

Section 11 - Data Protection: Guidance for Councillors

1.0 Introduction

This document gives brief guidance to councillors on those parts of the Data Protection Act (DPA) 1998 which directly affect them in the course of their duties.

2.0 The Data Protection Act, 1998

2.1 The Data Protection Act 1998 came into force on 1st March 2000. The Act regulates the ways that organisations (data controllers) collect, store and process personal data. It also strengthens the rights of individuals (data subjects) to access their personal data records and have mistakes corrected.

It replaces the Data Protection Act 1984, which only applied to automated data processing systems. The new regulations apply to all automated systems including computers, CCTV, tape recording, e-mail, photographs and, from 24th October 2001, many paper-based and other manual filing systems.

In particular the DPA 1998 governs what may or may not be done with “personal data”.

2.2 “Personal data” is mainly information, opinion or an expression of intention relating to a living individual which is held on computer (or for transfer to computer). Examples are details of an individual’s name and address, Council Tax reference number etc. However, it also includes personal information contained in certain manual files and personal information contained in educational, health, housing and social services records, which need not be computerised.

Data which relates to one or more of the following matters is defined as “sensitive personal data” i.e. information relating to:

- (a) Racial or ethnic origin
- (b) Political opinions
- (c) Religious or other similar beliefs
- (d) Trade Union membership
- (e) Physical or mental health or condition

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- (f) Sexual life
- (g) Commission/alleged commission of any offence
- (h) Criminal proceedings relating to the data subject.

There are extra regulations for processing data about sensitive personal data.

2.3 The DPA imposes a number of controls in relation to personal data. The main controls are:

- (a) Personal data may not be “processed” except in accordance with the provisions of the DPA. (“Processing” being a very wide term which includes almost anything that can be done with data. In addition to activities such as organising, adapting and altering the data, “processing” includes such basic activities as obtaining, holding or even merely reading the data.) Stricter conditions for processing apply in the case of sensitive personal data.
- (b) Processing of personal data may only be carried out by registered Data Controllers. (The Council has registered its activities with the Information Commissioner and can therefore process personal data as a Data Controller.)
- (c) Data must be handled in accordance with the eight Data Protection principles which are set out in the Act. These are:-
 - (i) Personal data must be processed fairly and lawfully and in accordance with the conditions contained in the Act.
 - (ii) Personal data must not be processed except for the specific purpose for which it was obtained.
 - (iii) Personal data must be adequate, relevant and not excessive in relation to the purpose(s) for which they are processed.
 - (iv) Personal data must be accurate and, where necessary, kept up to date.
 - (v) Personal data must not be kept for longer than is necessary.
 - (vi) The rights of data subjects must be observed.
 - (vii) Appropriate measures must be taken to prevent unauthorised/unlawful processing and against accidental loss/destruction of/damage to personal data.

- (viii) Personal data must not be transferred outside the European Economic Area except in restricted circumstances.
- (d) The DPA sets out a number of Rights of Individuals who are the subject of any personal data (“Data subjects”). For example, a right of access to the information held about them by a data controller (“Subject access”).
- (e) One of the most important aspects of the DPA is that it imposes strict controls in relation to the disclosure of personal data to third parties.

3.0 Implications for Elected Members

3.1 Although elected members will not be “data controllers” in respect of data held for the purposes of Council business, personal information which is protected by the provisions of the DPA may come into their possession in the course of their duties as councillors. The following guidance is offered in this regard:-

3.2 Am I entitled to see personal data held by the Council?

If you obtain the written consent of the person to whom the information relates, the answer is ‘yes’.

If you do not have their consent but the information is necessary in order for you to carry out your duties as a councillor, you may be entitled to have access to the information on a “need to know” basis. Council officers may release the information to you, as “elected members” are specified in the Council’s registration details (see paragraph 2.3(b) above) as a class of persons to whom personal information will be disclosed.

Before releasing any information to you, however, the officer dealing with your request will ask you the purpose for which the information is required and assure themselves that the use of the information is legitimate in terms of assisting you with your constituency role as a Councillor.

If the information is not essential to enable you to carry out your duties and the person who is the data subject has not given their consent for the information to be disclosed to you, you will not be allowed access to the information in question.

3.3 If I am given access to personal data, can I disclose it to any other person?

You may disclose the information to the individual to whom it relates provided that it does not contain personal data from which any individual can be identified directly or indirectly, if that other individual has not consented to the disclosure.

It is important to remember that personal data relating to an individual must not be disclosed by you to any other person without the consent of the individual concerned.

3.4 What are the consequences of unlawful disclosure?

If you do disclose such information to a third party without consent, there are two possible consequences:

- (a) First of all, you may have committed an offence under the DPA for which you may be prosecuted in either the Magistrates' Court or the Crown Court. Upon conviction in the Magistrates' Court, you would be liable to a fine of up to £5,000. In the Crown Court, the maximum penalty is an unlimited fine.
- (b) Secondly, you would be in breach of the Code of Conduct for Members of the Council, which states that a member "must not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so". Any member acting in breach of the Code of Conduct may be the subject of a report to the Council's Standards Committee and/or may be reported to the Standards Board for England. Sanctions which may be taken in respect of a member acting in breach of the Code are possible censure or suspension.

4.0 Members as Data Controllers

4.1 As previously mentioned, elected members will not be "data controllers" in respect of data held for the purposes of Council business. It will invariably be Council officers who control the processing of data held for such purposes. Any proposed use of the data by members, other than that detailed when requesting information, must be cleared with the relevant Council officer. Members can of course access personal data with the consent of the data subject e.g. when acting on behalf of a citizen in their ward.

4.2 It may, however, be the case that members maintain their own computerised records containing personal data (e.g. address lists) for their own use. If the data is held for personal, family or household purposes, there is no requirement for a member to register themselves as a data controller with the Office of the Information Commissioner (OIC). However, if the data is held or used for the purpose of constituency casework or for canvassing political support amongst the

electorate, formal notification must be made to the OIC under the provisions of the DPA. When you are campaigning for election or otherwise acting on behalf of a political party you should be covered by the party's notification, but check with your constituency Chairperson or Secretary. Any member who considers that they may be affected in this way should seek further advice from:-

Office of the Information Commissioner,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF.

Tel: 01625 545745

e-mail: data@dataprotection.gov.uk

5.0 Enquiries from Constituents

It is, of course, the case that individuals may make their own request under the DPA for disclosure of personal information held on them by the Council. If you are approached by a constituent who merely wants sight of such information, you should advise them to make a request for this, in writing, to:-

The Data Protection Officer,
Head of Law and Governance,
Office of the Chief Executive
Civic Centre,
Sunderland,
SR2 7DN.