

2017

Freedom of Information and Data Protection

Guidance for Elected Members

Overview

This document contains important information about Elected Members responsibilities under the Data Protection Act and Freedom of Information Act

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Data Protection Act 1998

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WHAT IS DATA PROTECTION?

It is a law that governs the way personal information (information which related to a living individual) should be used, including the obtaining, holding, use or disclosure of such information. It offers protection and gives individuals certain rights in relation to their own personal information. The regulator responsible for promoting and enforcing this legislation is known as the Information Commissioner.

IS IT IMPORTANT?

Yes, both the public and private sector hold an increasing amount of personal information about their customers. For instance, Loyalty/Reward cards offered by Supermarkets collect a wealth of information about individuals purchasing habits.

If there wasn't a law protecting this information there would be little preventing, how it was used, whom it might be shared with or how accurate it was. For example, inaccurate information might lead to someone being unjustly refused credit, benefits, housing or even a job.

In the role of an elected member you will be privy to a certain amount of other people's personal information and will need to ensure you follow the eight principles of good information handling,

THE EIGHT PRINCIPLES OF GOOD INFORMATION HANDLING

The law states that personal Information must be:

1. Fairly and lawfully collected and used.
2. Only used for the purpose for which it was collected, or compatible purposes.
3. Adequate, relevant and not excessive.
4. Accurate.
5. Not kept any longer than is necessary.
6. Processed in accordance with individuals' rights. Individuals may;
 - Ask any organisation if they hold personal information about them
 - Find out what this information is used for and the types of other organisations it may be passed to
 - Be given a copy of the information
 - Insist that decisions about them not be made solely by a computer, and insist on human intervention
 - Seek compensation for any breaches of the Act
 - Insist that their personal information may not be used if it is likely that it will cause them damage or distress
7. Kept safe and secure.
8. Not transferred abroad without adequate protection.

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NOTIFICATION

The Information Commissioner maintains a public register of data controllers (persons or organisations who hold and process personal information). Each register entry includes the name and address of the data controller and a general description of how the information is processed.

The Data Protection Act 1998 requires every data controller who processes personal information to notify unless they are exempt.

In considering whether they need to 'Notify', elected members must first decide in which role they are processing personal information.

Note: A standard form for notification by elected members has been created to simplify the procedure. There is an annual fee of £35. The council both pays for and administers each members annual notification, however, members are responsible for checking their own notifications to ensure they are accurate and reflect the information they process.

THE ROLE OF THE ELECTED MEMBER

The elected members of a local council are likely to have three different roles.

- They will act as a member of the council, for example, as a member of a committee.
- They will act as a representative of residents of their ward, for example, in dealing with complaints.
- They may represent a political party, particularly at election time.

1. As members of the council (e.g. members of a Committee or Board)

Councillors may have access to, and process, personal information in the same way as employees. In this case it is the council rather than the elected member that determines what personal information is used for and how it is processed. For example, if a member of a housing committee has access to tenancy files to consider whether the local authority should proceed with an eviction, or when a member of a licensing committee has access to an application for a taxi licence, they are carrying out the local authority's functions.

In this case the elected member does not need to notify in their own right.

Disclosure of information - The council can disclose personal information to an elected member if they need to access and use it to carry out official duties. Elected members are, effectively, in the same position as an employee. However, only relevant information should be disclosed, e.g. a member of the Housing Committee may attend a meeting to decide upon an eviction. They should have access to all the relevant information for that case, but it would be excessive to provide general access to the Housing system.

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2. As a representative of the residents of their ward

When elected members represent residents of their ward, they are likely to have to notify in their own right, for example, if they use personal information to timetable surgery appointments or take forward complaints made by local residents.

Disclosure of information – The council will not generally have to get consent of an individual to disclose their personal information to an elected member, providing:

- The elected member represents the ward in which the individual lives.
- The elected member makes it clear that they are representing the individual; in any request for their personal information, and,
- The information is necessary to respond to the individual's issue.

Any information disclosed by the council must only be used by the elected member for the purposes of dealing with the individual's query. It must not be used for any incompatible purpose.

If the information sought is particularly sensitive, members can usually rely on the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002, which covers the disclosure of sensitive data by organisations responding to members. However there may still be exceptional circumstances if the information is particularly sensitive where the council may ask the elected member to gain the written / express consent of the individual before disclosing..

