



## DATA RETENTION POLICY

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## INTRODUCTION

### 1.0 Policy statement

- 1.1 The Scottish Criminal Cases Review Commission (the Commission) recognises that it must, in terms of the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA), keep personal data no longer than necessary for the purpose for which it is processing the data.
- 1.2 This policy sets out the retention schedules for personal data that the Commission processes.

### 2.0 Policy authorisation

- 2.1 On 13 August 2021 the Board of the Commission approved this version of this policy.

### 3.0 Related policies

- 3.1 This policy must be read in conjunction with the Commission's data protection policy, its case handling procedures and its records management plan.

### 4.0 Types of processing

- 4.1 The processing that the Commission carries out falls into two broad types.

- **Law enforcement processing:** the processing of personal data so that the Commission can carry out its primary statutory function,<sup>1</sup> including personal data of the applicants whose cases the Commission is reviewing or has reviewed as well as the personal data of witnesses in those cases and other individuals.
- **General processing:** the processing of personal data for personnel, recruitment, procurement, property, financial and corporate purposes as well as data about individuals who contact the Commission seeking information. The Commission also processes personal data for purposes of crime prevention and detection and security including data security.

## 5.0 Law enforcement processing

- 5.1 Part 3 of DPA, which implements the Law Enforcement Directive,<sup>2</sup> provides for the processing of personal data by competent authorities for ‘the law enforcement purposes’.
- 5.2 The law enforcement purposes are the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.<sup>3</sup>
- 5.3 The Commission is a competent authority, and processes personal data in the cases that it reviews for a law enforcement purpose.
- 5.4 The Commission keeps personal data in accordance with the fifth data protection principle set out in Part 3 of DPA, which provides: (1) personal data processed for the law enforcement purposes must be kept for no longer than is necessary for the purpose for which they are processed, and (2) appropriate time limits must be established for the periodic review of the need for the continued storage of personal data for such purposes.<sup>4</sup>
- 5.5 Personal data that the Commission processes are kept securely: they are kept on the Commission’s Electronic Document and Records Management System (‘Visual Files’) or in hard copy (in line with the Commission’s records management plan), in accordance with the sixth data protection principle under Part 3 of DPA.<sup>5</sup>

### Stage 1 review

- 5.6 Where the Commission decides not to accept the application for a stage 2 review, personal data in the papers that the Commission has obtained from its stakeholder organisations (which comprise the court papers from Judiciary Office or the relevant sheriff/JP court) are kept for three years on Visual Files, in the file pertaining to the particular case.
- 5.7 The statement of reasons and the accompanying report are kept in perpetuity on Visual Files, in order to facilitate consistency in the Commission’s decision-making and for the purpose of staff training and professional development.

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<sup>1</sup> Which is that the Commission may, on the consideration of any conviction of a person in Scotland or the sentence imposed in such a case, refer the case to the High Court of Judiciary for determination where it believes there may have been a miscarriage of justice and it is in the interests of justice to make such a reference (s194B and C of the Criminal Procedure (S) Act 1995).

<sup>2</sup> Which means Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016.

<sup>3</sup> Section 31 of DPA.

<sup>4</sup> Section 39 of DPA.

<sup>5</sup> Section 40 of DPA.

## Stage 2 review

- 5.8 Where the Commission completes a Stage 2 review, personal data in the papers that the Commission has obtained from its stakeholder organisations (including Crown productions and precognitions, police statements, the defence files and the Commission's correspondence file) are kept on Visual Files, in the file pertaining to the particular case.
- 5.9 The Commission may either refer or not refer the stage 2 case to the High Court. The retention schedules for personal data in reference or non-reference cases follow.

### Reference cases

- The statement of reasons, including personal data in it, is kept in perpetuity on Visual Files, in order to facilitate consistency in the Commission's decision-making and for the purpose of staff training and professional development.
- The basic case-milestone information is kept in perpetuity on Visual Files, in order to facilitate research and statistical analysis.
- Where the appellant's appeal is successful, the case papers are destroyed and the defence files are returned to the defence solicitors.
- Where the appeal is unsuccessful, is successful only in part or is abandoned, the case papers are kept for ten years from the date of the High Court's decision (or the date of abandonment) and are destroyed; the defence files are, where it is practicable to do so, returned to the defence solicitors immediately after the High Court's decision/the date of abandonment.
- Where the Commission receives a repeat application about the same conviction or sentence, the case papers are kept for the length of time which is in accordance with the outcome of the later application.
- Where the Board of the Commission considers there are reasons which justify the archiving<sup>6</sup> of personal data, those data, including those in the defence files, will be archived in perpetuity. (The Board's decision is marked on the papers, and the Commission will, where it is appropriate to do so, tell the data subjects about the decision to archive their personal data.)

