

**Prescriptive Guidance on the processing of Personal Data and Special Category Data for
call recording sampling undertaken by the Policing Authority as part of the preliminary examination of
the Garda Síochána review of the closure (including cancellation) of Computer Aided Dispatch (CAD)
incidents**

The following Prescriptive Guidance sets out the suitable and specific measures adopted by An Garda Síochána and the Policing Authority when processing personal data, special categories of personal data and personal data relating to criminal convictions and offences for the purpose of the Policing Authority's preliminary examination of An Garda Síochána's review of the closure (including cancellation of computer aided dispatch (CAD) incidents (the "**Preliminary Examination**").

1. Binding Nature of Prescriptive Guidance

- 1.1 Adherence to the suitable and specific measures is mandatory and this Prescriptive Guidance is legally enforceable and is binding on An Garda Síochána, a statutory body established under the Garda Síochána Act 1924 and having its principal place of business at the Garda Síochána Headquarters, Phoenix Park, Dublin 8 ("**An Garda Síochána**", or "**AGS**"); and the Policing Authority, a statutory body established under the Garda Síochána Act 2005 (as amended) and having its principal place of business at 90 North King Street, Dublin 7 ("**the Policing Authority**" or "**the Authority**"); (each a "**Party**" and together "**the Parties**").
- 1.2 The Parties have adopted the suitable and specific measures to safeguard individual data subjects' fundamental rights and freedoms when undertaking the processing of personal data for the Preliminary Examination.

2. Context

- 2.1 The Policing Authority is undertaking the Preliminary Examination on foot of a request from the Minister and pursuant to its functions under the 2005 Act. The Policing Authority requires access to CAD incident call recordings held by An Garda Síochána, which may contain personal data, including special category personal data and data relating to criminal offences, as part of the Preliminary Examination to enable the Authority to take an informed view as to the appropriateness of the Garda Síochána response to the matter of the unwarranted cancellation of CAD 999 incidents and to determine the quality of the service being provided. The Policing Authority shall report on its findings to the Minister as requested. The Policing Authority will not include personal data accessed in CAD incident call recordings for the purpose of the Preliminary Examination in its report. The terms of reference and methodology used by the Policing Authority's review team assigned to conduct the Preliminary Examination is outlined in section 12 below.
- 2.2 The CAD incident call recordings may include a broad range of personal data concerning the caller, third parties and the call taker, depending on the content and the context of the individual call. Such data may include the caller's name, address, contact information (or that of third parties), and details in relation to a specific incident that may contain special category data (including data related to health and/or sexual orientation) or concerning criminal convictions and offences, 'Article 10' data under the GDPR.
- 2.3 Due to the potentially sensitive nature of the data contained in the call recordings to which the Policing Authority's review team will have access as part of the Preliminary Examination, the

Policing Authority and an Garda Síochána have jointly agreed to put in place suitable and specific measures to safeguard the rights and freedoms of individual data subjects.

3. Definitions

- 3.1 'Data Protection Legislation' means the Data Protection Acts 1988-2018, the EU General Data Protection Regulation (2016/679) (GDPR), and EU Directive 2016/680 (the Law Enforcement Directive, or LED), and all other applicable laws and regulations relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Data Protection Commission.
- 3.2 'Data Controller', 'Data Processor', 'Data Subject', 'Personal Data', 'Special Category Personal Data', 'Processing', 'Third Party' and 'Appropriate Technical and Organisational Measures' shall have the meanings as defined in the Data Protection Act 2018 and the GDPR.
- 3.3 '2005 Act' refers to the Garda Síochána Act 2005, as amended.
- 3.4 '2018 Act' refers to the Data Protection Act 2018, as amended.
- 3.5 'GDPR' refers to the General Data Protection Regulation (EU 679/2016)
- 3.6 'Minister' refers to the Minister for Justice

