

A Data Protection newsletter for the public sector

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Do Councillors have to notify?

The short answer according to the ODPC is yes. Councillors have three distinct areas where they may process personal data. As an elected member working on data held by their Council in committees, meetings etc. (which is covered by the Council's notification). As a member of a political party canvassing for votes, electioneering and working for the party (which is covered by the party's Notification) and carrying out casework in their ward (in which case they are the data controller and are required to notify). In addition to this if the Councillor runs his own business and processes personal data he may be required to notify in respect of that business.

To complicate matters further if a councillor is not a member of a political party but holds office as an independent he is required to notify as data controller for independent political activity.

If an aspiring Councillor, yet to be adopted by a party as a candidate, processes personal data in the course of his adoption campaign he is required to notify as data controller for political activity.

Is there any way of avoiding Notification?

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 so it could be argued that he 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.

How does a Councillor Notify?

In theory each Councillor is a separate legal entity so must undertake this themselves. They can do this online by using the ODPC website or by phone. In both cases a template exists to assist them in this process. You can see it by clicking [here](#). (You can also see the

Council Templates at this address). There will be a fee of £35 per annum. In practice it is likely that a Council's DPO will be required to notify on behalf on the Councillors and the Council will fund the process.

Just to sidetrack for a moment or two

So instead of an unwieldy Registration process where Councils had a dozen or more separate Registrations each costing £25 a year (adding up to £300 a year) the new system will mean just one Notification at a cost of £35 a year. Err... No.

My organisation 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 we'll have to fund the 93 Parish Councillors. That could mean 187 Notifications and a total cost each year of over £6,500. Bring back the 1984 Act!

LGA information line informs you 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 ODPC.

What can I do?

First discuss the issue with your legal services & policy team and form a view. If you feel like it consult the ODPC and ask them about the issue. The ODPC is preparing a guidance note on the issue - look out for it on their website. If you consider that your elected members will need to register for the Constituency Casework purpose 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 DPO prepare to have to do much of this work on behalf of the members.

Of course you may like to lobby the ODPC and persuade them that this will not be well received by the thousands of Councillors affected by this. You would not be alone in thinking that this will go down like a lead balloon. If you are attending a seminar where there is an officer from the ODPC you can ask them to explain the logic behind their view that elected members should notify. If you receive any further advice please let us know.

Freedom Of Information Act finally arrives

At the end of November the long awaited FOI Act for England and Wales was finally passed into law. What does it say and what shall I do about it? Firstly buy a copy. ISBN 0-10-543600-3 and my copy says £9-55 on the front cover but my bookseller charged me £10 for it and obtained it within a week. There is also, available separately, an explanatory note.

There are 78 pages and 88 sections plus schedules to read. It's not easy to summarise it in a brief article but we'll pick out the important sections.

The bare bones.

Section 1 states the right of individuals (and organisations) to access information held by Public Bodies. The DP Act confers upon individuals a right to their own information, The FOI Act allows individuals and organisations access to Public Sector information.

Section 2 specifies some exemptions which can be claimed when a request is received. These are dealt with later on in the Act

Section 3 defines Public Authorities and directs the reader to Schedule 1 where the relevant bodies are listed. These start at the top with the Commons, the Lords, the assemblies in Northern Ireland and Wales then progresses through to parish councils. Scotland will have its own FOI legislation which will differ in some respects from this Act. There are also 12 pages listing organisations which come under the scope of public bodies including The National Lottery Charity Board and the Millennium Commission.

Section 8 describes the process of requesting information. It requires any request to be in writing (including electronic means) and the person making the request has to supply name and address and a description of the information requested.

Section 9 discusses the fees that may be charged. Details are to be decided but it is likely to be 10% of actual costs of the search. There is a ceiling over which requests can be denied.

Section 10 gives the deadlines which Public Bodies must work to. The key phrase is **promptly** and in any event not later than the 20th working day following receipt of the request. The following sections deal with charges that can be made, vexatious requests, duty to assist people making requests and possibility of refusing requests.

