

Policy and Procedure

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Information Sharing Protocol: Auditor General for Wales & Wales Audit Office (collectively known as Audit Wales) and Public Services Ombudsman for Wales

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Introduction and Purpose

- 1 The intention of this Information Protocol (ISP) is to support effective communication and co-operation between the Auditor General for Wales working with staff of the Wales Audit Office (AGW) and the Public Services Ombudsman for Wales and his staff (PSOW) (together referred to as the parties) in sharing information to assist the work of the other where that work is complementary.
- 2 The underlying principle guiding engagement between staff of the Wales Audit Office and the PSOW is that it should be as open and cooperative as possible, within the legal and professional constraints that both organisations face.
- 3 Where the formal exchange of information is required, particularly personal information, this ISP sets out practical and legally sound arrangements to provide assurance that the parties have considered and met the requirements of data protection legislation. The arrangements support the parties in taking account of one another's work so that they can carry out their respective public responsibilities to best effect while making the best use possible of resources.

Parties and Functions

- 4 The AGW audits Welsh public sector bodies and examines how such bodies manage and spend public money under a wide range of legislation including the Public Audit (Wales) Act 2004, the Government of Wales Acts 1998 and 2006, the Local Government (Wales) Measure 2009, the Well-being of Future Generations (Wales) Act 2015 and the Local Government and Elections (Wales) Act 2021.
- 5 The PSOW investigates complaints of maladministration against public services and independent care providers in Wales under the Public Services Ombudsman (Wales) Act 2019 and investigates complaints about the conduct of members of local government bodies under the Local Government Act 2000 and the Local Government and Elections (Wales) Act 2021.
- 6 The terms of this ISP are without prejudice to the functions and access rights of the AGW and the PSOW, set out in legislation.
- 7 Information that is relevant to both parties, and which may therefore be subject to sharing requests where the information may be necessary for the performance of the parties' respective functions, may include:
 - information about the scope, type or timing of work being carried out by either party under their statutory functions;
 - the outcome of that work, including copies of any findings or reports;

- information about the activities of officials, officers or members of public bodies;
- information about the policies and processes of public bodies, and potential failure to comply with those; and
- information about legal requirements placed upon public bodies and failure to comply with those.

Practical Arrangements

- 8 The Data Protection Officer for each party, detailed at **Appendix A**, will oversee the implementation, monitoring, and review of this ISP.
- 9 All requests for information as well as communications about queries, complaints and access requests should be sent in writing to the key contact (or alternative contact in event of absence or unavailability) named at **Appendix A**.
- 10 All requests for information will clearly describe the information sought, set out the reasons for the request and the requester's statutory function that it relates to.
- 11 Requests for information will be acknowledged within 5 working days and processed as soon as possible. Given the potential variety and complexity of requests it is not possible to provide a definitive response time. On acknowledging a request, the receiving party will provide an estimate of the time likely to be required to fully respond. If more time is subsequently found to be required to complete a request the receiving party will advise the requesting party accordingly.
- 12 The party sharing information will keep a record of the decision to share, the lawful basis for the sharing (including any additional ground for processing special category information), what data was shared, the original source of the data (when and how it was collected) and when it was shared using the template at **Appendix B** in case of challenge, complaint or review.

Lawful Sharing

- 13 Each party must identify and record their lawful basis to share the data. This ISP does not provide a legal basis, or create an automatic right, to share information and the relevant legal provisions must be determined on a case-by-case basis. **Appendix C** sets out some of the relevant provisions.
- 14 It is the responsibility of each party to ensure that they comply with any legislation, standards and policies applicable to them or to the processes in which

they are engaged, including any statutory or common law restrictions on disclosure¹ and duties of confidentiality.

