

Our Ref: IM-FOI-2018- 1322
Date: 28 June 2018



FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response to each of your questions.

GiRFEC, wellbeing, GDPR and Human Rights.

To be clear and for the purposes of this request, wellbeing and welfare are vastly different in law. Welfare is child protection and has a clear, legal threshold for information sharing without consent; wellbeing is at best pertaining to the economic wellbeing of the country (Supreme Court, July 2016) but for the purposes of GiRFEC, wellbeing is happiness within SHANARRI, deemed vague and open to interpretation (Supreme Court, July 2016) and does not meet the threshold for information sharing without consent.

I would be grateful for the following information:

- 1. How your organisation is prepared for GDPR in relation to GiRFEC, SHANARRI, wellbeing, and all other processing of data at non-child protection level where it does not meet the high threshold of welfare.***

Police Scotland introduced a Data Protection Reform team for the preparation and implementation of GDPR and the adoption of processing conditions for the sharing of wellbeing concerns.

A number of products have been developed to support the implementation of GDPR. These include:

- Training package for operational staff with a force instruction issued for all officers and staff to complete.
- Aide Memoire for operational staff including a form of words to use when seeking consent. These have been distributed across the force area.
- Public Information Cards which are handed to individuals to inform them of their rights where consent has been sought to share with a 3rd sector organisation. This includes their right to withdraw their consent. These have been distributed across the force area.
- Process designed to support withdrawal of consent.
- Force instruction to communicate the process for withdrawal.
- Training package for Divisional Concern Hub staff delivered face to face to Divisional Hub Managers for local dissemination.
- Written guidance for Concern Hub staff.
- Short term instruction to staff in relation to the population of information on interim Vulnerable Persons Database (iVPD), with a view to further system development in the coming weeks.
- Privacy Notice published on force webpage detailing how information is handled.

Police Scotland Divisional Concern Hubs will triage, research, assess and share relevant, necessary,

justifiable and proportionate information with partners to secure appropriate intervention or support that is in compliance with statutory requirements, national guidance and GDPR.

2. What legal base you would process subject's information in relation to GiRFEC, SHANARRI, wellbeing, (to be clear, not welfare), and the reason for the legal base you would use, e.g. if the base would be public interest, please also describe WHY this base would apply.

Police Scotland rely on a number of lawful bases for sharing personal information, whilst continuing to comply with the requirement of the new legislation. This includes provision within Section 32 of Police and Fire Reform which outlines the purpose of policing in Scotland as being 'to improve the safety and well-being of persons, localities and communities'.

Public Task

"The processing is necessary for you to perform a task in the public interest or for your official functions; the task has a clear basis in law"

This will be used for the sharing of wellbeing concerns for Children with statutory agencies. The clear basis in law referred to in Public Task is:

Section 32 – Police and Fire Reform (S) Act 2012 – Main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland.

It must be clear that it is necessary, proportionate, justified and relevant to do so and must be balanced with individual's Human Rights – Article 8 ECHR: right to a private and family life, the Duty of Confidentiality and individual's views.

In addition to the above lawful basis for processing, where Police Scotland wishes to share 'special category' information e.g. race, religion, ethnicity, health, sexual orientation with statutory partners, Police Scotland will adopt either of the following additional processing conditions where sharing is likely to be necessary for that purpose;

Article 9(h) – Provision of Health or Social Care or;

Article 9(g) - Substantial Public Interest (Schedule 1, part 2, paragraph 6 - Statutory purpose).

Police Scotland rely on the following processing conditions for the sharing of wellbeing concerns with non-statutory bodies;

Lawful Processing Condition - Article 6(1)(a) – Consent

In addition to the above lawful basis for processing, where Police Scotland wishes to share 'special category' information e.g. race, religion, ethnicity, health, sexual orientation with statutory partners, Police Scotland will adopt the following additional processing condition;

Article 9(2)(a) – Explicit Consent

3. How you will notify each data subject, including 3rd party subject, in advance that you intend to process their GiRFEC, SHANARRI, wellbeing data, (not welfare) by sharing with another organisation.

Where officers attend an incident where there is a requirement to record data on the interim Vulnerable Persons Database (iVPD), all individuals are informed that information from a specific incident **will** be recorded and assessed on police systems and Police Scotland **may** share relevant information at the time of the incident.

Similar to previous legislation, there will be occasions where exemptions exist in relation to notification, namely the prevention/detection of crime or where there is a serious identifiable risk of harm to the data subject.

4. How you intend to offer each data subject, including 3rd party subject, the right to object to processing their GiRFEC, SHANARRI, wellbeing data, (not welfare).

The Police Scotland internet page contains the following information in relation to the right to object:

"The GDPR and the Data Protection Act 2018 strengthen the rights that you, as a data subject, possess in relation to the personal data that Police Scotland holds about you. These rights are:

- Right of access – you can make a 'subject access request' for a copy of the information we hold about you (see [Subject Access Requests](#))
- Right to rectification – you can instruct us to correct any personal data we hold about you that is inaccurate
- Right to erasure ('right to be forgotten') – you can ask for us to destroy any personal data that we hold about you
- Right to restrict or object to processing – in some circumstances, you can place restrictions on, for example, who can access your data or who we share it with

All of the above rights are subject to exemptions that we may apply, for example if your data is being processed for law enforcement purposes or under a legal obligation.

If you wish to exercise any of these rights, please call 101 and ask to speak to the Information Management team in your local area. "

<http://www.scotland.police.uk/access-to-information/data-protection/>

5. If it be the case that subject's consent is not required, the reasons WHY their consent is not required for processing their GiRFEC, SHANARRI, wellbeing data, (not welfare).

Lawful bases for processing for wellbeing concerns is valid and used by Police Scotland as documented at Question 2 to this response.

Public Task

"The processing is necessary for you to perform a task in the public interest or for your official functions; the task has a clear basis in law"

This will be used for the sharing of wellbeing concerns for Children with statutory agencies. The clear basis in law referred to in Public Task is:

Section 32 – Police and Fire Reform (S) Act 2012 – Main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland.

It must be clear that it is necessary, proportionate, justified and relevant to do so and must be balanced with individuals Human Rights – Article 8 ECHR: Right to a private and family life, the Duty of Confidentiality and individual's views.

In addition to the above lawful basis for processing, where Police Scotland wishes to share 'special category' information e.g. race, religion, ethnicity, health, sexual orientation with statutory partners, Police Scotland will adopt either of the following additional processing conditions where sharing is likely to be necessary for that purpose;

Article 9(h) – Provision of Health or Social Care or;
Article 9(g) - Substantial Public Interest (Schedule 1, part 2, paragraph 6 - Statutory purpose).

6. In the absence of informed consent, or not meeting one of the aims listed in Article 8, how you will apply the balancing test to comply with Human Rights Article 8 (2) ECHR to GDPR and DPA in processing GiRFEC, SHANARRI, wellbeing data, (non-child protection threshold).

Child protection is an exemption, however, wellbeing does not meet the necessity test, and the promotion of wellbeing is not one of the aims of Article 8 (2), (Para 89, Supreme Court, 2016). Legitimate interest base, for example, would need to be balanced with the 3 part test, including human rights, I request how would you apply this test.

On every occasion, Police Scotland will endeavour to ensure that the individual is aware that their details will be recorded on police systems, will be assessed and may be shared. The views of the individual will be obtained (where available) by operational officers at the time of the incident.

Upon receipt of a wellbeing concern, trained staff within a Divisional Concern Hub will thereafter carry out a holistic assessment in relation to that individual. This assessment uses the Resilience Matrix from the National Practice Model, alongside the wellbeing indicators, in order to identify individual and situational vulnerabilities. In addition to the resilience matrix, the assessor will identify if there is a necessity to share by carrying out a proportionality assessment. This assessment will take into account our Duty of Confidentiality, Article 8 of ECHR and the views of the individual. This will also be documented along with the legal basis for processing under Article 6 and Article 9 of GDPR.

