



MEMORANDUM OF UNDERSTANDING BETWEEN:

**THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI)
AND
THE POLICE OMBUDSMAN FOR NORTHERN IRELAND (PONI)**

REGARDING THE DISCLOSURE OF INFORMATION

1.0 INTRODUCTION

- 1.1 The Police Ombudsman for Northern Ireland was established under the Police (Northern Ireland) Act 1998 (the 1998 Act) to investigate complaints about the conduct of police officers and, where appropriate, makes recommendations in respect of criminal and misconduct matters. The Police Ombudsman investigates complaints received from members of the public but also investigates matters which have been referred to the Ombudsman by the Chief Constable, the Northern Ireland Policing Board, the Director of Public Prosecutions or the Department of Justice. The Police Ombudsman may in addition investigate matters on her own motion where appropriate in the public interest.
- 1.2 The Chief Constable is responsible for the direction and control of the Police Service of Northern Ireland (PSNI). PSNI's duty is to protect life and property; to preserve order; to prevent crime and to take measures to bring offenders to justice.
- 1.3 The purpose of this Memorandum is to establish a framework for the PSNI to provide information to the Police Ombudsman to enable her to investigate all complaints and referrals and to commence investigations on her own motion and for the purpose of the statutory functions provided for in the 1998 Act.
- 1.4 This Memorandum takes into account the provisions of the 1998 Act, and the obligations imposed on the PSNI by section 66 of the Police (Northern Ireland) Act 2000 (the 2000 Act). This Memorandum also recognises the obligations of the parties under section 6 of the Human Rights Act 1998 (HRA), and, in particular the obligation to act compatibly with articles 2, 3, 6 and 8 of the European Convention of Human Rights (ECHR) and the obligations to comply with the provisions of Data Protection Act 2018 (DPA 2018). Other relevant legislation is set out at paragraph 2.5.
- 1.5 The Police Ombudsman and the PSNI acknowledge the impact of sharing information and the potential impact on individuals in respect of their privacy and personal security. Both parties are mindful of their legal obligations in this regard.



2.0 A FRAMEWORK FOR INFORMATION SHARING

- 2.1 Consistent with the provisions of section 66 of the 2000 Act, the Chief Constable has an obligation to supply the Police Ombudsman with such information and documents as the Ombudsman may require for the purposes of, or in connection with, the exercise of any of her functions.
- 2.2 The Police Ombudsman for Northern Ireland has a statutory duty to exercise her statutory powers in such a manner and to such an extent as to secure the confidence of the public and of members of the police service in the complaints system.
- 2.3 Both PSNI and PONI are controllers within the meaning of the DPA 2018 in relation to the processing of personal information (including sensitive personal information) for law enforcement purposes. For the purpose of the Data Protection Act 2018, the parties are satisfied that the data sharing arrangements outlined in this document meet the requirements of the Information Commissioner's statutory Code of Practice on Data Sharing.
- 2.4 The Police Ombudsman and her staff are unable to disclose, at any time, information obtained from PSNI except as permitted by section 63 of the Police (Northern Ireland) Act 1998.
- 2.5 The purpose of this document is to provide an agreed framework that enables both PSNI and PONI to comply with relevant obligations imposed by but not limited to:
- Police (Northern Ireland) Act 1998
 - and in particular sections 51(4) and 63
 - Police (Northern Ireland) Act 2000
 - and in particular sections 32 and 66
 - RUC (Complaints etc) Regulation 2000
 - and in particular Regulation 8
 - Regulation of Investigatory Powers Act 2000 (RIPA)
 - Public Records (Northern Ireland) 1923
 - Official Secrets Act 1989
 - Human Rights Act 1998 (HRA)
 - Criminal Procedures and Investigation Act 1996 (CPIA)
 - Freedom of Information Act 2000 (FOIA)
 - Data Protection Act 2018 (DPA 2018) and related Codes of Practice
 - HMG Security Policy Framework

This MOU has been written to reflect the respective obligations of the parties under the legislation. Nothing in this MOU will replace the legal obligations placed on both PSNI and PONI by virtue of legislation.



