

**INFORMATION ON THE ROLE OF COUNCILLORS AS DATA  
CONTROLLERS & THEIR REGISTRATION WITH THE INFORMATION  
COMMISSIONERS OFFICE (ICO)**

In August 2011, the Authority agreed to register all its Councillors with the Information Commissioners Office following advice from them of the need for all Councillors to register as data controllers.

Councillors need to register as they have access to and use individuals' personal information, in particular as part of their electoral role.

The Authority will pay the registration fee (currently £35), which will cover Councillors for 1 year and be renewed every subsequent year the Councillor is in post. (Any changes should be forwarded to Members Support should a Councillors status alter after from their previous years registration).

The report that was approved by Council on 4 August 2011 is attached, as is the guidance from the ICO.

Please read the guidance and then complete the form at the end of the documents, answering yes or no as is relevant to you.

Please return your completed form by **4.00 pm on Friday, 2 June 2016** to:

**Democratic Services  
Room 216  
Guildhall  
SWANSEA  
SA1 4PE**

## Item No. 13 (3)

### Joint Report of the Chair of Council, Constitution Working Group, and Acting Monitoring Officer

Council – 4<sup>th</sup> August 2011

#### DATA PROTECTION REGISTRATION AND COUNCILLORS

##### Summary

<b>Purpose:</b>	To seek Council's permission to pay the Data Registration fee for all Councillors on an annual basis.
<b>Policy Framework:</b>	None.
<b>Reason for Decision:</b>	To obtain a resolution of Council to authorise the payment of the Data Registration fee for all Councillors on an annual basis.
<b>Consultation:</b>	Legal, Finance, Constitution Working Group

#### 1. Introduction

- 1.1 The Information Commissioner's Office (ICO) has recently written to all Local Authorities reminding them of the need for all Councillors to register as a data controller. Councillors need to register as they have access to and use individuals' personal information, in particular as part of their electoral division role.
- 1.2 To date only 6,000 out of 20,000 councillors are registered across the UK. The annual registration fee is £35 however the potential fine is up to £5,000.

#### 2. Payment of the £35 Registration Fee

- 2.1 There is no specific guidance as to whether the Councillor or the Authority should pay this fee. The Democratic Services and Complaints Manager has contacted other Local Authorities and found that there is a mixed approach with some paying and others still mulling over the notion.
- 2.2 The Democratic Services and Complaints Manager also contacted the Independent Remuneration Panel (IRP) for Wales and received the following advice:

“Whilst this is not strictly within the Panel's remit, the Panel's view is that a Local Authority should make the payment on behalf of their Councillors. Registration is required as a direct result of Councillors' work with their constituents and the cost arising is similar to that concerning the provision of laptops, telephones, postage etc for which the Panel has recommended, in paragraph 4.24 ii of their Moving Forward Report dated May 2010, that this should be provided without charge to individual Councillors.”

- 2.3 In light of the guidance from the Independent Remuneration Panel for Wales, it seems appropriate that the Authority should pay the annual fee on behalf of those Councillors that request it. This would currently cost £2,520 per annum (£35 Registration Fee x 72 Councillors).
- 2.4 In order to register, Councillors must complete a notification form which can be completed online. The Democratic Services and Complaints Manager can offer assistance in this area.

### **3. Data Protection Guidance**

- 3.1 If you handle personal information about individuals, you have a number of legal obligations to protect that information under the Data Protection Act 1998.
- 3.2 The Information Commissioner's Office has issued data protection guidance for elected and prospective members of local authorities. It includes information about notification. Visit [http://www.ico.gov.uk/for\\_organisations/sector\\_guides/political.aspx](http://www.ico.gov.uk/for_organisations/sector_guides/political.aspx)
- 3.3 The specific advice for elected and prospective Members of Local Authorities is attached as **Appendix A**.
- 3.4 The Information Commissioner's Office issued a news release on 25 January 2011 entitled “Councillors urged to check their Data Protection obligations”. This is attached as **Appendix B**.

