

INFORMATION SHARING AGREEMENT



INFORMATION SHARING AGREEMENT (ISA)

BETWEEN

Hampshire Constabulary

AND

Gunwharf Quays
Version 4.1

Date Agreement comes into force:	11.01.18
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1. INTRODUCTION

- i. Hampshire Constabulary are committed to tackling Crime and Disorder and safeguarding citizens across Gunwharf Quays, Portsmouth and work, on a regular basis, with members of Gunwharf Quays in order to make Gunwharf Quays, Portsmouth safer.
- ii. This agreement should also be used to further clarify any current arrangements.
- iii. The disclosures originating from this Agreement will comply with The General Data Protection Regulations (GDPR) (2016/679), the Data Protection Act 2018 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner's Office. The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement.

2. PURPOSE

- i. This agreement sets out the framework for the sharing of personal data between the parties. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other.
- ii. This agreement is in place to inform the reasons and methods of sharing, sharing for other purposes and other information is not covered by this agreement.
- iii. Data can only be used for the purpose shared and cannot be shared to third parties without written permission. Information that may prejudice an ongoing investigation will not be shared unless there is an overriding safety requirement.
- iv. The purpose of this agreement is protect property and to prevent the commission of a crime; it is not to advise or support any action of private banning by the stores, which remains the sole decision of the store. The aims are to support Gunwharf Quays to prevent known trouble makers from committing repeated offences and to enable them to identify persons who are also likely to target business premises.

3. STATUTORY POWERS TO PROCESS PERSONAL DATA

- i. The principle legislative instruments that provide powers to lawfully share information under this agreement are:
- ii. **The General Data Protection Regulations 2018:** HC processes personal information in accordance with this Act, which exists to ensure the fair and lawful use of personal data and to protect the rights of the data subject. The Act provides exemptions to some of its provisions if complying with them will prejudice the protection/detection of crime and the apprehension and prosecution of offenders. This Act also requires HC to comply with the following principles when processing personal data:
 - Fairly and lawfully processed;
 - Being processed for specified and lawful purposes and not in any manner incompatible with those purposes;
 - Adequate, relevant and not excessive;
 - Accurate and where necessary, up to date;
 - Not kept for longer than is necessary;

- Being processed in accordance with individuals rights;
 - Secure;
 - Not to be transferred to countries outside the EU.
- iii. **The Human Rights Act 1998:** HC as a public authority is duty bound to act in compliance with the Act. Article 8 states that everyone has a right to respect for his private and family life, home and correspondence by a public authority. Interference of this right by HC is not in contravention of the Act if it is in accordance with the law and is necessary, justified and proportionate in a democratic society in the interests of:
- Public Safety;
 - National Security;
 - Prevention of crime and disorder;
 - Protecting the rights and freedoms of others.
- iv. **Code of Practice on the Management of Police Information (MoPI) 2005:**
- 4.8. Sharing of police information outside the UK police service:
- “Chief Officers may arrange for other persons or bodies within the UK or overseas to receive police information where the chief officer is satisfied that it is reasonable and lawful to do so for the purposes set out at Section 2.2.2. In deciding what is reasonable, chief officers must have regard to any guidance issued under this Code.”*
- 2.2.2. For the purposes of this Code, police purposes are:
- Protecting life and property,
 - Preserving order,
 - Preventing the commission of offences,
 - Bringing offenders to justice, and
 - Any duty or responsibility of the police arising from common or statute law.
- v. Each party shall ensure that it processes the Shared Personal Data fairly and lawfully and ensure that it processes the Shared Personal Data on the basis of a lawful basis.
- vi. **Sharing personal data for under the General Data Protection Regulation (under Part 2 of the Data Protection Act 2018):**
- Where the sharing of personal data is between the police and other Non-Competent Authorities; or the sharing is for a non-Law Enforcement Purpose, the following lawful bases apply for the processing of personal data:
- Where the sharing of personal data is between the police and other Non-Competent Authorities; or the sharing is for a non-Law Enforcement Purpose, the following lawful bases apply for the processing of personal data:
- The General Data Protection Regulations 2018, Article 6 (1) (e), which states:
- “Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Controller”*
- The disclosure of personal information is legally justifiable if it falls within one of the defined categories of public interest:

The Public Interest Criteria include:

1. The administration of justice
2. Maintaining public safety;
3. The apprehension of offenders;
4. The prevention of crime and disorder
5. The detection of crime;
6. The protection of vulnerable members of the community

When judging the public interest, it is necessary to consider the following:

1. Is the intended disclosure proportionate to the intended aim?
 2. What is the vulnerability of those who are at risk?
 3. What is the impact of disclosure likely to be on the individual?
 4. Is there another equally effective means of achieving the same aim?
 5. Is the disclosure necessary to prevent or detect crime and uphold the rights and freedoms of the public?
 6. Is it necessary to disclose the information to protect other vulnerable people?
- vii. In order to lawfully process **special category data**, including ethnic origin, political or religious beliefs, trade union membership, genetics, biometrics, health, sex life or sexual orientation, and for non-Competent Authorities to process criminal data, it is essential to satisfy an additional lawful basis under Article 9 of the GDPR:
- Preventing/detecting unlawful acts
- viii. There are other pieces of legislation that place powers or duties to share information on public authorities – this list is not meant to be exhaustive. All information sharing must be conducted in accordance with one or more of the legal powers / duties.

4. PROCESS

This agreement has been formulated to facilitate the exchange of information between partners. It is, however, incumbent on all partners to recognise that any information shared must be justified on the merits of each case.

Decision making by Gunwharf Quays

- i. This section outlines the **conditions and criteria** under which the Police are authorised to share certain information with Gunwharf Quays.
- ii. The foundation for each ban will be the submission of an incident report reporting the offence. This will be reviewed by Hampshire Constabulary and the details will be checked for accuracy against the police record of the same event. Thus, bans are reliant upon there being a police record of the event.
- iii. The decision making process will be fully documented in each case and will thus ensure that disclosure of information is current, accurate and relevant. Gunwharf Quays will provide a clear audit trail that supports such disclosure with consideration given to the Human Rights of each individual and an account made of the lawfulness of such action; how it is necessary, justified and proportionate. It will be agreed that the wider interests of public safety and the rights of the society at large will, after due consideration of the circumstances of offence and the resultant

conviction, outweigh the rights of the individual. Disclosures will be considered in a case by case basis.

Fair processing

- i. Fairness involves being open with people about who is processing their data and how their data is being used. Put simply, unless the processing is exempted, a data subject should not be 'surprised' by their information being shared between Hampshire Constabulary and Gunwharf Quays.

Other obligations of the local control room

- i. All decisions to ban persons will be made by Gunwharf Quays. Any information provided by the Police shall be limited to them.
- ii. Gunwharf Quays will be Data Controller for the data held by them and liable to ensuring that the processing of personal data is in accordance with the principles of the Data Protection Act. Therefore Gunwharf Quays will be responsible for ensuring that adequate measures are place to prevent unauthorised or unlawful disclosure and against accident loss of personal data.
- iii. All the material provided by Hampshire Constabulary will be stored in a private and secure location. The photos and information provided by the Police shall only be for staff at business premises to view for work purposes. The photos and information shall not be made available for the general public to view.
- iv. Gunwharf Quays shall take all reasonable steps to ensure that staff abide by this protocol relating to the disclosure of material provided by Hampshire Constabulary so that they are fully aware of the limitations of Police material and expectations.
- v. A system shall be in place whereby each responsible person is aware of their responsibility to keep photographic images and other material safe, out of sight from the public and only for the use of staff that are on duty.
- vi. This sharing arrangement shall be restricted to the area of Gunwharf Quays and not for any other managed retail area.
- vii. For the Police to disclose any of the above information to Gunwharf Quays, the following criteria will need to be fulfilled:

Information sharing for private banning purposes

- i. The incident/intelligence linked to a ban request MUST be recorded on a Police recognised computer system. This is in order for Hampshire Constabulary to assess the necessity of making a disclosure. Any disclosure of information must be capable of verification so that it can be justified, audited and defended.
- ii. The release of a Police photo, name or age MUST be in the interests of public safety, to preserve order or to prevent crime and disorder. There will be sufficient grounds to suspect that a data subject will attempt to commit violence, theft and public order offences; linked to or targeted against retail premises.
- iii. The type of incident MUST justify disclosure. For example, violence, theft, drugs, sexual offences and public order offences; linked to or targeted against the business premises.

