

## **Memorandum of Understanding between the Information Commissioner (ICO) and Transport for London (TfL)**

### **Introduction**

1. This Memorandum of Understanding (MoU) establishes a framework for co-operation and information sharing between Transport for London (TfL) and the Information Commissioner (the Commissioner) in connection with the sharing of relevant information and intelligence, set out at 18 to 23 below. It sets out the role of each organisation and documents the practical working level arrangements between the Commissioner and TfL.
2. The Commissioner and TfL will monitor the operation of this memorandum and will review it, initially after one year from the date of this document, and subsequently from time to time as necessary.
3. Any changes to this memorandum identified between reviews may be agreed in writing between the parties.
4. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation (referred to in 24 below).
5. This memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or TfL.

### **The Role and function of The Information Commissioner**

6. The Commissioner is a corporation sole appointed by Her Majesty the Queen under the Data Protection Acts 1984 and 1998 to act as the UK's independent regulator promoting public access to official information and protecting personal data.
7. The Commissioner regulates the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), the Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009. The Commissioner is also the supervisory authority responsible for Regulation 2016/679 (the European General Data Protection Regulation), which will fully apply as of 25 May 2018.
8. Section 51 of the DPA places a duty on the Commissioner to promote the following of good practice by data controllers and the observance of the requirements of the DPA by organisations.

9. Where the Commissioner is satisfied that any of the data protection principles have been breached, a number of steps can be taken to seek to change the behaviour of the organisation including:
  - serving information notices requiring organisations to provide the Information Commissioner's Office with specified information within a certain time period;
  - issuing undertakings committing an organisation to a particular course of action in order to improve its compliance;
  - serving enforcement notices where there has been a breach, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;
  - conducting consensual assessments to check organisations are complying; and
  - issuing monetary penalty notices, requiring organisations to pay up to £500,000 for serious breaches.
10. Regulation 31 of PECR, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, provides the Commissioner with the power to serve enforcement notices and issue monetary penalty notices as above to organisations breaching PECR. This includes, but is not limited to, those breaching PECR by making unsolicited marketing calls, or sending unsolicited electronic messages, in breach of regulations 19 (automated calls), 21 (live calls) and 22 (text messages).
11. The Commissioner may also prosecute those who commit criminal offences under the DPA.

### **Functions and powers of Transport for London**

12. The Greater London Authority Act 1999 grants TfL wide statutory powers, to secure the provision of transport in London. TfL is also the highway and traffic authority for the Greater London area. TfL also has the broad licensing powers in relation to Taxi and Private Hire services in London.
13. In the exercise of all of its broad powers, TfL is responsible for securing or facilitating the implementation of the Mayor's transport strategy and his duties to "develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services
14. The policies of the Mayor's draft Transport Strategy published in June 2017 included to:

1. *ensure London has a safe, secure, accessible, world-class taxi and private hire service with opportunity for all providers to flourish;*
2. *enhance London's streets and public transport network so as to enable all Londoners, including disabled and older people, to travel spontaneously and independently, making the transport system navigable and accessible to all; and*
3. *provide an attractive whole-journey experience that will encourage greater use of public transport, walking and cycling.*

### **Cooperation between the Commissioner and TfL**

15. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at its discretion, TfL agrees that it will alert the Commissioner to potential breaches of the legislation she regulates discovered whilst undertaking its statutory duties, and provide relevant supporting information.
16. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and her discretion, the Commissioner agrees that she will alert TfL to any potential breaches of the relevant legislation it regulates, or information relevant to the aims set out at 12 to 14 above, discovered whilst undertaking her statutory duties, and provide relevant supporting information.
17. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, both parties will:
  - Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and
  - Consult one another on any issues which might have significant implications for the other organisation.

### **Sharing information**

18. Subject to any disclosure restrictions applicable to TfL, it may at its discretion disclose confidential information to the Commissioner to facilitate the carrying out of a statutory function of TfL or a statutory function of the Commissioner, as set out in 6 to 14 above.
19. Where TfL wishes to disclose to the Commissioner information necessary for the discharge by the Commissioner of her functions

under the DPA (or under FOIA), section 58 DPA provides that no enactment or rule of law prohibiting or restricting the disclosure of information shall preclude TfL from furnishing such information to the Commissioner.

20. In respect of information obtained by or furnished to the Commissioner for the purposes of her functions under the Information Acts, it is an offence under section 59 DPA for any current or former member of the Commissioner's staff or her agent to disclose such information without lawful authority.
21. Section 59(2)(e) DPA provides that a disclosure by the Commissioner of information obtained by or furnished to her is made with lawful authority where, having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
22. In addition, section 59(2)(d) DPA provides that a disclosure of information by the Commissioner is made with lawful authority where the disclosure is made for the purposes of any proceedings, whether criminal or civil.
23. Section 59(2)(c) of the DPA provides that a disclosure by the Information Commissioner of information obtained by or furnished to her is made with lawful authority where the disclosure is made for the purposes of, and necessary for, the discharge of any functions under the Information Acts (in this case the DPA).
24. The Commissioner may, at her discretion and in accordance with sub-sections 59(2)(c), (d) and/or (e) DPA, disclose confidential information to TfL, where this is necessary for performing the functions set out at 6 to 14 above.
25. If information to be disclosed by the Commissioner was received by her in the course of discharging her functions as a designated enforcer under the Enterprise Act 2002, any disclosure shall be made in accordance with the restrictions set out in Part 9 of that Act.
26. Where a request for information is received by either party under the DPA or FOIA, the recipient of the request will seek the views of the other party as described in the FOIA section 45 Code of Practice, where the information being sought under the request includes information obtained from, or shared by, the other party. However the decision to disclose or withhold the information remains with the party in receipt of the request.

27. Information transfers will be protected in accordance with the sensitivity of the information and any classification that is applied. Where there is a clear need to reinforce the 'need to know' principle, then material should be marked as OFFICIAL – SENSITIVE or TfL RESTRICTED, as the case may be and protected accordingly and in line with the government security classification scheme or TfL's Information Security Classification Standard. It is not anticipated that material classified as SECRET or above would be exchanged with reference to this Memorandum.
28. Whilst this Memorandum is written with current legislative requirements in mind, the broad principles will continue to apply until reviewed in line with paragraph 2.

**Points of contact**

29. See details set out below:

| <b>Transport for London</b>  | <b>Information Commissioner</b>  |
|--|----------------------------------|
| Richard Bevins, Head of Information Governance and Data Protection Officer | Emma Bate, General Legal Counsel |

**TfL**

**Information Commissioner**

(Signature)

(Signature)

(Date)

(Date)

02-02-18

26 Jan 2018