### **4. Financial Implications**

- 4.1 There is a potential cost of £2,520 per annum associated with this. This money can be found from existing budget.

### **5. Legal Implications**

- 5.1 Councillors are likely to handle personal information about individuals; as such they have a number of legal obligations to protect that information under the Data Protection Act 1998.
- 5.2 Should a Councillor fail to comply with this Act then they would be liable to a fine of up to £5,000.

**6. Recommendations. It is recommended that:**

- 6.1 The Authority pays the annual registration fee for all Councillors that require it and that the Democratic Services and Complaints Manager assist Councillors in the completion of the ICO notification forms.

Contact Officer: Huw G Evans – Democratic Services & Complaints Manager  
☎ 01792 63 7347

Legal Officer: Roderic Jones

25 January 2011

**Councillors urged to check their data protection obligations**

Councillors who handle personal data must check if they need to register as a data controller or risk a fine of up to £5,000, the Information Commissioner's Office (ICO) said today.

The ICO is writing to councillors across the country to urge them to check if they are fulfilling their legal requirements under the Data Protection Act. Over 6,000 councillors are currently registered with the ICO, but a further 13,000 are potentially not fulfilling their obligations.

While not all councillors will need to notify with the ICO, failure to do so when required is a criminal offence and, if convicted, defendants can face a fine of up to £5,000 in the Magistrates Court or an unlimited fine in the Crown Court.

In determining whether they need to notify, councillors need to consider the role in which they are processing personal information. If doing so as a member of the council or as a representative of a major political party, councillors will not normally be required to notify with the ICO. However, when carrying out their role as a representative of the residents in a ward or an independent councillor who is not affiliated to any political party a councillor may need to notify. Simon Entwisle, Director of Operations at the ICO, said:

"Most councillors have regular access to the personal information of the residents they represent. Like all organisations who handle people's information, it is of paramount importance that they take their responsibilities under the Data Protection Act seriously.

"We will be writing to councillors with advice on whether they need to notify with the ICO. Those who fail to notify with us when required may face enforcement action."

**ENDS**

If you need more information, please contact the ICO press office on 0303 123 9070 or visit the website at: [www.ico.gov.uk](http://www.ico.gov.uk).

**Notes to Editors**

1. The ICO has issued data protection guidance for elected and prospective members of local authorities. It includes information about notification. [http://www.ico.gov.uk/for\\_organisations/sector\\_guides/political.aspx](http://www.ico.gov.uk/for_organisations/sector_guides/political.aspx)
2. The annual fee for notification is £35. Notification can be made by either visiting the ICO website and completing and returning the online notification

forms, along with the statutory annual fee, or by contacting our helpline on 01625 545 740 to request that the notification forms be posted out.

3. The ICO has also developed an online self assessment tool which helps individuals to find out whether they are required to notify or not.  
<http://www.ico.gov.uk/notify/self/question1.html>
4. Desk research carried out by the ICO suggests that just 6,356 councillors are currently registered as a data controller, from a UK total of 20,632, on the public register.
5. Examples of how a councillor may use personal information and whether this would require them to register with the ICO are included below:
  - **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 elected member 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, or when a member of a licensing committee has access to an application for a taxi licence, they are carrying out the local authority's functions. In this case the elected member does not need to notify in their own right
  - **as a representative of the residents in their ward** - Councillors are likely to have to notify 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**, for instance as an office holder -Councillors are entitled to rely upon the notification made by the party. When individuals campaign on behalf of political parties to become the elected members for a particular ward, they can rely on the parties' notification, if the party determines how and why the personal information is processed for the purpose of their individual campaigns. 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. There is an exemption from notification if the only personal information which is processed takes the form of paper records
6. The Information Commissioner's Office upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals.
7. The ICO has specific responsibilities set out in the Data Protection Act 1998, the Freedom of Information Act 2000, Environmental Information Regulations 2004 and Privacy and Electronic Communications Regulations 2003.
8. For more information about the Information Commissioner's Office subscribe to our e-newsletter at [www.ico.gov.uk](http://www.ico.gov.uk). Alternatively, you can find us on Twitter at [www.twitter.com/ICOnews](http://www.twitter.com/ICOnews).
9. Anyone who processes personal information must comply with eight principles of the Data Protection Act, which make sure that personal information is:
  - Fairly and lawfully processed