- iv. The release of Police data shall NOT be limited to persons who have been charged, cautioned or positively disposed of in any other way. The decision to disclose shall be based on all relevant factors in the Police material relating to the incident and to be in the interests of public safety and preventing crime and disorder.

Targeted disclosures for crime prevention purposes – outside of a decision to ban

- v. If there are sufficient grounds to suspect that a data subject will attempt to commit violence, theft and public order offences; linked to or targeted against business premises at Gunwharf Quays, the release of Police data, if also in the interests of public safety or preventing crime and disorder, shall be authorised.
- vi. The police will retrieve such data when no longer relevant for the purposes.

4.1 THE AGREEMENT

- i. This ISA applies to any personal or confidential information, irrespective of the medium in which it is held e.g. paper based, electronic, images or disc. Legal advice on this agreement should be sought in any case of doubt. It should be applied while following established and agreed processes within the signatory organisations.
- ii. By signing up to this agreement, signatories are committed to a positive approach to information sharing, and agree to meet the outlined commitments and processes.
- iii. It is the responsibility of each signatory to ensure that:
 - Information shared is in accordance with the law
 - Appropriate staff training and awareness sessions are provided in relation to this agreement, and that their organisation abides by the Golden Rules for information sharing (see **Appendix A**)
 - Information is shared responsibly and in accordance with professional and ethical standards
 - Any restrictions on the sharing of the information contained in the disclosure, in addition to those contained within this agreement, should be clearly noted. Information exchanges and refusals are recorded in such a way as to provide an auditable record.
 - The Police will appoint a disclosure officer to be the Single Point of Contact (SPOC) for Gunwharf Quays. This would ordinarily be Neighbourhood Policing Team covering the area of Gunwharf Quays.
 - The material provided by Hampshire Constabulary should be hand delivered. Requests and replies may also be communicated via e-mail should the recipient subscribe to an encrypted email server (pnn, gsi, cjsm, nhs.net and gcsx).
 - This agreement does not give agencies an automatic right to receive or provide information. It is a process for information sharing in cases in where it is suitable to do so.
 - Hampshire Constabulary may request a copy of the partner's information security policy (where it exists) when sensitive personal data is to be shared.
 - This agreement may be published on the Hampshire Constabulary external websites for the purposes of openness regarding information sharing within the Constabulary.

- If after material has been released by Police, evidence comes to light that the person is not likely to commit crime or antisocial behaviour against Control Room, the disclosure officer should seek to retrieve the disclosed information.
- Any error identified with the accuracy of a disclosure should be notified at the earliest opportunity.
- It is the responsibility of Gunwharf Quays to ensure that its employees are aware of the terms and requirements of this information sharing agreement. As such a mechanism should be in place to ensure that new retail managers become aware of the requirements rather than relying on cascade information from previous managers.

4.2 HOW / WHAT INFORMATION WILL BE SHARED

- i. The Constabulary will share :
 - A Police custody photograph
 - The subject's name
 - The subject's Date Of Birth or age
 - Residential address (if relevant to private banning)
 - A modus operandi (if relevant in targeted briefings)
- ii. Where information or a photo about a person under 18 is being considered the threshold for satisfying the above criteria will be much higher and it is anticipated that sharing will only occur in exceptional circumstances. For example: A prolific offender having a significant negative impact; high likelihood of re-offending; sharing is most likely to prevent re-offending; and the disclosure is in the significant public interest.
- iii. Data can only be used for the purpose shared and cannot be shared to third parties without written permission. Information that may prejudice an ongoing investigation will not be shared unless there is an overriding safety requirement.

