

**MEMORANDUM OF UNDERSTANDING**

**between the**

**Jersey Data Protection Authority/Information Commissioner**

**and**

**the States of Jersey Police**

## **Contents**

<b>1.</b>	Definitions	3-4
<b>2.</b>	Recitals	5-6
<b>3.</b>	Purpose and Principles	6
<b>4.</b>	Scope of co-operation	6-8
<b>5.</b>	Legal basis for information	8-9
<b>6.</b>	Requests for Assistance	10
<b>7.</b>	Procedure for Requests	10
<b>8.</b>	Investigation and enforcement	10-11
<b>9.</b>	Assessing requests	11-12
<b>10.</b>	Execution of search warrants	12-13
<b>11.</b>	Contact points	13
<b>12.</b>	Costs	13
<b>13.</b>	Confidentiality and data breach reporting	13-14
<b>14.</b>	Retention and disposal of information	14
<b>15.</b>	Consultation	14
<b>16.</b>	Commencement and termination	14
<b>17.</b>	Publication	14

## **Definitions**

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

<b>"applicable laws, regulations and requirements"</b>	means any law, regulation, or requirement applicable in Jersey 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 Law"</b>	means the Data Protection Authority (Jersey) Law 2018 (as may be amended from time to time);
<b>"DPJL 2018"</b>	means the Data Protection (Jersey) Law 2018 (as may be amended from time to time);
<b>"FoI Law"</b>	means the Freedom of Information (Jersey) Law 2011;
<b>"Information Commissioner"</b>	means the Information Commissioner for Jersey (appointed pursuant to Art.5 of the Authority Law);
<b>"JDPA"</b>	means the Jersey Data Protection Authority;
<b>"SOJP"</b>	means the States of Jersey Police;
<b>"JOIC"</b>	means the Jersey Office of the Information Commissioner (such term including the Information Commissioner) who carries out the day-to-day work of the Authority;
<b>"MoU"</b>	means this Memorandum of Understanding;
<b>"Party(ies)"</b>	means the SOJP, the JDPA/Information Commissioner;
<b>"Person"</b>	means a natural person, legal entity, partnership, or unincorporated association;
<b>"Receiving Party"</b>	means the Party to whom a request for assistance is made under this MoU;
<b>"Requesting Party"</b>	means the Party making a request for assistance under this MoU; and
<b>"warrant"</b>	means a warrant to enter premises, issued to the JDPA by the Balliff of Jersey (or

Jurat) under the provisions of Schedule 1 para.5 of the Authority Law or to the Information Commissioner by the Bailiff of Jersey under the provisions of Schedule 1 para.2 of the FoI Law.

**Memorandum of Understanding ("MoU")**

**between the**

**Jersey Data Protection  
Authority  
("JDPA")/Information  
Commissioner**

**-and-**

**States of Jersey Police  
("SOJP")**

**Recitals**

- A. The JDPA is the 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 by the Information Commissioner regarding the FOI Law.
- C. Part 4 of the Authority Law place 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. certifying contempt of court should a public authority fail to comply with an information notice, decision notice or enforcement notices under the FOI Law;
  - f. investigating potential regulatory matters including liaising with the Jersey Financial Services Commission where appropriate; and
  - g. investigating potential criminal offences and liaising with SOJP.
- E. The Information Commissioner also has separate responsibility from the JDPA for the FoI Law. The Information Commissioner's regulatory and enforcement powers include:

- a. issuing decision notices detailing the outcome of an investigation under the FOI Law.

F. The SOJP is the professional police force in Jersey and was established under the Police Force (Jersey) Law 1974. It has responsibility for the prevention and detection of crime including the investigation and prosecution of criminal offences set out in the DPJL 2018, Authority Law and FoI Law.

### **Purpose and Principles**

1. The purpose of this MoU is to provide a framework for the working relationship between the Parties. In particular, it establishes a framework:
  - a. for the exchange of relevant information to enable or assist the Parties to carry out their respective statutory functions; and
  - b. by which the SOJP will provide certain operational assistance to the JDPA and/or the Information Commissioner in the exercise of their enforcement activities including in relation to the execution of warrants.
2. The parties enter into this MoU to *inter alia* provide a formal basis for co-operation, including for the exchange of information. The Parties believe such co-operation will enable them to perform their functions more effectively.
3. The MoU does not modify or supersede any applicable laws, regulations and requirements and any obligation herein shall be construed as being subject to any applicable 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 Parties may have under other MoUs.