### Non-reference cases

- The statement of reasons and any supplementary statement of reasons are kept in perpetuity on Visual Files (as above).
- The defence files are returned to the defence solicitors upon completion of the Commission's review.

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<sup>6</sup> In taking the decision whether to archive personal data, the Board will take into account the safeguarding requirements set out in s41 of DPA, including whether the processing is necessary for archiving purposes in the public interest, and that such processing is not permitted if it is likely to cause substantial damage or substantial distress to a data subject.

- The case papers, as outlined in para 5.8 above, are kept for five years (and for ten years in murder cases) from the date of the Commission’s final decision letter and are then destroyed.
- Where the Commission receives a repeat application about the same conviction or sentence, the case papers are kept for the length of time which is in accordance with the outcome of the later application.
- Where the Board of the Commission considers there are reasons which justify the retention of personal data for longer than the five or ten-year period, those data, including those in the defence papers, will be kept for the period determined. (The Board’s decision is marked on the papers, and the Commission will, where it is appropriate to do so, tell the data subjects about the decision to extend the five or ten-year period of retention.)

Court actions

5.10 The Commission keeps personal data in connection with court actions taken against it. It keeps the final interlocutor of the court action in perpetuity. It keeps the other papers in each case for six years from the date of the final interlocutor.

The Scottish Child Abuse Inquiry

5.11 The Commission keeps data which may be sought by this Inquiry. It keeps the data for the requisite period of time in order to comply with any request by the Inquiry. Such a retention period supersedes the above-mentioned five and ten-year periods.

**6.0 General processing**

6.1 The Commission processes personal data for personnel, recruitment, procurement, property, financial and corporate purposes as well as data about individuals who contact the Commission seeking information. The Commission also processes personal data for purposes of crime prevention and detection and security including data security.

6.2 The Commission keeps personal data in accordance with the data protection principle set out in Article 5(e) of UK GDPR.

6.3 The retention schedules for those data follow.

Document	Period of Retention
Agreements and related correspondence	
Contracts with suppliers	6 years after expiry or termination of contract
Licensing agreements	6 years after expiry or termination of contract
Rental agreements	6 years after expiry or termination of contract

Property	
Leases	15 years after expiry or termination of lease agreement
Accounts & Finance	
Payroll and PAYE records	6 years following year-end
Invoices and payments information	6 years following year-end
Accounts and budgets	6 years following year-end
Employee Records	
Staff personal records	6 years after employment ceases
Applications for jobs (where the candidate was unsuccessful)	6 months after notifying the unsuccessful candidate – unless a reserve list is maintained
Payroll records and expenses	6 years following year-end
Sickness records	6 years after tax year
Accident book	6 years from the date of each entry
Health and safety records	6 years
Board Member records	
Payroll	6 years
Appraisals	6 years
Board and Senior Management	
Board minutes	In perpetuity
Management minute meetings	6 years
Corporate	
Audit committee meetings	6 years
Internal audit	6 years
External audit	6 years

Strategic planning	6 years
Business planning	6 years
Financial planning	6 years
Risk register	6 years
Statistics and data collection	6 years
Policies	10 years
Contributions to legislation	6 years
Research and evidence	10 years
Insurance	
Employer's liability certificate	40 years
Communications	
Media cuttings	6 years
Image library records	6 years
Events organisation	10 years
Publications	6 years
Press releases	10 years
Information requests	
FOI requests	6 years
Subject access requests	6 years
Customer Feedback	
Complaints	3 years
Compliments	3 years

Health & Safety and Environmental	
Quarterly meetings, policies, correspondence	6 years
Staff matters	
Staff and legal officer meetings, training, including traineeships	6 years
Whistleblowing	
Disclosures made under the Public Interest Act 1998	6 years
Enquiries	
Requests for applications etc.	6 years
Emails	
Copies of emails which concern one of the aforementioned categories will be stored in the relevant file, and will be disposed of in accordance with the relevant retention schedule	
All other non-case-related emails	1 year
On premises CCTV and video controlled entrance	
All images	20 Days

## 7.0 Review

7.1 The data protection officer will review this policy at least annually.

Date first approved	16 August 2013
Date of this review	14 October 2022
Date of next review	August 2023