Members should consider security arrangements for sensitive personal data carefully including holding data and secure disposal.

Members are advised to ensure the use of the order is proportionate and that individual constituents and others do not feel their privacy is being negatively affected.

Members should inform the Lord Chancellor or the Commissioner if a constituent is unhappy about disclosures of sensitive personal information made in the course of constituency casework, whether by Members or organisations responding to them.

3. As a representative of a political party

When acting on behalf of a political party, for instance as an office holder, members are entitled to rely upon the notification made by the party. When individuals campaign on behalf of political parties to be the elected members for a particular ward, they can rely on the parties' notification if the party determines how and why the personal information is processed for the purpose of their individual campaigns.

Individuals who are not part of any political party but campaign to be an independent elected member for a particular ward, need to have their own notification.

There is an exemption from notification where the only personal information which is processed takes the form of paper records.

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Disclosure of information – The council should not normally disclose personal information to elected members for political purposes without the consent of the individuals concerned. There are two exceptions to this.

- There may be information the council is required to make public, e.g. lists of some types of licence holder.
- Personal information may be disclosed if it is presented in an aggregated form and does not identify living individuals, e.g. Council Tax band information, and statistical information. However, there would be a breach of the Act if personal information was released in an apparently anonymised form which could then be linked to individuals concerned, e.g. by comparing property data with the electoral roll.

USE OF PERSONAL INFORMATION

When elected members consider using personal information for any particular purpose, they should take into account the context in which that information was collected to decide whether their use of the information will be fair and lawful.

- Personal information held by the local authority should not be used for political or representational purposes unless both the local authority and the individuals concerned agree. It would not be possible to use a list of the users of a particular local authority service, for electioneering purposes without their consent. An example would be using a local authority list of library users to canvass for re-election on the grounds that the member had previously opposed the closure of local libraries.
- When campaigning for election as the representative of a political party, candidates can use personal information, such as mailing lists, held by their parties. However, personal information they hold as elected members for casework should not be disclosed to the political party without the consent of the individual.
- Candidates for election should also be aware of the requirements of the Privacy and Electronic Communication (EC Directive) Regulations 2003 that regulate unsolicited electronic marketing messages sent by telephone, fax, email or text.
- When campaigning for election to an office in a political party, members should only use personal information controlled by the party if its rules allow this. It would be wrong, for instance, to use personal information which the candidate might have in their capacity as the local membership secretary, unless the party itself had sanctioned this.

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Multi-member wards

In some types of local authorities councillors are elected under a multi-member system where more than one councillor represents a particular ward.

As a result, there may be situations where a councillor who represents a constituent may need to pass on that individual's personal information to another councillor in the same ward. The councillor will only be allowed to disclose to the other ward councillor the personal information that is necessary either:

- to address the constituent's concerns; or
- where the particular issue raises a matter which concerns other elected members in the same ward; **and**
- the constituent has been made aware that this is going to take place and why it is necessary. If a constituent objects to a use or disclosure of their information, their objections should normally be honoured. The councillor should not pass on personal information which is not connected to the constituent's case.

OFFENCES

The Data Protection Act contains a number of criminal offences including:

- When someone is required to notify and does not do so. For example, a councillor who holds computerised records of constituents' details for casework purposes, would commit an offence if they had not notified this use of personal information.
- Making unauthorised disclosures of personal information. For example, an elected member who disclosed personal information held by the council to their party for electioneering purposes without the council's consent could commit an offence.
- Procuring unauthorised disclosures of personal information. For example, an elected member who obtained a copy of personal information apparently for council purposes, but in reality for their own personal use (or the use of his or her party) is likely to have committed an offence.

SECURITY

Councils and elected members should be aware that they need to arrange for appropriate security to protect personal information. They must take into account the nature of the information and the harm that can result. They should consider what technical measures and organisational measures, such as use of passwords, computer access privileges, procedures and staff training, are appropriate to keep the information safe.

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EXAMPLES OF GOOD AND BAD PRACTICE

Example	Good Practice	Bad Practice
An elected member helps a constituent with a particular issue and wishes to use the constituent's personal information to progress a party political matter on the same issue.	The elected member seeks the consent of the constituent before using their personal information.	The elected member uses the constituent's personal information without their consent.
A resident asks one of their elected members in a multi-member ward for help about teenagers acting in an intimidating way in the area. The elected member wishes to share the constituent's complaint with other members of the ward because it is an issue of general concern.	<p>The elected member lets the constituent know that he wants to give the details of their complaint to the other ward councillors and why he wants to do that rather than giving a general description of the complaint to other ward members.</p> <p>If the constituent objects, then his wishes are respected and only the general nature of the complaint is shared.</p>	The elected member does not inform the constituent that they intend to give details of their particular complaint to the other ward members and releases the information.
A resident asks one elected member for help with a noisy neighbour.	The member lets the resident know he intends to give their personal information to another ward member because that particular councillor has knowledge and experience with this subject. If the constituent objects, he does not disclose the information.	The elected member does not tell the complainant that he intends to give their personal information to another ward member and goes ahead anyway.

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WHAT IS THE FREEDOM OF INFORMATION ACT?

In 2005 a law came into effect that gives individuals access to all types of recorded information held by public bodies. All information that the Council holds is covered by the Act, regardless of when it was created or how long the Council has held it.

When a person requests a piece of information, providing the Council holds the information it will be under a legal duty to disclose that information. This means that when a member of the public makes a request for information the Council must check its paper records for the information, as well as structured files and electronic records.



WHAT IS THE PURPOSE OF THE ACT?

The aim of the Act is to fundamentally change the way in which public authorities provide information to the public. It is hoped the law will encourage a culture of openness, transparency and accountability.

ELECTED REPRESENTATIVES AND POLITICAL PARTIES

Political parties are not public bodies for the purposes of the Act and do therefore not have to apply the provisions of the Act to any written requests for information that they themselves receive.

A common example of party political communications would be emails between elected members which discuss party political matters. In this context the author will be communicating in their party political capacity and the emails would not relate to the functions of the public authority. These communications would therefore not be subject to FOI.

However, parties, or their elected representatives, communicate with a range of public bodies that are covered by the Act. Information which is passed to these bodies might be subject to a FOI request.

For example, a written request from a mobile phone company to a local authority asking for copies of correspondence with the local MP and councillor about the siting of a phone mast would come within the ambit of the Act.

The information an elected member creates/receives whilst acting on behalf of the Council, for example, as a member of a committee, will fall within the scope of the Act.

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RIGHTS OF ACCESS TO INFORMATION

Members have already got extensive rights of access to information that the Councils holds. Where these rights are qualified rights the information will only be disclosed if the member can demonstrate that they need the information in order to perform their duties as a councillor or official.

With the introduction of the Act members will have the same rights available to all members of the public and consequently an unqualified right of access to all information the council holds such as minutes, reports, committee papers, emails and faxes (subject to certain exemptions).

IS ANY INFORMATION EXEMPT?

There will of course be circumstances when information might not be released. For instance, information that might prejudice ongoing criminal investigations, or reveal commercially sensitive information.

There are a number of exemptions and unless one can be applied the information sought must be provided within 20 working days.

WHO WILL MAKE REQUESTS?

The requests the council receives can be generalised into 3 main groups.

- Commercial Sector.
- Private Individuals (typically, members of the public, MPs, students, campaign groups).
- Press/Media.

WHAT TYPES OF INFORMATION WILL BE REQUESTED?

Typically,

- Reports, minutes, policy & procedures.
- Copies of emails.
- Details of a contract / contractual agreements / tenders.
- Staffing structures.
- Plans / projects / strategies / investment plans
- Planning information
- Food / Premises Inspection Reports
- Costs / Budget / Finance related
- Officer & Councillor expenses and trips abroad

Examples of requests specific to elected members are:

- Declaration of elected members' interests.

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- Which elected members had trips abroad that were funded by the council, detailing who, where, when, destinations and expenses.
- Request for emails to elected members about an alleged school closure.
- Cost of Christmas parties for elected members.
- Information given to elected members by council officers before closure of public toilets.

FURTHER INFORMATION

For further information or more detailed guidance please contact the Councils Information Governance Team (tel. 0121 704 6251) or visit the Corporate Performance, Policy and Information Divisions Intranet site.