### **Scope of co-operation**

4. Subject to any legal or other procedural permissions or restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their absolute discretion, both parties agree that they will alert each other to any potential breaches of legislation regulated by the JDPA or the Information Commissioner<sup>1</sup>, within the context of this relationship and provide relevant and necessary supporting information.
5. SOJP shall pass to the JDPA and/or Information Commissioner information that comes into its possession which, in the opinion of SOJP:
  - a. Indicates that a significant breach of regulatory legislation may have taken place;
  - b. Indicates that a significant breach of a binding regulatory requirement may have taken place; and/or

---

<sup>1</sup> For the purposes of this MoU, the: Data Protection (Jersey) Law 2018, the Data Protection Authority (Jersey) Law 2018 and the Freedom of Information (Jersey) Law 2011.

- c. Indicates that an entity subject to the DPJL 2018 may have significant weaknesses in its corporate governance, compliance and/or security/information technology function that the JDPA and/or Information Commissioner is not aware of and which may result in clients/customers of the entity, or the reputation of the Island, being exposed to an unacceptable level of risk.
6. Paragraph 4 shall not restrict the discretion of the SOJP to pass to the JDPA and/or Information Commissioner information on other matters that it considers relevant to the functions of the JDPA and/or Information Commissioner.
7. The JDPA and/or Information Commissioner shall pass to SOJP information that comes into its possession which, in the opinion of the JDPA and/or Information Commissioner indicates that a crime may have been committed or is about to be committed as follows:
  - a. Art.71 of the DPJL 2018 (Unlawful obtaining etc. of personal data)
  - b. Art.72 of the DPJL 2018 (Requirement to produce certain records illegal)
  - c. Art.73 of the DPJL 2018 (False information)
  - d. Art.74 of the DPJL 2018 (Obstruction)
  - e. Art.83(4) of the DPJL 2018 (Regulations -disclosure of information to improve public service delivery)
  - f. Art.8 of the Authority Law (Confidentiality of information)
  - g. Art.17(1) of the Authority Law (Registration of controllers and processors)
  - h. Art.25(7) of the Authority Law (Sanctions following breach determination)
  - i. Art.49 of the FoI Law (Offence of altering, etc. records with intent to prevent disclosure)
  - j. Schedule 2 para.7 of the FoI Law (Offence in respect of the execution of a warrant)
8. Subject to any legal permissions or restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their absolute discretion, both 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 may have significant implications for the other organisation.
9. Both 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.

10. The JDPA/Information Commissioner and SOJP will exchange information on relevant issues of interest to the extent permitted by law, and as appropriate and relevant to their respective objectives. This may include, but is not limited to:
- a. information about investigations and notifying the other about any relevant action taken against a person or firm by one regulator which may be relevant to the other functions of the other;
  - b. information held by either regulator regarding fraud/criminal or any other activity that might cast doubt on the fitness and propriety of any entity or person regulated by the SOJP; or
  - c. information or intelligence held by the JDPA and/or Information Commissioner which indicates that there may be a failure of an entity regulated by the SOJP (including the regarding the implementation or effectiveness of its systems and/or controls).
11. The JDPA/Information Commissioner and SOJP may request information from each other and will include the details of the information sought and why it would assist them to carry out their functions. Each may suggest a reasonable deadline for response, including an explanation of any urgency.
12. The JDPA/Information Commissioner and SOJP may consult and co-ordinate in respect of reviews, calls for evidence and recommendations directed towards both parties, where appropriate. In addition, if one party considers that information it has gathered will be materially relevant to the other, it will notify the other to enable the other to request disclosure of such information.
13. In the case of a major incident of mutual interest, the SOJP and JDPA/Information Commissioner will work together in line with agreed incident protocol in order to secure the best outcomes for consumers and ensure incidents are dealt with in a co-ordinated and efficient manner.
14. Where requested, the SOJP will support the JDPA/Information Commissioner in the execution of any warrant and the JDPA/Information Commissioner will support the SOJP in the investigation of any criminal offence set out under the DPJL 2018, the Authority Law or the FoI Law, as appropriate.

