

Data Protection Good Practice Note

Advice for the elected and prospective members of local authorities



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

This good practice note aims to provide elected and prospective members of local authorities with guidance about how the Data Protection Act 1998 (the Act) applies to them.

The Act regulates the holding and processing of personal information that relates to living individuals and which is held on computer or, in some cases, on paper.

Organisations or individuals that process personal information covered by the Act may need to notify the Commissioner about their processing. A description of the processing activities is placed on a public register of notifications. These organisations or individuals must also comply with eight data protection principles which together form a framework for the proper handling of personal information. Individuals whose personal information is processed have rights under the Act, for example, to a copy of the information that is held about them.

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.

Notification

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

1. As members of the council

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.

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.

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.

A standard form for notification by elected members has been created to simplify the procedure.

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 reelection 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. For more information on this, please see the guidance on our website (www.ico.gov.uk.)
- 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.

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.

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 the 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 the details of their particular complaint to the other ward members and releases the information. The resident finds out and is afraid of reprisals if the information they have leaks out.

<p>A resident asks one elected member for help with a noisy neighbour.</p>	<p>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.</p>	<p>The elected member does not tell the complainant that he intends to give their personal information to another ward member and goes ahead anyway. The resident finds out and makes a complaint.</p>
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More information:

If you need any more information about this or any other aspect of data protection, please contact us.

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Notification helpline: 01625 545 740

E-mail: please use the online enquiry form on our website

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