- 15 The parties to this protocol undertake to comply with data protection legislation, including the General Data protection Regulation 2016 (UK GDPR) and the Data Protection Act 2018 (DPA), and the Human Rights Act 1998 (HRA), and will:
- ensure that sharing is in accordance with law and that the data shared is relevant, proportionate and the minimum that is necessary for the specific lawful purpose, to be determined on a case by case basis (it may not always be appropriate to share all the information requested);
 - take reasonable steps to ensure the quality of any data shared, so that the data is accurate, not misleading, up to date and adequate for the specified purpose;
 - only share the information with staff who need to process the information for their role, promote staff awareness of this ISP and train staff in the principles of lawful information sharing;
 - use the data only for the specific purpose for which it is shared;
 - not further share or publish the data without prior consultation with the other party (except where such consultation may be contrary to law, eg, where it may lead to a section 342 Proceeds of Crime Act 2002 offence (prejudicing an investigation));
 - process data fairly and transparently, ensuring that their privacy notices are readily and easily available and properly explain when data may be shared;
 - retain the data for no longer than is necessary and in accordance with an appropriate records retention policy;
 - ensure that security arrangements for the transmission, processing and retention of the shared data are proportionate, adequately maintained and/or updated and in accordance with current best practice including ISO27001² and Cyber Essentials³ to protect the data against unauthorised or accidental loss, destruction or damage; and

¹ eg, Public Audit (Wales) Act 2013, section 54; Public Services Ombudsman (Wales) Act 2019, section 69

² <https://www.iso.org/obp/ui/#iso:std:iso-iec:27001:ed-2:v1:en>

³ <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

- have regard to relevant guidance from the Information Commissioner's Office including its Data Sharing Code of Practice.

Data Subject Rights, Data Breach

- 16 The parties will uphold data subject rights in relation to shared information, including the provision of fair processing information, where required, and will be responsible for managing subject access requests in line with data protection legislation and relevant policies.
- 17 In relation to shared information, each party will notify and/or consult the other in relation to data subject requests for access to personal information, objections to processing or requests for the rectification of inaccurate data where such a request relates to information provided by the other party.
- 18 Where shared information is found to be inaccurate, not up to date or inadequate for the purpose, the party originally holding that data will correct the data and notify the other party, who must ensure that their records are updated or amended.
- 19 In the event of a data breach affecting shared information, the party suffering the breach must notify the other party as soon as possible and, if appropriate, notify the ICO in accordance with data protection legislation. The party suffering a breach will review the incident to understand the circumstances of the breach in relation to shared information, to develop a remedial action-plan and to assess the future viability of the ISP.
- 20 The parties will provide all reasonable, timely and necessary assistance to each other and the ICO in order to help manage the breach, prevent further data losses, minimise harm to any data subject and maintain public confidence.

Complaints

- 21 Complaints about the use or sharing of personal information under this ISP will be dealt with under the complaints procedure of the party whose actions are the subject of complaint. Subject to any statutory prohibition, the other party will cooperate and assist in any complaint investigation where they have information that is relevant to the investigation. If the complaint affects both parties, they should liaise to investigate the complaint. The respective parties will keep each other informed of any developments, progress and lessons learned.

Review and Termination

- 22 The DPO for each party will regularly monitor and review the use of this ISP to ensure information is shared effectively and appropriately.

- 23 Either party may withdraw from this ISP upon giving 30 days' notice to the other party. The withdrawal from the protocol would not preclude subsequent sharing of information if a legal basis exists.

Signatures

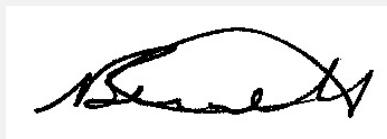
- 24 The signatory is an appropriate person with authority to sign the ISP on behalf of the party.

**Signed by the Auditor General for
Wales**



Date: 4 November 2021

**Signed by the Public Services
Ombudsman for Wales**



Date: 4 November 2021

Appendix A – Contacts

The table below sets out the parties to the ISP, details of the parties Data Protection Officers and key contacts for the purposes described in this ISP.