### **Legal basis for sharing information**

#### *Information shared by the SOJP with the JDPA/Information Commissioner*

15. Subject to any disclosure restrictions applicable to the SOJP, the SOJP may disclose confidential information to the JDPA/Information Commissioner where necessary for the administration of justice.
16. The JDPA/Information Commissioner's statutory functions relate to the legislation set out at Recital D and this MoU governs information shared by the SOJP to assist the JDPA/Information Commissioner to meet those responsibilities. To the extent that any



such shared information is to comprise personal data, as defined under the DPJL 2018, the SOJP is a data controller so must ensure that it has a legal basis to share it and that doing so would otherwise be compliant with the data protection principles.

17. Schedule 2 paragraph 4 of the DPJL 2018 may provide a legal basis for the SOJP to share information with the JDPA/Information Commissioner. Under this particular provision, the SOJP is not prohibited or restricted from disclosing information to the JOIC by any other enactment or rule of law provided it is "*for the administration of justice*".

*Information shared by the JDPA/Information Commissioner with the SOJP*

18. The JDPA/Information Commissioner will, during the ordinary course of duties, receive information from a range of sources, including personal data. The JDPA/Information Commissioner will process all personal data in accordance with the principles of the DPJL 2018 and all other applicable legislation. The JDPA/Information Commissioner may identify that information held by that office (which may include personal data) ought to be shared with the SOJP as it would assist them in performing their functions and responsibilities.

19. Article 8 of the Authority Law states that information obtained by the JDPA in the course of, and for the purposes of discharging that office's functions can only be shared with others if there is lawful authority to do so. Article 8(2) of the Authority Law sets out the circumstances in which the JDPA will have the lawful authority to share information with the SOJP. In particular, it will be lawful in circumstances where:

- a. the sharing is made for the purposes of, and is necessary for, the discharge of a function under Authority Law, the DPJL 2018, or an obligation under an agreement, or other instrument, of the EU (Article 8(2)(c));
- b. the sharing is made for the purposes of any proceedings, whether criminal or civil, however arising (Article 8(2)(d)); or
- c. having regard to the rights and freedoms or legitimate interests of any person, the sharing is necessary in the public interest (Article 8(2)(e)).

20. The JDPA will therefore be permitted to share information with the SOJP in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined in paragraph 19. In doing so, the JDPA will identify the function of the SOJP with which that information may assist, and assess whether that function could reasonably be achieved without access to the particular information in question.

21. Unless otherwise stated, information exchanged between the JDPA/Information Commissioner and SOJP under the provisions of this MoU is for intelligence purposes only and should it be required formally as evidence or for use in an investigation then the appropriate formal application must be made.

### **Requests for Assistance**

22. If a request for assistance is made, each Party will use its best endeavours and efforts to provide assistance to the other, subject to applicable laws, regulations and requirements.

### **Procedure for Assistance**

23. Requests for the provision of information or other assistance will be made in writing or – in urgent cases – made orally and, unless otherwise agreed, confirmed in writing within five business days. To facilitate assistance, the Requesting Party should specify in any written request:

- a. a description of the information or other assistance requested;
- b. if information is provided by the Requesting Party for confirmation or verification, the information and the kind of confirmation or verification sought;
- c. the purpose for which the information or other assistance is sought; and
- d. to whom, if anyone, onward disclosure of information provided to the Requesting Party is likely to be necessary and the purpose such disclosure would serve.

24. The Parties will notify each other without delay, if they become aware that information shared under this MoU is not accurate, complete, and up-to-date.

25. The Parties 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 Information Commissioner and the Deputy Chief Officer.

### **Investigation and enforcement**

26. The Parties 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 Parties will notify each other of significant developments where the other is likely to have an interest. Where appropriate, the parties 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.

27. The Parties 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.

28. Where the Parties 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.
29. Where information exchanged between the JDPA/Information Commissioner and SOJP indicates that the subject of the information is of interest to both parties (for example where both criminal activity and regulatory breaches are suspected) a case conference may be called to ensure that the maximum, and appropriate, use of the information is made. In relevant cases, the JDPA/Information Commissioner and SOJP may request the involvement of a representative of Jersey's prosecuting authority – Her Majesty's Attorney General – in the case conference.
30. 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.
31. If a decision is made by either party to take action against a subject, the JDPA/Information Commissioner and SOJP should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that both parties publish the outcome of their investigations simultaneously. In any event, the JDPA/Information Commissioner and SOJP 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.
32. Relevant JDPA and SOJP staff will, where appropriate, seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other to ensure that issues are appropriately identified.

