

PROTOCOL
BETWEEN
LOTHIAN AND BORDERS POLICE
AND
WEST LOTHIAN COUNCIL , a Local Authority incorporated
under the Local Government Etc (Scotland) Act 1994 and
having our Headquarters at West Lothian Civic Centre,
Howden South Road, Livingston, West Lothian
FOR THE PURPOSE OF ASSISTING IN THE PREVENTION OF
ORGANISATIONAL FRAUD AND ORGANISED CRIME.

Background

Lothian and Borders Police and West Lothian Council (the partners) recognise that there is an opportunity for unscrupulous, criminal or corrupt persons and criminal enterprises to be involved in criminality and to make criminal financial gains from the supply of works, goods or services, to or from West Lothian Council.

West Lothian Council is engaged in instances of significant expenditure of public money in the delivery of services in the West Lothian area. This includes but is not limited to the processing of various licensing schemes, the recruitment of staff and the procurement of contracts to provide services in accordance with The Public Contracts (Scotland) Regulations 2012 (hereinafter referred to as “the Regulations”).

The partners recognise that the provision of information by Lothian and Borders Police may assist West Lothian Council in determining, amongst other things, whether an applicant for employment or an applicant for a licence is a fit and proper person or whether any of the conditions for exclusion of an organisation from the opportunity to tender for a public contract specified in the Regulations has been met.

Legislation

The Regulations state that where a public authority has actual knowledge that the directors or any other person who has powers of representation, decision or control in an organisation has been convicted of certain specified criminal offences, that organisation may be excluded from the opportunity to tender for a public contract. The Regulations further provide that public bodies may take

into account other criminal offences or acts of grave misconduct on the part of an organisation in considering whether to exclude an organisation from the opportunity to tender for a public contract.

Also relevant to purposes of this Protocol are the sections relating to Serious and Organised Crime in the Criminal and Justice and Licensing (Scotland) Act 2010.

The Chief Constable of Lothian and Borders Police, and police officers of Lothian and Borders Police, have certain duties under the Police (Scotland) Act 1967 to guard, watch and patrol, to protect life and property, to prevent the commission of offences, and also to preserve order. Restricting, or removing altogether, opportunities to be involved in criminality and make criminal financial gain is recognised as an effective way of discharging these duties.

Lothian and Borders Police may monitor the activities of individuals and organisations where these individuals and organisations are suspected to be engaged in acts of criminality, or where the organisations themselves are suspected to be criminally corrupt. Information processed by Lothian and Borders Police about the activities of such persons constitutes sensitive personal data about those individuals in terms of the Data Protection Act 1998.

The partners are mindful of their legal responsibilities under the terms of the Data Protection Act 1998 and also under the terms of The Human Rights Act 1998.

The Data Protection Act 1998, contains eight data protection principles. The first data protection principle states that personal data must be processed fairly and lawfully i.e. that a data subject must know the purpose for which their personal data is being processed and must consent to that processing.

Section 29 of the 1998 Act provides that personal data processed for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders is exempt from the first data protection principle in any case to the extent that the application of those principles would be likely to prejudice any of the matters mentioned above.

This protocol sets out in clear terms the purpose of information exchange between the partners, the parameters for the sharing of information, arrangements to preserve confidentiality appropriately and the exercise of professional judgement in the sharing of information for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders.

The overarching standards for information sharing within the Lothians, as described in the Pan Lothian and Borders Partnership General Protocol for Sharing Information, are also applicable.

Roles

The Director of Intelligence, whom failing the deputy Director of Intelligence within “X” Division of the Lothian and Borders Police Force, is the representative of Lothian and Borders Police (hereafter referred to as “the Lothian and Borders authorised representative”) authorised to receive a request for information or to disclose sensitive personal data to West Lothian Council about individuals or organisations engaged in criminality or the control and direction of criminal enterprise organisations.

West Lothian Council’s Chief Executive (hereafter referred to as the “West Lothian Council authorised representative”) is the representative authorised to take responsibility for the processing of sensitive personal data transferred to or received from the authorised representative of Lothian and Borders Police.

