



Home Office

Memorandum of Understanding

between

The Home Office and UK Border Force

and

Department for Education

**In Respect of the Exchange
of Information Assets**

DRAFT

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1. Introduction

1.1. This Memorandum of Understanding (MoU) sets out the high level agreement between Department for Education (DfE) and Home Office (HO)¹ that governs the exchange of information assets needed to better deliver their respective businesses.

1.2. It should be noted that with effect from 1 March 2012 when the UK Border Force (BF) was created as a directorate of the HO, taking over the exercise of customs and immigration functions at the (former) UK border from the Home Office, the responsibilities of the Director Border Revenue were transferred to the Director General Border Force. BF continues to exercise powers assigned to the Secretary of State, Customs Officials and Immigration Officers

1.2.1.3. The DfE was formed on 12 May 2010 and is responsible for education and children's services.

1.3.1.4.

1.4.1.5. This MoU is not a contract nor is it legally binding. It does not in itself create lawful means for the exchange of information; it simply documents the processes and procedures agreed between the parties.

1.5.1.6. All specific information exchanges ('process level' agreements) including 'proof of concept exercises' will be recorded at annex 2 of this MoU. The specific agreement must reference this umbrella MoU as the basis for the exchange and as a minimum include:

- purpose for exchange,
- (physical) method of exchange,
- benefit (to both parties) of the exchange;
- primary business owner(s) in both departments
- length of exercise, if long term a review date of 6 months minimum from commencement must be included
- specific legislation, and
- the level of assurance or approval given for the exchange to take place

2. Legal

2.1. Both Parties are legally obliged to handle personal information according to the requirements of the Data Protection Act 1998 (DPA) and the Human Rights Act 1998 (HRA).

2.2. As well as meeting the requirements of the DPA, both DfE and HO are bound by legislative obligations of confidence, with the unlawful disclosure of information by officers constituting an offence.

¹ All references to Home Office (HO) in the document refer to the work of Visas & Immigration and Immigration Enforcement Directorates, (the work previously undertaken by the former UK Border Agency) only and not the whole of the Home Office and its Executive Agencies

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2.3. Information can only be exchanged where there is a legal basis. No information should be exchanged that is not covered by relevant legislation and complies with the overarching principles of the DPA and ECHR.

2.4. In the absence of a statutory (data sharing) gateway Home Office will rely on its common law powers to share information where it is appropriate.

2.4. The Secretary of State has the power at common law to share data ~~where it is believed an offence has been, or is being committed. Under these conditions, HO will utilise the exemptions granted under Section 29(3) of the DPA. to request information from DfE.~~

2.5. ~~The DfE was formed on 12 May 2010 and is responsible for education and children's services.~~

2.6. HO functions are laid out in a number of Acts and specifically include a legal obligation under Section 55 of the Borders, Citizenship and Immigration Act 2009, which came into force on 2 November 2009, which requires staff employed by the former the UK Border Agency and now the Home Office to make arrangements to safeguard and promote the welfare of children in discharging its immigration, nationality and general customs functions.

3. Freedom Of Information

3.1. Both parties are subject to the requirements of the Freedom of Information Act (FoIA) 2000 and shall assist and co-operate with each other to enable each party to comply with their information disclosure obligations.

3.2. In the event of a FoIA request being received which relates to an activity utilising the other party's information, the respective party will notify the other to allow it the opportunity to make representations on the potential impact of disclosure.

4. Information Handling

4.1. Both Parties are data controllers, and subject to the data protection principles set out in the DPA. Additionally as part of Her Majesty's Government, both DfE and HO must process personal data in compliance with both the mandatory requirements set out in [Information Assurance Standard 6](#) and the [Security Policy Framework](#) issued by HM Cabinet Office, when handling, transferring, storing, accessing or destroying information assets.

4.2. Each party will expect the other to have taken every reasonable measure to comply with the above standards and may conduct a risk assessment of the exchange against these requirements.

4.3. The exporting party will ensure that data integrity meets their party's standards, unless more rigorous or higher standards are required and agreed at the information exchange specific MoU stage.

