

Guidance on disclosing information to Elected representatives

September 2023

Summary Sheet

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Document History

Version	Date	Author	Notes on revisions
1.0	March 2017	Angela Ellis and Catherine Larkin	
2.0	July 2018	Catherine Larkin	Order 2002 revoked and replaced by DPA 2018, Schedule 1, Part 2, Paras 23 & 24
3.0	September 2023	Catherine Larkin	Technical change to reference UK GDPR and include definition of elected representative

Guidance note - Disclosing information to elected representatives on behalf of constituents

Citizens have the right to ask their elected representative to assist them with a variety of matters and it is the Council's duty to protect the personal information we hold.

A local authority does not generally have to get the express consent of an individual to disclose their personal information to an elected member, as long as:

- the elected member represents the ward in which the individual lives;
- the elected member makes it clear that they are representing the individual in any request for their personal information to the local authority; and
- the information is necessary to respond to the individual's enquiry or complaint.

For the purposes of this guidance, the meaning of 'elected representative' is taken from Schedule 1, Part 2, paragraph 23(3) of the Data Protection Act 2018, which is as follows:

'(3) In this paragraph, "elected representative" means—

- (a) a member of the House of Commons;*
- (b) a member of the National Assembly for Wales;*
- (c) a member of the Scottish Parliament;*
- (d) a member of the Northern Ireland Assembly;*
- (e) a member of the European Parliament elected in the United Kingdom;*
- (f) an elected member of a local authority within the meaning of section 270(1) of the Local Government Act 1972, namely—*
 - (i) in England, a county council, a district council, a London borough council or a parish council;*
 - (ii) in Wales, a county council, a county borough council or a community council;*
- (g) an elected mayor of a local authority within the meaning of Part 1A or 2 of the Local Government Act 2000;*
- (h) a mayor for the area of a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;*
- (i) the Mayor of London or an elected member of the London Assembly;*
- (j) an elected member of—*
 - (i) the Common Council of the City of London, or*
 - (ii) the Council of the Isles of Scilly;*
- (k) an elected member of a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;*
- (l) an elected member of a district council within the meaning of the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.));*
- (m) a police and crime commissioner.*

This guidance also applies to constituency workers - the elected representatives' official assistants/staff.

Provided you are satisfied that the “elected representative” is who she/he says they are and that it is clear that the enquiry is being made on behalf of the individual constituent we should not obstruct the process.

Elected members are data controllers for the personal data they process and therefore must comply with the data protection principles and enable people whose data they process to exercise their information rights.

Therefore, elected representatives must provide individuals with privacy information at the point any personal data are collected from them. This includes having a lawful basis for the processing and telling the constituent the basis they are relying on to process their personal data.

Guidance

Guidance on the use of personal data by elected representatives carrying out constituency work is available from the Information Commissioner’s Office (ICO) at the link below:

[Guidance for the use of personal data by elected representatives in carrying out constituency casework | ICO](#)

Special categories of personal data

Many enquiries will be straightforward in nature and involve minimal disclosure of personal data. However, in some cases the enquiry or complaint raised by the constituent will be highly sensitive and involve the processing of ‘special categories’ of personal data.

There are different requirements when dealing with personal data that are classed as a ‘special category’ of data under the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018. ‘Special categories’ of personal data are defined as:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade union membership;
- genetic data;
- biometric data, where used for identification purposes;
- health;
- sexual life; or
- sexual orientation.

When the Council processes special category data, it must identify both a lawful basis for processing and a special category condition for processing in compliance with Article 9 of the UK GDPR. The lawful basis for processing and the special category condition must be documented so that you can demonstrate compliance and accountability.

The substantial public interest conditions give you the basis in UK law for relying on Article 9(2)(g). These conditions allow you to process special category data for a variety of specific purposes.

The Data Protection Act 2018 (Schedule 1, Part 2, paragraphs 23 & 24) provides substantial public interest conditions for the processing of sensitive personal data by elected representatives in connection with their function as a representative and including the disclosure of such information where necessary; and the disclosure of sensitive personal data by organisations responding to elected representatives acting on behalf of individual constituents.

When providing personal information to the elected member, you should make clear that it is provided only to help the individual and must not be used for any other purpose.

In exceptional circumstances, prior to responding to a Member we may need to contact the constituent to inform them of a planned disclosure. For example, where the response involves disclose particularly sensitive information which could cause distress to the individual. In such circumstances the obligation to process fairly and lawfully – which includes respecting a duty of confidentiality - could mean that the individual should be alerted to the intended disclosure and consent obtained.

Staff should follow some simple security rules in order to safeguard the information being provided in response to an enquiry:

- Establish in a proportionate manner that the caller/visitor is who they say they are - details of all Sefton Councillors and MPs are on the Council's website.
- Do not automatically disclose information - before disclosing information, staff must only contact the elected representative via an official contact channel. In the case of a phone call, staff should ring back using an official contact number (held on the Sefton telephone directory/website).
- Use only official/secure contact channels - the elected representatives' official contact details, and Sefton/ House of Commons email accounts and addresses, are shown on Sefton's website.
- Personal information should never be sent to an elected representative via non- secure email addresses (e.g. personal Google mail, Hotmail accounts etc.) or by post to unofficial postal addresses.
- Minimise the amount and sensitivity of the personal data being released – always respond to the specific enquiry only.
- Advise the elected representative that the information is provided to help the individual with their enquiry and must not be used for any other purpose. This should be made clear to the elected representative in any response issued (email, letter, phone call).
- In the case of “constituency workers” the request can be accepted on a member or MP's behalf but cannot share any information during a call or interview. The process is to respond with the information requested by email to the elected representatives official email address.
- Keep a record of the information provided to the elected representative.

Disclosures to a councillor as a member of the council

You can disclose personal information to a councillor if they need to access and use the information to carry out official duties. For this purpose, councillors are in the same position as an employee and you should only give the councillor access to the personal information they need to carry out their duties.

The councillor should specify the purposes for which that information may be used or disclosed.

Remember – Councillors, Members of Parliament and Constituency Workers have the same right as any other individual to make requests under the Freedom of Information Act. The same rules and exemptions apply to such requests as they do to requests made by members of the public.

If you feel a request falls outside the scope of this guidance, for example, it does not relate to an identifiable, specific or relevant matter or is particularly sensitive, you should seek guidance.

In the first instance contact your line manager who can support you in the practical application of the guidance. If your line manager has any concerns about providing information to an elected representative, they should refer the matter to Catherine Larkin (Information Management and Governance Lead and the Council's Data Protection Officer) catherine.larkin@sefton.gov.uk or Fiona Townsend (Senior Lawyer – Litigation and Regulatory) Fiona.Townsend@sefton.gov.uk