Process

Requests for the transfer of sensitive personal data by the respective authorised representatives will be made in writing.

Requests for or about an individual, or individuals associated with an organisation will include all relevant information; for example, their name, address and date of birth and details of interest or concern. It is recognised that such details as are provided by Lothian and Borders Police will be at the sole discretion of the Director of Intelligence.

The West Lothian Council authorised representative will process the information on behalf of West Lothian Council and will determine the manner in which, and purposes for which, the information is processed, subject to the purpose for which the information was provided.

Information to be disclosed in terms of this protocol shall be transferred by hand or by secure e-mail to the respective authorised representatives.

The authorised representatives will ensure that the disclosure of the information is limited to those officers whose prescribed role or function warrants or necessitates access to such information.

It should be noted that nothing in this Protocol creates, or is intended to create, an obligation on Lothian and Borders Police to make such disclosures to West Lothian Council. Lothian and Borders Police and West Lothian Council also recognise that this Protocol does not regulate the disclosure of sensitive or other personal data in circumstances beyond those set out in this Protocol.

Management of Information

The parties to this protocol agree to abide by the terms of the Data Protection Act 1998, and in particular will ensure that:

- All data shall be securely transmitted and stored.
- All information provided shall be used for no other purposes than the purposes for which they are disclosed.
- Steps will be taken to ensure that all information disclosed is accurate.
- All information shall be updated as required.
- Information supplied by the Police will not be retained beyond the period of the investigation and/or court process etc.

Protective Marking

Lothian and Borders Police uses the Government Protective Marking Scheme (GPMS) and information, which is shared, will carry a protective marking.

The protective markings used will be either **Restricted** or **Confidential**, in accordance with the Government Protective Marking Scheme, attached for information at Appendix 1, for the physical security, transfer, copying and destruction of Restricted and Confidential material.

For the avoidance of doubt **Faxes** will **not** be used for the transfer of any information under this Protocol

Restricted information may be transferred by **e-mail** but only if the e-mail address contains one of the following– **pnn. gsi. or gsx.**

Breaches of Security

All known or suspected breaches of security in relation to records in any format, or computer terminals, relating to any information shared under this protocol - such as misuse or abuse of the system, misuse or abuse of information shared, unauthorised processing of data, unauthorised disclosure of information, malicious software attack, denial of service attack - are to be reported to the partners' Information Security Officer, Data Protection Officer or equivalent. Sufficient details are to be provided to enable them to retain assurance in the confidentiality, integrity and availability of the information and the processes supporting information exchange, and to undertake their own risk assessments.

Once notified of a breach of security, the partner responsible for the breach will conduct an investigation to identify, where possible, how/why the breach was committed, who committed the breach, what information has been compromised, whether the integrity of the system has been compromised, whether the breach has been contained and whether any measures require to be taken to safeguard or protect any individual etc.

Where any breach of security may amount to criminal activity, this must be reported to Lothian and Borders Police who will investigate the matter and, where appropriate, report the circumstances to the Procurator Fiscal.

Access to Information

Access to information gathered, as part of any of these processes may be available either under subject access rights, as described in the Data Protection Act 1998 (Section 7), or the Freedom of Information (Scotland) Act 2002 (FOI). Where access is requested advice must be sought from the organisation's Freedom of Information or Data Protection Officer.

Where a request has been received and a partner holds any information that was disclosed in terms of this protocol, and where a partner is considering the disclosure of information, it is recommended that the disclosing authority be consulted prior to any release of the information in response to a request under the 1998 Act or the 2002 Act.

Complaints from data subjects, or their representatives, about information held by the partners will be investigated first by the organisation receiving the complaint, although action that affects either of the partners will not be taken without the consent of both partners.

Review

This protocol will be reviewed annually by both partners. However, The Director of Intelligence from Lothian and Borders Police, and the Force Information Manager, and the Chief Executive of the West Lothian Council must be notified of and agree to any substantial proposed change.

IN WITNESS WHEREOF these presents are executed as follows:

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(for and on behalf of Lothian and Borders Police)

Date:

.....
(for and on behalf of West Lothian Council)

Date: