

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4872 GIBRALTAR Thursday 1st July 2021

B. 12/21

DATA SHARING (PUBLIC AUTHORITIES) BILL 2021

ARRANGEMENT OF CLAUSES

Clause

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THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

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BILL

FOR

AN ACT to provide for the regulation of the sharing of information, including personal data, between public bodies; to provide for the regulation of the management of information by public bodies; and to provide for related matters.

ENACTED by the Legislature of Gibraltar.

PART 1 COMMENCEMENT AND INTERPRETATION

Title.

1. This Act may be cited as the Data Sharing (Public Authorities) Act 2021.

Commencement.

2. This Act comes into operation on the day of publication.

Interpretation.

3. In this Act, unless the context otherwise requires—

“anti-social behaviour” means conduct that—

- (a) is likely to cause harassment, alarm or distress to any person; or
- (b) is capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises;

“Crown” means the Crown in right of the Government of Gibraltar;

“data protection legislation” has the meaning given to it in section 2 of the Data Protection Act 2004;

“Information Commissioner” means the Information Commissioner appointed under section 123 of the Data Protection Act 2004;

“Minister” means the minister with responsibility for data protection;

“personal information” has the meaning given to it in section 13;

“public authority” means—

- (a) a government department;
- (b) a body or other person, that carries out functions of public administration;
- (c) a body or other person, that exercises functions of a public nature; or
- (d) a body or other person, that provides public services,

but a person is not a public authority for the purposes of this Act merely because the person exercises functions on behalf of a public authority;

“specified objective” means an objective specified in Schedule 2; and

“specified person” means a person specified, or of a description specified, in Schedule 1.

PART 2

DISCLOSURE OF INFORMATION BETWEEN SPECIFIED PERSONS

Disclosure of information for the purposes of public administration and delivery of public services.

4. A specified person may disclose information held by the person in connection with any of the person's functions to another specified person for the purposes of an objective which is a specified objective under Schedule 2.

Disclosure of information to reduce debt owed to the public sector.

5.(1) A specified person may disclose information held by the person in connection with any of the person's functions to another specified person for the purposes of the taking of action in connection with a debt owed to a public authority or to the Crown.

(2) For the purposes of this section a debt is owed to a public authority or to the Crown if—

- (a) a person is required to pay a sum of money to a public authority or to the Crown; and
- (b) all or part of that sum remains unpaid after the date on which, or after the end of the period within which, it is required to be paid.

(3) For the purposes of this section taking action in connection with debt owed to a public authority or to the Crown includes—

- (a) identifying debt of that kind;
- (b) collecting and recovering debt of that kind;
- (c) bringing civil proceedings as a result of debt of that kind;
- (d) taking administrative action as a result of debt of that kind.

Disclosure of information to combat fraud against the public sector.

6.(1) A specified person may disclose information held by the person in connection with any of the person's functions to another specified person for the purposes of the taking of action in connection with fraud against a public authority.

(2) In this section “fraud against a public authority” means a fraud offence which involves—

- (a) loss to a public authority; or
- (b) the exposure of a public authority to a risk of loss.

(3) In subsection (2)—

- (a) “fraud offence” means an offence under section 415 of the Crimes Act 2011;
- (b) “loss”, as it applies in relation to an offence under section 415 of the Crimes Act 2011, has the meaning given by section 423 of that Act.

(4) For the purposes of this section, taking action in connection with fraud against a public authority includes any of the following—

- (a) identifying fraud of that kind;
- (b) preventing fraud of that kind;
- (c) investigating fraud of that kind;
- (d) prosecuting fraud of that kind;
- (e) bringing civil proceedings as a result of fraud of that kind; or
- (f) taking administrative action as a result of fraud of that kind.

Disclosure of information for research purposes.

7.(1) Information held by a specified person in connection with its functions may be disclosed to another specified person for the purposes of research which is being or is to be carried out.

