

Disclosure Of Personal Information From The Department For Work And Pensions To Police Forces

A MEMORANDUM OF UNDERSTANDING



Association Of Chief Police Officers

Introduction

This Memorandum of Understanding sets out the principles underpinning the disclosure of personal information by the Department for Work and Pensions (DWP) to individual police forces. Both DWP and the Association of Chief Police Officers (ACPO) agree to abide by the principles outlined. A separate Memorandum will be agreed with ACPO Scotland.

Individual agreements between relevant DWP business units covering mutual DWP and police co-operation at the operational level will be concluded to facilitate investigations. These agreements will be subordinate to the principles set out below.

The Department for Work and Pensions and ACPO recognise the value to both organisations of clearly identifying the legislative, policy and practical implications of disclosing information.

It is essential that the DWP and all police forces embrace the principles set out in this document. It is the duty of DWP to maintain the confidence in which customers provide the department with information whilst at the same time co-operating with police investigations where internal DWP policy, and the law allows it.

Purpose Of The Memorandum Of Understanding

The purpose of the Memorandum of Understanding is to:

Ensure effective co-operation by promoting a clearer understanding of DWP policy in relation to disclosure of information and

Provide overarching policy guidelines to support DWP and police co-operation at an operational level.

DWP Policy On Disclosure

The Department's guiding principle on the handling of information is one of fairness, even-handedness and compliance with the law. The intention is to ensure that it should always:

- Act lawfully
- Comply with both the letter and spirit of all relevant enactments
- Meet common law duties of confidentiality and
- Honour its commitment to the principles stated in the Department's own policy on disclosure.

To assist in meeting this goal the Department subscribes to the following policy:

All personal information held in social security records is regarded as confidential. Information will not normally be disclosed to third parties without the consent of the person concerned. Information may normally be disclosed without consent to assist in the prevention or detection of crime or to aid the apprehension or prosecution of offenders; to meet statutory requirements; to comply with a court order or to prevent duplication of payments from public funds

Legal Background

The Data Protection Act, Human Rights Act, DWP legislation and common law protect personal information. These are cumulative and must always be considered together.

Human Rights Act

The Human Rights Act 1998 requires the Department to comply with Article 8 of the European Convention on Human Rights, which allows interference with the right to respect for private and family life only when it is in accordance with the law and pursues a legitimate public interest in a proportionate manner. For this reason also, DWP will only disclose information if there is substantial evidence that disclosure is in the public interest.

Common law

The principle underlying all police and DWP co-operation is the common law duty of confidentiality owed to the public. This requires that personal information given for one purpose cannot be used for another, and places restrictions on the disclosure of that information. This duty can only be broken if the public interest requires it. Statutory provisions on disclosure override common law provisions.

Departmental legislation

DWP has included in its own legislation specific references to the disclosure of information, these are to be found at sections 122/ 123 of the Social Security Administration Act 1992 (SSAA 1992) and section 50 of the Child Support Act 1991.

In addition to the constraints on disclosure in general legislation, DWP legislation contains penalties for staff found guilty of unauthorised disclosure (section 123 of the SSAA 1992 and s50 of the Child Support Act 1991).

Data Protection Act

Even if the common law allows disclosure of information, and there is no other explicit statutory provision for disclosure, the Data Protection Act 1998 must also be complied with. Included in the exemptions from the non-disclosure provisions of the Act, is an exemption that allows disclosure if it is for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders. ***The exemption should only be applied where failure to disclose would be likely to prejudice those purposes.***

Provided requests for assistance from police forces follow the guidance set out in this document, the DWP will normally provide information. This will as a rule be on receipt of a written standard request (see appendix 1), clearly specifying the reasons the police force believe that the non-disclosure exemptions of the Data Protection Act 1998 apply. ***Requests should be on the standard form and signed off by an officer of at least Inspector rank.***

Meeting Data Protection Act provisions

The Data Protection Act 1998 (DPA) requires that all transfers of information fall within the eight data protection principles and all other requirements of the Act.

