

# Advice for elected and prospective councillors

## Data Protection Act

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## Introduction

1. The Data Protection Act 1998 (DPA) is based around eight principles of good information handling. These give people specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it
2. An overview of the main provisions of the DPA can be found in [The Guide to Data Protection](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help data controllers to fully understand their obligations and promote good practice.
4. This guidance aims to provide elected and prospective councillors with advice on how the DPA applies to them.

## The role of the councillor

5. Councillors are likely to have three different roles:
  - As a member of the council, for example, as a cabinet member or a member of a committee.
  - A representative of residents of their ward, for example, in dealing with complaints.
  - They may represent a political party, particularly at election time.

## Use of personal information

6. When councillors consider using personal information, 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, as required by principle 1 of the DPA:
  - Where a councillor is representing an individual resident who has made a complaint, the councillor will usually have the implied consent of the resident to retain relevant personal data provided and to disclose it as appropriate. The resident will also expect that the organisations (including the local authority) who are the subject of the complaint will disclose personal data to the councillor. If

there is any uncertainty regarding the resident's wishes, it would be appropriate to make direct contact with the resident to confirm the position.

- Sensitive personal information is treated differently; for example, where consent is being relied on this should be explicit in nature. However, in the context of a complaint, councillors – and organisations making disclosures to them - will usually be able to rely on the [Data Protection \(Processing of Sensitive Personal Data\)\(Elected Representatives\) Order 2002](#) as a condition for processing.
- Personal information held by the local authority should not be used for political 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 councillor 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, legitimately held by their parties. However, personal information they hold in their role as representative of local residents, such as complaints casework, should not be used without the consent of the individual.
- When campaigning for election to an office in a political party, councillors 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.
- Candidates for election should be aware that political campaigning falls within the definition of direct marketing. Consequently, they should have regard to the requirements of the DPA (in particular section 11) and the Privacy and Electronic Communication (EC Directive) Regulations 2003 which set out specific rules that must be complied with for each type of marketing communication. For further information on this, the Information

Commissioner has produced [Guidance on Political Campaigning](#) which is available on our website.

### **Multi-member wards**

7. In some types of local authority, councillors are elected under a multi-member system where more than one councillor represents a particular ward.
8. As a result, there may be situations where a councillor who represents a resident may need to pass on that particular 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:
  - to address the resident's concerns;
  - where the particular issue raises a matter which concerns other elected members in the same ward; or
  - where the resident has been made aware that this is going to take place and why it is necessary.

If a resident objects to a use or disclosure of their information, their objection should normally be honoured.

9. The councillor should not pass on personal information which is not connected to the resident's case.

#### **Example**

A resident asks one of the councillors in a multi-member ward for help about teenagers acting in an intimidating way in the area. The councillor wishes to share the resident's complaint with the other ward councillors because it is an issue of general concern.

The councillor lets the resident 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 councillors.

If the resident objects, then his wishes are respected and only the general nature of the complaint is shared.

## Notification

10. In considering whether they need to register their processing with the Commissioner, councillors must first decide in which role they are processing personal information:

- **As a member 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 councillor 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, the councillor is carrying out the local authority's functions and so does not need to register in their own right.

- **As a representative of the residents of their ward**

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

- **As a representative of a political party**

When acting on behalf of a political party, for instance as an office holder, councillors are entitled to rely upon the registration made by the party.

When individuals campaign on behalf of political parties to be the councillor for a particular ward, they can rely on the parties' registration if the party determines how and why the personal information is processed for the purpose of their individual campaigns.

If a prospective councillor is not part of any political party but campaigning to be an independent councillor for a particular ward, they need to have their own registration.

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

12. A standard form for registration by councillors has been created to simplify the procedure.

## Offences

13. The DPA contains a number of criminal offences, including:
  - Failure to register when required to do so. For example, a councillor who holds computerised records of residents' details for casework purposes would commit an offence if they had not registered this use of personal information.
  - Making unauthorised disclosures of personal information. For example, a councillor who discloses 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, a councillor who obtains a copy of personal information apparently for council purposes, but in reality for their own personal use (or the use of their party), is likely to have committed an offence.

## Security

14. Councillors 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 and organisational measures, such as use of passwords, computer access privileges, procedures and staff training, are appropriate to keep the information safe. Councils should also take appropriate measures in the same way.

## More information

15. Additional guidance is available on [our guidance pages](#) if you need further information on other parts of the DPA.
16. If you need any more information about this or any other aspect of data protection, please [contact us](#), or visit our website at [www.ico.org.uk](http://www.ico.org.uk).