4. Lawfulness of Processing

- 4.1 An Garda Síochána
 - 4.1.1 The function of An Garda Síochána is set out in Section 7(1) of the 2005 Act as providing policing and security services for the State. This includes the objectives of prevention, detection and investigation of crime, the protection of life and property and the preservation of peace and public order.
 - 4.1.2 Under Section 7(2) of the 2005 Act, the Garda Síochána shall co-operate, as appropriate, with other Departments of State, agencies and bodies having by law, responsibility for any matter relating to any aspect of its objectives. Section 41A(1) of the 2005 Act states that the Garda Commissioner shall keep the Authority fully informed of the following:
 - (a) matters relevant to the functions of the Authority under that Act; and
 - (b) any other matters that, in the opinion of the Commissioner, should be brought to the attention of the Authority having regard to its function under that Act.
 - 4.1.3 The relevant lawful basis for AGS's processing of personal data for law enforcement purposes under data protection legislation is Section 71(2)(a) of the Data Protection Act 2018, which provides that processing of personal data by a data controller is lawful where necessary for the purposes of the prevention, investigation, detection or prosecution of criminal offences, including the safeguarding against, and the prevention of, threat to public security, or the execution of criminal penalties.
 - 4.1.4 Section 73(b) of the Data Protection Act 2018 provides for the processing of special categories of personal data where Section 71 is complied with and where the processing is necessary and proportionate for purposes including, per Section 73(b)(iv): (i) the administration of justice; (ii) the performance of a function conferred on a person by or under an enactment; or (iii) the performance of a function of the Government or a Minister of the Government.

4.2 The Policing Authority

- 4.2.1 The functions of the Policing Authority are set out in Section 62H of the 2005 Act. The Policing Authority's functions includes an obligation on the Policing Authority to "keep under review the performance by the Garda Síochána of its functions".
- 4.2.2 Article 6(1)(e) GDPR and Section 38(1) of the 2018 Act permit the processing of personal data where it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority, this includes the functions of the Policing Authority.
- 4.2.3 Section 41A(1) of the 2005 Act provides that Garda Commissioner shall keep the Authority fully informed of the following: "(a) matters relevant to the functions of the Authority under this Act; and (b) any other matters that, in the opinion of the Commissioner, should be brought to the attention of the Authority having regard to its functions under this Act"; this satisfies the laid down in law requirement under Article 6(1)(e) and Article 6(3) GDPR. Therefore, the Policing Authority has a lawful basis for the processing of personal data for the Preliminary Review.
- 4.2.4 The Policing Authority is relying on its functions as outlined above and Article 9(2)(g) GDPR and Section 49 of the 2018 Act for accessing and processing special category personal data contained in the CAD incident call recordings, and Article 10 GDPR and Section 55 of the 2018 Act for accessing personal data related to criminal offences.
- 4.2.5 The Policing Authority has had regard to the provisions of Section 36(1) and Section 51(7)-(8) when adopting suitable and specific measures to safeguard the rights of data subjects with regard to processing their personal data, special category data and data relating to criminal offences for reasons of substantial public interest, in so far as is necessary and proportionate, for the purposes of the Preliminary Examination.
- 4.2.6 The Policing Authority is bound by this Prescriptive Guidance, which further describes what "suitable and specific measures" will be taken to safeguard the fundamental rights and freedoms of data subjects when implementing governance procedures and controls in place to protect personal data, special category personal data and criminal offence data.

5. Purpose, Necessity and Proportionality of the Processing for Preliminary Examination

- 5.1 The purpose of the processing is to enable the Policing Authority to supervise and audit the performance of An Garda Síochána in the performance of its function, in particular in relation to An Garda Síochána's review of the closure, including cancellation, of computer aided dispatch (CAD) incidents.
- 5.2 The Policing Authority is undertaking the Preliminary Examination in accordance with its function. The Preliminary Examination is a task carried out in the public interest and in the exercise of official authority by a statutory civilian oversight body.
- 5.3 It is necessary that the Policing Authority has access to CAD incident call recordings held by An Garda Síochána to allow the Authority to perform its statutory functions and in particular to complete its Preliminary Examination of the appropriateness of the Garda Síochána response to the matter of the unwarranted cancellation of CAD 999 incidents and to determine the quality of the service being provided. Listening to calls is wholly necessary to assessing the quality of call taking in terms of tone and service.
- 5.4 Without appropriate access to the personal data, special category data and personal data relating to criminal offences it would not be possible for the Policing Authority to perform its functions in the public interest, including civilian oversight of An Garda Síochána's functions.