The first principle requires that transfers are fair and lawful. Section 29 provides an exemption from the first principle's requirement of fairness, and from the non-disclosure provisions, provided that to meet that requirement would be likely to prejudice the purposes listed at 29(1)(a)-(c)¹, namely:

- (a) The prevention or detection of crime²,
- (b) The apprehension or prosecution of offenders³, or
- (c) The assessment or collection of any tax or duty or of any imposition of a similar nature.

Information provided by DWP in the process of assisting the police with their enquiries will only be used for those enquiries (second principle).

Information passed to the police by DWP will be only that information strictly necessary and relevant for the enquiry (third principle).

Information provided will be that which is accurate and up to date (fourth principle).

Police forces will keep the information supplied only for as long as necessary for the purposes of the enquiry. It is the responsibility of individual police forces to ensure compliance with data protection principles once the information is passed to them.

The rights of data subjects under DPA will be respected subject to the exemptions available for such processing (sixth principle).

Police forces will carry out the necessary processing in a secure environment on a strictly need to know basis. Destroyed information will be treated as confidential waste and disposed of in a secure manner (seventh principle).

Information will not normally be transferred outside the European Economic area (eighth principle).

Information provided to the police can be requested by individuals under Data Protection Act provisions except where appropriate exemptions apply.

Provision Of DWP Information To The Police

DWP staff are permitted to supply information to the police when one of the following applies:

1. The DWP customer has given permission;
2. It is provided under the terms of a court order; or
3. The DWP Personal Information Policy (PIP) Guide otherwise permits disclosure; for example where the DWP has an interest or where disclosure is in connection with the prevention or detection of crime or the apprehension or prosecution of offenders. DWP will only assist where non-disclosure would result in a substantial chance, not merely a risk, that the investigation, prosecution etc would be prejudiced.

In either instance at sub-paragraph 3), the police will need to give sufficient reasons to satisfy the DWP as to why they consider the disclosure falls within the non-disclosure exemptions of the Data Protection Act 1998 and to provide those reasons in writing (see standard request form at appendix 1).

Witnesses or victims

Information will not normally be provided if the DWP customer is a witness to, or victim of, crime. In such cases DWP may consider either forwarding a letter on behalf of the police or telephoning the person concerned. DWP will need to see and approve the contents of the police letter and cannot be held responsible for the safe delivery of letters.

Requests for lists⁴

DWP will not normally provide police forces with information on lists of customers. However it is accepted that in certain circumstances police forces may believe that a list of suspects is the only manner in which an investigation may be furthered. **Decisions on the release of information relating to a range of persons will not be handled at a local level, these will be considered by the DWP central advice unit.**

If information about a number of individuals is necessary to an investigation, police forces must narrow down any list of individuals before submitting it to DWP. DWP wish to see any list reduced, wherever possible, to the minimum of clearly identifiable suspects needed to further the investigation. It is for the police, and not DWP, to take appropriate steps to ensure that a list of suspects is sufficiently narrowed for DWP to consider assistance.

For example, if the police ask for a list of all customers in a particular area of a certain age, this would be too widely drawn. However, if by providing further information, which significantly reduces the search criteria and better targets the request, help will be considered.

DWP Decision Makers

The police will indicate on the request form whether the offence under investigation attracts a non-imprisonable or imprisonable sentence. This will determine the grade of DWP officer making the decision to release information.

If there is any doubt as to which category the request falls into i.e. non-imprisonable or imprisonable the procedures appropriate to non-imprisonable offences will apply i.e. the request will be handled by an officer of at least Higher Executive Officer grade.

Non-imprisonable offences

An officer of at least Higher Executive Officer grade will make decisions in these cases. Judgement will need to be applied as to whether release of the information is in the public interest. For these offences DWP will not normally release anything more than address and signing on/attendance details.

Imprisonable offences

An officer of at least Executive Officer grade will make decisions in these cases. Generally, for basic information, a request is very unlikely to be refused if the request form is fully and correctly completed. However if the request is for more sensitive information, a more senior officer (at least Higher Executive Officer) must be consulted on the merits of the request.

In any case, further guidance can be found in the DWP Personal Information (PIP) Guide. Additionally, assistance can also be sought from the central advice unit.

Complaints/Challenges

In the event that an individual questions or challenges the police force about the passing of information by DWP, the police force will contact the DWP officer or local office who responded to the original request. The DWP officer will consider whether the correct procedures have been followed and respond as appropriate. If necessary, further guidance will be sought from the Personal Information Policy (PIP) Guide or the central DWP advice unit.