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- 4.4. DfE and HO must ensure effective measures are in place to manage potential or actual incidents as per Cabinet Office guidance, as defined in its [Checklist for Managing Potential Loss of Data or Information](#).
- 4.5. Without limiting the receiving party's legal obligations under Data Protection legislation or otherwise, the party in receipt of information will ensure that they:
- Only use the information for purposes that are legal under the legal basis on which they received it;
 - Even where not legally required to do so, will, as a courtesy, notify the other party if they are going to use the information for any purpose other than that for which they received it (in the event there is an urgent need to share they will be informed as soon as possible afterwards);
 - Store data received securely;
 - Notify the other party if they are going to disclose information received from that party to another party or body due to a legal or moral requirement (in the event there is an urgent need to share they will be informed as soon as possible afterwards);
 - Ensure that only people who have a genuine business need to see that data will have access to it;
 - Report any data losses, wrongful disclosures or breaches of security relating to information originating in the other party to the designated contacts immediately (within 24 hours of becoming aware). This includes both advising, and consulting with, the other party on the appropriate steps to take, e.g. notification of the Information Commissioner's Office or dissemination of any information to the data subjects;
 - Only hold data while there is a business need to keep it and destroy it in line with Government guidelines;
 - Regularly review the assessment of risks to information and the effectiveness of measures taken to mitigate risks.

5. Purpose of information sharing

- 5.1 In specific circumstances information received by one party for their own purpose(s) ~~can~~ may be shared with another and used by that other for their purpose(s) outwith the original purpose for which that information was obtained as long as the information is shared in accordance with the relevant legislation lawfully and appropriately under the terms of this MoU (and any subsequent agreements) and having regard to any inherent legal restrictions that may apply. Any such exchanges will be subject to a process level MoU and/ or with prior agreement of both parties.

Commented [1]: This is a bit circular and doesn't really go very far. The point is that it's often going to be unlawful for DfE to share information for a purpose other than for which it was collected. In DfE's case, that's because NPD data are collected under specific powers (section 537A of the Education Act 1996) that are limited to educational purposes.

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5.2 In particular, information may be shared (in accordance with the relevant legislation) between parties for a number of other purposes including, but not limited to:

- To allow one or other, or both of the parties to carry out their stated function including assessing an applicant's right to obtain a service from that party
- In the interest of promoting the education or well-being of Children in England
- To prevent and/ or detect fraud or other criminal activity against either party/crime
- In the interest of protecting/ securing national security
- In the interests, well being and safety of any child

Commented [1]: Is this para intended to be providing examples of circumstances where we might share information for purposes other than the purpose for which it was collected? In which case, I think we should tweak this. I've suggested text

Commented [1]: I don't understand what this means. Could you ask HO/ UKBA to set out what they understand by it please? If it means that DfE may share NPD data with HO/ UKBA for educational purposes, then yes, we should be able to build a case for that.

Commented [1]: Yes, we could rely on the exemption from fair processing in section 29 of the Data Protection Act to provide personal data to HO/ UKBA – they would have to set out the specific crime that they thought the sharing could prevent/ detect.

Commented [1]: See my original email on this. Yes, it's possible, but might be burdensome.

Commented [1]: In theory, yes. In practice we weren't sure what the circumstances would be in which 'whereabouts' information about a child/ parent could be shared with UKBA which was in the interest of that child. It would be for the requestor to explain on the facts of the specific case why sharing the information would be in the interests of the child's safety. It wouldn't provide a basis for bulk sharing. It would be helpful to have examples of how it is envisaged that this would work.

Commented [1]: These general statements are to provide a guide to the sort of circumstances we would seek to share information with DfE; the greater detail is in the annex

6 Method of information sharing

6.1 In the main information will be supplied by one party on request from the other in the approved format and by the agreed method. However, this MoU and associated legislation allows for information to be provided from one party to the other, without formal request or prior notice, in the event that the party holding the information is satisfied that the transfer of information is necessary and appropriate for any stated functions of the other party.