- 5.5 The Policing Authority has duly authorised members of its staff to complete the Preliminary Examination in accordance with Section 62(H)(4) which permits staff of the authority to perform any of its function, other than nominating a person for appointment to, or recommending the removal of a person from, the office of Garda Commissioner or Deputy Garda Commissioner.
- 5.6 The recordings may contain personal data, including special category personal data and data relating to criminal offences, and therefore the Policing Authority will process the minimum amount of data by a limited number of staff and one external expert in order to complete an appropriate and comprehensive review in compliance with its statutory functions. Further information on this processing is set out in Section 12 Terms of reference / Methodology Section below.
- 5.7 This Prescriptive Guidance sets out suitable and specific measures implemented by the Policing Authority and An Garda Síochána respectively for the protection of personal data, special category data and personal data relating to criminal offences accessed for the purpose of the Preliminary Examination.

6. Governance Structures

- 6.1 Governance structures have been put in place to ensure the processing of data for the purposes of the Preliminary Examination are appropriate. These include:
- 6.1.1 Approval of the Preliminary Examination by the Policing Authority and the Garda Commissioner has been secured.
- 6.1.2 An Garda Síochána and the Policing Authority are independent data controllers for the purposes of the Preliminary Examination. An Garda Síochána and the Policing Authority in their respective capacities as data controllers will be responsible for fulfilling the obligations placed on data controllers by the GDPR and the Data Protection Acts 1988 to 2018, including processing personal data in line with the principles of data protection outlined under Article 5(1) GDPR and Section 71(1) of the Data Protection Act 2018, as applicable.
- 6.1.3 The Policing Authority has appointed an expert consultant leading a review team for the purposes of the Preliminary Examination. The expert consultant is a data processor on behalf of the Policing Authority and he is bound by appropriate data protection obligations.
- 6.1.4 The Minister has requested the Preliminary Examination and the Department of Justice supports the Preliminary Examination. The Policing Authority is required to report to and advise the Minister in accordance with its functions, including in respect to the Preliminary Examination.
- 6.1.5 The expert consultant and review team will not record any identifying information in their notes. Instead, anonymised data may be recorded as part of the review methodology and procedures for completing the Preliminary Examination. The anonymised data may also be used in the preparation of the report on the Preliminary Examination.

7. Suitable and Specific Measures for the protection of Personal Data

- 7.1 The Policing Authority and An Garda Síochána respectively have established and implemented appropriate processes and procedures to ensure the security of the data. All of the following procedures relating to the management and conduct of the call recording sampling as part of the Preliminary Examination have been put in place or are met:
- 7.1.1 measures that verifiably demonstrate compliance with the data minimisation principle in GDPR Article 5/Section 71 of the Data Protection Act 2018, for example, the Preliminary Examination

methodology is based on international best practice and ensures that the personal data processed is adequate, relevant and limited to what is necessary in relation to the purpose, the use of call sampling further ensures that the minimal amount of personal data to achieve effective oversight is accessed by the Policing Authority, and the Parties have agreed to limitations in the form of supervised access to the audio recordings by the Policing Authority, subject to the following restrictions;