DWP Review Of Decisions

If a police force wishes to query a DWP decision, either because insufficient or no information is provided, contact should be made with the DWP officer who made that decision. The decision will then be reviewed by a more senior officer. The reviewing officer will consider any additional information supplied by the police in support of the re-submission of the request.

It is accepted that without a court order or customer consent, it will always be up to the discretion of the DWP whether they feel that the public interest argument in favour of disclosure has been adequately addressed.

DWP and Police Commitments

DWP will:

- Ensure that any request from the police satisfies the criteria laid down in this document; any request not meeting the criteria will be returned to the originator
- Ensure that all requests are handled by the appropriate grade of officer dependent upon whether the enquiry concerns a non-imprisonable or imprisonable offence or it is unclear
- Ensure the enquiry is treated in confidence
- Provide the information asked for within the requested timescale, provided that this is considered reasonable
- Consider appropriate action where the police inform DWP that the information provided by DWP is believed to be incorrect
- Consider inclusion of DWP reply form in response to a Subject Access Request under the Data Protection Act 1998 unless it is specifically exempt
- If there are any doubts about whether to comply with the request in full or in part, DWP staff will, in the first instance, consult internal guidance contained in the Personal Information Policy (PIP) Guide and if still unsure will contact The DP/Folia policy team.
- Ensure that appropriate guidance is issued to all DWP staff

Police forces will:

- Identify on the request form whether information is being requested for non-imprisonable or imprisonable offences or whether it has not been possible to make this decision
- Clearly state the reason for a records check to be made, explaining as fully as possible the reason(s) why the non-disclosure exemptions of the Data Protection Act 1998 apply
- Ensure all other more appropriate lines of enquiry have been pursued to locate the subject/obtain relevant information (unless absolutely necessary, DWP should not be the first or only port of call)
- Forward request to DWP on the agreed form only
- Treat all responses in confidence
- Observe all obligations under the Data Protection Act 1998 in relation to information supplied by DWP
- Not transfer the provided information onwards unless it is necessary for the investigation or legal proceedings
- Include information supplied by DWP in any response to a Subject Access Request under the Data Protection Act 1998 unless it is specifically exempt
- Only keep information supplied by DWP for as long as necessary for the specific purpose of the individual investigation, any subsequent legal proceedings or if appropriate, the limit of any relevant appeal period has expired, whereupon it will be the responsibility of the police force concerned to destroy that data in a secure manner and to record that this has been done on their file
- Notify DWP if the information provided proves to be incorrect
- Distribute this Memorandum as appropriate
- Copy/print/reproduce and distribute the standard request form as necessary.

Commencement Date

This Memorandum will come into effect on

**Memorandum of Understanding
Association of Chief Police Officers****AGREEMENT**

In addition to formalising arrangements for co-operation between the Department for Work and Pensions (DWP) and police forces, this memorandum of understanding provides important guidance regarding relevant legal requirements and operational procedures that apply to both the DWP and the Police service. Recognising that these may be subject to change, this document will be regularly reviewed on a yearly basis, or at the request of either of the parties to the agreement.

Signatories to this agreement:

1. Date:

Department for Work and Pensions

2. Date:

¹The exemption does not oblige a data controller to make the disclosure but where it applies they MAY make the disclosure.

²In the view of the Information Commissioner, there would have to be a substantial chance, rather than a mere risk, that in a particular case, the purposes would be noticeably damaged.

³see footnote 2

4 The Information Commissioner has stated that the exemption at s29 of the Data Protection Act 1998 cannot justify the disclosure of personal data relating to a number of individuals, when in fact the purposes at s29 would only be likely to be prejudiced by a failure to make the disclosure in the case of some of them.

⁵Please delete as appropriate. If uncertain please indicate, in which case DWP will treat the request as though it refers to a non-imprisonable offence.

⁶If information other than whereabouts is being requested, please specify on a separate sheet, attaching it to this form explaining why it is necessary and the impact any failure to provide information will have on the investigation.

