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## INFORMATION SHARING AGREEMENT

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### 1. Introduction

- 1.1 This document is an Information Sharing Agreement between the Commissioner for Ethical Standards in Public Life in Scotland (ESC) and the Standards Commission for Scotland (Standards Commission). The Agreement identifies what personal information is being shared, why it is being shared and the legal basis for sharing. The Agreement also emphasises the ESC's and Standards Commission's commitment to protect the privacy and security of all personal information.

### 2. Background

- 2.1 The Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act), as amended, provides a framework to promote, encourage, and where necessary, enforce high ethical standards in public life. The ESC and the Standards Commission each have separate roles under the governing legislation, and it is necessary for the two organisations to share personal information in order for them to undertake their respective roles and perform their statutory duties.
- 2.2 One of the ESC's responsibilities is to investigate complaints alleging that a councillor or a member of a devolved public body (the respondent) has breached the Councillors' Code of Conduct or the public body's Members' Code of Conduct. If, following investigation, the ESC determines that a potential breach of these Codes of Conduct has occurred, she will report the matter to the Standards Commission.
- 2.3 Following receipt of a report from the ESC advising of a potential breach of a Code of Conduct, the Standards Commission has three options; being to direct the ESC to undertake further investigation, to hold a Hearing or to take no action. Hearings are held to adjudicate on alleged breaches of the Codes of Conduct and, where a breach is found, to then determine the appropriate sanction to be imposed on the respondent. The Standards Commission also has a role under the ethical standards framework to provide advice and guidance on the Codes of Conduct.
- 2.4 The 2000 Act also provides the Standards Commission with the power to impose an interim suspension on a councillor or member of a devolved public body on receipt of an interim report from the ESC about an ongoing investigation.

### 3. Information that is shared and the legal basis for doing so

- 3.1 The ESC and Standards Commission share personal information to enable them to pursue their legitimate interests and statutory functions, as outlined in the 2000 Act, in respect of dealing with complaints about the conduct of councillors and members of devolved public bodies (see the sections on breach cases, interim suspension reports and no breach cases below). The lawful basis for sharing and processing personal data, as set out in Article 6 of the General Data Protection Regulations, is public task. This is where the processing is necessary for the ESC and Standards Commission to perform tasks in the public interest or for their official functions,

where the task or function has a clear basis in law. The ESC and the Standards Commission have to share information to perform their statutory functions. As such, consent to such processing is not necessarily required.

- 3.2 The ESC and Standards Commission may also share personal information to enable them to deal with enquiries about how to make complaints about the conduct of councillors and members of devolved public bodies (see the section on enquiries below). The lawful basis for sharing and processing personal data, as set out in Article 6 of the General Data Protection Regulations, is consent. This is where an individual has given clear consent for their personal data to be processed and shared for a specific purpose.
- 3.3 Data shared between the ESC and the Standards Commission can include personal information about the respondent, complainer, employees of the council or devolved public body, legal representatives and witnesses, such as their names, titles and contact details. The ESC and Standards Commission may also share information which is defined by the data protection legislation as “special category”, if it is relevant to a case. This includes information about race, ethnic origin, sexual orientation, trade union membership, physical or mental health and criminal offences.

#### **Breach Cases**

- 3.4 The ESC will provide the Standards Commission with the names and contact details of the respondent and any complainers and any of their representatives, when submitting a report about a potential breach of a Code of Conduct. This enables the Standards Commission to contact the parties and advise them of its decision about whether to direct the ESC to undertake further investigation, to hold a Hearing or to take no action. It also allows the Standards Commission to correspond with the parties about the Hearing and any decisions made in respect of it.
- 3.5 Where the Standards Commission has decided to hold a Hearing to adjudicate on an alleged breach of a Code of Conduct, the ESC and respondent can submit evidence and information (such as documents, statements and photographs). This evidence, which forms the productions, may contain personal information about third parties, such as the names and job title of any witnesses. The productions are shared with the Hearing Panel and circulated to the ESC, the respondent and any representative either has engaged. The productions are not published or disclosed to any other party.
- 3.6 If the respondent has sought representation, they will be asked to provide contact details for that individual to enable information and matters pertinent to the case being shared with them. The Standards Commission will notify the ESC of the respondent’s representative’s contact details.
- 3.7 Further information about the procedures which will be followed if a decision is made to hold a Hearing are outlined in the Standards Commission’s Hearing Rules, which can be found at: [www.standardscommissionscotland.org.uk/cases/hearing-rules](http://www.standardscommissionscotland.org.uk/cases/hearing-rules).