### **Assessing requests**

33. Each request for assistance will be assessed on a case-by-case basis by the Receiving Party to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the Receiving Party 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.
34. In deciding whether and to what extent to fulfil a request, the Requested Party 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 Party'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 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 Party of its functions; and
- f. the security arrangements, including cyber defences, that will apply to information disclosed under this MoU.

35. The Parties recognise that assistance may be denied in whole or in part for any of the reasons mentioned in clause 10 in the discretion of the Receiving Party.

### **Execution of search warrants**

36. Ordinarily, where the JDPA/Information Commissioner is investigating a matter within its area of competence (for example, a suspected breach of regulatory legislation) it would expect to rely upon the general power it has under the Authority Law or FoI Law to require a controller, processor or scheduled public authority to provide it with such information as it may require. This MoU shall refer to this as the imposition by the JDPA/Information Commissioner as an "**information requirement**".

37. However, there will be circumstances where it may not be possible, or appropriate, for the JDPA/Information Commissioner to impose an information requirement. For example, where the JDPA/Information Commissioner has reasonable grounds for suspecting that if it were to impose an information requirement on a controller or processor, that entity would not comply with the information require or they would remove, tamper with, or destroy the information or documents sought.

38. In the circumstances prescribed at Art.2 of the Authority Law, the JDPA may apply to the Bailiff pursuant to Art.5 of the Authority Law for a warrant to be issued that will authorise an authorized officer<sup>2</sup> to enter and search premises and to inspect, examine, operate and test any equipment found there which is used or intended to be used for the processing of personal data and to inspect and seize any documents or other material found there.

39. Similarly, in the circumstances prescribed in Schedule 2 para.2 of the FoI Law, the Information Commissioner may apply to the Bailiff for a warrant to be issued that will authorize the Information Commissioner (or any of his officer's or staff) to enter and search premises and to inspect, examine, operate and test any equipment found there which is used or intended to be used for the processing of personal data and to inspect and seize any documents or other material found there.

---

<sup>2</sup> As defined in Art.1(1) of the Authority Law

40. When the JDPA/Information Commissioner considers it is appropriate for an application to be made to the Bailiff for a search warrant, it will consult with the SOJP in advance with a view to agreeing a strategy for the execution of the warrant (should the Bailiff see fit to issue one).

41. Where the SOJP are assisting the JDPA/Information Commissioner with the execution of a warrant, and unless otherwise agreed with the JDPA/Information Commissioner, it will be the responsibility of the SOJP, in consultation with the JDPA/Information Commissioner to handle the conduct of the entry process, but all other matters relating to the search and seize process (including the handling and removal of evidence) will be handled by the JDPA/Information Commissioner.

### **Contact points**

42. The Parties 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.

### **Costs**

43. If the cost of fulfilling a request is likely to be substantial, the Receiving Party may, as a condition of agreeing to give assistance under this MoU, require the Requesting Party to make a contribution to costs, although the parties will work to ensure information is disclosed to the other in the public interest.

### **Confidentiality and data breach reporting**

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

45. Where confidential material is shared between parties it will be marked with the appropriate security classification.

46. 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.

47. 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 DPJL 2018 where personal data is contained in the information disclosed.

48. In accordance with relevant legislation, the JDPA/Information Commissioner and SOJP 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.

49. 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.

50. The JDPA/Information Commissioner and SOJP 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**

51. The Parties 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 laws, regulations, and 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.

### **Consultation**

52. The Parties 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,

53. Both Parties 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 involve a substantial cost).

### **Commencement and Termination**

54. This MoU will take effect once both Parties have signed it.

55. This MoU will continue to have effect until terminated by either Party giving 30 days' advance written notice to the other Party. It may be amended by agreement, in writing.

56. In the event of the termination of this MoU, information shared under this MoU will remain subject to clauses 44 to 51.

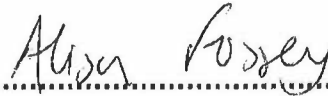
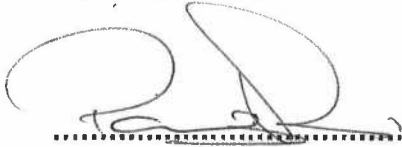
### **Publication**

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

**Executed by the Parties:**

**For the JDP/Information  
Commissioner**

**For the SOJP**



[NAME] PAOL VANE  
[POSITION] INFORMATION  
COMMISSIONER  
[DATE] 28/05/2022

ALISON FOSSEY [NAME]  
DET SUPERINTENDENT [POSITION]  
24/5/22 [DATE]

