

# Privacy Notice – Office of Criminal Prosecution and Litigation (OCPL)

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This Privacy Notice is for anyone who has dealings with the OCPL whether in connection with a prosecution or through correspondence. It applies to any personal data we hold about you for any reason.

At the OCPL we are committed to protecting and respecting your right to privacy. This privacy notice aims to provide you with information on what data we collect about you, what we do with that information and why we do it, who we share it with, and how we protect your privacy.

This Privacy Notice also sets out the standards you can expect when we hold your personal data, in some cases this includes your sensitive personal data, as well as other privacy information which we are obliged to provide.

It is important that you read this Privacy Notice together with any other privacy notice we may provide on specific occasions when we are collecting or processing personal data about you so that you are fully aware of how and why we are using your personal data.

The OCPL's data protection team can be contacted at the following address:

OCPL  
6<sup>th</sup> Floor,  
57/63 Line wall Road  
Gibraltar  
[info.ocpl@gibraltar.gov.gi](mailto:info.ocpl@gibraltar.gov.gi)

## Why we process personal data

We need to handle personal data in order to prosecute criminal cases and to handle certain civil matters. The majority of the personal data we hold is passed to us by the Royal Gibraltar Police in order that we can determine whether or not to prosecute. In general, personal data is held by the OCPL about defendants, victims / witnesses and others involved in the Criminal Justice System within criminal case files.

We will only process personal data when it is lawful to do so and where it is necessary and proportionate.

## **Categories of personal data processed by the OCPL in criminal case file**

The list of data categories that can be found within the prosecution case file can be found at [Annex A](#) of this Privacy Notice.

Personal data processed within criminal case files will predominantly contain data relating to the commission, or alleged commission, of an offence. However, it is likely that other sensitive categories will also be processed where they relate directly to a criminal case. The full definition of sensitive personal data is defined in the Data Protection Act 2004 (DPA 2004) as:

- '(a) the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership;*
- (b) the processing of genetic data, biometric data for the purpose of uniquely identifying an individual;*
- (c) the processing of personal data concerning health*
- (d) the processing of personal data concerning an individual's sex life or sexual orientation'.*

Within criminal case files this is likely to include, but not be limited to, racial or ethnic origin, physical or mental health contained within medical records for example and sexual orientation.

## **Legal Basis for processing personal data for law enforcement purposes**

The processing will fall under part III of the DPA 2004 as the OCPL processes data for the purpose of conducting criminal prosecutions.

Should you wish to view a more detailed explanation of the legal basis for processing it can be found at [Annex B](#) of this Privacy Notice.

## **Legal Basis for processing personal data within criminal cases for non-law enforcement purposes**

Where the OCPL processes personal data within criminal case files for non-law enforcement purposes, the processing will fall under the Gibraltar GDPR and the DPA 2004. There are a number of requirements listed in the DPA 2004 to ensure this is lawful, and a detailed explanation of how the OCPL achieves this can be found at [Annex C](#) of this Privacy Notice.

## How we process personal data

This section sets out how we look after personal data. We commit to:

- protect it and ensure that nobody has access to it inappropriately;
- make sure we don't keep it longer than necessary;

Data received from the police may only be disclosed to those persons/organisations that are listed within this Privacy Notice, where they have a legitimate need to access it.

The OCPL is required to share information with other parties under various statutory provisions including the Criminal Procedure and Evidence Act and the Criminal Procedure Rules. It is intended that in appropriate circumstances, as part of the ordinary business of the OCPL and to meet the requirements of criminal justice, relevant personal data may be disclosed to, for example:

- Solicitors acting for defendants;
- Defendants in person;
- Solicitors acting for third parties;
- Solicitors acting for the OCPL;
- The Royal Gibraltar Police;
- Other Law Enforcement agencies;
- Persons/Organisations providing support services for victims and witnesses;
- Victims and witnesses;
- Barrister for the defendant;
- Barrister for the prosecution;
- Magistrates' Courts;
- Crown Courts;
- Appeal Courts;
- Probation Service;

- Prison Service;
- Youth Offending Teams;
- Care Agency;
- Others with a legitimate interest in the data.

