

# **MEMORANDUM OF UNDERSTANDING BETWEEN THE DATA PROTECTION COMMISSIONER AND THE GAMBLING COMMISSIONER**

## **Introduction**

1. This Memorandum of Understanding (MoU) establishes a framework for cooperation and information sharing between the Data Protection Commissioner (the Commissioner) and the Gambling Commissioner (GC), collectively referred to as "the Parties" throughout this document. In particular, 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 a closer working relationship between the Parties, including the exchange of appropriate information, so as 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 Commissioner or the GC. The Parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

## **The role and function of the Data Protection Commissioner**

3. The Commissioner is the Chief Executive Officer of the Gibraltar Regulatory Authority established by statute as Gibraltar's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.
4. The Commissioner is empowered to take a range of regulatory action for breaches of, inter alia, the following legislation:
  - Data Protection Act 2004 (DPA);
  - General Data Protection Regulation (GDPR);
  - Communications (Personal Data and Privacy) Regulations 2006; and
  - Freedom of Access to Information on the Environmental Regulations 2005 (EIR).
5. Article 57 of the GDPR and Section 124 of the DPA place a broad range of statutory duties on the Commissioner, including monitoring and enforcement of the GDPR and DPA, promotion of good practice and adherence to the data protection obligations by those who process personal data.
6. The Commissioner's regulatory and enforcement powers include:
  - Conducting assessments of compliance with the DPA and GDPR;
  - Issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
  - 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;
  - Administering fines by way of penalty notices in the circumstances set out in section 162 of the DPA;
  - Issuing decision notices detailing the outcome of an investigation under EIR; and
  - Prosecuting criminal offences before the Courts.

## **Functions and powers of the Gambling Commissioner**

7. Section 5 of the Gambling Act 2005 provides that the Licensing Authority shall be the Minister, or such other person as the Minister shall appoint. For the purposes of this MoU, the Licensing Authority operates through the GC and the GC shall have regard to the general policy of HM Government of Gibraltar (HMGoG) in relation to the carrying out of gambling operations in Gibraltar and shall comply with any general directions given by HMGoG pursuant to that policy.
8. Under section 6 of the Gambling Act 2005, the GC shall be such individual or body as the Minister may appoint. In 2020, Andrew Lyman was appointed as the GC and principal officer of the Gambling Division (GD). The GC, together with GD staff, regulates all gambling operations in Gibraltar in partnership with the Licensing Authority. The GC has power to bring or defend legal proceedings under the Gambling Act 2005. The GC shall act in accordance with the public interest.

## **Purpose of information sharing**

9. The purpose of this MoU is to enable the Parties to share relevant information which enhances their ability to exercise their respective functions.
10. This MoU should not be interpreted as imposing a requirement on either of the Parties 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 both the GDPR and the DPA. This 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**

11. 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 Commissioner, within the context of this relationship, discovered whilst undertaking regulatory duties, and provide relevant and necessary supporting information.
12. Similarly, although again subject to any legal restrictions on the disclosure of information, the Commissioner will, at his discretion, alert the GC to any potential breaches of the legislation regulated by the GC within the context of this relationship and provide relevant and necessary supporting information.
13. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the Parties will:
  - Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and
  - Consult one another on any issues which might have significant implications for the other organisation.
14. 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 any governance requirements in particular relating to security and retention, and process personal data in accordance with the statutory rights of individuals.

## **Legal basis for sharing information**

### ***Information shared by the GC with the Commissioner***

15. The Commissioner's statutory function relates to the legislation set out at paragraph 4, and this MoU governs information shared by the GC to assist the Commissioner to meet those responsibilities. To the extent that any such shared information is to comprise personal data, as defined under the GDPR and DPA, the GC 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.
16. Section 139 of the DPA may permit the GC to share information with the Commissioner. Under this particular provision, the GC is not prohibited or restricted from disclosing information to the Commissioner by any other enactment or rule of law provided it is information "*necessary or expedient for the performance by the Commissioner of his functions*".
17. Section 6(6)(g) and (h) of the Gambling Act 2005 provides that the GC may liaise with such persons or organisations as the GC considers would be useful or necessary for the performance of his functions and shall be able to do all things necessary for or ancillary or reasonably incidental to the exercise of his powers under the Gambling Act 2005.

