



Scottish Biometrics  
Commissioner  
Coimiseanair  
Biometrics na h-Alba

# SCOTTISH BIOMETRICS COMMISSIONER

## PRIVACY NOTICE

### COMPLAINTS PROCEDURE FOR FAILURE TO COMPLY WITH THE CODE OF PRACTICE



*Safeguarding our biometric future*



This document explains how the Scottish Biometrics Commissioner (SBC) collects and uses personal information as a data controller in cases where an individual complains about a potential breach of the SBC Code of Practice by Police Scotland (PS), the Scottish Police Authority (SPA), or the Police Investigations and Review Commissioner (PIRC).

### The purpose of the processing

During the course of our investigation, we will use personal data for the purpose to comply with a legal obligation prescribed under [Section 15](#) of the Scottish Biometrics Commissioner Act 2020. The complaints process and the Code of Practice encourage and enable best practice in the use of biometric data within the criminal justice system in Scotland.

### Type of information

If a person makes a complaint to us about a potential breach of the Code of Practice, we will require the complainer's written authority to share their personal information with the body to whom the complaint relates - so that we may properly investigate in accordance with our statutory duties under the Scottish Biometrics Commissioner Act 2020. This information includes: name, date of birth, address and contact information of the complainer or a representative acting on behalf of the complainer.

### Categories of information processed

Normal category data such as name, date of birth, addresses and telephone number will come from the complainer. The SBC could also receive 'criminal offence data', in the course of an investigation, which will be provided by PS, the SPA or the PIRC. This may include details of criminal convictions and offences, charge details and warning markers from suspects, witnesses, victims, or deceased persons. The SBC will not manage or process any biometric data. If the SBC needs to view an individual's biometric data record for the purposes of investigating a complaint relating to the Code of Practice, this will be facilitated on the premises of PS, SPA or PIRC.

### Legal basis for data processing

The processing is necessary for compliance with a legal obligation<sup>1</sup> to which the SBC is subject to in terms of [Article 6\(1\)\(c\)](#) of the UK General Data Protection Regulation (UK GDPR).

The bodies to whom our functions extend can be legally required by the SBC, under [Section 16](#) of the Act, to supply information, which the Commissioner reasonably requires for the purposes of determining whether the body complained about is complying with the Code of Practice.

As aforementioned, the SBC could also receive criminal offence data, which will be processed in terms of [Article 10](#) of the UK GDPR and [paragraphs 6 of Part 2 of Schedule 1](#) of the Data Protection Act 2018.

### Consequences of not providing personal data

If a person makes a complaint to us about a potential breach of the Code of Practice, we will require the complainer's written authority to share their personal information with the body to whom the complaint relates (PS, PIRC or SPA), so that we may properly investigate in accordance with our statutory duties under the Scottish Biometrics Commissioner Act 2020. We cannot start an investigation without the data subject's personal information. However, if a person withdraws their initial consent or does not wish to

---

<sup>1</sup> [Section 15](#) of the Scottish Biometrics Commissioner Act 2020



proceed, we reserve the right to conduct a full investigation if the specific nature of the allegation suggests that it is in the public interest to do so

### Data sharing

The SBC currently has data sharing agreements with:

- Police Scotland
- Scottish Police Authority
- Police Investigations and Review Commissioner

The SBC may report on the outcome of an investigation, for example to the Scottish Parliament, in compliance with the Act. 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.

### Retention of data

The personal data will be retained until the SBC has responded to the complaint and the matter is concluded. Personal data will be deleted 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 and retained in accordance with the SG eRDM retention [policy](#).<sup>2</sup>

The personal data will be secured in the eRDM system.

### Children and young people safeguarding and child protection

In line with the principles underlying the [National Guidance for Child Protection in Scotland \(2014\)](#), published by the Scottish Government, our staff may report a concern to the relevant authorities if they come across an issue during their work which causes them to think that a child may be at risk of abuse or harm.

### Your rights

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below.

You can exercise your data subject rights in particular circumstances depending on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place. The following rights may apply:

**Access to your information** – You have the right to request a copy of the personal information about you that we hold. For further information, see information on how to make a data protection [subject access request](#).

**Correcting your information** – You have the right to ask us to correct the personal data we hold about you. We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

---

<sup>2</sup> This is usually 7 years from the date that the complaint folder was opened



**Objecting to how we may use your information** – You have the right at any time to require us to stop using your personal information. Where we use your personal information to perform tasks carried out in the public interest, if you ask us to, we will stop using that personal information unless there are overriding legitimate interest or grounds to continue.

**Please note:**

- The right to object to the processing of personal data does not apply where the data subject has consented to the processing, subject to the right to withdraw consent.
- The right to object to the processing of personal data for the purposes of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject.
- The right of erasure and the right to object to processing of personal data do not apply where personal data is processed for the performance of a legal obligation. This will be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data could pose to you.

**Deletion of your information** – You have the right to ask us to delete personal information about you, where:

- You consider that we no longer require the information for the purposes for which it was obtained
- We are using that information with your consent and you have withdrawn your consent – see withdrawing consent to using your information
- You have validly objected to our use of your personal information
- Our use of your personal information is contrary to law or our other legal obligations

**Please note:**

- That the right allowing for deletion or erasure of personal data (right to be forgotten) does not apply in cases where personal data is processed for the purposes of the performance of a task carried out in the public interest
- The right of erasure and the right to object to processing of personal data do not apply where personal data is processed for the performance of a legal obligation. This will be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data could pose to you.

**Restricting how we may use your information** – In some cases, you may ask us to restrict how we use your personal information. This right might apply for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where there is no longer a basis for using your personal information, but you do not want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so.

**Withdrawing consent to using your information** – Where we use your personal information with your consent, you may withdraw that consent at any time and we will stop using your personal information for



the purposes for which consent was given. However, we may continue with an investigation where there are other public interest grounds to do so.

Please contact us in any of the ways set out below if you wish to exercise any of these rights.

#### Changes to our privacy notice

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy statement may also be obtained using the contact information below.

This privacy notice will be updated in November 2023.

#### Contact information and further advice

If you have any questions about the way in which we process your personal data, or about how to exercise your rights, please contact us at:

Contact@biometricscommissioner.scot

Write to us to:

Scottish Biometrics Commissioner  
Bridgeside House  
99 McDonald Road  
Edinburgh  
EH7 4NS.

#### Complaints

We seek to directly resolve all complaints about how we handle your personal information. You can submit your complaint [here](#).

You also have the right to lodge a complaint with the Information Commissioner's Office [online](#) or by phone on 0303 123 1113.