

# **Overarching protocol for information sharing in Gloucestershire**

Gloucestershire Information Sharing Partnership Agreement (GISPA)

*June 2021*

**VERSION 5.0**

# 1. INTRODUCTION

Sharing Personal Data is essential for delivering effective and efficient public services that meet the needs of the community and safeguard the individual. Whether this for Health and Social Care, the prevention and detection of crime or protecting public money, public sector service providers are governed by legislation that reinforces the need to share data to carry out their statutory and discretionary functions.

The purpose of the Gloucestershire Information Sharing Partnership Agreement (GISPA) is to enable organisations providing public services concerned with the safeguarding, welfare and protection of the wider public to share relevant, minimum and appropriate personal data between them in a lawful, safe and informed way.

# 2. AIMS AND OBJECTIVES

- 2.1 The GISPA aims to assist compliance with statutory and legislative requirements for disclosing Personal Data including the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018, the Human Rights Act 1998, the Privacy and Electronic Communications Regulations 2003 (PECR), the Regulation of Investigatory Powers Act 2000 (RIPA) and with the common law duty of confidentiality. It also enables compliance with the Information Commissioner's statutory Data Sharing Code of Practice.
- 2.2 The main objectives are:
  - a) to promote the lawful sharing of information between organisations for the provisions of public services in Gloucestershire
  - b) to promote a more joined up approach to services provided in Gloucestershire by ensuring access to the right information in an efficient, appropriate, and lawful manner
  - c) to assist organisations to meet their regulatory requirements and
  - d) to support a process, which will implement, govern, monitor and review information flows.

# 3. SCOPE

- 3.1 The conditions, obligations and requirements set out in this agreement and supporting documentation will apply to all appropriate staff, agency workers, volunteers and others working on behalf of the participating organisations including their partners, agents, and sub-contractors.
- 3.2 The protocol applies to all Personal Data handled by the participating organisations including but not limited to information held on manual records and information processed electronically.
- 3.3 There are three broad categories of information relating to personal data that organisations may share without the need for protocols or agreements.
  - a) Directly Identifiable Personal Data
  - b) De-identified or Pseudonymised Information including

c) De-identified Anonymised Information Including Aggregated (Statistical) Information

- 3.4 Extra consideration should be given to other datasets that maybe held by participating organisations. The UK GDPR definition of Personal Data also includes individuals “who can be indirectly identified from that information in combination with other information”. Therefore, the parties should consider whether the sharing of de-identified information would result in that information becoming Personal Data again if combined with information held by the receiving party.
- 3.5 Where anonymised or de-identified information is shared all parties agree not to attempt to re-identify individuals and not to undo or reverse any pseudonymisation
- 3.6 Where any of the processing may lead to any of the parties becoming joint Controllers, this agreement will be replaced by a Joint Controller Data Processing Agreement setting out the responsibilities of the parties, in line with the requirements of Data Protection legislation.

#### **4. THE AGREEMENT**

- 4.1 All parties agree that any arrangement entered into will be governed by the requirements, terms and conditions of the overarching data sharing protocol, inclusive of its Schedules.
- 4.2 All parties will ensure their organisation’s compliance with all aspects of this overarching data sharing protocol as well as any specific arrangements agreed to by the parties before the commencement of any data sharing.
- 4.3 All specific requirements will be outlined using the Specific Information Sharing Agreement (SISA) set out in Schedule 1 to this agreement and will not alter or otherwise affect each organisation’s compliance with the requirements of this overarching Data sharing Protocol. Terms defined in Schedule 3 shall apply to this agreement and any SISA.
- 4.4 All Parties are considered a Controller in their own right under current Data Protection legislation and agree to:
- a) hold a valid registration and have paid such fees as are required by the Supervisory Authority which, by the time that the data sharing is expected to commence, covers the intended data sharing, unless an exemption applies.
  - b) Appoint a Data Protection Officer, if appropriate, and publish contact details.
- 4.5 All Parties shall appoint a Single Point of Contact (SPoC) who will work together to reach an agreement with regards to any issues arising from the data sharing and to actively improve the effectiveness of the data sharing protocol.

## **5. THE PRINCIPLES OF THE GISPA**

- 5.1 All parties shall comply at all times with all applicable laws and regulations relating to processing of personal data and privacy in effect in the UK, including where applicable the guidance and codes of practice issued by the Information Commissioner, the Department of Health and other relevant bodies and shall not perform its obligations under this Agreement in such a way as to cause any other party to this Agreement to breach any of its obligations under such applicable laws, regulations or guidance.
- 5.2 All Parties will use the same degree of care as it uses to protect its own strictly confidential information, which is processed under current Data Protection legislation, to maintain the data in strict confidence.
- 5.3 All Parties shall not make any use of, or otherwise process, the data and information received other than for the agreed purpose(s) and shall not attempt to re-identify individuals where data has been anonymised or de-identified or undo or reverse any pseudonymisation used.
- 5.4 All Parties shall restrict access to the data and information received solely to its staff members and/or the staff members of any authorised third-party organisation, who need to have such access in order to carry out the agreed purpose(s).
- 5.5 All parties are responsible for ensuring the accuracy, completeness and validity of the data.
- 5.6 All parties will use its reasonable endeavours to ensure that appropriate security and confidentiality procedures are in place to protect the transfer and use of the Personal Data by:
  - a) Complying with any organisations specific data security requirements such as the Data Security and Protection Toolkit (DSPT), management of police information (MoPI) or as agreed by the parties in the appendix of the Specific Information Sharing Agreement (Schedule 1) and adhering to robust information governance management and accountability arrangements, including effective security event reporting and management; and
  - b) Complying with any relevant assessment, reporting and audit requirements relevant to its organisation type as agreed by the parties in the appendix of the Specific Information Sharing Agreement (Schedule 1). Third parties shall internally audit their compliance annually and report on such audits to the Data Discloser.

