

# Privacy notice

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## Investigations for law enforcement purposes

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## Glossary and abbreviations

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Term used	Explanation
<b>FOISA</b>	Freedom of Information (Scotland) Act 2002
<b>EIRs</b>	Environmental Information (Scotland) Regulations 2004
<b>DPA 2018</b>	Data Protection Act 2018
<b>SIC, The Commissioner, we</b>	Scottish Information Commissioner
<b>MoU</b>	Memorandum of Understanding between the Commissioner, Police Scotland and the Crown Office
<b>DPO</b>	Data Protection Officer
<b>FOI offence</b>	Offence under section 65 of FOISA or regulation 19 of the EIRs
<b>FOI law</b>	FOISA and the EIRs

## Introduction

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1. The Commissioner is a “competent authority” for the purposes of Part 3 (Law enforcement processing) of the Data Protection Act 2018 (DPA 2018) in relation to personal data processed in relation to the investigation of offences under section 65 of FOISA and regulation 19 of the EIRs (“FOI offences”).
2. “Law enforcement purposes” are defined in section 31 of the DPA 2018. For the purpose of this document, the relevant purposes are the prevention, investigation and detection of FOI offences.
3. As a competent authority, the Commissioner must, for example:
  - (i) maintain records of personal data processed for law enforcement purposes and
  - (ii) log the collection, alteration and disclosure of personal data.

## Purpose and legal basis for processing

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1. It is a criminal offence for a public authority, or a member of its staff, to alter, destroy, etc. a record if a request has been made for that record under FOISA or the EIRs and the information is altered, destroyed, etc. with the intention of preventing it being disclosed.
2. As part of our statutory functions, we consider whether an individual or public authority has committed an FOI offence.
3. An allegation may be made by a member of the public. Alternatively, the possibility that an offence has been committed may come to our attention as a result of carrying out our other functions under FOI law.
4. If we consider an offence may have been committed (and the case is not time-barred), we will refer the matter to Police Scotland for further investigation.
5. We have an MoU with Police Scotland and the Crown Office and Procurator Fiscal Service about what happens with this type of allegation. It can be read [here](#).
6. In our role as competent authority, we need to establish whether offences may have been committed so that we can refer the matter to Police Scotland, if appropriate. So, if you make an allegation to us, we will gather information relevant to your allegation. This might include information about you.
7. Our processing can also include sensitive processing which means processing special category data for law enforcement purposes. Where this is the case, we rely on either the consent of the individual or (provided the processing is strictly necessary for law enforcement purposes) on a condition in Schedule 8 to the DPA 2018.
8. This policy explains about our processing for law enforcement purposes, our procedures for complying with the data protection principles and our policies for retention and erasure of any personal data.

## **Processing law enforcement data**

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### **What types of law enforcement data do we process?**

9. When we investigate an alleged criminal offence, we gather information and evidence which might include information about victims, suspects, witnesses and other individuals relevant to the circumstances and events.

### **Who do we share the data with?**

10. We use your personal information for the purposes of determining whether to refer your allegation to Police Scotland for further investigation.
11. We may also share your personal information with the Crown Office and Procurator Fiscal Service.
12. If the matter is referred to court, personal data (including special category data) might be made public during the course of the proceedings.
13. In the event that a successful prosecution takes place, we may publish the convicted individual's identity in our Annual Report, on our website, or distribute more widely to the media.

### **Do we use data processors?**

14. We do not use external service providers to process cases which are investigated for law enforcement purposes.

### **Do we transfer data to third countries?**

15. Any transfers we make would be in line with our data protection obligations.

### **How long do we keep the data?**

16. Electronic copies of case files are retained for five years from the date of closure of the case.
17. The contents of hard copy files (if any) are securely shredded at case closure.

### **What rights do individuals have under Part 3 of the DPA 2018?**

18. You have a right to access your personal data. You also have a right to get inaccurate data rectified and incomplete data completed, and for your personal data to be erased in certain circumstances.
19. We may provide further information directly to data subjects in specific cases to enable them to exercise their rights, for example where personal data was collected without their knowledge.
20. However, we will not do this where doing so would, in line with section 44(4) of the DPA 2018:
  - (i) obstruct an investigation
  - (ii) prejudice an investigation
  - (iii) protect public security, national security or the rights and freedoms of others.
21. We do not carry out automated decision-making.