⁷Of at least Inspector rank

⁸DWP to retain a copy of the complete form on file and complete form to be returned to originating police force

⁹This should only be information relevant to the actual police enquiry

¹⁰ At least EO for imprisonable offences (name/address or times of attendance information only). At least HEO for non-imprisonable offences or where sentencing is uncertain and for all information other than name/address or times of attendance.

POLICE REQUEST FOR INFORMATION FROM DWP

(guidance for completion of forms PART1 and PART1A)

PLEASE READ THIS GUIDE BEFORE COMPLETING A REQUEST FOR INFORMATION

The forms that have been sent to you have been devised in order to ensure your request for information from the Department of Work and Pensions (DWP) is dealt with as swiftly and accurately as possible. The forms are in compliance with the Memorandum of Understanding (MOU) – any request made on the forms included in the Appendix of the MOU will still be actioned as normal, however we would prefer you to use the new forms (PART1 [your request for whereabouts of subject] and PART1A [your request for other information]).

The forms can either be hand written or typed

The forms must be completed and received at the OIU before any action is taken

The completed forms must include:

- The name of the requesting officer
- A return fax number
- The location of the requesting officer
- A crime reference number/ or other reference number

We need this information to:

- Get the information back to you
- Provide an audit trail

Subject of Enquiry

- Include as much information as possible to enable us to trace the person(s). For example the person may have Aliases or you may have uncovered several possible dates of birth/ possible addresses/ different spellings of the name, etc., etc., in your enquiries with may help us to direct our search more appropriately.
- The subject of the request should be a suspect and not a witness or victim

Request for information other than whereabouts

- You must complete both forms (PART1 and PART1A) – the MOU states that you should make your request on a separate sheet, we have introduced PART1A to prevent the loss of documents and improve turn around time for you.
- You must complete the whole form
- Be specific about the information you require and provide reason for the requests that are relevant to your investigations. Remember if you don't ask you won't get. Where there is some ambiguity form may be returned for a more detailed request, which will inevitably delay our response.

The forms must be signed by an officer of at least Inspector rank

Please fax the completed and signed forms to the OIU

If we cannot action your request we will notify you by return fax and provide a full explanation.

POLICE
EMBLEM

REQUEST TO DEPARTMENT OF WORK AND PENSIONS FOR INFORMATION

To: FIS(I) National Disclosure Unit P.O. Box 995 Shoreham by Sea BN43 5EL	From:	
	Force:	
	Tel No:	
	Fax No:	
Tel:- Fax:-	Crime Ref No:	

This enquiry is in respect of a **non-imprisonable** ☐ Or an **imprisonable** ☐ offence (tick box)

If uncertain please indicate, in which case DWP will treat the request as though non-imprisonable

This enquiry is in respect of a **Suspect** ☐ **Witness** ☐ Or **Victim** ☐ (tick box)

SUBJECT OF ENQUIRY

Full name:		Male/Female:	
Date of Birth:			
Last known address:			
Alias name/other information (i.e. National Insurance Number)			

I am investigating the whereabouts of the person named above as their current whereabouts are unknown and I have not been able to ascertain them from publicly available sources.

Tick box for information other than whereabouts ☐ And complete this form and **part 1A**

I am making enquiries, which are concerned with the prevention or detection of crime and/or the apprehension or prosecution of offenders. The nature of the offence is as follows:

It is my view that the disclosure of the requested information is necessary and compatible with section 29(3) of the Data Protection Act 1998 because:

I can confirm that other lines of enquiry have been made. Reply required by (date)

Signed		Date	
Name (block capitals)			
Rank (i.e. Inspector or above)			

(PART 1A)

POLICE
EMBLEM

REQUEST TO DEPARTMENT OF WORK AND PENSIONS FOR INFORMATION

(TO BE COMPLETED BY POLICE FORCE)

To:	National Disclosure Unit
Tel:	
Fax:	

From:	
Fax No:	
Crime Ref No:	

SUBJECT OF ENQUIRY

Name:

D.O.B

Other Information Requested:

Please specify necessity of information (other than whereabouts) requested and impact on investigation if information can not be provided:

I can confirm that other lines of enquiry have been pursued.

Signed		Date
Name (block capitals)		
Rank (i.e. Inspector or above)		