Section 18 specifies the role of Information Commissioner and the Information Tribunal.

Section 19 & 20 states that every Public Authority has a duty to adopt and maintain a publication scheme and suggests getting Commissioner approval for such schemes.

The next sections up to 44 are concerned with the exemptions from giving access to information.

Sections 45 to 49 requires Secretary of State, Lord Chancellor and Information Commissioner to issue Codes of Practice, promote good practice and report to Parliament.

Section 50 onwards deals with Enforcement and Appeals and the last few sections deal with the usual suspects in terms of tidying up and Miscellaneous and Supplemental.

Practical Steps.

There are three main points emerging.

Any request in writing is to be considered as a request under FOI. Lee Hughes from the Home Office said at the recent NADPO conference that every communication with a Public Authority was likely to ask for information and he used the phrase 'Be afraid - be very afraid' to let us know how tough this regime is going to be.

Every Public Authority must have publication scheme in place (on paper and probably on the internet)

Thirdly although there are exemptions which can be claimed every public body must consider the Public Interest when deciding whether to disclose. Whether they do or don't the issue is likely to go to the Information Commissioner for a ruling anyway.

Of these the easiest to deal with is the Publication scheme. This legislation has been in place in Eire for nearly 3 years and all Public Bodies have their schemes up and running. Look at [City of Dublin Website](#) and search for FOI or try any Public Authority in Eire and you'll see the type of information you need to put in. If you want to look further afield there is similar legislation in Australia and Canada and believe it or not Colombia and Argentina.

In the next newsletter we'll have formed a better view of how FOI will apply to all written communications and how a Public Authority will operate its internal review and consider Public Interest vs Maintaining Exemptions.

Council Tax Update

Many of you will remember from the last issue that there was some controversy caused by the Data Protection Commissioner's restrictive view on the legitimate use of council tax data (circular 99/1). Ibrahim Hasan has now received an opinion from Andrew Arden QC, a leading barrister on public law matters, which states quite clearly that the Commissioner's advice is wrong in law. Amongst other things, Mr Arden repeats the argument set out in the IRRV Insight Magazine (July 2000 edition) article entitled "No Chinese Walls" by Ibrahim Hasan.

Unfortunately the Commissioner has not changed her view. Therefore councils must proceed with great caution in this area. In the recent NADPO newsletter (Dec 2000) it is stated that she will not take new advice and although she may not take action if Council Tax data is used for other purposes she cannot say it is not unlawful. To discuss this issue please contact Ibrahim by [email](#)

DataEdge

We have received a number of queries about the DataEdge kits which you will have seen at our seminars. They have been produced by Hammond Suddards Edge a firm of solicitors with offices throughout the country ([website](#)). The kits are ideal for any organisation which wants a ready resource upon which to base a data protection compliance programme. Each kit contains very useful material such as a data protection policy, data processor agreement, security checklists and employment contract clauses. They are available for sale at the reduced rate for local authorities of £500 (no vat). The normal price is £750. Anyone interested should contact Hammond Suddards Edge on 0121 2002001 or by email to [Caroline Egan](#)

New Draft Code for consultation

The Data Protection Commissioner has issued a draft code of practice entitled "The use of personal data in employer/employee relationships". It has been issued under section 51 of the Data Protection Act 1998. Whilst the 60-page code does not carry statutory force it can

be taken into account by the courts and the Commissioner in deciding data protection issues. The code covers a range of technical personnel matters, including recruitment, shortlisting, managing employment records, references, monitoring, drug testing and discipline. All organisations especially personnel managers would be wise to study it carefully.

The draft code is intended to help employers grasp their obligations under both the Data Protection Act and the Human Rights Act. The key principle is that what employers do should be "necessary and proportionate" and they must aim to be as open with any information that concerns an employee as is possible. The code can be found on the Commissioners [website](#) under Guidance and then drafts and was open to consultation until Friday 5th January. They may accept comments for a few days yet.