(2) If the information is personal information it may not be disclosed under subsection (1) unless the following conditions are met—

- (a) The first condition is that, if the information identifies a particular person, it is processed before it is disclosed so that—
 - (i) the person's identity is not specified in the information, and
 - (ii) it is not reasonably likely that the person's identity will be deduced from the information (whether by itself or taken together with any other information);
- (b) The second condition is that each person who is involved in processing the information for disclosure takes reasonable steps to—
 - (i) minimise the risk of the accidental disclosure of information which identifies a particular person, and
 - (ii) prevent the deliberate disclosure of such information (otherwise than in accordance with this section);
- (c) The third condition is that the research for the purposes of which the information is disclosed is in the public interest.

(3) For the purposes of the first condition the information may be processed by—

- (a) the specified person;
- (b) a person other than the specified person; or
- (c) both the specified person and a person other than the specified person.

(4) Personal information may be disclosed for the purpose of processing it for disclosure under subsection (1) by a specified person to a person involved in processing the information for that purpose.

Disclosure of information for research purposes: supplementary.

8.(1) In its application to a specified person with functions relating to the provision of health services or adult social care, section 7 does not authorise the disclosure of information held by the specified person in connection with such functions.

(2) Nothing in subsection (1) limits a specified person with functions relating to the provision of health services or adult social care from disclosing information that it holds in connection with its other functions.

(3) Section 7 does not limit the circumstances in which information may be disclosed apart from that section.

(4) In this section—

“adult social care” includes all forms of personal care and other practical assistance provided for individuals aged 18 or over who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or assistance;

“health services” means services which must, or may, be provided as part of the duties conferred upon the Gibraltar Health Authority under section 6 of the Medical (Gibraltar Health Authority) Act, 1987.

(5) References in this section to information which identifies a particular person are to be read in accordance with section 12(2).

(6) A disclosure under subsection (1) does not breach—

- (a) any obligation of confidence owed by the public authority making the disclosure; or
- (b) any other restriction on the disclosure of information subject to section 9,

but subsection (1) does not authorise the making of a disclosure that would contravene the data protection legislation.

PART 3 GENERAL OBLIGATIONS

Restriction on disclosure.

9. The power to disclose information under this Act is subject to any express restriction on disclosure imposed by any other enactment (ignoring any restriction which allows disclosure if authorised by any other Act).

Regard to codes of practice.

10.(1) In disclosing information under this Act, a specified person must have regard to any code of practice issued by the Information Commissioner under section 130 of the Data Protection Act 2004, as well as any of the following codes of practice that may be issued by the Information Commissioner under section 135 of the Data Protection Act 2004, so far as they apply to the information in question—

- (a) any code which makes provision about the identification and reduction of the risks to privacy of a proposal to disclose information; or
- (b) any code which makes provision about the information to be provided to data subjects (within the meaning of that Act) about the use to be made of information collected from them.

(2) The duty in subsection (1) to have regard to a code of practice does not affect any other requirement for the public authority to have regard to a code of practice under the data protection legislation in disclosing the information.

Confidentiality of personal information.

11.(1) Subject to subsection (2) personal information disclosed under this Act may not be subsequently disclosed.

(2) Subsection (1) does not apply to a disclosure—

- (a) which is required or permitted by any enactment;
- (b) which is made in pursuance of an order of the court;
- (c) of information which has already lawfully been made available to the public;
- (d) which is made for the prevention or detection of crime, or the prevention of anti-social behaviour;
- (e) which is made for the purposes of a criminal investigation;
- (f) which is made for the purposes of legal proceedings (whether civil or criminal);
- (g) which is a disclosure in the public interest for any of the purposes under Part IVA of the Employment Act;
- (h) consisting of the publication of information for the purposes of journalism, where the publication of the information is in the public interest;
- (i) which is made with the consent of the person to whom the personal information relates; or
- (j) which is made for the purposes of—
 - (i) preventing serious physical harm to a person;
 - (ii) preventing loss of human life;
 - (iii) safeguarding vulnerable adults or children;

