution in a timely manner, by discussion between the Commissioners (or their deputies) of the respective Authorities.

### **Investigation and enforcement**

23. The Authorities recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that in these cases, the most appropriate body or bodies will commence and lead investigations. To the extent permitted by law and having regard to their respective powers, expertise and resources, they will seek to ensure that in cases of investigations, the Authorities will notify each other of significant developments where the other is likely to have an interest. Where appropriate, the Authorities will discuss the steps they propose to take and ensure co-ordination takes place in a timely manner, where possible, allowing for a proper exchange of views.
24. The Authorities may refer a matter for action if the other body is considered more appropriate to deal with the matter. Any such referral will include the action sought and the legal powers it considers are available to the other. Where the other party determines not to proceed, an explanation will be provided, where possible.
25. Where the Authorities agree that an investigation should be carried out by both of them, it will usually be appropriate that both investigations proceed in parallel. However, in appropriate circumstances, they will consider whether the particular facts of the matter, as they are known at that time, suggest that one party's investigation should proceed before the others.
26. Where either party carries out any subsequent investigation and proceedings alone, that party will keep the other regularly updated on material aspects of the progress of the investigation.
27. If a decision is made by either party to take action against a controller or processor, the JDPa and GDPA should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that both Authorities publish the outcome of their investigations simultaneously. In any event, the JDPa and GDPA will endeavour to give the other appropriate notice of any press release or other public statement it intends to make relating to enforcement cases in which the other may have an interest, no later than 24 hours prior to publication unless there are overriding reasons which prevent or delay such notice.

### **Assessing requests**

28. Each request will be assessed on a case by case basis by the Receiving Authority to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in art or whole, the Receiving Authority may be asked to provide the reasons for

not granting the assistance and consider whether there may be other assistance which can be given by itself.

29. In deciding whether and to what extent to fulfil a request, the Requesting Authority may take into account:

- a. whether the request conforms with this MoU;
- b. whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Receiving Authority's functions;
- c. whether it would be otherwise contrary to the public interest to give the assistance sought;
- d. any other matters specified by Applicable Privacy Laws, regulations and requirements (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness);
- e. whether complying with the request may otherwise be prejudicial to the performance by the Receiving Authority of its functions; and
- f. the security arrangements, including cyber defences, that will apply to information disclosed under this MoU.

30. The Authorities recognise that assistance may be denied in whole or in part at the absolute discretion of the Receiving Authority.

#### **Contact points**

31. The Authorities will provide a list of contact points to which the information or requests for information or assistance under this MoU should be directed. 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 same.

#### **Confidentiality**

32. 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.

33. Where confidential material is shared between Authorities, it will be marked with the appropriate security classification.

34. 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.

35. 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 immediately. This is in addition to obligations to report a personal data breach under the DPJL 2018/GDPL 2017 where personal data is contained in the information disclosed.

36. In accordance with relevant legislation, the JDPa and GDPa will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other regulator, and maintain effective controls designed to minimise the risk of inappropriate disclosures.
37. Where one party has received information from the other, it may use the information for purposes set out in requests for information or otherwise agreed, but will notify the other before passing the information to a third party unless the sending party has placed additional restrictions.
38. The JDPa and GDPa 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**

39. The Authorities 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 is permitted under Applicable Privacy Laws, regulations and requirements. As soon as practicable after any information supplied under this MoU is no longer required, the relevant Authority will dispose of it in a secure manner.

#### **Changes in Applicable Privacy Laws**

40. In the event of amendments, replacement or other modification of the Applicable Data Protection Laws of an Authority's Bailiwick that are within the scope of this MoU, the Authorities will use best efforts to consult promptly and, if possible, prior to the entry into force of such enactments, to determine whether to amend this MoU.

#### **Costs**

41. If the cost of fulfilling a request is likely to be substantial, the Receiving Authority may, as a condition of agreeing to give assistance under this MoU, require the Requesting Authority to make a contribution to costs.

#### **Commencement, Review & Termination**

42. This MoU will take effect once both Authorities have signed it.
43. This MoU will continue to have effect until terminated by either Authority giving 30 days' advance written notice to the other Authority. It may be amended by agreement, in writing.
44. In the event of the termination of this MoU, information shared under this MoU will remain subject to clauses 32 to 38 and 39.
45. The Authorities will keep the operation of this MoU under review and will consult where necessary with a view to improving its operation and resolving any matters.

- 46. Both Authorities will consult in matters relating to any difficulties that may arise in relation to specific request made pursuant to this MoU (e.g. where a request may be denied, or if it appears that responding to a request will involved a substantial cost).
- 47. Any changes to this MoU can only be made by mutual agreement.
- 48. Unless otherwise agreed, this MoU will be treated as applying to the Authorities in each island, unless its provisions are explicitly amended or revoked by those Authorities at the relevant time.

**Publication**

- 49. Either, or both, of the Authorities may make a copy of this MoU, or the text of it, publicly available.

**Executed by the Authorities:**

For the JDPA

  
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[NAME] Jay Fedorak  
[POSITION] Information Commissioner

[DATE] 07 February 2020

For the GDPA

  
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[NAME] EMMA MARTINS  
[POSITION] DP Commissioner

[DATE] 7/2/20