- 7.1.2 controls to log and limit access to the personal data undergoing processing in order to prevent unauthorised access to or other processing of that data have been agreed and will be implemented by An Garda Síochána and the Policing Authority. An Garda Síochána will permit supervised access to the call recordings only to appropriately authorised members of the Policing Authority's review team for a limited and set period on Garda premises. A record of attendance and compliance with this safeguard will be retained by An Garda Síochána and the Policing Authority in line with their retention policies;
- 7.1.3 adequate measures to protect the security of the personal data concerned. The Policing Authority's review team will not have direct access to AGS ICT systems as part of the permitted access to and playback of CAD incident call recordings;
- 7.1.4 appropriate arrangements have been identified for when the Preliminary Examination has been completed in order to anonymise, properly archive or securely destroy the data.
- (a) The Policing Authority's review team will only record, in handwritten or electronic notes or otherwise, anonymised information about any individual related to the call recordings to the extent required to ensure the accuracy of the review process.
 - (b) No personal data capable of re-identifying an individual related to the call recordings will be recorded in handwritten or electronic notes or otherwise retained by the Policing Authority as part of the review.
 - (c) The Policing Authority's review team will permit An Garda Síochána personnel, supervising their access to the call recordings, sight of their notes to verify that no personal data has been recorded as part of and at the conclusion of the supervised review period. A sample template to be used for the recording of the Policing Authority's notes, the PAI Call Audit template, is attached at Annex A.
 - (d) A record verifying compliance with this safeguard will be retained by An Garda Síochána and the Policing Authority in line with their retention policies.

For the avoidance of doubt, this does not restrict An Garda Síochána's retention of the call information for its own purposes separate to the Preliminary Examination, in line with its own internal policies. The Policing Authority may retain the anonymised data in the review team's notes as required in line with its retention policy. Both An Garda Síochána and the Policing Authority have implemented appropriate technical and organisational measures to securely handle data in their possession.

- 7.1.5 The Policing Authority's review team will have supervised access to the call recordings for a 5 day review period on site at An Garda Síochána's premises from 23 May to 27 May 2022, and for such further period as is necessary and agreed between the Parties for the purpose of completing the Preliminary Examination.
- 7.1.6 Members of the Policing Authority's review team are bound by obligations of confidentiality, pursuant to Section 62(M) 2005 Act, including a specific protection against disclosures of personal

information causing harm at Section 62(M)(2)(h) to safeguard an individual's right to privacy. A breach of this statutory obligation of confidentiality is an offence.

- 7.1.7 The Policing Authority will ensure that members of the review team have been provided with training in data protection law compliance and practice prior to undertaking the call recording sampling as part of the Preliminary Examination.

8. Transparency Obligations

- 8.1 The Policing Authority and An Garda Síochána have identified and put in place appropriate transparency arrangements to inform individual data subjects of how their data is being used. The following transparency measures have been put in place:

- 8.1.1 This Prescriptive Guidance is published on the website of the Policing Authority; and
- 8.1.2 This Prescriptive Guidance will be published as an addendum to the Policing Authority's final report on the Preliminary Examination.

9. Data Subject Rights

- 9.1 The Policing Authority and An Garda Síochána have reviewed their privacy statements to ensure there is adequate information provided to data subjects in order to comply with their obligations under Articles 13 and 14 GDPR and Section 90 of the Data Protection Act 2018, as applicable.
- 9.2 The Policing Authority and An Garda Síochána shall each in its capacity as a data controller be responsible for fulfilling all the obligations placed on data controllers by the GDPR and the Data Protection Acts 1988 to 2018 in respect of safeguarding the rights of data subjects concerning access to, and the correction, deletion or erasure of, personal data, to enable the fulfilment by the data controller of its obligation to respond to requests by data subjects to exercise their rights under data protection legislation. The contact details for making requests to the data protection officers has been published on the websites of both Parties respectively.

10. Data Breaches

- 10.1 In the event of a personal data breach (or suspected breach) on the part of either An Garda Síochána or the Policing Authority relating to personal data processed as part of the supervised access, the Party responsible for the breach will immediately upon becoming aware of the breach (or suspected breach) inform the other Party, and provide all information required under Article 33 GDPR and Section 86 of the Data Protection Act 2018, as applicable.
- 10.2 The organisation responsible for the personal data breach, in its capacity as controller, will comply with its obligations under Articles 33 and 34 GDPR and Section 86 and 87 of the Data Protection Act 2018, as applicable, in respect of its reporting and notification obligations.

