



Hampshire Biodiversity
Information Centre

Hampshire Biodiversity Information Centre

Data Exchange Agreement with the

Hampshire Recording Group/Recorder

Introduction

The Hampshire Biodiversity Information Centre recognises the effort and time spent by volunteer recorders in collecting, collating and managing their biodiversity data. HBIC also recognises the need to put in place procedures to control the issue of data exchange. It is anticipated that recorders and recording groups will supply non-editable copies of their data to HBIC on the basis that HBIC will ensure that the data is used pro-actively to aid decision making processes for the benefits of wildlife, habitats and people. HBIC will also endeavour to provide additional services in-kind in return for copies of their data, including copies of relevant data that it holds itself.

Notes for Use

1. This Agreement defines how the Hampshire Biodiversity Information Centre (HBIC) will hold, maintain, and administer third party access to wildlife data that has been supplied by a recording group, otherwise known as a data custodian. The Agreement sets out the terms and conditions under which HBIC is licensed to hold, manipulate and disseminate the data.
2. The Agreement is also designed to facilitate the provision of wildlife data and services from HBIC to the Hampshire Recording Group/Recorder to improve availability and use of data and support the work of the Hampshire Recording Group/Recorder.
3. The HBIC Data Access Policy (Schedule 3) accords with the requirements of Environmental Information Regulations 2004 and the National Biodiversity Network Data Exchange Principles (Schedule 5) that wildlife data should be made as widely available as possible to all parties. Exemptions to this may include not disclosing data the release of which might adversely affect the habitat or species to which the information relates (Regulation 12(5)(g)), or the future supply of data from a third party data custodian who was under no obligation to provide that data (Regulation 12(5)(f)).

This is an agreement between;**The Hampshire Recording Group/Recorder (Data Custodian) and the Hampshire Biodiversity Information Centre, acting by Hampshire County Council on behalf of the HBIC Partnership**

The Agreement is effective from the 1st April 2008 and shall continue until such time as either party terminate the Agreement in accordance with paragraph 9 of the Agreement

1. Definitions

In this Agreement the following words have the following meanings:

'Data Access Policy' means the policy of HBIC relating to permitted access to the data, as set out in Schedule 3. Hampshire Recording Group/Recorder may also wish to attach it's own Data Access Policy, as set out in Schedule 6, which may set restrictions on the use of the data that are different to those defined in the HBIC Data Access Policy. The HBIC Data Access Policy must follow the requirements of and allowable exceptions under the Environmental Information Regulations.

'Agreement': refers to this document and any documents attached to or referred to in it.

'the DPA' means the Data Protection Act 1998 and any legislation amending or replacing that Act and any subsidiary legislation made under it;

'the Data': all wildlife data supplied by Hampshire Recording Group/Recorder for which it holds copyright or can legitimately pass on to the Hampshire Biodiversity Information Centre, as described in Schedule 1A.

'the Hampshire Biodiversity Information Centre Partnership' (hereafter referred to as the HBIC Partnership) comprises those organisations, groups or individuals who contribute essential services, funding and/or important data to the centre, set through Service Level Agreements and Data Exchange Agreements. The Partners influence the work of the Centre through the Strategic Management Group and the Users and Recorders Advisory Groups.

2. Supply of the Data to the Hampshire Biodiversity Information Centre

2.1 The Hampshire Recording Group/Recorder will supply the Data to the Hampshire Biodiversity Information Centre in the manner and at the intervals set out in Schedule 1A.

3. The Licence

3.1 The Hampshire Recording Group/Recorder grants the Hampshire Biodiversity Information Centre a licence to use and make available the Data, subject to this Agreement and in accordance with HBIC's published Data Access Policy set out in Schedule 3 and any Data Access Policy of the Hampshire Recording Group/Recorder as set out in Schedule 6, and in accordance with the Environmental Information Regulations 2004.

3.2 The Hampshire Biodiversity Information Centre is authorised under this licence to;

- Access and hold copies of the Data for the purpose of:
 - Providing a data enquiry service, primarily for guiding development control and land management decisions,
 - Identifying and monitoring Sites of Importance for Nature Conservation,
 - Providing notable species data to its funding Partners under the terms of their service level agreements, at the resolution provided and to species group level only.
 - Informing the UK & Hampshire Biodiversity Action Plan processes,
 - Monitoring the state of Hampshire's habitats and species in relation to land use change, climate change etc. and contributing to the regional and national picture,
 - Providing a resource for students, local societies and other recording groups for research, community projects etc.
- Copy and/or process the Data into other formats (including electronic formats) to aid data management and dissemination;

4. Rights and obligations of the Hampshire Recording Group/Recorder

- 4.1 The Hampshire Recording Group/Recorder retains ownership of the Data and is thus free to make available, use or publish the Data elsewhere.
- 4.2 The Hampshire Recording Group/Recorder will notify the Hampshire Biodiversity Information Centre of any:
- Change in copyright ownership affecting the Data.
 - Re-determinations subsequent to the supply of the Data.
 - Species or features deemed 'sensitive', as set out in Schedule 4.

