

# Data Protection Training for Members

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## What is all this about?

- Roles of a councillor
- Data protection responsibilities of councillors
- How information is obtained and re-used
- Direct Marketing

# DPA Principles

To comply with the Data Protection Act, personal data must be:

- fairly and lawfully processed;
- processed for limited purposes;
- adequate, relevant and not excessive;
- accurate;
- not kept longer than necessary;
- processed in accordance with the data subject's rights;
- secure;
- not transferred to countries without adequate protection.



## What is personal data?

Personal data is any information relates to an identified or identifiable individual.

## What is sensitive personal data?

Any personal data that references:

- \* Racial or Ethnic Origin
- \* Political Opinions or Persuasion
- \* Religious Beliefs or other beliefs of a similar nature
- \* Trade Union Membership or Affiliation
- \* Physical or Mental Health or Condition
- \* Sexual Life
- \* Commissioned or Alleged Commission of Offences
- \* Any proceedings for any offence, committed or alleged, including any sentencing decisions made by the Court

## Stories in the press

Nov 2007: HM Revenue and Customs (HMRC) lost details of 25 million child benefit claimants (on two CDs), Names, addresses, dates of birth, child benefit numbers, NI Numbers, bank account details.

Hackney PCT: 160000 children's names and addresses lost data on a disc that failed to arrive and a hospital

The Bichard Inquiry - Ian Huntley's previous criminal records deleted.

Jan 2008: MoD laptop stolen with 600 000 military records.

Jan 2008: Stockport PCT 4000 medical records lost on a memory stick

Dec 2007: Devon - personal data on a computer sent for recycling



# Data security is big news

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**Fresh benefit data lapse admitted**


**An ex-contractor at the Department for Work and Pensions had two discs with thousands of benefit claimants' details for more than a year, the DWP says.**

The unencrypted discs revealed the type of benefits paid, but a DWP spokesman said they did not contain bank details.

The woman told the News of the World she forgot to return them after she stopped working for the DWP a year ago.

In October, two child benefit discs containing the personal details of 25 million people went missing.

The HM Revenue and Customs discs containing the entire child benefit database, unregistered and unencrypted had been sent to the National Audit Office - but they did not arrive.

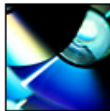
 GETTY IMAGES

The discs containing the data were unencrypted

**BENEFIT DISCS LOST**

**KEY STORIES**

- Discs loss 'entirely avoidable'
- MoD 'Facebook generation' fear
- New boss for HMRC after data slip
- Tougher data rules for Whitehall
- More firms 'admit disc failings'
- £20,000 reward offered for discs
- Fresh benefit data lapse admitted
- Discs 'worth £1.5bn' to criminals

 **Queries answered**  
BBC personal finance reporter Jennifer Clarke answers your questions on the crisis

**FEATURES AND BACKGROUND**

- Q&A: Child benefit records lost
- Government letter: full text
- Taking cover from ID theft
- Point-by-point: Darling statement
- The dealers in data
- Life inside the beleaguered HMRC
- Timeline: Benefits records loss
- Revenue's previous data failings

# Registering as a Data Controller

## Legal requirements for councillors

The Information Commissioner, Christopher Graham, is looking to make more Councillors aware of their responsibilities and legal requirements when handling personal data. In particular that they fulfil their legal obligation to notify with the ICO as an official data controller if they process personal data on computer for the purpose of their constituency casework

## Considering whether or not you need to register

Councillors must first decide in which role or roles they are processing personal information.

# Roles of a Councillor

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

Councillors are likely to have to notify in their own right if they process personal information on a computer when looking into complaints or responding to issues raised by local residents. This would include the use of a computer as a word processor when writing letters in relation to issues raised by a constituent for instance.

- **As a member of the council ?**

When councillors have access to, and process, personal information in the same way as a council employee might, it is the council, rather than the elected member, that determines what the personal information is used for and how it is processed. For example the elected member does not need to notify in their own right if they are accessing tenancy files to consider whether the local authority should proceed with an eviction, or if, as a member of a licensing committee, they are processing personal information in an application for a taxi licence.