11. Enforceability

- 11.1 The Policing Authority and An Garda Síochána respectively shall be liable to the data subject, and the data subject shall be entitled to receive such compensation as is required by law.
- 11.2 The Policing Authority and An Garda Síochána acknowledge that the provisions of this Prescriptive Guidance amount to a representation as to how the respective Parties shall act in respect of the processing of data for the purpose of the Preliminary Review for the purposes of the doctrine of legitimate expectations.

12. Terms of reference / Methodology

12.1 The terms of reference for this second phase of work will assess and make indicative observations in relation to:

12.1.1 the accurate and appropriate recording and categorisation of information from calls received through the 999 system and recorded on the CAD system in relation to Priority, 1, 2 and 3 calls;

12.1.2 appropriate action taken in response to information from calls received through the 999 system;

12.1.3 the degree of consistency in the treatment of calls across the four control rooms;

12.1.4 the quality of call taking in terms of tone and service across the four control rooms; and

12.1.5 the accuracy and robustness of the CAD Review process undertaken by the Garda Síochána.

12.2 The exercise does not attempt to be statistically significant but rather provide a sufficient basis to make observations around compliance and quality in relation to the calls sampled.

12.3 The proposed methodology is set out below:

To listen to a sample of incidents, selected by the expert consultant drawn from a list of all cancelled incidents across all four control rooms identified as high risk. The population of high risk calls presented to the expert consultant for sampling will include those assessed by the Garda Síochána as Red RAG ("Red, Amber, Green") status and including a sub category of all cancelled incidents identified at an early stage in their review by the Garda Síochána strategic oversight group as comprising a "serious cohort" and having the potential to have resulted in serious risk or harm to individuals, which were collated and escalated to Divisions for urgent review.

A list of these CAD entries (detailing the incident number, incident type the control room completing the assessment) matching the above criteria is to be provided by the Garda Síochána from which a sample will be selected by the Authority Review Team. It is intended that approximately 80 incidents will be selected from this category

The review of the sample incidents selected will require supervised access by the Policing Authority to the relevant CAD Review Files containing the relevant 999 call and TETRA recordings already gathered by the CAD Review Team, assessment sheet, and all relevant assessments from the CAD Review relating to these incidents up to and including the victim engagement, where relevant.

12.3.1 To listen to a selection of calls, (approximately 120) to be drawn by the expert consultant from a list of all CAD incidents received in each control room for the times and dates specified below.

(a) by DMR Control Room on Saturday, 5 December 2020 from 7pm until Sunday 6 December 2020 at 1am

(b) by Waterford Control Room on Friday, 14 August 2020

(c) by Galway Control room on Wednesday, 16 September 2020 between 3pm and 9pm

(d) by Cork Control room on Tuesday, 17 March 2020 from 11pm to Wednesday 18 March 2020 at 5am.

12.3.2 The list of all CAD incidents to be provided to include the incident number, date and time of incident, relevant control room, incident type (opening code), priority categorisation and closing

code and some narrative where available to enable the selection of calls after which the relevant recordings would be made available.

- 12.3.3 Any personal data included in the narratives recorded for CAD incidents within scope will be removed before the list is shared with the expert consultant to identify the sample of calls.
- 12.3.4 Incidents where there is no associated call recording available to the relevant control room will be removed from the sample.
- 12.3.5 The methodology does not require personal data to be recorded in the PA Call Recording template at any stage of the Audit Process, however, the Policing Authority Review Team require access to personal details such as a caller's name, address or any identifiable characteristic in terms of what is being heard on the call and what has been recorded on the CAD Incident. It will be important for the purpose of assessing call handling quality/consistency that the audit team will be able to check that caller details, (name, address, telephone number, location) were requested and accurately recorded in terms of the AGS Policies and Procedures.
- 12.3.6 The only notes to be taken by the Authority review team for the review process will be appropriately anonymised with no personal data retained.

