



Department for Digital, Culture, Media & Sport

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Baroness Morgan of Cotes
Select Committee on the Fraud Act 2006 and
Digital Fraud
House of Lords
London
SW1A 0PW

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Dear Nicky,

I write in response to the data sharing questions that were put to my colleague Damian Collins, then the Minister for Technology and the Digital Economy, during the final public evidence session of the Fraud Act 2006 and Digital Fraud Committee on 17 October 2022. Minister Collins advised that as the Minister responsible for Data Policy and Reform, I would be responding to the Committee's queries.

Lord Sandhurst referred to the evidence given earlier in the hearing which described how stakeholders were unsure on whether they could share data because of the perceived restrictions of UK GDPR. He asked if the government felt that GDPR is hindering data sharing within the counter-fraud response.

Data protection law does not prevent sharing data between law enforcement authorities and other organisations in order to discharge their statutory law enforcement functions. Under Article 6 of the UK GDPR, data sharing of this type can occur if the controller identifies a lawful basis and where the processing is necessary and proportionate. We encourage organisations to share data, with initiatives such as Stop Scams UK, where scheme members (such as banks and telecom companies) share data with one another for the purpose of stopping scams.

Minister Collins was asked if there were any plans to work with the Information Commissioner to give clear and focused guidance to remove such false perceptions. My officials engage in regular sponsorship meetings with the ICO and will raise the Committee's suggestions about further tackling the perceived UK GDPR barriers. It is worth noting that the Information Commissioner has a duty under the Data Protection Act 2018 to produce a code of practice that provides practical guidance and promotes good practice about how to share personal data in accordance with data protection laws. The Information Commissioner's Data Sharing Code of Practice has been produced to help dispel many of the misunderstandings over data sharing and can be accessed here: <https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/data-sharing-a-code-of-practice/>.



The Data Sharing Code practice sits alongside other useful guidance and practical tools in a data sharing hub on the ICO's website, which can be accessed here: <https://ico.org.uk/for-organisations/data-sharing-information-hub/>

Lord Sandhurst asked if the Data Protection and Digital Information Bill would be strengthened to proactively encourage the sharing of fraud risk information. I can confirm that the Bill will provide organisations with greater clarity and confidence in the legal bases for sharing data for law enforcement purposes and to safeguard national security.

Commercial and third sector organisations may rely on the legitimate interests ground in Article 6 where the processing is necessary for their legitimate activities, providing the rights of individuals do not outweigh their own interests - this is known as the 'balancing test'.

Evidence from last year's public consultation titled "Data: A New Direction" suggested that some organisations were concerned over the consequences of getting the balancing test wrong, while others said the need to document the outcome of their assessment could slow down some important processing activities which could lead to crucial information not being shared. The Bill contains a measure that will create an exhaustive 'safe list' of legitimate interests activities where organisations would not have to apply the balancing test, thus reducing the barriers to responsible data use. It provides a condition for processing where it is necessary for the purposes of detecting, investigating or preventing crime or apprehending or prosecuting offenders. The reference to 'crime' would also cover economic crimes such as fraud, money-laundering or terrorist financing.

With best wishes,



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