



Home Office

Memorandum of Understanding

between

The Home Office

and

Department for Education

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

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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. The DfE was formed on 12 May 2010 and is responsible for education and children's services.
- 1.3. 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.
- 1.4. 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.
- 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.

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

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2.5. ~~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 ~~t. Under these~~ ~~conditions, he~~ HO will utilise the exemptions granted under Section 29(3) of the DPA.

2.6. ~~Once HHO Of functions are I have obtained aid information it will rely on powers~~ ~~set~~ out in a number of Acts ~~to further process that information and specifically~~ include ~~ing~~ 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.

2.7.

~~2.7-2.8.~~ Information exchanged as a result of this and any associated agreements which then forms part of the permanent record of the receiving body becomes the responsibility of the receiving body under the terms of the DPA. The receiving body becomes the data controller for that information and as such adopts all of the DPA obligations for that information.

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 Information may be shared (in accordance with the relevant legislation) between parties for a number of purposes including, but not limited to:
- In the interest of promoting the education or well-being of children in England
 - To protect and maintain the welfare of a child or children
 - To prevent and/ or detect crime, including abuse of the immigration system
 - In the interest of protecting/ securing national security

6 Method of information sharing

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- 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~~ and Termination Arrangements**

- 7.1 This agreement will run indefinitely but will be subject to an annual review. 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. Either party may terminate this agreement within one months written notice to the other or with immediate effect in the event of breach of its obligations by any other Party to this MoU.

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7.3.7.4. 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.

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- 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.

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)

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11 Annex 1 – Document Control

11.1 Document Control Personnel

| Key personnel | Name | Organisation (Team) |
|----------------|------|----------------------------------|
| Author | | <u>Home Office</u> <u>DfE</u> |
| Approver | | <u>Home Office</u> <u>DfE</u> |
| Review Control | | <u>Home Office</u> <u>DfE</u> |

11.2 Version History

| Version | Date | Summary of changes | Changes marked |
|------------|-----------------|----------------------|----------------|
| <u>0.1</u> | <u>11/12/14</u> | <u>Draft version</u> | |
| | | | |
| | | | |
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| | | | |

11.3 Review dates

| Version | Publication date | Review date |
|---------|------------------|-------------|
| | | |
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| | | |

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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 | | | |
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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 |
|  NPD Requests mailbox | NPD.Requests@education.gsi.gov.uk |  |
| | | Freedom of Information Requests |
| | | Protocol for dealing with cross-party complaints |

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13.2 DfE – Escalation

| Contact | E-mail | Responsibility |
|---|---|---|
|  | | Security Incidents |
| | | Legal issues |
|  |  |  |
| | | 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.

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 the 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

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 it 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 HO will only request information from DfE in cases where:

- HO confirm we have lost contact with the child and their family members
- The family has no current lawful basis to remain in the UK
- The HO believes the family and child are still in the UK, and
- The HO has exhausted all other avenues to establish contact with the child and family

1.4 Any information received as a result of this 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 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:

Commented [REDACTED]: I'm not sure if this is something we could identify?

Commented [REDACTED]: Not knowing what information is available I assumed there might be records if a parent/ carer advises the school if they are leaving the country etc if not then like you I see no value in adding this line in

Commented [REDACTED]: [REDACTED]: Do we need to take this out?

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- National Insurance Number (where held)
- Surname
- Middle Name
- Forename
- Address
- Post Code
- 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 in response provide the HO with information relating to those individuals that matched DfE records.

2.3 DfE will extract the information required for this exchange from records held on the National Pupils database which is managed by Cap Gemini on behalf of DfE under contract as data processors for the DfE.

Commented [1]: : does this work?

2.43 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

2.45 On receipt of this information the HO will provide DfE with statistical information on a regular basis detailing how useful this information was in achieving the aims detailed at 1.1 and 1.2 above.

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3. Benefits of the exchange

3.1 Potential benefits for both departments include, but are not limited to:

- DfE will be notified of details of vulnerable minors which they may utilise to take action in accordance with their duties and obligations

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- HO will initiate contact with applicants under their duty of care pertaining to missing and vulnerable children.
- 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

4. Physical method of data transfer

4.1 HO will provide DfE with information as listed at 2.1 above in an Excel spreadsheet on a regular basis and sent over the GSI network to a dedicated DfE mailbox. [DfE to insert]. The spreadsheet will contain details of those individuals HO wishes to match against DfE records for the purposes outlined at section 1.1 – 1.3 above.

4.2 DfE will aim to respond to each request within X [DfE to insert] days of receipt using the same spreadsheet by inserting additional information as detailed as section 2.3 in cases where there is a positive match. If there is no positive match DfE will confirm this in their response.

4.3 In exceptional circumstances HO will make single case by case enquiries of DfE to the dedicated mailbox and DfE will aim to respond to these within X [DfE to insert] days of receipt. These exceptional circumstances include but are not limited to:

- The HO believes there is significant and imminent physical risk to the child or parent/guardian
- Issues of national security
- [REDACTED] – we may be able to add more here

Commented [REDACTED]: We would need to run this by our technical and security people but if they are happy then we are happy

Commented [REDACTED]: We'd prefer to use Key to Success to facilitate the transfer of data to and from the department. Key to Success (also known as 'WebDav secure file transfer' system) is an online encryption system provided and hosted by SDA Ltd. On request, DfE can create a secure online folder on the 'WebDav secure file transfer' system, setting up and limiting access to a selected number of users. Those users will then be provided with the web path which they will need to map to their system and login using a user ID and password. They will then be able to upload and download files to and from this secure folder. As an additional layer of security, files that are made available by the department are further encrypted and password protected, with users required to call for the password.

Commented [REDACTED]: Does 10 working days sound reasonable?

Commented [REDACTED]: Richard do we need to confirm/ agree match criteria?

Commented [REDACTED]: Can you give details of the frequency of these requests? Monthly? Quarterly? Other?

Commented [REDACTED]: Does 5 working days sound reasonable?

Commented [REDACTED]: The frequency can be negotiated – so once a month would be fine – although we would like the facility to carry out ad hoc one off enquiries in exceptional circumstances as described. We will be guided by you in terms of turnaround times as it is you doing the work

Commented [REDACTED]: I assume the frequency of the bulk requests will determine the volume of these we can expect?

Commented [REDACTED]: Happy with what you've proposed so far and happy to review any further circumstances you might want to add.