13. Points of Contact

- 13.1 The points of contact for each of the parties are:

Michael Armstrong, Data Protection Officer, An Garda Síochána

Derek Penman, Expert Consultant, Director Learntech (Scotland) Ltd.

- 13.2 The Parties agree that they will endeavour in the first instance to resolve any disputes regarding the operational implementation of this Prescriptive Guidance by the above points of contact. Only if necessary will the dispute be escalated to:

Anne Marie McMahon, Deputy Commissioner - Policing and Security, An Garda Síochána

Helen Hall, Chief Executive, Policing Authority

14. Breach of Prescriptive Guidance

- 14.1 In the event of a breach of this Prescriptive Guidance on the part of either An Garda Síochána or the Policing Authority, the Party responsible for the breach will immediately upon becoming aware of the breach (or suspected breach) inform the other Party.
- 14.2 Depending on the circumstances of the breach, the parties will agree they shall cooperate and take such reasonable steps as are necessary to assist in the investigation, mitigation and remediation of any breach.

15. Date of Effect

- 15.1 This Prescriptive Guidance will have effect from the date of its signing unless and until it is revoked by the Parties or either Party withdraws from it.
- 15.2 The Prescriptive Guidance is intended to govern the Preliminary Examination only, and will apply to processing activities undertaken by An Garda Síochána and the Policing Authority for the purpose of the Preliminary Examination. The Parties undertake to formally revoke the

Prescriptive Guidance at the conclusion of the Preliminary Examination, when the final report is published.

Signed

Deputy Commissioner Anne Marie McMahon (On behalf of An Garda Síochána)

Date: 20 May 2022

Helen Hall, Chief Executive (On behalf of the Policing Authority)

Date: 20 May 2022

ANNEX A

CAD URN _____

PAI Call Audit template (sample)

Control Room Receiving Call	DMR	Waterford	Cork	Galloway
Date of call				
Time of call				
Priority	1	2	3	
Incident type (Opening code)				
Incident type (Closing code)				
CAD Review URN (If relevant)				

Call/CAD Assessment		
Was the location of the incident recorded and verified? -	Yes	No
Was the Caller's Phone Number recorded and verified?	Yes	No
Were the Caller's Contact Details requested and recorded where provided?	Yes	No
Does the CAD Incident "Type" (Opening Code) reflect initial call information?	Yes	No
Does the text recorded on CAD accurately summarise the call information?	Yes	No
Was the Caller directed to contact their local station?	Yes	No
Was the "Telephone Etiquette" of the Call Taker professional and courteous?	Yes	No
Does the CAD Incident record how the call was actioned and resolved?	Yes	No
Does the information recorded on the CAD Incident support the closing code?	Yes	No
Did the Caller request cancellation?	Yes	No
Was the incident cancelled?	Yes	No
If cancelled, then by whom?	Call Taker	Dispatcher
If cancelled, was this a duplication call?	Yes	No
Does the CAD Incident show any supervisory involvement/checks?	Yes	No

CAD Review Assessment (If relevant)		
Was this CAD Incident included in the CAD Review?	Yes	No
If so, how was this incident assessed by the CAD Review?	Red	Green
Was the call recording accurately transcribed/recorded on the CAD Review File?	Yes	No
Was the CAD Incident information accurately recorded on the CAD Review File?	Yes	No
Is the CAD Review Assessment supported by evidence/rationale?	Yes	No

Comments (No Personal Information to be recorded)

PAI Audit Assessment			
PAI Audit Initial RAG (Red/Amber/Green) Status?		Green	Red
Initial Assessment By		Date	
PAI Audit Peer Review RAG (Red/Amber/Green) Status?		Green	Red
Peer Reviewed By		Date	
Is incident assessed as meeting the standards expected?		Yes	No
If no – include rationale (No Personal Information to be recorded)			
Is incident assessed as exceeding the standards expected?		Yes	No
If yes – include rationale (No Personal Information to be recorded)			
Checked and Approved By	(Derek Penman)	Date	