- (iv) taking pre-emptive or other measures in relation to an event or situation that threatens damage to human welfare in Gibraltar within the meaning of section 3 of the Civil Contingencies Act 2007;
 - (v) responding to an emergency within the meaning of section 10 of the Civil Contingencies Act 2007; or
 - (vi) protecting the security of Gibraltar.
- (3) A person commits an offence if—
- (a) the person discloses personal information in contravention of subsection (1); and
 - (b) at the time that the person makes the disclosure, the person knows that the disclosure contravenes that subsection or is reckless as to whether the disclosure does so.
- (4) A person who is guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
 - (b) on conviction on indictment, to a fine.
- (5) Subsection (1) does not apply to a disclosure—
- (a) to a person by whom the research referred to in section 7(1) is being or is to be carried out; or
 - (b) for the purposes of enabling anything that is to be published as a result of the research to be reviewed before publication.

Further permitted use of disclosed information.

12.(1) Personal information disclosed under this Act may only be used by the specified person to whom it is disclosed for the purposes for which it was disclosed, subject to subsection (2).

- (2) Subsection (1) does not prevent the use of information by a person—
- (a) if the information has already lawfully been made available to the public;
 - (b) if the person to whom the information relates consents to its use for another purpose;
 - (c) for the prevention or detection of crime or the prevention of anti-social behaviour;
 - (d) for the purposes of a criminal investigation;

- (e) for the purposes of legal proceedings (whether civil or criminal); or
- (f) for the purposes of–
 - (i) preventing serious physical harm to a person,
 - (ii) preventing loss of human life,
 - (iii) safeguarding vulnerable adults or children,
 - (iv) responding to an emergency, or
 - (v) protecting the security of Gibraltar.

(3) A disclosure under this Act does not breach–

- (a) any obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed),

but nothing in this Act authorises the making of a disclosure that contravenes the data protection legislation.

Meaning of “personal information”.

13.(1) For the purposes of this Act information is “personal information” if–

- (a) it relates to and identifies a particular person (including a body corporate); but
- (b) it is not information about the internal administrative arrangements of a specified person or a person to whom information may be disclosed under this Act.

(2) For the purposes of subsection (1) information identifies a particular person if the identity of that person–

- (a) is specified in the information;
- (b) can be deduced from the information; or
- (c) can be deduced from the information taken together with any other information.

Regulations.

14.(1) The Minister may by regulations make any supplementary, incidental, consequential, transitory, transitional or saving provision which the Minister considers necessary or expedient for the purposes of, or in consequence of, or for giving full effect to any provision of this Act.

(2) Regulations under this section may amend, repeal or revoke any enactment other than one contained in an Act or instrument passed or made after this Act is passed.

(3) Regulations under this section may amend Schedule 1 so as to add, remove or modify an entry relating to a person or description of person.

(4) In determining whether to make regulations for the purposes of subsection (3) in relation to a person or description of person the Minister must have regard, in particular, to whether the person or (as the case may be) a person of that description—

- (a) has appropriate systems and procedures for the secure handling of information by that person or persons of that description;
- (b) requires information from a specified person or a person providing services to a specified person to—
 - (i) assist, improve or facilitate the performance of a specified objective;
 - (ii) improve the person’s ability to identify, manage or recover a debt owed to a public authority or to the Crown; or
 - (iii) improve the person’s ability to identify or reduce the risk of fraud against a public authority.
- (c) has information which, if shared with a specified person or a person providing services to a specified person, has the potential to—
 - (i) assist, improve or facilitate the performance of a specified objective;
 - (ii) improve a specified person’s ability to identify, manage or recover a debt owed to a public authority or to the Crown; or
 - (iii) improve a specified person’s ability to identify or reduce the risk of fraud against a public authority.
- (d) has functions relating to—
 - (i) the management or recovery of such debt; or
 - (ii) taking action in connection with fraud against a public authority,the exercise of which may be improved by the disclosure of information by or to the public authority.

(5) Regulations under this section may amend Schedule 2 so as to add, remove or modify an entry relating to a specified objective.

(6) In determining whether to make regulations for the purposes of subsection (5) in relation to a specified objective the Minister must have regard, in particular, to whether the specified objective is in the public interest.

Application to the Crown.