- Processed for limited purposes
- Adequate, relevant and not excessive
- Accurate and up to date
- Not kept for longer than is necessary
- Processed in line with your rights
- Secure
- Not transferred to other countries without adequate protection

**Advice for the elected and prospective members of local authorities**

This good practice note aims to provide elected and prospective members of local authorities with guidance about how the Data Protection Act 1998 (the Act) applies to them.

The Act regulates the holding and processing of personal information that relates to living individuals and which is held on computer or, in some cases, on paper.

Organisations or individuals that process personal information covered by the Act may need to notify the Commissioner about their processing. A description of the processing activities is placed on a public register of notifications. These organisations or individuals must also comply with eight data protection principles which together form a framework for the proper handling of personal information. Individuals whose personal information is processed have rights under the Act, for example, to a copy of the information that is held about them.

**The role of the elected member**

The elected members of a local council are likely to have three different roles.

- They will act as a member of the council, for example, as a member of a committee.
- They will act as a representative of residents of their ward, for example, in dealing with complaints.
- They may represent a political party, particularly at election time.

**Notification**

In considering whether they need to notify, elected members must first decide in which role they are processing personal information.

1. As members 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 elected member 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, or when a member of a licensing committee has access to an application for a taxi licence, they are carrying out the local authority's functions. In this case the elected member does not need to notify in their own right.



2. As a representative of the residents of their ward

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

3. As a representative of a political party When acting on behalf of a political party, for instance as an office holder, members are entitled to rely upon the notification made by the party.

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

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.

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

A standard form for notification by elected members has been created to simplify the procedure.

### **Use of personal information**

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 re-election 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. For more information on this, please see the guidance on our website ([www.ico.gov.uk](http://www.ico.gov.uk).)

- 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.

### **Multi-member wards**

In some types of local authorities councillors are elected under a multi-member system where more than one councillor represents a particular ward.

As a result, there may be situations where a councillor who represents a constituent may need to pass on that 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 either:

- to address the constituent's concerns; or
- where the particular issue raises a matter which concerns other elected members in the same ward; and
- the constituent has been made aware that this is going to take place and why it is necessary. If a constituent objects to a use or disclosure of their information, their objections should normally be honoured.

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

### **Offences**

The Data Protection Act contains a number of criminal offences including:

- When someone is required to notify and does not do so. For example, a councillor who holds computerised records of constituents' details for casework purposes, would commit an offence if they had not notified this use of personal information.
- Making unauthorised disclosures of personal information. For example, an elected member who disclosed 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, an elected member who obtained a copy of personal information apparently for council purposes, but in reality for their own personal use (or the use of his or her party) is likely to have committed an offence

## Security

Councils and elected members 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 measures and organisational measures, such as use of passwords, computer access privileges, procedures and staff training, are appropriate to keep the information safe.

### Examples of good and bad practice

Example	Good Practice	Bad Practice
An elected member helps a constituent with a particular issue and wishes to use the constituent's personal information to progress a party political matter on the same issue.	The elected member seeks the consent of the constituent before using their personal information.	The elected member uses the constituent's personal information without their consent.
A resident asks one of their elected members in a multi-member ward for help about teenagers acting in an intimidating way in the area. The elected member wishes to share the constituent's complaint with the other members of the ward because it is an issue of general concern.	The elected member lets the constituent 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 members. If the constituent objects, then his wishes are respected and only the general nature of the complaint is shared.	The elected member does not inform the constituent that they intend to give the details of their particular complaint to the other ward members and releases the information. The resident finds out and is afraid of reprisals if the information they have leaks out.
A resident asks one elected member for help with a noisy neighbour.	The member lets the resident know he intends to give their personal information to another ward member because that particular councillor has knowledge and experience with this subject. If the constituent objects, he does not disclose the information.	The elected member does not tell the complainant that he intends to give their personal information to another ward member and goes ahead anyway. The resident finds out and makes a complaint.