3.0 PRINCIPLES UNDERPINNING THE MOU

3.1 The parties agree that the following overarching principles apply in relation to this data sharing arrangement and the disclosure by PSNI of information:

- (i) Fairness – the parties will respect the privacy and data protection rights of all individuals whose data is disclosed to PONI. The parties will ensure that where lawful and appropriate, individuals will be informed of a disclosure made under this MOU.
- (ii) Facilitated Direct Access – where lawful and appropriate PSNI will provide PONI with facilitated direct access to all PSNI systems. For the avoidance of doubt, facilitated direct access means staff from PONI Confidential Unit and where appropriate PONI's Director of Investigations accessing PSNI information systems directly, supported by PSNI staff, for the purposes of systems searches for specific matters under investigation by PONI.
- (iii) Openness – PONI will provide the PSNI with such information as is necessary in each case to enable PSNI to make an effective search of its records.
- (iv) Confidentiality - All information requested and related information will be managed in line with the common law and legal obligations under the legislation applicable to both parties and in accordance with HMG Security Policy Framework.
- (v) Transparency – this MOU will be published by both parties and any revisions or amendments will also be published.
- (vi) Proportionality - only the information that is strictly necessary for the purposes of a PONI investigation will be collected and retained by PONI staff.
- (vii) Timeliness – the parties to this MOU will seek to ensure that matters are progressed in a timely manner
- (viii) Collaboration - the parties will work together to resolve issues as they emerge.



4.0 REASONABLE FACILITIES

4.1 PSNI will provide PONI staff with all facilities reasonably requested for access to, viewing, photocopying and note taking regarding all the relevant information and records. Records include records held in hard copy, electronic and digital storage.

5.0 THE RELEVANCY TEST

5.1 The PSNI will provide the Police Ombudsman with all information that she may require for the purposes of her functions.

5.2 For the avoidance of doubt the Police Ombudsman and her staff will apply the test of relevancy to the requested information.

6.0 ESCALATION PROCEDURES

6.1 In the event of any dispute between PSNI and PONI staff as to the application of the MOU this should be escalated in the first instance to the Police Ombudsman's Senior Responsible Owner and the PSNI's Assistant Chief Constable in charge of Legacy. Where the matter cannot be resolved the Police Ombudsman and Chief Constable will discuss and where possible agree on the issue. Litigation to resolve an issue of access to information required by PONI will be a last resort.

7.0 DAY TO DAY LIAISON

7.1 Day to day liaison in relation to this MOU will be:

PONI

Senior Responsible Owner
and
Director of Legal Services

PSNI

Assistant Chief Constable in charge of Legacy
and
Head of Legal Services



8.0 ONWARD DISCLOSURE OF INFORMATION TO THIRD PARTY

8.1 The Police Ombudsman and her staff are bound by the obligations imposed by section 63 of the 1998 Act in relation to information received for the purposes of the functions of the Office. The Police Ombudsman and her staff will also comply with the CPIA and relevant legal obligations under DPA 2018. If she or her staff propose to release any information collected for the purposes of her investigations to any other party for other purposes they will consult with and take account of all PSNI representations and those of the relevant third party.

9.0 DATA RETENTION

9.1 PSNI and PONI will retain and dispose of information collected by PONI pursuant to section 66 of 2000 Act in accordance with the Public Records Act (Northern Ireland) 1923, Data Protection and Human Rights obligations and in accordance with their respective Retention and Disposal schedules.

10.0 REVIEW

10.1 This MOU will be reviewed at least every three years by both parties or sooner if required by either party.

Dated 11th day of August 2020

Signed

Chief Constable of the Police Service of Northern Ireland

Signed

Police Ombudsman for Northern Ireland