22. More information about your rights and how to access them can be found in our wider [privacy notice](#).

### **How we keep information safe**

23. Information about the steps we take to keep your information safe can be found in our [privacy notice](#). However, we have additional safeguards in place for personal data which is processed for law enforcement purposes. For example:
- (i) Only very limited information is recorded in the case management system (WorkPro) all staff have access to, i.e.:
    - (a) the name of the person making the allegation
    - (b) the name of the public authority against which the allegation has been made
    - (c) the outcome of the case (for example, whether a successful prosecution took place)
  - (ii) All electronic records are stored in a separate system, known as Virtual Cabinet (VC). The following rules apply to the information in VC:
    - (a) access to the records is strictly controlled and is available only to the Commissioner and to a small number of senior members of staff
    - (b) VC has full version control, which means it logs who has seen the information, whether it has been edited, etc.
  - (iii) Paper files may also be used. These are kept in locked cupboards. The contents are securely shredded when the cabinet is closed.

## **General information**

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### **Who we are and how to contact us**

24. Daren Fitzhenry, the Scottish Information Commissioner, is the data controller. This means he decides what we do with your information and how we do it.

25. These are his contact details:

Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS  
Telephone: (01334) 464610  
Email: [enquiries@itspublicknowledge.information](mailto:enquiries@itspublicknowledge.information)

### **Our DPO and how to contact them**

26. By law, we must have a data protection officer (DPO). Our DPO does a number of things, including:
- (i) giving us advice on data protection laws and

(ii) monitoring our compliance with data protection laws.

27. The Commissioner's DPO is Claire Turnbull. These are her contact details:

Scottish Parliament  
Edinburgh  
EH99 1SP  
Telephone: 0131 348 6080  
Email: DPOservice@parliament.scot

28. We have an agreement with our DPO which gives more detail about what she does. The agreement can be read by clicking [here](#).

### **Making a complaint**

29. If you are unhappy with what we do (or have done) with your personal information, you can complain to the ICO. (This is a different person from the *Scottish* Information Commissioner, so you can be sure that the ICO is independent.) You can also contact us at any time before contacting the ICO to see if we can put things right.

30. The ICO's contact details are:

<https://ico.org.uk/global/contact-us>

Telephone: 0303 123 1113

31. More information about the role of the ICO can be found here: <https://ico.org.uk/>.

### **Other versions**

32. If you would like a hard copy of this document, let us know. We will send one to you free of charge.

## Document control sheet

Document Information	
Full name of current version: Class, Title, Version No and Status. <i>E.g. C5 Key Documents Handbook v01 CURRENT ISSUE</i>	C5 Privacy notice: investigations for law enforcement purposes v01 CURRENT ISSUE
VC Fileld	114477
Type	Procedure
Approver	SMT
Responsible Manager	HOE
Date of next planned review	February 2022
Approval & Publication	
Approval Date (major version)	18/02/19
For publication (Y/N)	Y
Date published	05/02/21
Name of document in website file library	PrivacyNoticeInvestigationsLawEnforcement
Corrections / Unplanned or Ad hoc reviews (see Summary of changes below for details)	
Date of last update	29 January 2021

Summary of changes to document				
Date	Action by <i>(initials)</i>	Version updated <i>(e.g. v01.25-36)</i>	New version number <i>(e.g. v01.27, or 02.03)</i>	Brief description <i>(e.g. updated paras 1-8, updated HOPI to HOOM, reviewed whole section on PI test, whole document updated, corrected typos, reformatted to new branding)</i>
06/03/19	BOW	01.00	01.01	New document created following approval of draft
06/03/19	BOW	01.01	01.02	DCS updated, published on website
12/03/19	KB	01.02	01.03	Error in index updated, DCS updated, published on website
29/01/21	MK	01.03	01.04	Document reviewed to ensure up to date following changes to DPA 2018. Minor changes (such as contact details of ICO) made.
05/02/21	BOW	01.04	01.05	DCS updated, published on website

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