### ***Information shared by the Commissioner with the GC***

18. The Commissioner, during the course of his activities, will receive information from a range of sources, including personal data. The Commissioner will process all personal data in accordance with the principles of the GDPR, the DPA and all other applicable legislation. The Commissioner may identify that information he holds, which may include personal data, ought to be shared with the GC as it would assist in performing the functions and responsibilities of the GC.
19. Section 140 of the DPA states that information obtained by the Commissioner in the course of, or for the purposes of, discharging his functions can only be shared with others if there is lawful authority to do so. Section 140 of the DPA sets out the circumstances in which the Commissioner will have the lawful authority to share that personal data with the GC.
20. The Commissioner will therefore be permitted to share information with the GC in circumstances where he has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at paragraph 19. In doing so, the Commissioner will identify the function of the GC with which that information may assist and assess whether that function could reasonably be achieved without access to the particular information in question. In particular, where the information proposed for sharing with the GC amounts to personal data, the Commissioner will consider whether it is necessary to provide it in an identifiable form in order for the GC to perform its functions, or whether disclosing it in an anonymised form would suffice.

21. Where information is to be disclosed by either Party for law enforcement purposes<sup>1</sup> under section 44(3)(a) or (b) of the DPA, then they will only do so in accordance with an appropriate policy document as outlined by section 51 of the DPA.
22. Where a request for information is received by either Party under data protection laws, the recipient of the request will seek the views of the other Party 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.

### **Policies, guidance and GC rule-making**

23. Each Party will make rules and/or policies in pursuit of their separate objectives. The Parties will seek to understand and where appropriate collaborate and co-ordinate work on their respective policies that have a material effect on the other's objectives. This may include, but not be limited to, work on:
  - Regulatory policy;
  - Industry standards and recommendations;
  - Regulatory materials, such as codes of practice, rules and guidance;
  - Assessments of the landscape and risk analysis to inform policy-making;
  - GC consumer alerts concerning advertising;
  - Competition in the sector;
  - Innovation initiatives; and
  - Any other projects that may be identified on an ad hoc basis, particularly to aid understanding of how the two regulators work together.
24. The Parties will liaise closely to ensure that their separate awareness activities are complementary. Where appropriate, both Parties will share communication and publication plans to facilitate joined up messages and effective resource planning.

### **Investigation and enforcement**

25. 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.
26. The following are specific areas where the Parties consider it would be of mutual interest to seek co-operation:

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<sup>1</sup> As per section 40 of the DPA the "law enforcement purposes" are the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

- Sports integrity and the upholding of standards in sport to the extent that it involves data held by licensees under the Gambling Act 2005 and the GC's role in facilitating investigations by relevant sports governing bodies.
  - The security of personal data processed by online gambling organisations regulated by the GC, particularly in relation to cyberattacks, including the obligation to notify personal data breaches to the Commissioner.
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 Parties, 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 other's.
  29. 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.
  30. If a decision is made by either Party to take action against an individual or other legal entity, the GC and the Commissioner 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 GC and the Commissioner 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.
  31. Relevant GC and the Commissioner's 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.

### **Method of exchange**

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.

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

33. Where confidential material is shared between the Parties 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 without delay. This is in addition to obligations to report a personal data breach under the GDPR and/or DPA where personal data is contained in the information disclosed.
36. In accordance with relevant legislation, the GC and the Commissioner 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 GC and the Commissioner 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 Act requests and will consult each other before releasing information originally belonging to the other.

#### **Duration and review of the MoU**

39. The Parties will monitor the operation of this MoU and will review it biennially.
40. Any minor changes to this MoU identified between reviews may be agreed in writing between the Parties.
41. Any issues arising in relation to this MoU will be notified to the key contact for each organisation.
42. Either party may terminate this MoU by submitting prior notice to their counterpart at any given time. Such termination shall become effective thirty calendar days from the date of submission of said notice.

#### **Key contacts**

43. The Parties have both identified a key person who is responsible for managing this 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 seek to minimise the same.

#### **Signatories**



Paul Canessa  
Data Protection Commissioner



Andrew Lyman  
Gambling Commissioner

Dated this 10<sup>th</sup> Day of December 2020