15.(1) Any provision made by or under this Act binds the Crown.

(2) For the purposes of this Act, each government department is to be treated as a person separate from the other government departments, to the extent that is not already the case.

(3) As regards criminal liability—

(a) a government department is not liable to prosecution under this Act;

(b) a person in the service of the Crown is liable to prosecution under section 11.

(4) An organisation that is a servant or agent of the Crown is not by virtue of its status immune from prosecution under this Act.

(5) For the purposes of this Act, anything purporting to be done by a department or body of the Government of Gibraltar, although in law done by the Crown or by the holder of a particular office, is to be treated as done by the department or body itself.

SCHEDULE 1

SPECIFIED PERSONS

1. Ministers of Her Majesty's Government of Gibraltar.
2. His Excellency, the Governor of Gibraltar.
3. Departments of Her Majesty's Government of Gibraltar.
4. The Commissioner of Police.
5. The Royal Gibraltar Police.
6. Gibraltar Financial Intelligence Unit (GFIU).
7. Gibraltar Coordinating Centre for Criminal Intelligence and Drugs (GCID).
8. HM Prison.
9. The Collector of Customs.
10. HM Customs.
11. Borders & Coastguard Agency.
12. The Environmental Agency.
13. Gibraltar Regulatory Authority.
14. Gibraltar Financial Services Commission.
15. Any other public authority or public body carrying out investigatory functions.
16. Land Property Services Limited.
17. Gibraltar Fire and Rescue Service.
18. A person providing services in connection with a specified objective to a specified person who falls within this Schedule.

SCHEDULE 2

SPECIFIED OBJECTIVES

Section 4

Specified objectives in relation to a specified person.

1. The specified objectives are—

- (a) the public administration objective;
- (b) the well-being objective.

2. In paragraph 1(a) the public administration objective is to—

- (a) assist, improve or facilitate the delivery of public services, including—
 - (i) avoidance of the financial or administrative burden that would otherwise be imposed on a person to whom a service is being, or is to be, delivered by a specified person, were the information to be collected directly from that person (including reducing the need for a person to provide the same information to more than one specified person);
 - (ii) reducing the duplication of tasks carried out by one or more specified persons;
 - (iii) increasing the efficiency of a specified person in carrying out their functions;
 - (iv) the delivery of public services by electronic means or facilities;
 - (v) verification of the identity of a person, where a specified person is providing or proposes to provide a service to that person;
 - (vi) identification and correction of erroneous information held by specified persons;
 - (vii) establishing the entitlement of a person to the provision of a service being delivered by a specified person, on the basis of information previously provided by that person to the specified person (or another specified person that previously disclosed the information to the first mentioned specified person);

- (viii) facilitating the administration, supervision and control of a service, programme or policy delivered or implemented, or being delivered or implemented, as the case may be, by, for or on behalf of one or more specified persons;
- (ix) enabling the evaluation, oversight or review of a service, programme or policy delivered or implemented, or being delivered or implemented, as the case may be, by, for or on behalf of one or more specified persons; or
- (x) facilitating the analysis of the structure, functions, resources and service delivery methods of specified persons.

3.(1) In paragraph 1(b) the well-being objective is to–

- (a) assist, improve or facilitate a public service delivered to an individual or household;
- (b) assist, improve or facilitate the provision of a benefit to an individual or household;
or
- (c) assist, improve or facilitate the exercise of a public authority function in assisting an individual or households well-being, including–
 - (i) their physical and mental health and emotional well-being;
 - (ii) their social and economic well-being; or
 - (iii) their living conditions.

(2) In this paragraph “benefit” means an offer or delivery of a service of any type or of financial assistance that is for the good or advantage of an individual or a household.

Dated: 1st July, 2021.

EXPLANATORY MEMORANDUM

This Act creates permissive gateways enabling specified persons to share personal information for the purposes of a specified objective. It aims to improve information sharing within the public sector, to assist, improve or facilitate the delivery of public services. It also allows for the sharing of information to assist with the reduction of debt owed to the public sector and the prevention, detection and investigation of fraud.

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