#### **Interim Suspension Reports**

- 3.8 Section 21 of the 2000 Act provides the Standards Commission with the power to impose an interim suspension on a councillor or member of a devolved public body on receipt of an interim report from the ESC about an ongoing investigation. The ESC will provide the Standards Commission with the names and contact details of the respondent and any of their representatives, when submitting an interim report. This enables the Standards Commission to contact the respondent to seek representations and thereafter advise them of its decision about whether to impose an interim suspension or to take no action. The ESC’s interim report may contain personal information about third parties, such as the names and job title of any complainers or witnesses.

### **No Breach Cases**

- 3.9 The ESC may provide the Standards Commission with no breach case reports to enable it to determine if there are any emerging trends or difficulties being experienced in respect of interpreting the Codes of Conduct. This information is used by the Standards Commission to inform its advice and guidance activities aimed at promoting the ethical standards framework and adherence to the Codes of Conduct. Some personal details, including the names of any respondents and witnesses may be included in the no breach reports. The reports are reviewed by Standards Commission Members at their next meeting following receipt and are thereafter destroyed. This means that information contained within them is not processed or stored by the Standards Commission after the meeting.

### **Enquiries**

- 3.10 If the Standards Commission receives any complaints about councillors or members of devolved public bodies and / or any enquiries about how to make a complaint or an ongoing investigation, it will seek consent from the individual making the complaint or enquiry to share any personal information provided (including their contact details) with the ESC. The Standards Commission will not share any personal information with the ESC until such consent has been provided.

## **4. How information is shared, retained and stored:**

- 4.1 Personal Information will be shared by the ESC and Standards Commission by email, letter or telephone, in accordance with procedures outlined in the ESC's and Standards Commission's Privacy Notices. Protective markings may be used to flag up the existence of any sensitive or restricted information.
- 4.2 The ESC's Privacy Notice can be found at:  
<https://www.ethicalstandards.org.uk/privacy-policy>  
The Standards Commission's Privacy Notice can be found at:  
<https://www.standardscommissionscotland.org.uk/about-us/data-protection-and-privacy>
- 4.3 Both the ESC and Standards Commission are responsible for the quality of the data being shared. Before any data is shared, it will be checked for accuracy and to ensure that it is up to date. If the ESC or Standards Commission is advised that any shared information is inaccurate or out of date, it will inform the other organisation accordingly.
- 4.4 The ESC and Standards Commission will only process information, in terms of this Agreement, for the specific purpose for which it was shared.
- 4.5 The ESC and Standards Commission will retain shared personal information for no longer than is necessary to perform their legal performance of tasks associated with these statutory functions or to respond to any enquiries.
- 4.6 Information and data will be stored, retained and destroyed in accordance with the ESC's and Standards Commission's individual document retention and disposal policies. Copies of these can be provided on request.

## **5. Responsibilities for Data Protection**

- 5.1 Both the ESC and the Standards Commission are registered with the Information Commissioner as data controllers. As such, both are separately responsible for determining the purpose for which, and the manner in which, any personal data is or is to be processed. Any concerns about

the use of personal information, including that it is being processed unfairly or inappropriately, should be directed to the relevant organisation.

## 6. Review Process

6.1 This Data Sharing Agreement will be reviewed every five years or following any substantive changes being made to the data sharing arrangements.

Signed on behalf of:

Standards Commission for Scotland

Commissioner for Ethical Standards  
in Public Life in Scotland



Lorna Johnston  
Executive Director

Caroline Anderson  
Ethical Standards Commissioner

5 May 2020

4 May 2020



Data control and version information				
Date	Action by	Version Updated	Current version	Brief Description
05/05/2020	SCS	N/A	V1.0	Agreement finalised and signed