5. Undertakings of the Hampshire Biodiversity Information Centre

- 5.1 The Hampshire Biodiversity Information Centre will:
- Ensure that the Data supplied is used pro-actively to aid decision making for the benefits of wildlife
 - Supply to the Hampshire Recording Group/Recorder any records¹ it has gathered itself, or has received from third parties, in the manner and at the intervals set out in Schedule 1B, to be used by the Hampshire Recording Group/Recorder within their normal operational activities
 - Comply with the data security policy set out in Schedule 2.
 - Keep a catalogue & brief description of all datasets it holds and make available to all potential users to enable them to assess the suitability of the data for their proposed use.
 - Acknowledge any copyright notices and sources of records within the Data in any report
 - Not publish or supply information that includes significant amounts of the Data without the prior agreement of the Hampshire Recording Group/Recorder. Such enquiries will first be referred back to the Hampshire Recording Group/Recorder.
 - Not publish or supply details of locations of sensitive species below the resolution as set out in Schedule 4. Such enquiries will be passed onto the Hampshire Recording Group/Recorder to respond to.
 - Make appropriate administration charges to cover the cost of staff time in supplying copies of the Data to commercial bodies
 - Keep a log of all data enquiries and data sent which it can make available to the Hampshire Recording Group/Recorder on a regular basis
 - Ensure that when supplying extracts of the Data there is a disclaimer of liability at least as comprehensive as that contained in clause 8.2.
 - Ensure that any of the Data supplied to a third party will carry a note explaining that further expertise & understanding of the Data can be sought from the Hampshire Recording Group/Recorder.
 - Provide to the Hampshire Recording Group/Recorder, at the end of each financial year, a (small)% of all income gained from providing extracts of the Data to commercial bodies.

6. Services offered to the Hampshire Recording Group/Recorder by the Hampshire Biodiversity Information Centre

- 6.1 The Hampshire Biodiversity Information Centre will actively support² the Hampshire Recording Group/Recorder in the following ways:
- Provision of data, advice, materials, information and assistance to Hampshire Recording Group/Recorder on request, such as:
 - Maps, aerial photographs etc. to aid recording (subject to any copyright restrictions)
 - Habitat or species data, some of which may have been received from other sources; to target new surveys, for research & analysis etc.
 - Land access information to enable new sites to be surveyed, to increase geographic and taxonomic coverage, landowner consent permitting

¹ These are records that are relevant to Hampshire Recording Group/Recorder and some may be subject to restrictions placed on them by third parties.

² The level of support will be commensurate with such effort not being damaging to prioritised work from the funding partners

- Offer to assist with, and endeavour to secure funding for, the:
 - Production of atlases, county checklists and county 'Red Data Books'
 - Electronic capture or migration of data to a format compatible with the HBIC database and NBN data model
- Offer to assist with;
 - the placing of summary data onto the NBN Gateway at the 10km square resolution if the Hampshire Recording Group/Recorder was not already supplying a copy of its data to the NBN Gateway or appropriate national scheme organiser, and only if requested.
 - the provision of training opportunities and facilities wherever possible.

7. Data Protection

- 7.1 Any personal information, which will be limited to names and contact details, supplied in association with these records and information by either party, will not be passed to third parties without the consent of the data Custodian, and in accordance the Data Protection Act¹ and HBIC's stated Privacy Policy as set out in Schedule 7. A person's name on its own is not subject to restrictions under the Data Protection Act, and is a recognised part of a biological record for the purposes of the Environmental Information Regulations 2004

8. Warranties of the Hampshire Recording Group/Recorder and Limitations of Liability

- 8.1 The Hampshire Recording Group/Recorder warrants to the Hampshire Biodiversity Information Centre that each of the statements in this clause is true.
- It is either the owner of the copyright and all other intellectual property rights in the Data or that it has the necessary rights and licences to grant the licence to Hampshire Biodiversity Information Centre as set out in Clause 3.
 - It is not under any obligation or disability created by law, contract or otherwise which would in any manner or to any extent prevent or restrict it from entering into and fully performing this agreement.
 - Release of the Data in accordance with the terms of this Agreement does not and will not contravene any laws as far as can be reasonably determined..
 - It has taken reasonable steps to maximise the quality of the Data.
- 8.2 Owing to the dynamic and judgmental nature of information relating to wildlife and the environment, the Hampshire Recording Group/Recorder disclaims any responsibility for the accuracy or comprehensiveness of the Data, and accepts no liability for any direct, indirect, consequential, or incidental damages or losses arising from use of the Data.

9. Termination and withdrawal of Data

- 9.1 Either party may terminate this Agreement at any time by giving not less than three months' notice to the other.
- 9.2 On termination of this Agreement the Hampshire Biodiversity Information Centre will make no further use or distribution of the Data, and will delete and destroy all copies that it holds. It will not be required to return data passed down under this agreement to third parties.
- 9.4 In the event of the termination of this Agreement, neither party shall be liable for any costs incurred by the other in the carrying out of its work under the Agreement.

10. General

- 10.1 *Notices.* Any notice to be given under this Agreement must be in writing, and delivered to the other party by hand or by post.

¹ Where relevant. This is a requirement of the Data Protection Act where data includes more than just personal names.

- 10.2 *Illegal/unenforceable provisions.* If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.
- 10.3 *No agency etc.* Except as expressly set out in this Agreement, neither party has any authority to make any representation or commitment or incur any liability on behalf of the other.
- 10.4 *Entire agreement.* This Agreement and any Schedule or Schedules (which are incorporated into and made a part of this Agreement) constitute the entire agreement between the parties relating to its subject matter.
- 10.5 *Third parties.* No person who is not a party to this Agreement has any right to prevent the variation or cancellation of any provision of this Agreement or its or termination, and no person who is not a party to this Agreement may enforce any benefit conferred upon them by this Agreement, unless this Agreement expressly provides otherwise.
- 10.6 *Governing law, etc.* This Agreement will be governed by and construed in accordance with English law.

Signed by authorised representatives of the parties

Name.....The Hampshire Recording Group/Recorder (the Data Custodian)

Signed

Printed name:

Date

Position

Telephone..... **Fax**

E-mail

Name....Hampshire Biodiversity Information Centre

(Acting by Hampshire County Council on behalf of the HBIC Partnership)

Signed

Printed name

Date

Position

Telephone..... **Fax**

E-mail

SCHEDULE 1A**The Data supplied by the Hampshire Recording Group/Recorder**

Title/s of the resources and/or general description of the Data, together with details of how and when it is to be supplied to the Hampshire Biodiversity Information Centre:

All XXXX records for the administrative county of Hampshire to be supplied as a synch file in MapMate format (bulk import format) once a year during March, or more frequently by agreement

SCHEDULE 1B**The records supplied by the Hampshire Biodiversity Information Centre**

All XXX records to be supplied from the Recorder 6 database as a csv file on an annual basis during April. Only records entered up to a certain date to be supplied each year to avoid duplicates

SCHEDULE 2**HBIC Data Security Policy -**

1. The Hampshire Biodiversity Information Centre will make regular robust back-up copies of the Data to safeguard its longevity as appropriate
2. The Hampshire Biodiversity Information Centre will archive version-controlled copies of the Data at regular intervals as determined in Schedule 1A.
3. The Hampshire Biodiversity Information Centre will maintain and where appropriate add to any relevant data management audit trails for the Data to clearly document and illustrate the data management processes undertaken.
4. The Hampshire Biodiversity Information Centre will take reasonable measures to prevent unauthorised access to, duplication of, or distribution of the Data whilst in its possession.

SCHEDULE 3

HBIC Data Access Policy

Introduction

The purpose of the Hampshire Biodiversity Information Centre is to “collect, collate, manage and disseminate information of known quality on Hampshire’s biodiversity to those who require it, to increase knowledge and understanding, and to enable informed decisions to be made about factors affecting the environment”.

The Hampshire Biodiversity Information Centre also has an obligation to make environmental information available to any person that requests it under the Environmental Information Regulations 2004. This is in keeping with the seven Data Exchange Principles promoted by the National Biodiversity Network Trust (Schedule 5).

Background to the data held by HBIC

Data that is held by HBIC, including both manual and electronically held data, comes from a variety of sources, including data supplied by a range of voluntary recording groups and individuals via data exchange agreements; and surveys funded by the local authorities of Hampshire, English Nature, Hampshire Wildlife Trust and Environment Agency via service level agreements.

The ownership of all information collected under the service level agreements remains the exclusive property of the HBIC Partnership. Data provided by other organisations or individuals via data exchange agreements remains the property of that organisation or individual.

The Environmental Information Regulations 2004 allow for the fact that sensitive information, including that supplied and owned by third parties, is only released after careful consideration of the request and with the consent of all the parties involved. Regulation 12(5)(g) lists all the exceptions to the duty to disclose environmental information including where “ its disclosure would adversely affect the protection of the environment to which the information relates” The associated guidance states that information on the location of nesting sites, rare habitats and endangered/protected species may need to be withheld to avoid the risk of damage caused by collecting, disturbance or commercial exploitation.

The Environmental Exception can also be used to withhold information in a range of circumstances, including, for example, details of sites prior to legal designation, or to avoid harm caused by damage to important partnerships with landowners or volunteer recorders¹. Regulation 12(5)(f) allows for data to be withheld where its disclosure would adversely affect the interests of the person or group who provided the information.

However, these are not absolute exceptions, in each case the decision to withhold must be subject to a ‘public interest test’. For example, the disclosure of such information can also be vitally important to ensure the protection of that species or habitat. The exceptions must be considered alongside other legal exceptions which may also apply, for example, commercial confidentiality, health and safety or intellectual property rights.

Data Access Policy

Any request for data by a third party must give:

- the name and contact details of the person requesting the data and the name and address of the person or organisation they are acting for (where applicable),

¹ Further detailed guidance on the Environmental Exceptions relating to sensitive species and volunteered data has been produced by the Countryside Agencies’ Open Information Network

- the geographical extent of the area of interest defined on a map at a suitable scale.
- the precise nature of the information required.

Under the Environmental Information Regulations 2004 a request for data must be responded to within 20 working days of the request being made.

If HBIC holds certain data belonging to an organisation or individual who has deemed it sensitive or not consented to its disclosure then that data cannot be released and the person requesting the data may be transferred to the original Data Custodian with their consent.

If the data can be made available then the person requesting the data will be told, in writing, the nature of the data and what charge will be made (in respect of costs reasonably attributable to the supply of that data¹). HBIC Partners, voluntary conservation organisations, students and the public will not normally be charged for the cost of supplying the data unless there are additional printing costs which HBIC would otherwise be charged for.

When a request for data is refused the reasons for refusal will be specified in writing.

When information is made available the enquirer has to sign a declaration that states that he or she is aware of and understands the following :

- The Hampshire Biodiversity Information Centre and/or HBIC Partners holds copyright of the data, unless otherwise stated.
- No reproduction of the data will be allowed as a direct copy except for the purpose stated
- Data provided by the Hampshire Biodiversity Information Centre will only be used for the purpose stated and must not be added to any permanent database system.
- The data must not be passed to any third party except as aggregated data within reports or maps for the purpose stated.
- Whilst every reasonable effort is made to validate information supplied to and by the Hampshire Biodiversity Information Centre, owing to the dynamic and judgmental nature of information relating to wildlife, HBIC disclaims any responsibility for the accuracy or comprehensiveness of the information supplied, and accepts no liability for any indirect, consequential, or incidental damages or losses arising from use of the information.
- The whereabouts of other material, documentary sources etc. referred to cannot be guaranteed.
- Acknowledgement of the use of the supplied data from the Hampshire Biodiversity Information Centre (including acknowledgement of any stated third party supplier) must be given in any published documents.

¹ A set of charges relating to the supply of biological data is available on request

SCHEDULE 4**Species deemed sensitive by the Hampshire Recording Group/Recorder**

HBIC recognises that certain species are particularly vulnerable to collecting, damage, trampling, disturbance or commercial exploitation if certain information about them is released to the general public or a third party. For example, the whereabouts of hen harrier nest sites.

The Environment Information Regulations 2004 give HBIC a general legal duty to give access to its data. However, HBIC has the right to withhold data under the exception described in Reg 12(5)(g) if 'disclosure would adversely effect the protection of the environment to which the information relates'.

Hampshire Recording Group/Recorder who has supplied the data has produced a 'Restricted' Species List the records of which must not be disseminated below the resolution stated. The list is not exhaustive or definitive. These records will carry a presumption of confidentiality such that the data will not be supplied to any requester at a scale below that defined and HBIC will refer the requester to Hampshire Recording Group/Recorder for further information.

Records of those species listed below must not be disseminated below the resolution stated except after consultation and by agreement of both parties.