- **Is it as a representative of a political party, for instance as an office holder ?**

When individuals campaign on behalf of political parties to become the elected members for a particular ward, they can rely on the parties' notification, provided it's the party deciding how and why the personal information is processed. 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.

- **Online self-assessment**

As a final check Councillors might also like to complete the ICO's online self assessment which will confirm whether they are required to notify or not. This can be found on the ICO's website here: <http://www.ico.gov.uk/notify/self/question1.html>



# Obtaining and re-using personal data

## Islington's Fair Processing Notice

- Any personal information you give us is held securely and will be used only for council purposes. Information that was collected for one purpose may be used for another council purpose, unless there are legal restrictions preventing this. Islington may share this information where necessary with other organisations, including (but not limited to) where it is appropriate to protect public funds and/or prevent fraud in line with the National Fraud Initiative guidelines.
- Using your information in this way allows us to deliver more efficient services that can be tailored to your individual needs and preferences. All personal information is held in strict confidence.
- The use of data by the Audit Commission in a data matching exercise is carried out with statutory authority under its powers in Part 2A of the Audit Commission Act 1998.

## Conditions for data sharing

As members of the local authority, Councillors may receive personal information where it is needed to carry out their role.

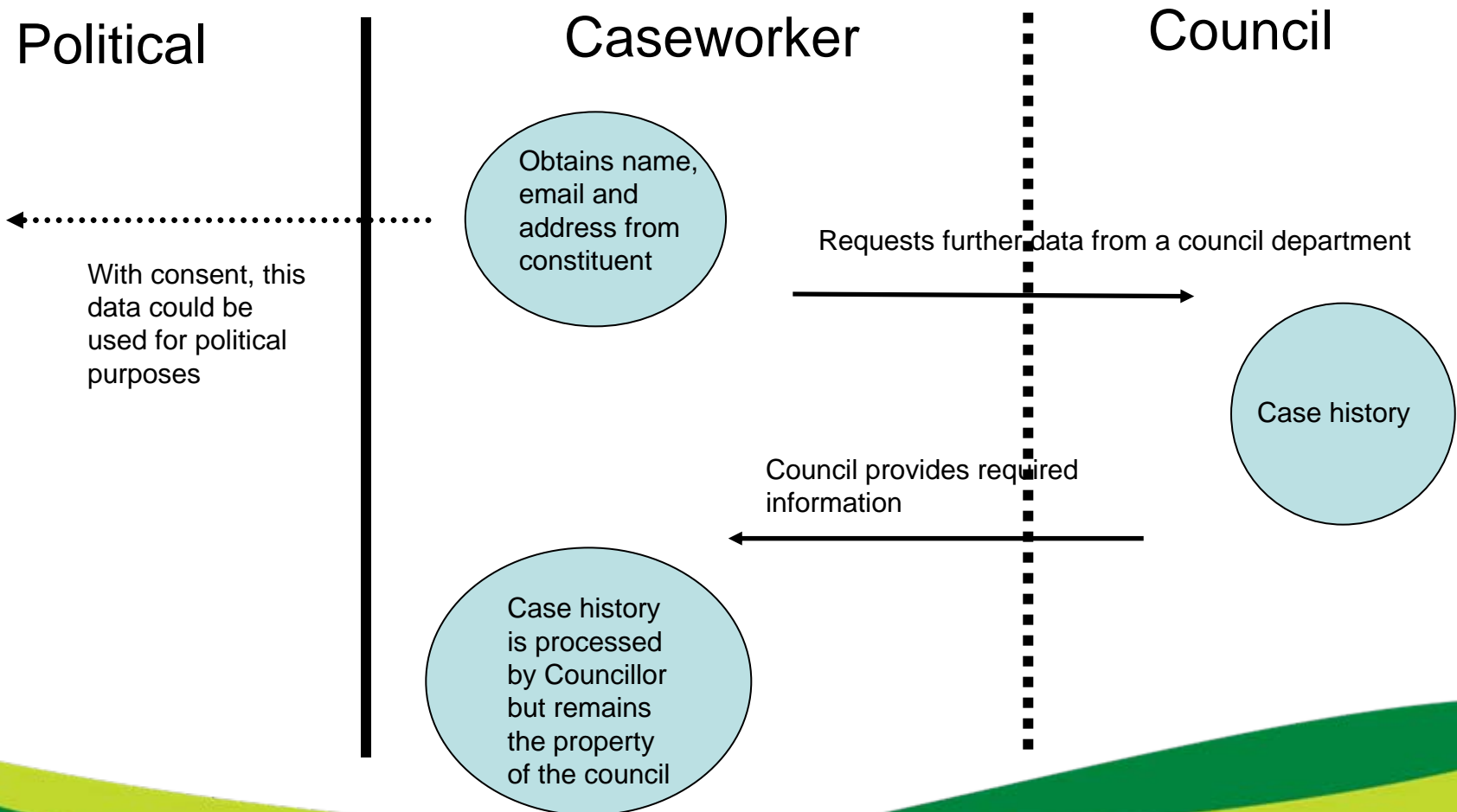
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# Conditions for re-use