Surveillance and Monitoring

The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 came into force on 24th October 2000 under the controversial Regulation of Investigatory Powers Act. They allow business and public authorities to record or monitor communications without the caller's consent for the purposes of :-

Recording evidence of transactions;

Ensuring compliance with regulatory or self regulatory rules or guidance;

Gaining routine access to business communications;

Maintaining the effective operation of their systems;

Monitoring standards of service and training; and

Combating crime and the unauthorised use of their systems.

Concerns have been raised about the human rights implications of the code as well as their compatibility with the code of practice discussed above. This Act does permit organisations to monitor email and internet use by their employees although there are other considerations such as informing your staff before beginning to monitor. There has been a spate of high profile cases in the media recently of cases where employees have been disciplined or even dismissed over misuse of email. Some of these stories are available at some of the news services such as [Ananova](#) and [The Register](#). If you have a strong stomach you can look at the words but not the images of [the Bart Simpson email](#) that provoked sackings at Royal Sun Alliance or for the less adventurous [The Cable & Wireless Sackings](#) and there are plenty of links lower down on these sites to many email horror stories. Despite the voyeuristic element of this issue (prize for anyone who thinks of a better phrase to describe the feeding frenzy on email sleaze) there are serious points that your organisation must address.

For a full discussion on them please refer to the following articles:

Local Government Chronicle 24th November 2000

Solicitors Journal 10th November 2000

IRRV Insight Magazine February 2001 issue.

Council Breaches Data Protection Principles

Bath and North East Somerset Council have been criticised by the Data Protection Commissioner for mishandling information during a stock transfer. This is where a local authority transfers some or all of its council houses to a housing association under housing legislation. Housing benefit information was passed on to Somer Community housing trust, breaking data protection principles. The investigation by the Office of the Data Protection Commissioner found that the council had not applied for tenant's consent or informed them that the information would be passed on.

odds & ends

Needing to write a privacy policy for your website? There are plenty out there to look at. One that we saw recently was both comprehensive and also humorous. It had a short version and a long version and originated in Austria of all places. [U-boat](#) is definitely worth looking at (yes we know all the jokes about the Austrian Navy)

You may or may not like the FBI (motto Fidelity, Bravery, Integrity) but they have a very useful guide to the Internet for Parents which you can see [here](#) and use it within your own home or synthesise for your organisation.

We have heard from more than one source that the Office of the Data Protection Commissioner (ODPC) is looking for secondees from the Public Sector who would like to work in their offices in Wilmslow for a time. The words frying pan and fire spring to mind. Details are few but if you are interested I'm sure the ODPC will give you more details. (01625 545700)

Another piece in the jigsaw of Information Management is Records Management. There's a considerable amount of documentation to download from the [Public Records Office](#) which will help you put together your Information Management Strategy.

Wouldn't it be nice if the Council Templates on the Commissioner's site were ordered and numbered so you could look at one of your systems and say 'That obviously belongs to Purpose A number 3'. Look [here](#) and download this list to see if it will help you match your systems to the template.

If you're one of the people who've given us our email address and never received the newsletter (apart from the fact that I don't know how you're reading this) it's because you put a full stop or org or nhs in the wrong place. Send us an email and we'll put you on our mailing list electronically and avoid transcription errors.

Finally from the end of January we will no longer be able to use the friendly and comforting acronyms ODPR or ODPC but will have to refer to our regulator as an OIC. Office of the Information Commissioner. Happy New Year!

ACT NOW - DATA PROTECTION TRAINING

So far 86% of delegates at our seminars who completed a feedback sheet have rated them good or excellent. Consequently we have received many requests to present the course in house. We have now improved it to incorporate FOI and RIP. If you would like us to deliver training to your organisation please contact us. Organisations in an area may wish to club together so that they can share the costs and resources. Our availability is

limited therefore the sooner you contact us the better. See our [website](#) for details. If you wish to know where we will be doing external courses please visit [ETC](#).

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