6.2 The method of transfer must be in accordance with the standards and benchmarks relating to the security of that transfer and in accordance with Cabinet Office and other HMG guidance.

7. Monitoring and Review Arrangements

- 7.1. This agreement will be reviewed at least annually. Any changes needed in the interim may be agreed in writing and appended to this document for inclusion at the following review.
- 7.2. Reviews outside of the schedule can be called by representatives of either party.
- 7.3. Annex 3 outlines the contacts for document control, the version history of this MoU and the review dates for it.

8. Issues, Disputes and Resolution

- 8.1. Any issues regarding party level, ongoing delivery aspects of the information supply, such as data integrity or quality, should be addressed through “business as usual” channels as detailed in annex 3.
- 8.2. Where a problem arises it should be reported immediately, in writing to the designated contacts (listed in annex 1). The contacts will endeavour to resolve the problem within 2 working days.
- 8.3. Where it is not possible to resolve the issue within 2 working days or the issue is of such severity that public customers may be negatively affected by delays to their payments, the issue will be escalated to the senior management team for each partner. They will be notified with an explanation of why the dispute has not been resolved so that they can take appropriate action for resolution or plan contingency arrangements.
- 8.4. Where the “business as usual” channels fail to reach agreement, the parties will attempt to negotiate a settlement in the spirit of joint resolution within 20 working days of a formal notification being received. Contacts detailed in annex 3.
- 8.5. Specific strands of activity that may affect this MoU should be discussed at a “business as usual” level to consider the possible impact on the MoU; once the potential changes have been identified then a formal change notification should be sent to the “MoU Change Control” contact detailed at annex 3.
- 8.6. External changes affecting the operational delivery responsibilities of the parties will also necessitate the reviewing and potential amendment of this agreement.

9. Costs

- 9.1. No charges will be made by either party in relation directly to this MoU. There may, however, be costs involved in specific information exchanges in relation to IT issues; these will be detailed in the respective process level agreement.

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10. Signatures

SIGNED BY:

For, and on behalf of,
Department for Education

For, and on behalf of,
Home Office

(Name)

(Name)

(Role/ title)

(Role/ Title)

(Signature)

(Signature)

(Date)

(Date)

For, and on behalf of,
UK Border Force

(Name)

(Role/ title)

(Signature)

(Date)

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11 Annex 1 – Document Control

11.1 Document Control Personnel

Key personnel	Name	Organisation (Team)
Author	[REDACTED]	Home Office DfE
Approver		Home Office DfE
Review Control		Home Office DfE

11.2 Version History

Version	Date	Summary of changes	Changes marked
0.1	22/11/13	Draft version	

11.3 Review dates

Version	Publication date	Review date

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12. Annex 2 – Information exchange specific (“process-level”) agreements

12.11. Data Provided From Ho to DfE

Reference	Legal Basis	Business Owner	Start date
Annex 4 a			

12.12. Data Provided From DfE to HO

Reference	Legal Basis	Business owner	Start date
Annex 4 a			

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13. Annex 3 - Contacts

13.1 DfE – Business As Usual

Contact	E-mail	Responsibility
		Security Incidents
		Legal issues
		Data Exchange Co-ordinator
		Freedom of Information Requests
		Protocol for dealing with cross-party complaints

13.2 DfE – Escalation

Contact	E-mail	Responsibility
		Security Incidents
		Legal issues
		Data Exchange Co-ordinator
		Freedom of Information Requests
		Protocol for dealing with cross-party complaints

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13.3 Home Office – Business As Usual

Contact	E-mail	Responsibility
		Security Incidents
		Legal issues
		Data Exchange Co-ordinator
		Freedom of Information
		Protocol for dealing with cross-party complaints

13.4 Home Office – Escalation

Contact	E-mail	Responsibility
		Security Incidents
		Legal issues
		Data Exchange Co-ordinator
		Freedom of Information
		Protocol for dealing with cross-party complaints

