

The Information Commissioner's response to the Department of Justice's Call for Views on a New Victims and Witnesses Strategy

Introduction

1. The Information Commissioner's Office (ICO) welcomes the opportunity to respond to the above call for views. This Office has responsibility for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018) and additional information rights legislation.
2. We note that this call for views marks the first formal stage in the development of a new five-year Victim and Witness Strategy. The Department of Justice (DoJ) is seeking feedback to shape this strategy, particularly focusing on four key strategic priorities.
3. It is our understanding that these four priorities have been designed to enhance various aspects of support, protection, and participation for victims and witnesses, ensuring their needs are met more effectively.
4. Please note that many of the themes/questions included in the consultation fall outside of the scope of the Information Commissioner's regulatory role. For this reason, the following comments are focused solely on elements of the strategy relating to information rights.
5. We have detailed our feedback under the headings below.

General Observations

6. The draft priorities outlined by the DoJ are closely aligned with the Information Commissioner's Opinion [*'Who's Under Investigation? The processing of victims' personal data in rape and serious sexual offence investigations'*](#).
7. *'Who's Under Investigation?'* highlights that victims' lack of confidence in the criminal justice system is partly due to concerns about unnecessary privacy intrusions and delays in obtaining requested materials by investigators and prosecutors. The opinion

includes recommendations for better handling of victims' information within the criminal justice system; thereby helping to improve their overall experience.

8. It is recommended that DoJ considers this Opinion, and the recommendations therein, when working towards finalising the strategy.

Data Protection by Design and Default

9. All organisations processing or sharing personal data as a result of the strategy's aims and objectives will need to comply with [data protection by design and default](#) under Article 25 of the UK GDPR. This requires that organisations have in place appropriate technical and organisational measures to implement the [data protection principles](#) effectively and safeguard individual rights.

Involvement of Data Protection Officer

10. Given the sensitive nature of the information that may be processed or shared as part of the strategy, it is important that organisations seek expert advice from their Data Protection Officer (DPO). Part of the DPO's role under the UK GDPR is to advise and inform their organisation of their obligations under data protection laws.

Data Sharing

11. We have noted that there are data sharing references and inferences within the call for views document. For example, paragraph 16 states that it is important that DoJ continues to use a multi-agency cross-sectoral approach to deliver improved outcomes for victims and witnesses.
12. Furthermore, we also note that DoJ intends to build on the successes delivered under the current strategy. This includes continuing the efforts of the data working group, which was established to create a framework for monitoring the victim experience within the criminal justice system.
13. It is important to note that data protection law enables organisations to share personal data securely, fairly and

proportionately. Organisations participating in data sharing under the new strategy should therefore consult the ICO's [Data Sharing Code of Practice](#), which provides detailed guidance on protecting individuals' privacy when sharing data.

14. In addition to this, as the strategy focuses on all victims and witnesses, organisations should refer to our [child safeguarding guidance](#) in cases where information needs to be shared for safeguarding purposes.

Oversight and Accountability

15. Paragraph 4 states that the strategy is led by a Victim and Witness Steering Group and by Victim Champions. The document explains that these groups are responsible for overseeing the delivery of key priorities and actions across Criminal Justice Organisations to improve outcomes for victims and witnesses.
16. It is unclear whether these groups will have access to personal data as part of the strategy. DoJ may need to ensure that each group is aware of their role/responsibilities in respect of any personal data they might have access to. This includes clarifying whether these groups will be acting as a controller, joint controller, or processor.
17. Additionally, it is important to have in place appropriate governance arrangements. This will include assessing whether there is a need to have [data sharing agreements](#) or [controller/processor contracts](#) in place.

Witness / Victim Data

18. We welcome the strategic framework's emphasis on increasing awareness of the needs, interests, and experiences of victims and witnesses (Strategic Priority 1). We are also encouraged by the acknowledgment of the importance of considering victims' and witnesses' perspectives on their experiences within the justice system to identify gaps in support.
19. Regarding this, victims and witnesses will need to be assured that any personal information they reveal to Criminal Justice Organisations will be handled appropriately, in accordance with

[data protection legislation](#). This includes it being held securely and retained no longer than necessary, in accordance with the law.

Vulnerable Individuals

20. It is essential to recognize that victims and witnesses may be in vulnerable situations. Furthermore, as the call for views specifically refers to children and young people, this is considered to be an additional vulnerability. The UK GDPR states that "*children merit specific protection with regard to their personal data*".
21. DoJ must work to ensure that the needs of vulnerable individuals are met through the strategy. The [ICO's Strategic Plan \(ICO25\)](#) is concerned with ensuring a better understanding of how the personal information of vulnerable individuals is used and accessed, with specific reference to children.
22. DoJ (and other relevant organisations) must therefore ensure that such individuals are aware of how their personal information is being processed under the strategy. For example, when passing on referrals to support agencies, sharing information and seeking their experiential views. In addition to this, their rights in relation to this processing must also be communicated.
23. The [right to be informed](#) and providing appropriate privacy information will be crucial to meeting the needs of these individuals.
24. For all individuals, Article 12 of the UK GDPR requires organisations to provide information to them in a way that is concise, transparent, intelligible, easily accessible, and uses clear and plain language. In relation to children's personal data, particular care must be taken to ensure that the information provided to them is appropriately written, using clear and plain language that a child would understand.

Conclusion

25. We hope that the above comments are helpful. If there are any

queries regarding our response or any points that require clarification, please do not hesitate to contact our office.

26. In addition, we are also happy to engage further with DoJ on the strategy and it's outworkings in areas where our advice and support would be welcomed.