Example data from HOS

Species	Scientific Name	Restriction	What is the justification	
			Vulnerability	Threat
			e.g. Schedule 1 of WCA, Annex 1 of EC Birds Directive, rare and localised breeder	e.g. Disturbance
Honey-buzzard	Pernis apivorus	10-km		
Red Kite	Milvus milvus	2-km		
Hen Harrier	Circus cyaneus	2-km		
Montagu's Harrier	Circus pygargus	10-km		
Goshawk	Accipiter gentilis	10-km		
Hobby	Falco subbuteo	2-km		
Peregrine Falcon	Falco peregrinus	10-km		
Stone-curlew	Burhinus oediconemus	10-km		
Little Ringed Plover	Charadrius dubius	2-km		
Mediterranean Gull	Larus melanocephalus	2-km		
Roseate Tern	Sterna dougallii	10-km		
Long-eared Owl	Asio otus	2-km		
Short-eared Owl	Asio flammeus	2-km		
Nightjar	Caprimulgus europaeus	2-km		
Woodlark	Lullula arborea	2-km		
Black Redstart	Phoenicurus ochruros	2-km		
Dartford Warbler	Sylvia undata	2-km		
Firecrest	Regulus ignicapilla	2-km		
Great Grey Shrike	Lanius excubitor	2-km		
Raven	Corvus corax	2-km		
Tree Sparrow	Passer montanus	2-km		

The List can be reviewed and updated at any time

SCHEDULE 5**The Seven Data Exchange Principles of the NBN****Principle One**

Biodiversity data should be easily accessible to enable their use for decision-making, education, research and other public-benefit purposes.

Principle Two

Making biodiversity data available should reduce the risk of damage to the environment. If it is likely to have the opposite effect, availability may need to be controlled.

Principle Three

Biodiversity data suppliers should make available sufficient meta-data to allow biodiversity data users to assess the scope and potential uses of their information holdings. When biodiversity data are supplied, accompanying information (meta-data) on its ownership, methods and scale of collection and limitations of interpretation, should be provided.

Principle Four

A clear transfer of authority should be made when a biodiversity data resource is put together, to allow biodiversity data managers to act on behalf of the biodiversity data owners.

Principle Five

Managers of biodiversity data should make their framework of terms and conditions publicly available, allowing biodiversity data owners to have confidence that control will be exercised in the management and use of their data.

Principle Six

Personal data must be managed in accordance with the principles of the Data Protection Act 1998 and/or any subsequent legal provisions.

Principle Seven

- a) Managers and funders of biodiversity data should make basic facts freely available (except for handling charges if needed) for not-for-profit decision-making, education, research and other public-benefit purposes.
- b) Biodiversity data suppliers should try to arrange resourcing of information provision so that charges for not-for-profit uses are minimal and charges for commercial uses are realistic but do not prevent the use of biodiversity data.
- c) Biodiversity data users should expect to contribute to sustaining the provision of biodiversity data through contributing either in kind or financially to the collection, collation and management of biodiversity data, or at the point of use.

SCHEDULE 6

Hampshire Recording Group/Recorder's Data Access policy

SCHEDULE 7

The HBIC PRIVACY POLICY

1. Introduction

Personal information relating to living individuals must be held and managed in accordance with the requirements and principles of the Data Protection Act 1998 and/or any subsequent legal provisions. This policy sets out the personal information that is to be collected, stored and managed, the uses to which it is put and to whom this information is disclosed.

This Privacy Policy relates to personal data held by the Hampshire Biodiversity Information Centre.

2. Type of personal information to be collected and stored

The Hampshire Biodiversity Information Centre needs to hold some or all of the following contact details for private individuals with which it is engaged in the course of its day to day work:

- Names
- Addresses
- Telephone/fax numbers
- Email addresses

3. Uses to which personal information is applied

Personal contact information is used by the Hampshire Biodiversity Information Centre for the following purposes:

- Verification/validation of records
- Seeking permission to use or pass on data
- Support for volunteer recorders and others
- General administrative purposes e.g. convening meetings, mailing newsletters, providing feedback

4. The Policy

The Hampshire Biodiversity Information Centre is registered under the Data Protection Act 1968 and/or any subsequent legal provisions to collect and hold personal contact details from private individuals in order to verify/validate records, seek permission to use or pass on data, support volunteer recorders and others and for general administrative purposes. In so doing, the Hampshire Biodiversity Information Centre undertakes not to pass on this information to other organisations or individuals or to use it for other purposes without the express permission of the individuals concerned.

It should be noted, however, that a person's name on its own is not subject to restrictions under the Data Protection Act, and is a recognised part of a biological record for the purposes of the Environmental Information Regulations 2004.

5. Public availability of the policy

This policy is published on the Hampshire Biodiversity Information Centre website and is available in writing upon request. An abridged form of words may be included within publications and appear on the Hampshire Biodiversity Information Centre's recording forms and survey sheets.