## ICO Guidance

- 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.
- 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.

## How information passes between these roles



# Direct Marketing



# Direct marketing restrictions apply to everyone – Data Protection Act 1998

Section 11 of the Data Protection Act 1998 gives people the legal right to 'prevent processing for purposes of direct marketing'.

## What is direct marketing?

**Legal definition:** the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals.

**ICO definition:** Direct marketing is the communication to a particular individual of any advertising or marketing material. It is not confined to the advertising or marketing of commercial products or services. ***It would include, for example, the promotion of an organisation's aims or ideals or a charity or political party making an appeal for funds.***

## How does Islington Council use 'direct marketing'

Some examples:

Communicating about changes in public library access

Updating people about changes in parking

Advertising upcoming events

**In each case we must consider whether these are council business or political**

**We must consider how we communicate these and who we may communicate them to**



# What are the regulations about direct marketing?

## Paper (post or phone)

- Opt-out consent
- If the person or organisation you're targeting asks to be taken off your mailing list, you must comply with their request. There are no exceptions to this rule, and if you fail to comply, they can apply to the courts for an order against you under section 11 of the Data Protection Act.

## Electronic (email or text)

- You can only carry out electronic marketing with permission (opt in).
- There is an exception, known as the 'soft opt-in.' However, the exemption only applies where a **commercial** organisation provides an opt out option when data are collected and with each subsequent email.
- Therefore political parties must design their data collection mechanisms so that individuals actively request to be sent information electronically.

## Direct marketing for political purposes

- In 2005 the Information Commissioner served an Enforcement Notice on the Scottish National Party after they had used 'Automated Voice Polling'.
- The Information Commissioner confirmed that, in his view, telephone calls made by a political party to promote the party or to solicit support are a marketing activity and that as a consequence a political party must not make unsolicited calls for such purposes to a number registered with the TPS (Telephone Preference Service).
- The SNP challenged the interpretation and the subsequent Enforcement notice at the Information Tribunal.
- The Information Tribunal found in favour of the Information Commissioner.

## Direct marketing for political purposes - summary

<b>Communication method</b>	<b>In summary you may use this method to promote a party or candidate</b>
Post addressed to particular individuals	unless the individual has asked you not to write to them or not to send them marketing material by post. In addition, s91 of the Representation of the People Act 1983 gives a candidate at a parliamentary election the right to send an election address by post. This specific right applies even if the individual has asked you not to contact them.
Email/text and other messages to mobile phones/voicemail	where the individual has consented to contact of that sort from you for those purposes.
Fax	where the individual has consented to contact of that sort from you for those purposes.
Phone calls	unless you have grounds for believing the individual would not want you to contact them such as TPS registration.
Automated phone calls	where the individual has consented to contact of that sort from you for those purposes.
AND in every case	you must normally identify yourself in the communication and provide contact details to allow individuals to contact you and easily opt out of unwanted direct marketing. The Representation of the People Act 1983 also requires specific details to appear on election publications.

## Further information

- <http://www.idea.gov.uk/idk/aio/1708186> (Data Protection: A Councillor's Guide)
- [http://www.ico.gov.uk/upload/documents/library/data\\_protection/practical\\_application/advice\\_elected\\_and\\_prospective\\_members\\_local\\_authorities.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/advice_elected_and_prospective_members_local_authorities.pdf) (ICO Guidance)
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