

## PFCC Decision Report

<b>Report reference number:</b> 029/2020
<b>Classification</b> (e.g. Not protectively marked/restricted): Not protectively marked
<b>Title of report:</b> Data Processing Contract with Essex Police
<b>Area of county / stakeholders affected:</b> All employees of the Police, Fire and Crime Commissioner for Essex
<b>Report by:</b> Anna Hook (Head of Performance and Scrutiny – Policing and Crime, DPO)
<b>Date of report:</b> 24 February 2020
<b>Enquiries to:</b> Anna Hook (Head of Performance and Scrutiny – Policing and Crime, DPO)

### 1. Purpose of the report

To approve for signing and adoption the Data Processing Contract with Essex Police attached at Appendix 1.

### 2. Recommendations

That the Police, Fire and Crime Commissioner (PFCC) for Essex approves the Data Processing Contract with Essex Police attached at Appendix 1.

### 3. Benefits of the proposal

Implementation of the recommendations above will ensure the PFCC's compliance with their mandatory obligations under the General Data Protection Regulation (GDPR). The attached Data Processing Contract provides clear and contractual detail regarding the required processing of personal data on behalf of the PFCC, the controller, by Essex Police, the processor, in the areas of HR and IT provision and support.

### 4. Background and proposal

The PFCC has a suite of Data Protection and GDPR related policies and guidance, including a Data Protection Policy, Access to Information Policy, an Employee Privacy

Notice, a Volunteer Privacy Notice and a generic Privacy Notice which together provide employees, volunteers, residents and service users with information about how the organisation collects and processes their personal data. However the General Data Protection Regulation (GDPR) also requires a Data Processing Contract to be in place between the Controller and Processor where the latter processes personal data on behalf of the former. Article 28(3) states that the contract must include the following details about the processing:

- the subject matter and duration of the processing;
- the nature and purpose of the processing;
- the type of personal data and categories of data subject, and
- the controller's obligations and rights.

Article 28(3) also sets out the following specific terms or clauses that must be included in the contract:

- Processing only on the documented instructions of the controller;
- Duty of confidence;
- Appropriate security measures;
- Using sub-processors;
- Data subjects' rights;
- Assisting the controller;
- End-of-contract provisions, and
- Audits and inspections.

All of these requirements are met in the Data Processing Contract attached for approval at Appendix 1.

The 2014/15 PFCC / Essex Police Statement of Accounts ([https://www.essex.pfcc.police.uk/wp-content/uploads/2015/08/Consolidated-SoA\\_FINAL\\_Website.pdf](https://www.essex.pfcc.police.uk/wp-content/uploads/2015/08/Consolidated-SoA_FINAL_Website.pdf)) outlined the details regarding employment of PCC (now PFCC) employees as follows: "From 1st April 2014 all assets, liabilities and contracts remain in the name and ownership of the PCC but the majority of police staff, formally under the direction of the PCC, had their employment contracts formally transferred to the Chief Constable. The staff of the office of the PCC remain employed by the PCC."

As such the PFCC and the Chief Constable are separate Corporation Soles. The PFCC, however, has a naturally close relationship with Essex Police and requires access to its IT and support from HR (including for vetting purposes) to undertake its duties. It is acknowledged that, in order to provide the PFCC with the required services, Essex Police will be required to process personal data of the PFCCs employees. The Data Processing Contract attached at Appendix 1 has been produced in collaboration between the PFCC and Essex Police and has utilised a template developed by the legal firm TLT, which has supported and advised Essex Police on data protection compliance.

## **5. Alternative options considered and rejected**

As an employer, the PFCC is under a mandatory obligation under the GDPR to ensure that they deliver their obligations as a Data Controller, including when processing data outside of its own organisation. As such, there is no alternative available to the Commissioner but to adopt the proposed, or an amended, Data Processing Contract with Essex Police.

## **6. Police and Crime Plan**

Whilst there is no direct link between this decision and the Police and Crime Plan, implementation of the recommendations set out above will discharge some of the PFCC's key mandatory obligations in respect of its workforce, which is of course one of the key resources available to deliver the Plan.

## **7. Police operational implications**

There are no operational implications arising for Essex Police as a result of this report.

The content of the Data Processing Contract attached at Appendix 1 has been developed jointly with the force (including its Data Protection Officer and Information Security Manager) and has been endorsed by its Data Protection Officer.

## **8. Financial implications**

There are no financial implications arising from this report.

## **9. Legal implications**

The PFCC's mandatory obligations in respect of Data Controller and Processor responsibilities, specifically in this case, with regard to their staff and to the processing of their personal data, are set out in the General Data Protection Regulation (GDPR) 2016, which came into effect in the UK on 25 May 2018.

The Data Processing Contract attached at Appendix 1 has been reviewed and approved by the Force Solicitor, following the reflection of his feedback in the final document.

## **10. Staffing implications**

This formal Data Processing Contract will support the detail outlined in the Employee Privacy Notice, which will apply to all employees, ex-employees, agency staff, contractors, secondees and the PFCC.

## **11. Equality and Diversity implications**

The Data Processing Contract attached at Appendix 1, alongside the Employee Privacy Notice, details how sensitive special category data, including that relating to equal opportunities monitoring, will be collected from employees, retained, protected and utilised by the PFCC.

## **12. Risks**

If, as the Controller, the PFCC does not have a clear Data Processing Contract with the Chief Constable of Essex Police, complying with the requirements outlined by the GDPR, and is either subject to an Information Commissioner's Office (ICO) inspection or dealing with the ICO for some other reason, a failure to provide this information will likely adversely affect the ICO's assessment of the PFCC's overall compliance with data protection legislation and regulations. The recommendations set out within this report mitigate against this risk.

## **13. Governance Boards**

The Data Processing Contract, attached at Appendix 1, was discussed at the PFCC's SMT meeting on 18 February 2020. At this meeting it was agreed that amendments were required and when completed, it should be brought forward for adoption with the required decision sheet.

## **14. Background papers**

Appendix 1 – Data Processing Agreement with the Chief Constable of Essex Police.

**Report Approval**

The report will be signed off by the OPFCC Chief Executive and Treasurer prior to review and sign off by the PFCC / DPFCC.

Chief Executive / M.O.

Sign: [Signature].....

Print: P. SEAN TOWNSEND.....

Date: 28 FEBRUARY 2020.....

Chief Finance Officer / Treasurer

Sign: N/A - NO FINANCIAL IMPLICATIONS

Print: .....

Date: .....

**Publication**

Is the report for publication?

YES   
NO

If 'NO', please give reasons for non-publication (Where relevant, cite the security classification of the document(s). State 'None' if applicable)

.....  
..... N/A .....

If the report is not for publication, the Chief Executive will decide if and how the public can be informed of the decision.

**Redaction**

If the report is for publication, is redaction required:

1. Of Decision Sheet? YES  NO       2. Of Appendix? YES  NO

If 'YES', please provide details of required redaction:

.....  
..... N/A .....

Date redaction carried out: .....

**Treasurer / Chief Executive Sign Off – for Redactions only**  
If redaction is required, the Treasurer or Chief Executive is to sign off that redaction has been completed.  
  
Sign: .....  
Print: .....  
  
Chief Executive/Treasurer

**Decision and Final Sign Off**

I agree the recommendations to this report:

Sign: J Gardner

Print: JANE GARDNER

PFCC Deputy PFCC

Date signed: 28 FEBRUARY 2020

I do not agree the recommendations to this report because:

.....  
.....  
.....

Sign: .....

Print: .....

PFCC/Deputy PFCC

Date signed: .....