14. Annex 4 - Glossary of Terms

DPA	Data Protection Act 1998
E&E	Evidence and Enquiry Unit, Home Office
GPMS	Government Protective Marking Scheme
GSI	Government Secure Intranet
HRA	Human Rights Act 1998
MIDA	Management Information & Data Analysis Service
MoU	Memorandum of Understanding
DfE	Department for Education
SPoC	Single Point of Contact
FOIA	Freedom of Information Act 2000
BF	UK Border Force
HO	Home Office - Visas & Immigration and Immigration Enforcement Directorates
NATT	(HO) National Absconders' Tracing Unit

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14 Annex 4 a. NATT exchange (proof of concept)

1. Purpose of the exercise

1.1 The aim is to establish if DfE hold information that may/ will support the Home Office/Absconder Tracing Team's (NATT) key objectives and commitment to upholding a duty of care for missing children and abuse of immigration control through the following three objectives:

- Re-establish contact with families HO has lost contact with
- To protect the interests and safety of any child
- To reduce harm resulting from abuse of immigration control.
- Combat illegal migrant working and those that benefit from it.
- Create a hostile environment for those who seek to benefit from abuse of immigration control

Commented [1]: This is a full list of why HO need the information and the purposes for which it will be used

1.2 And in addition the purpose of the exercise is to establish if DfE hold information that may/ will assist the HO:

- To identify foreign nationals families who have absconded from immigration control.
- To identify the most recent address and any previous addresses that holds for these subjects in order to maximise the success of tracing missing children and their families.
- (Where appropriate) bring the family (back) into compliant reporting
- To identify if the Department of Education (DfE) hold any information that may suggest the subject has already departed from the UK
- To secure the safety and well being of any child.

1.3 [Subject to paragraph 2.4](#), Any information received as a result of this (proof of concept) exercise will be used in conjunction with other information already held by the HO or obtained by the HO in the course of carrying out its functions to assist in ~~locating the process of identifying potential new contact details (including addresses) for~~ the individual(s) and their family members.

2. Information to be shared

2.1 The HO will provide details of minors who have been categorised as missing children or children from a family group who are immigration absconders and have an open breach on Home Office systems, including:

- National Insurance Number (where held)
- Surname
- Middle Name
- Forename
- Address
- Post Code

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- Gender
- Date of Birth
- Nationality
- CID PER ID
- [Details of crime being committed.](#)

2.2 The DfE will match this information against records and then ~~confirm with HO how many positive 'hits' were identified in response provide the HO with information relating to those individuals that matched DfE records.~~

Commented [REDACTED]: 2.4 below confirms we will not be using this data operationally until and if approved by DfE

2.3 As a minimum the DfE will return the following pupil/ child and school(s) information:

- Surname
- Forename
- Middle name
- (If held) Former surname
- (If held) Preferred surname
- Multiple or sole addresses information to include for all
 - Post code
 - Earliest data at address
 - Latest date at address
- Multiple or sole school information to include for all
 - School number
 - School name
 - School post code
 - Earliest pupil data at school
 - Latest pupil date at school

2.4 At this stage the personal data released to HO as a result of a '~~hit~~-positive match' cannot be used for operational purposes and can only be used for analytical ~~reason purposes~~ to assess the benefit of the exchange.

2.5 On receipt of this information HO will provide DfE with detailed analysis of how useful this information would/ will be in achieving the aims detailed at 1.1 and 1.2 above.

3. Benefits of the exchange

3.1 Potential benefits for both departments to moving this exchange from proof of concept to business as usual in cases where DfE have positively identified an individual or individuals of interest to the HO include, but are not limited to:

- DfE will be notified of details of vulnerable minors which they may utilise to take action in accordance of their duties and obligations
- HO will initiate contact with applicants under their duty of care pertaining missing and vulnerable children.

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- HO will initiate contact with applicants with a view to encouraging them and where appropriate provide support to enable them to depart the UK; where appropriate effect removal or regularise their stay.
- If HO ascertains that DfE hold any robust data pertaining to the subjects' departure from the UK, these will be investigated by HO & the departure will be updated on the CID database and all outstanding actions on the case will be closed

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