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Do councillors have to notify under the Data Protection Act 1998?

Everyone who holds information about individuals (data controllers) is subject to the Data Protection Act 1998. One of the requirements of the Act is the process of Notification (formerly known as Registration under the old Data Protection Act 1984). This is where a data controller informs the Office of the Information Commissioner (OIC), formerly the Data Protection Commissioner, what information it is holding and what it is intending to do with it. All this was common knowledge amongst local authorities and it would be very surprising if any have not registered/notified. However the question arises do elected members, as individuals who hold records about their constituents, have to go through notify or does the Council's notification cover their activities.

Recent opinion from the OIC means that thousands of councilors and parish councilors will have to go through the Notification process. Councilors have three distinct areas where they may process personal data:

1. As an elected member working on data held by their Council in committees, meetings etc. which is covered by the Council's notification.
2. As a member of a political party canvassing for votes, electioneering and working for the party which is covered by the party's Notification.
3. Carrying out casework in their ward in which case they are the data controller and are required to notify.

To complicate matters further if a councillor is not a member of a political party but holds office as an independent he is require to notify as data controller for independent political activity as he has no party notification to cover his processing.

The original idea behind the new system of Notification under the 1998 Act was as follows: Instead of an unwieldy Registration process where Councils had a dozen or more separate Registrations (for each department) each costing £25 a year (adding up to £300 a year) the new system will mean a single Notification for each Council at a cost of £35 a year. Forcing councillors to notify will mean that this is not the reality. To take an example, Bradford Council will also have to notify for the Electoral Registration Officer, the Superintendent Registrar of Births,

Marriages and Deaths, the Youth Offending Team and for 90 Elected Members. Maybe they'll have to assist the 93 Parish Councillors too. That could mean 187 Notifications to submit and a total cost each year of over £6,500. Bring back the 1984 Act!

Local Government Association information line advises that there are 21,249 Councillors in England and Wales; Northern Ireland has 567, Scotland has 1,229 but the significant figure is revealed when you call the National Association of Local Councils which will tell you that there are over 10,000 Town and Parish Councils in the UK with over 80,000 serving local councillors. Adding it all up makes over 103,000 councillors who if they all notify will generate £3.6 million a year for the Information Commissioner.

So is there any way of avoiding Notification for councillors? If a councillor is carrying out his casework in his ward using manual systems (pen and paper) and has been doing so since before October 1998 and is going to continue to do it could be argued that he/she is exempt from Notification until 2007 but will still have to comply with the other provisions of the Act such as Subject Access and the security principle.

So How does a Councillor Notify? In theory each Councillor is a separate legal entity so must undertake this them. They can do this online by using the Commissioner's website or by phone. In both cases a template exists to assist them in this process. There will be a fee of £35 per annum. In practice it is likely that a Council's Data Protection Officer will be required to notify on behalf on the Councillors and the Council may decide to fund the process.

So what can local authority officers do? First discuss the issue with your legal services & policy team and form a view. If you feel like it consult the Information Commissioner and let them know what you think of the issue. You would not be alone in thinking that this will go down like a lead balloon. A guidance note is being prepared by the OIC on the issue – look out for it on their website (www.dataprotection.gov.uk). If you consider that your elected members will need to notify make the task easier for them by downloading the template and preparing an advice note on how to notify. If you are a local authority Data Protection Officer prepare to have to do much of this work on behalf of the members.