In the rare circumstances where we collect information directly from you, we will:

- make sure you know why we need it;
- ask only for what we need, and not collect too much information or irrelevant information;
- let you know if we share it with other organisations to give you a better service - and seek your consent when necessary.

In dealing with your personal information, we will also:

- value the personal information entrusted to us and make sure we respect that trust;
- abide by the law when it comes to handling personal information;
- consider the privacy risks when we are planning to use or hold personal information in new ways, such as when introducing new systems;
- provide training to staff who handle personal information and respond appropriately if personal information is not used or protected properly.

To ensure we keep your information reliable and up to date, in return, we ask you, where applicable, to:

- give us accurate information;
- tell us as soon as possible if there are any changes to the information we hold about you, such as a new address, telephone number, email address and name change.

The security and confidentiality of your personal data is very important to us, as such we will ensure that we have safeguards in place to keep your information secure. Additionally, we will ensure that your personal data remains under the control of our authorised officers and that we comply with HM Government of Gibraltar's Information Security Policy.

## **Retention of your personal data**

The OCPL Retention and Disposal Policy is published on the GLO website. This document sets out the length of time we will hold material within criminal cases. The OCPL will adhere to this retention and disposal policy unless a legal obligation - for example a Statutory Inquiry - requires us to keep the data for longer.

## How to find out what information we hold about you

The DPA 2004 gives you the right to seek a copy of the information the OCPL holds about you; such a request for is known as a 'right of access' request. Should you wish to exercise this right, please use the following contact information.

## Contact

OCPL  
6th Floor,  
57/63 Line wall Road  
Gibraltar  
[info.ocpl@gibraltar.gov.gi](mailto:info.ocpl@gibraltar.gov.gi)

## How to exercise other rights available to you under the Data Protection Act 2004

The Act also gives you various other rights:

- Rectification - i.e. correction of inaccurate personal data
- Erasure - i.e. removal of personal data;
- Restriction of processing - i.e. limit the further processing of data we hold;
- Right of data portability - i.e. to receive the personal data we hold and have it transferred to another Data Controller;
- Object - i.e. to object to us using personal data about you
- Automated decision making - i.e. not to be subject to a decision based solely on automated processing.

Please note that some of these rights are not absolute and there may be legitimate justifications which we may rely on to restrict them. Whenever we restrict one of your

rights we will inform you of our reasoning. To exercise any of these rights please contact the OCPL at the above address.

## Making a complaint to the OCPL

If you wish to make a complaint about the way your personal data has been handled please put it in writing to:

OCPL  
6th Floor,  
57/63 Line wall Road  
Gibraltar  
[info.ocpl@gibraltar.gov.gi](mailto:info.ocpl@gibraltar.gov.gi)

Alternatively, you can contact our Data Protection Officer via email on [dpo@gibraltar.gov.gi](mailto:dpo@gibraltar.gov.gi)

## Making a complaint to the Gibraltar Regulatory Authority

If you remain dissatisfied with our processing of your personal data, you can make a complaint to the data protection supervisory authority by contacting them on:

### **Gibraltar Regulatory Authority,**

2nd floor, Eurotowers 4,  
1 Europort Road,  
Gibraltar.  
(+350) 20074636  
(+350) 20072166  
[privacy@gra.gi](mailto:privacy@gra.gi)

## Annex A - Data Categories

- Defendant details, including ethnicity, next of kin and family details
- Defence firm details - telephone numbers and email, including personal secure email

- Details of Chambers
- Victim/Witness details, including alternative contacts Personal data of Police Officers
- Previous conviction data for defendants and witnesses
- Hearing Record Sheets
- Intelligence data
- Particulars of the crime
- Expert Witness details/reports
- Interpreter details
- Exhibits/statements - used and unused material
- Used and unused material - sensitive
- Photographic Evidence
- Charging decisions
- Legal skeleton arguments
- Emails to Counsel
- Records of speaking to witnesses at court, including phone records, audit logs, records of conversations
- Referrals to victim support service
- Victim's Right to Review - records of conversations, e-mails from victim and/or witness
- Hearing Results and outcomes.