4.3 CONSTRAINTS ON THE USE OF INFORMATION

- i. Any data will only be used for the specific purpose for which it is shared, and recipients will not release information to any third party without obtaining the express written authority of the disclosing partner, including requests from the public, disclosure within judicial proceedings and safeguarding forums.
- ii. All information that is disclosed under this agreement remains the property of the original data owner.
- iii. Information will not be shared where disclosure would prejudice ongoing criminal proceedings unless there is an overriding safety requirement to do so.

This Agreement does not constitute an overarching permission for the broad, comprehensive or unchallenged sharing of Personal Data. It provides a framework for the sharing of Information which aligns with the objectives set out below.

4.4 RESTRICTIONS ON INFORMATION SUPPLIED

- i. The material provided by Hampshire Constabulary will only be used for the specific purpose under which they were requested, namely the purpose of providing information in order to uphold a ban or to monitor and report criminal behaviour.
- ii. When no longer relevant, and on request, the photograph and other material provided by Hampshire Police shall be returned. No copies will be retained by Gunwharf Quays.
- iii. When a banning period ends, the photo and other material provided by Hampshire Constabulary shall be returned or securely disposed of by Gunwharf Quays, unless the data subject has come to attention for another incident that Gunwharf Quays deem to be suitable for a ban extension and meets the 'disclosure criteria'.
- iv. If a ban period is extended for the sole reason of having breached or attempted to breach the ban by entering a business premises, the retention of the data provided by the Police is authorised.
- v. At the conclusion of the ban, or any extension as described above, the individual must be removed entirely from Gunwharf Quays system. All physical material supplied must be returned or securely destroyed and all electronic data pertaining to that individual, including copies, must be deleted by Gunwharf Quays.

4.5 REVIEW OF THE INFORMATION SHARING AGREEMENT

- i. This ISA will be reviewed, as a minimum, 6 months after its implementation and every year thereafter. The ISA should always be reviewed if listed signatory organisations change. Any changes will be signed and verified by the Joint Information Management Unit.

5. BREACHES

- i. Any breaches of security, confidentiality or other violations of shared data must be reported to the owning agency as soon as possible and in any case within 24 hours.
- ii. Any breach of information by a signatory partner is their responsibility. Each agency is accountable for any misuse of information supplied and the consequences of such misuse. Any disclosure of information by an employee made in bad faith, or for motives of personal gain, will be the subject of an internal inquiry and be treated as a serious matter.
- iii. The parties shall provide reasonable assistance as is necessary to each other to facilitate the handling of any data security breach. In the event of a dispute or claim brought by a data subject or the Data Protection Authority concerning the processing of Shared Personal Data against either or both parties, 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.

6. SIGNATURES

- i. All agencies that are part of the information sharing process will be, upon signing this agreement, bound to comply with its terms.
- ii. Breaches of this agreement will lead to a review and possible termination of this agreement (including the destruction of all previously shared information).
- iii. Hampshire Constabulary Information Management and Information Security Teams will be granted reasonable access to undertake an audit to ensure compliance with this agreement. The signatory can exercise its right under this agreement to audit compliance in relation to its own information shared with the Constabulary.
- iv. Any signatory to this agreement may withdraw on giving written notice to the other Signatories. The withdrawing signatory will be bound to comply with those relevant terms of this agreement, which remain effective following withdrawal.
- v. Where the Chief Executive or Director leaves the organisation, it is not a requirement to re-sign the ISA. If a signatory changes, contact details of the new SPoC must be circulated in writing to all parties.

APPENDIX A: GOLDEN RULES FOR INFORMATION SHARING

- Confirm the identity of the person you are sharing with
- Obtain consent to share if safe, appropriate and feasible to do so
- Confirm the reason the information is required
- Be fully satisfied that it is necessary to share
- Check with a manager/specialist or seek legal advice if you are unsure
- Do not share more information than is necessary
- Inform the recipient if any of the information is potentially inaccurate or unreliable
- Ensure that the information is shared safely and securely
- Be clear with the recipient how the information will be used
- Record what information is shared, when, with whom, and why; and if you decide not share record your reason.