



Scottish Biometrics
Commissioner
Coimiseanair
Biometrics na h-Alba

THE SCOTTISH BIOMETRICS COMMISSIONER

in compliance with the requirements of the
General Data Protection Regulation

APPROPRIATE POLICY

Version 1 – October 2023



Safeguarding our biometric future



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Prepared by	Diego Quiroz
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Scope

This policy has been developed to meet the requirement in the Data Protection Act (DPA) 2018 for an Appropriate Policy document which details the lawful basis and conditions for processing and safeguards the Scottish Biometrics Commissioner (SBC) has put in place for sensitive processing, the processing of special categories of personal data and criminal offence data.

In terms of [Section 15](#) of the Scottish Biometric Commissioners Act 2020 the Commissioner must provide a procedure for an individual (or someone acting on an individual's behalf) to make a complaint that an organisation to whom our functions extend has failed to comply with the SBC [Code of Practice](#) in relation to the individual's biometric data.¹

This policy applies where an individual raises a complaint to us regarding a potential breach of the [SBC Code of Practice](#) by [Police Scotland](#) (PSoS), the [Scottish Police Authority](#) (SPA), or the [Police Investigations and Review Commissioner](#) (PIRC).

Categories of information processed

The Commissioner will require to process normal category data of the individual including the individual's:

- name
- date of birth
- address
- contact details of the individual or a representative acting on behalf of the individual

The SBC could also receive 'criminal offence data' when dealing with a complaint, for example Police Scotland may advise that the reason for holding someone's biometrics was because they had been charged or convicted with a crime or statutory offence. This may include details of criminal convictions and offences, charge details and warning markers from suspects, witnesses, victims, or deceased persons.

The SBC may also receive sensitive data and will only process such data if it is relevant to a specific complaint. However, the SBC will never hold 'biometric' or 'genetic' data, including DNA profile, fingerprint, or image. If the SBC needs to view an individual biometric data record for the purposes of investigating a complaint relating to the Code of Practice, this will be facilitated at the premises of PSoS, SPA or PIRC.

Definition of criminal offence and sensitive data

Special category data is defined by Article 9 of the UK General Data Protection Regulation (UK GDPR) and sensitive data is defined by Section 35 of the DPA 2018.

Article 10 UK GDPR applies to the processing of personal data relating to criminal convictions and offences or related security measures.

¹ Section 15 of the SBCA 2020 'Complaints about failures to comply with the code - (1) the Commissioner must provide for a procedure by which an individual, or someone acting on an individual's behalf, may make a complaint to the Commissioner that a person who is required by Section 9(1) to comply with the Code of Practice has not done or is not doing so in relation to the individual's biometric data.'

Section 11(2) of the DPA 2018 provides that criminal offence data includes data which relates to the alleged commission of offences and related proceedings and sentencing. Information about victims and witnesses of crime is also included in the scope of data relating to criminal convictions and offences.

Lawful basis for processing

The SBC is a statutory body with statutory functions which are set out in the [Scottish Biometrics Commissioner Act 2020](#). As part of SBC's statutory functions, we may process special category and criminal offence data for the purpose of investigating an individual complaint under Articles 6(1)(c) and 9(2)(g) of the UK GDPR (that is, processing is necessary for compliance with a legal obligation to which SBC is subject and for reasons of substantial public interest).

The SBC processes sensitive data only when it is necessary for the investigation of the complaint under Section 35(2)(b) of the DPA 2018.

The SBC [Privacy Notice](#) and [Information Governance Handbook](#) have more information about our data protection policy and procedures, including the kind of information we hold and what it is used for.

Substantial public interest

Section 10(3) of the DPA 2018 sets out that in order for processing of criminal offence data to be necessary for reasons of substantial public interest under Article 9(2)(g) of the UK GDPR, that processing must meet one of the conditions set out in Part 2 of Schedule 1. The SBC processes criminal offence data in the performance of its statutory and corporate functions when the following conditions set out in Part 2 of Schedule 1 to the DPA 2018 are met: paragraph 6, Statutory etc and government purposes. This condition applies to SBC's statutory and corporate functions.

Data protection principles

SBC follows the principles set out in Article 5 of the UK GDPR, and Part 3, Chapter 2 of the DPA 2018 as follows:

Accountability

The SBC maintain appropriate documentation of our data processing activities. We have a data protection policy in place for the processing of personal data. We have carried out a full Data Protection Impact Assessment which has been approved by the Data Protection Officer in relation to the processing of criminal offence data for the purposes of the consideration of a complaint under [Section 15](#) of the Scottish Biometric Commissioner Act 2020.

Lawfulness, Fairness and Transparency

The lawful basis for this processing is described [here](#). In addition, we take an open and honest approach to the collection of all personal data from individuals including special category and criminal offence data and we have practices and procedures in place to ensure that personal data is processed in accordance with the data protection principles and that individuals are made aware as to the provisions for the processing of their personal data.

Purpose Limitation

As outlined in the paragraphs above we have clearly identified the purposes for which we process special category and criminal offence data, which is for the purposes of investigating a complaint under [Section 15](#) of the Scottish Biometrics Commissioner Act 2020. SBC does not process personal data for purposes that are incompatible with the purposes for which it is collected.

When we process personal data to fulfil our [statutory functions](#), this information may be used in connection with any other function under our Act. For example, the SBC may report on the outcome of an investigation to the Scottish Parliament, in compliance with the Scottish Biometrics Commissioner Act 2020. When we do so we will not name individuals. We may also use information we collect to compile statistics and undertake research and analysis. In these cases, personal information will be completely anonymised.

Data Minimisation

The SBC collects personal data that is adequate, relevant and limited to the relevant purposes for which it is processed. We will ensure that the information we process is necessary and proportionate for the purposes of investigating a complaint. For example, we will only request from the complainer: name, date of birth, addresses and telephone numbers.

As part of our commitment to compliance with the data protection principles under the UK GDPR we will periodically review the personal data we hold, including special category and criminal offence data and securely delete any such personal data that we no longer require having regard to the purposes of the processing.

Accuracy

Personal data shall be accurate and, where necessary, kept up to date. When we become aware that personal data is inaccurate or out of date, having regard to the purpose for which it is being processed, we will take every reasonable step to ensure that data is rectified without delay, including informing PSoS, PIRC and SPA.

Storage Limitation

Personal data is retained for the purposes of the processing in terms of the statutory requirements for investigation of a complaint under [Section 15](#) of the Scottish Biometrics Commissioner Act 2020. Personal data is retained until the SBC has responded to the enquiry and the matter is concluded. For this, we will delete personal data after a period of 26 months has elapsed since the date of the last action on the complaint file. Thereafter, the complaint file will be anonymised for any reporting obligation under the Scottish Biometrics Commissioner Act 2020 and retained in accordance with our [Information Governance Handbook](#) and our [File Type Guidance](#).

Integrity and Confidentiality

The SBC has considered the risks to the processing of personal data and has put in place appropriate technical, physical and managerial procedures to safeguard and secure the personal data we collect about individuals. We have strict safety and privacy standards for our staff and third parties who process personal data for the reasons of this policy. We, for example, have entered into data sharing agreements with PSoS, PIRC and SPA and all SBC staff are required to complete the GDPR online training. This is a mandatory requirement for all staff and requires to be completed annually. Personal data will be secured in our eRDM system. Access to personal information is limited to those employees, or third parties who have a business or legal need to access it.



Policy review statement

This policy will be periodically reviewed and updated.