

<b>Data Controller Registration and NAC Correspondence</b>	<b>17 April 2018</b>
<b>Corporate Policy and Resources Committee For Decision</b>	

<b>Linkage to Council Strategy (2015-19)</b>	
<b>Strategic Theme</b>	Leader and Champion
<b>Outcome</b>	Provide civic leadership to our citizens
<b>Lead Officer</b>	Elizabeth Beattie
<b>Cost: (If applicable)</b>	£1600 additional cost

## **1.0 Background**

- 1.1 At the Committee's meeting in March, Members considered a report and correspondence from National Association of Councillors (NAC) relating to Data Protection Registration. Members requested that a further report be brought back on the ICO Registration Fee for Councillors and on the correspondence from NAC.

## **2.0 Introduction**

- 2.1 Under the Data Protection Act 1998 data controllers have been required to register with the Information Commissioner and pay a fee as part of this registration.
- 2.2 However, on 20/2/2018 The Data Protection (Charges and Information) Regulations 2018 were laid before Parliament. This legislation introduced a new charging regime in relation to registration and is related to the introduction of the new General Data Protection Regulations (GDPR) on 25<sup>th</sup> May 2018.

## **3.0 Implications for Councillors**

- 3.1 Council's registration as a data controller covers certain aspects of the role of a Councillor. As a member of Council, Councillors would be covered by this registration for any personal information they are provided with in relation to

the functions of Council, for example to enable Councillors to fulfil their decision and policy making role within Council.

3.2 However, there are other aspects of a Councillor's role which are not covered by the Council's data registration. These include the following:

- As a Representative of the Residents of their Ward

For example, if a Councillor is approached by a constituent regarding a problem they have with housing and as a result the Councillor holds any personal information relating to that constituent, the Councillor may need to be registered as an individual with the Information Commissioner for processing this personal information. Council's data registration would not provide cover in this type of instance as housing is not a Council function.

- As a Representative of their Political Party

For example, a Councillor may hold personal information relating to political activities such as mailing lists at election times. A Councillor may perhaps be covered by their Party data registration and it might be useful for Councillors to contact their Political Parties to see what the situation is in relation to Party business.

3.3 The Information Commissioner's Office have issued "*Advice for Elected and Prospective Councillors on the Data Protection Act*". This gives guidance on the issue of data registration for Councillors and a hard copy is attached for information as **Appendix 1**.

#### **4.0 Data Protection Registration – Charging Regime**

4.1 At present, it is a criminal offence to fail to register, or fail to keep an entry up to date, under the Data Protection Act 1998 but this will be replaced under the new charging regime and will now be treated as a civil matter. Data controllers who fail to pay the requisite charge will be liable to pay a fine of 150% of the amount due.

4.2 Data controllers due to renew their existing notification between now and 25<sup>th</sup> May 2018 must continue to do so. This means that a data controller renewing under the existing notification arrangements on, say, 24<sup>th</sup> May 2018 will not be subject to the new charging regime until 25<sup>th</sup> May 2019.

4.3 Councillors processing personal data on behalf of their constituents or political party will be required to pay the **Tier 1 charge**, ie **£40** per year. Therefore it is likely that Councillors who have not already registered should consider doing so. There is a modest (one off) incentive to do so. The rate post 25<sup>th</sup> May 2018 will be £40 unless paid by direct debit when the rate will be £35.

#### **5.0 NAC Correspondence presented at the March Committee Meeting**

As indicated in the survey conducted by the National Association of Councillors, only two Council's in Northern Ireland are currently known to cover any expenses associated with the payment of these fees by their Councillors. These Councils are Belfast City Council and Lisburn & Castlereagh City Council. A copy of the results of the National Association of Councillors survey is attached as **Appendix 2**.

NAC are urging councils that do not reimburse councillors' data protection fees to reconsider their policy and agree to reimbursement in all cases.

#### **6.0 Recommendation**

It is recommended that Council notes the ICO's new charging regime for Data Protection Registration and considers reimbursement of Councillors' data protection fees.

# 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).

NAC survey: Council policies on payment of data protection fees  
February 2018

<b>Council</b>	<b>Does council pay fees?</b>
Antrim & Newtownabbey	No – councillors to pay their own fee if required.
Ards & North Down	Only if councillors are acting on council business. Otherwise councillors pay their own fee.
Armagh Banbridge C'avon	Only if councillors are acting as a member of the council. Otherwise councillors pay their own fee.
Belfast City Council	<b>Yes.</b> Council will refund fee on production of receipt or proof of payment.
Causeway Coast & Glens	No – councillors were advised of the need to register themselves and pay their own fees.
Derry & Strabane	No response.
Fermanagh & Omagh	Not known. Officers will be reporting back to Council in February with a view to formalising the position.
Lisburn & Castlereagh	<b>Yes.</b> Fees recoverable through expenses system, since they result from councillors representing residents.
Mid & East Antrim	Only if information is covered by council policy. If they obtain information while acting for a resident they are advised to register as data controllers and the fee is not reimbursed by the council.
Mid Ulster Council	No response.
Newry Mourne & Down	No – When councillors are representing constituents, this is not official council business and the councillor has to register with the ICO in their own right.