**More information:**

If you need any more information about this or any other aspect of data protection, please contact us.

**Head Office**

Phone: 01625 545 745 or 08456 306 060

Notification helpline: 01625 545 740

E-mail: please use the online enquiry form on our website

Website: [www.ico.gov.uk](http://www.ico.gov.uk)

**Regional Offices****Scotland**

Phone: 0131 225 6341

E-mail: [scotland@ico.gsi.gov.uk](mailto:scotland@ico.gsi.gov.uk)

**Wales**

Phone: 029 2044 8044

Fax: 029 2044 8045

E-mail: [wales@ico.gsi.gov.uk](mailto:wales@ico.gsi.gov.uk)

**Northern Ireland**

Phone: 028 9051 1270

Fax: 028 9051 1584

E-mail: [ni@ico.gsi.gov.uk](mailto:ni@ico.gsi.gov.uk)

**Below is the guidance provided by the ICO on what a Councillor is likely to deal with in relation to their Constituency casework:**

## **"N826 - Councillor " Constituency casework**

**The carrying out of casework on behalf of individual constituents. This purpose includes:  
The recording of details of problems, complaints and any action taken.  
Mailing lists of electoral voters used for canvassing.  
Organisation of surgeries.**

### **Subjects**

- Business or other contacts
- Complainants, correspondents and enquirers
- Constituents
- Council employees
- Elected representatives, other holders of public office
- Relatives, guardians and associates of the data subject
- Subject of complaints

### **Classes**

- Details of complaint
- Employment details
- Family, lifestyle and social circumstances
- Financial details
- Housing details
- Offences (including alleged offences)
- Personal details
- Physical or mental health or condition
- Political affiliation (of elected members)
- Racial or ethnic origin
- Trade union membership

### **Recipients**

- Central government
- Data subjects themselves
- Elected representatives
- Healthcare, social and welfare advisers or practitioners
- Landlords
- Local government
- Other holders of public office
- Other statutory law enforcement agencies, investigating bodies
- Political organisations
- Relatives, guardians or other persons associated with the data subject
- Subject of complaint
- Suppliers, providers of goods or services
- The media

### **Transfers**

- None outside the EEA
- Names of countries:

Check the template accurately describes your processing of personal data. Again we ask data controllers to bear in mind when providing information for notification not to go into unnecessary detail.

**PLEASE INDICATE WHETHER YOU ARE HAPPY WITH THIS LIST THAT HAS BEEN PROVIDED AS GUIDANCE BY THE ICO (please make any required changes on this sheet)**

**I am / am not happy with the guidance list provided by the ICO (please delete as appropriate)**

**Signed:** \_\_\_\_\_

**Printed:** \_\_\_\_\_

## SECURITY STATEMENT (MANDATORY) QUESTIONS

As part of the notification process, a data controller is required to provide a general description of the security measures taken to guard against unauthorised or unlawful processing of personal data and against accidental loss, destruction or damage. It is a requirement of the 1998 Data Protection Act but will not form part of the public register.

Do the measures taken by you include:

(Please mark the relevant box with x or ✓)

Question	Yes	No
Someone in my place of work is responsible for making sure we comply with the Data Protection Act.		
Relevant People in my place of work have been trained in how to handle personal information.		
When collecting personal information, we tell people how we will use it.		
We have a process in place so we can respond to requests for the personal information we hold.		
We keep records of people's personal information up to date and don't keep it longer than necessary		
We have measures in place to keep the personal data we hold safe and secure.		

### Statement of Exempt Processing

Question	Yes	No
Does your notification cover all your processing of all personal data		

### Voluntary Notification

Question	Yes	No
If you are exempt from notification but you have decided to notify voluntarily please choose yes		

Please return these last 2 completed pages to:

**DEMOCRATIC SERVICES**  
Room 216, Guildhall  
SWANSEA  
SA1 4PE