## **6. DATA SUBJECT RIGHTS**

- 6.1 All Parties will comply with the rights of the Data Subject in a fair and consistent manner and in accordance with any specific legislative requirements, regulations or guidance.
- 6.2 All Parties must ensure that they have appropriate policies and procedures in place to facilitate both the protection and the exercising of data subject rights.
- 6.3 All parties must be transparent and inform Data Subjects of the intended processing and their applicable rights.
- 6.4 The Parties each agree to provide assistance as is reasonably required to enable other Parties to comply with requests from Data Subjects to exercise their rights under

the Data Protection Legislation within the time limits imposed by Data Protection Legislation.

- 6.5 All Parties are responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.

## **7. FREEDOM OF INFORMATION ACT**

- 7.1 This GISPA overarching data sharing protocol should be disclosed under the Freedom of Information Act and should become part of your Publication Scheme.
- 7.2 Where Parties and/or their partners are not bound by this legislation consideration should still be given to referencing this information on their website.

## **8. SECURITY AND TRAINING**

- 8.1 Without prejudice to the parties' other obligations in respect of information security, the Parties agree to have in place throughout the term of their participation appropriate technical and organisational security measures as set out in Schedule 2 to;

a) Prevent:

- i) unauthorised or unlawful processing of any shared Personal Data: and/or
- ii) The accidental loss or destruction of, or damage to, the Shared Personal Data

b) Ensure a level of security appropriate to:

- i) The harm that might result from such unauthorised or unlawful processing or accidental loss, destruction, or damage; and/or
- ii) The nature of the Shared Personal Data to be protected

- 8.2 It is the responsibility of each party to ensure that its staff members are appropriately trained to handle and process the Shared Personal Data in accordance with the organisational and technical security measures set out in Schedule 2 together with any other applicable national data protection laws and guidance and have entered into an employment contract inclusive of confidentiality clauses for the Processing of Personal Data.
- 8.3 The level, content and regularity of training shall be proportionate to the parties' staff, agency workers, volunteers and others working on their behalf, including their partners, agents, and sub-contractors' role.

## **9. PERSONAL DATA BREACHES AND REPORTING PROCEDURES**

- 9.1 The Parties shall each comply with the obligation to report a Personal Data Breach to the appropriate Supervisory Authority and (where applicable) Data Subjects under Article 33 of UK GDPR and shall each inform the other party/parties of any Personal Data Breach irrespective of whether there is a requirement to notify any Supervisory Authority or data subject(s).

9.2 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal data Breach in an expeditious and compliant manner.

## **10. TRANSFERS**

10.1 Shared Personal Data may only be transferred outside of the UK in compliance with the conditions for transfers set out in Chapter V of the UK GDPR.

10.2 The Parties shall not be permitted to transfer Shared Personal Data to a third party unless it is required or allowed by law. The Parties agree to notify any impacted Parties of any such transfers as soon as it becomes aware the transfer is taking place.

10.3 If any party appoints a third-party Processor to Process the Shared Personal Data it shall comply with Article 28 and Article 30 of UK GDPR and shall remain liable to the Parties for any acts and/or omissions of the Processor

## **11. LIABILITY**

11.1 No Party excludes or limits liability to the other Party(ies) for:

- a) fraud or fraudulent misrepresentation.
- b) death or personal injury caused by negligence.
- c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- d) any matter for which it would be unlawful for the parties to exclude liability.

11.2 Subject to clause 10.1, no Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation, or goodwill.
- b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- c) any loss or liability (whether direct or indirect) under or in relation to any other contract.

## **12. DISPUTE RESOLUTION (DATA SUBJECTS & SUPERVISORY AUTHORITY)**

12.1 In the event of a claim or dispute brought by a Data Subject or the Supervisory Authority concerning the Processing of Shared Personal Data against any Party, the Parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.

12.2 The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Supervisory Authority. If participating in proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other

arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

### **13. THIRD PARTY RIGHTS**

- 13.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 13.2 No one other than a Party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

### **14. SEVERANCE**

- 14.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 14.2 If any provision or part-provision of this Agreement is deemed deleted under clause 14.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended result of the original provision.

### **15. NO PARTNERSHIP OR AGENCY**

- 15.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any Party the agent of another party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 15.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## 16. REVIEW

16.1 This overarching data sharing protocol will be reviewed by the Gloucestershire Information Governance Group at least every 3 years unless it is required to do so following changes to Data Protection legislation.

### DOCUMENT INFORMATION

Document owner:	Gloucestershire Information Governance Group (GIGG)
Next major review date:	June 2024
Version:	5.0
Summary of changes:	Major review of core framework to cover legal requirements and standard clauses; dispute resolution, third party rights and severance. Removed reference to professional standards and specific accreditations Major review of SISA to include legal requirements and mechanics of sharing Included appendix within the SISA for information and processing restrictions and baseline organisational and technical measures