Party	Auditor General for Wales and the Wales Audit Office 24 Cathedral Road Cardiff CF11 9LJ Tel: 02920 320500 Email: info@audit.wales
Data Protection Officer	Martin Peters Head of Law & Ethics Tel: 02920 320526 Email: Martin.Peters@audit.wales
Key Contact	Yazmin Steelandt-Humphries Information Officer Tel: 02920 320572 Email: Yazmin.Steelandt-Humphries@audit.wales
Alternative Contact	

Party	The Public Services Ombudsman for Wales 1 Ffordd yr Hen Gae Pencoed CF35 5LJ Tel: 0300 790 0203 Email: ask@ombudsman.wales
Data Protection Officer	Alison Parker Information Governance Manager Tel: 01656 644200 Email: Alison.Parker@ombudsman.wales

Key Contact	Alison Parker, Information Governance Manager (as above)
Alternative Contact	Marilyn Morgan Executive Assistant Tel: 01656 641152 Email: Marilyn.Morgan@ombudsman.wales

Appendix B – Data Sharing Record

The table below provides a record of the decision to share and includes a record of the legal basis for sharing to help safeguard against claims of unlawful processing.

<p>Information request</p> <p>Date and sender of request.</p> <p>Brief description of information requested.</p> <p>Date request received and reviewed by.</p> <p>Date information shared.</p>	
<p>Information shared</p> <p>Description of the information to be shared.</p> <p>State if this is all or part of the information requested.</p> <p>Note: only the minimum and relevant personal information is to be shared on a case by case basis.</p>	
<p>Source of data, and when collected</p>	

<p>Lawful basis for sharing</p> <p>Describe the lawful basis, record that no prohibitions on disclosure apply.</p> <p>For special category data, detail the additional ground for processing.</p>	<p>[eg task carried out in the public interest or in the exercise of official authority - UK GDPR Art 6(1)(e) - specify the relevant task, function or power and identify its statutory or common law basis.</p> <p>Or, necessary for compliance with a legal obligation – UK GDPR Art 6(1)(c) - identify the specific legal obligation that requires information to be shared and include the title of legislation and relevant section(s)]</p>
<p>Method of transfer of data.</p> <p>Describe methods used to keep the information secure.</p>	<p>[eg Is email secure because the content is encrypted and, if so, is what software package used? eg gov.wales/uk encryption, Egress, Objective Connect etc.]</p>
<p>Notes</p> <p>Record any other relevant information</p>	

Appendix C – Relevant Legal Provisions

Auditor General for Wales

Power to share information:

- Public Audit (Wales) Act 2013, section 9(1) - AGW's ancillary power to do 'anything calculated to facilitate, or which is incidental or conducive to the carrying out of any of the Auditor General's functions'.
- Public Services Ombudsman (Wales) Act 2019, section 68 - provisions for the PSOW, if he considers it appropriate, to inform and consult with the AGW regarding the effective conduct of an investigation, and where there is such consultation the parties may co-operate with each other in relation to the matter, may conduct a joint investigation and prepare and publish a joint report.

Power to request information, set out in rights of access to documents and information in:

- Government of Wales Act 2006, Paragraph 17 of Schedule 8
- Public Audit (Wales) Act 2004, section 52 and section 64(B)
- Local Government (Wales) Measure 2009, section 26
- Local Government and Elections (Wales) Act 2021, section 98

Prohibitions on Disclosure:

- Public Audit (Wales) Act 2004, section 54 – breach punishable by a fine

Public Services Ombudsman for Wales

Power to share information:

- Public Services Ombudsman (Wales) Act 2019, Section 69, information obtained by the Ombudsman in the discharge of his functions may be disclosed for the purpose of any function of the Auditor General for Wales, Section 69(2)(c).
- Public Services Ombudsman (Wales) Act 2019, section 68 - provisions for the PSOW, if he considers it appropriate, to inform and consult with the AGW regarding the effective conduct of an investigation, and where there is such consultation the parties may co-operate with each other in relation to the matter, may conduct a joint investigation and prepare and publish a joint report.
- Public Services Ombudsman (Wales) Act 2019, paragraph 22 to Schedule 1 – the Ombudsman's power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of the Ombudsman's functions.

Power to request information:

- Public Services Ombudsman (Wales) Act 2019, Section 19.
- Part III of the Local Government Act 2000

Prohibitions on Disclosure:

- Public Services Ombudsman (Wales) Act 2019, Section 69.
- Part III of the Local Government Act 2000