For child wellbeing, this is likely to be Public Task and Provision of Health or Social Care or Substantial Public Interest (Schedule 1, part 2, paragraph 6 - Statutory purpose) under Article 9 dependant on circumstances. Both would use a basis in law of Section 32 of the Police & Fire Reform (Scotland) Act 2012. Section 32 of the Police & Fire Reform (Scotland) Act 2012 states:

The policing principles are—

- (a) that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland, and
- (b) that the Police Service, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which—
 - (i) is accessible to, and engaged with, local communities, and
 - (ii) promotes measures to prevent crime, harm and disorder.

Where the necessity test is not met and the proportionality assessment indicates that the freedoms and rights of the individual outweigh our need to share information in order to improve the safety and well-being of that individual, then the information will not be shared.

7. A copy of your policy/code of practise for data processing.

Police Scotland have adopted the following processing conditions for the sharing of wellbeing concerns with statutory bodies:

Lawful Processing Condition - Article 6(1)(e) - Public Task

In addition to the above lawful basis for processing, where Police Scotland wishes to share 'special category' information e.g. race, religion, ethnicity, health, sexual orientation with statutory partners,

Police Scotland will adopt either of the following additional processing conditions where sharing is likely to be necessary for that purpose;

Article 9(h) – Provision of Health or Social Care or;

Article 9(g) - Substantial Public Interest (Schedule 1, part 2, paragraph 6 - Statutory purpose).

Police Scotland have adopted the following processing conditions for the sharing of wellbeing concerns with non-statutory bodies;

Lawful Processing Condition - Article 6(1)(a) – Consent

In addition to the above lawful basis for processing, where Police Scotland wishes to share 'special category' information e.g. race, religion, ethnicity, health, sexual orientation with statutory partners, Police Scotland will adopt the following additional processing condition;

Article 9(2)(a) – Explicit Consent

The Police Scotland internet page contains the following information:

<http://www.scotland.police.uk/access-to-information/data-protection/>

**8. Copies of your staff training programs in relation to GiRFEC, SHANARRI, wellbeing since; a). Supreme Court ruling, July 2016.
b). 2013 - Supreme Court ruling, July 2016.**

There are four on line training packages in relation to the interim Vulnerable Persons Database (iVPD) as follows:

- Search and View Module
- Create and Update Module
- Vulnerability Module
- Domestic Abuse Questions Module

There are two half day courses:

- Supervisors Module
- Public Protection Unit Module

There is not a specific training package in relation to GiRFEC and SHANARRI. Therefore section 17 of the above act applies, notice that information is not held.

An Aide Memoire for operational staff including a form of words to use when seeking consent has been developed. These have been distributed across the force area.

9. Copies of your memorandums to staff regarding updating practise information in relation to GiRFEC, SHANARRI, wellbeing since Supreme Court ruling July 2016.

Not Applicable

10. The legal base for processing data through MASH and onto VPD relating to GiRFEC, wellbeing, social history, educational history where this does not meet the welfare threshold of sharing without consent.

Divisional Concern Hubs will for each individual wellbeing concern report triage, research, assess and share if relevant, necessary, justifiable and proportionate, information with partners to secure

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appropriate intervention or support that is in compliance with statutory requirements, national guidance and GDPR prior to multi agency discussion.

Should you require any further assistance concerning this matter please contact Information Management - Edinburgh on 0131 311 3785 quoting the reference number given.

If you are dissatisfied with the way in which your request has been dealt with, you are entitled in the first instance, and within 40 working days of receiving this response, to request a review of our actions and decisions.

Should you wish to do so, please contact us at the following address, stating what has caused your dissatisfaction and what you require us to review:

Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH - foi@scotland.pnn.police.uk

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Scottish Information Commissioner within six months for a decision. You can raise an appeal using the online service at www.itspublicknowledge.info/Appeal or by writing to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS, or via email at enquiries@itspublicknowledge.info.

Should you wish to appeal against the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information [Disclosure Log](#) in seven days' time.

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