## **Proceeds of Crime cases**

- Bank Account details
- Property abroad or other assets
- Restraint Orders
- Receivership Orders
- Confiscation Orders
- Liaison with other law enforcement authorities's
- Calculations of monies owed
- Management and enforcement receivers.

## **International Cooperation and Extradition Cases**

- Information supplied by a foreign government, judicial authority, prosecutor, or law enforcement agency for the purposes of extradition, investigation, or prosecution
- Correspondence with Liaison Magistrates and prosecutors.

## Annex B - Detailed explanation of the legal basis for processing

Section 44 of the DPA 2004, the first data protection principle, states the following:

*44.(1) The first data protection principle is that processing of personal data for any of the law enforcement purposes must be lawful and fair.*

*(2) The processing of personal data for any of the law enforcement purposes is lawful only if and to the extent that it is based on law and either-*

*(a) the data subject has given consent to the processing for that purpose; or*

*(b) the processing is necessary for the performance of a task carried out for that purpose by a competent authority.*

The OCPL relies upon S.44(2)(b) as we do not rely upon consent for process data of this nature. Section 44(3) states:

*(3) In addition, where the processing for any of the law enforcement purposes is sensitive processing, the processing is permitted only in the following two cases-*

*(a) The first case is where-*

*(i) the data subject has given consent to the processing for the law enforcement purpose as mentioned in subsection (2)(a), and*

*(ii) at the time when the processing is carried out, the controller has an appropriate policy document in place as per section 51.*

*(b) the second case is where-*

*(i) the processing is strictly necessary for the law enforcement purpose.*

*(ii) the processing meets at least one of the conditions in Schedule 8, and*

*(iii) at the time when the processing is carried out, the controller has an appropriate policy document in place as per section 51.*

The processing within OCPL is strictly necessary for the OCPL to effectively conduct criminal prosecutions.

The relevant conditions in schedule 8 of the DPA 2004 are:

- (i) For statutory purposes where the OCPL is processing data through exercising powers under statutory provisions such as the Crimes Act or Proceeds of Crime Act or



any other relevant law, and where Crown Counsel ensure processing is necessary for reasons of substantial public interest;

- (ii) For the Administration of Justice;
- (iii) For the Safeguarding of children and of individuals at risk;
- (iv) For Archiving purposes where data is contained within files that meet the criteria of 'long term interest' defined by the OCPL Retention Schedule.
- (v) For processing personal data that are already in the public domain;
- (vi) For the purposes of, or in connection with, any legal proceedings, including prospective legal proceedings; including to obtain legal advice, or otherwise for the purposes of establishing, exercising or defending legal claims;
- (vii) For the purposes of preventing fraud;
- (viii) For archiving purposes in the public interest.

## **Annex C - Processing law enforcement data for a non-law enforcement purpose**

Article 6 subsection 1 of the Gibraltar GDPR sets out the following lawful bases we rely upon for processing personal data for this purpose:

6(1)(c) processing is necessary for compliance with a legal obligation to which we are subject;

6(1)(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of the official authority vested in us as the body with responsibility for prosecuting criminal cases;

Where the OCPL relies on legitimate interests as a reason for processing data, it has considered whether or not those interests are overridden by the rights and freedoms of individuals and has concluded that they are not.

In addition, where the processing for any of the non-law enforcement purposes is sensitive processing, the OCPL processes data under the following article 9(2) conditions of the Gibraltar GDPR:

- Where we have your explicit consent this will be appropriately documented, and you will be able to 'opt out' at any time.
- Where processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity.
- Where processing is necessary for reasons of substantial public interest

In order for the OCPL to process special category data for reasons of substantial public interest, the processing must meet one of the conditions set out in Schedule 1.

The condition(s) the OCPL relies on in Schedule 1 will depend on the context of the data processing concerned.

## Archiving, Research and Statistics

In order for the OCPL to process special category data in reliance upon this Article 9 condition, the processing must meet one of the conditions set out in Part 1, Schedule 1.