Data Protection Good Practice Note

Advice for the elected and prospective members of the States

This good practice note aims to provide elected and prospective members of the States with guidance about how the Data Protection (Bailiwick of Guernsey) Law, 2001 (the Law) applies to them.

The Law 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 Law may need to notify the Data Protection Commissioner about their processing. A description of the processing activities is placed on a public register of notifications.

Whether or not notification is required, 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 Law, for example, to a copy of the information that is held about them.

Specific provisions are made in data protection legislation[1] enabling Elected Members to process sensitive personal data when dealing with requests made by an individual to take action on behalf of himself or someone else.

The role of the elected member

The elected members of the States are likely to have three different roles.

- They will act as a member of the States, for example, as a member of a department or committee.
- They will act as a representative of residents of their electoral district, for example, in dealing with complaints.
- They may act essentially as a private individual, for political or electioneering purposes.

Notification

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

[1] The Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order, 2004

1. As members of a States department or committee

States Members may have access to, and process, personal information in the same way as employees. In this case it is the department rather than the elected member that determines what personal information is used for and how it is processed. For example, if a member of the Housing Department has access to tenancy files to consider whether the department should proceed with an eviction, he is carrying out the department's functions. In this case the elected member does not need to notify in his own right.

2. As a representative of the residents of his electoral district, etc.

When elected members represent residents of their electoral district, or indeed other persons, they are likely to have to notify in their own right, for example, if they use personal information to take forward complaints made by local residents.

3. As a private individual

When individuals campaign to be elected members of the States, they 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. There is no notification fee for elected or prospective members.

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 States should not be used for political or representational purposes unless both the States and the individuals concerned agree. It would not be possible to use a list of the users of a particular States service, for electioneering purposes without their consent. An example would be using a States list of households with cesspits to canvass for re-election on the grounds that the member supported extending the main drain network.

- When campaigning for election, personal information held as elected members for casework should not be disclosed or otherwise used without the consent of the individual.

- Candidates for election should also be aware of the requirements of the European Communities (Implementation of Privacy Directive) (Guernsey)

Ordinance, 2004 that regulates unsolicited electronic marketing messages sent by telephone, fax, email or text.

Passing information to another Member

As each electoral district is represented by six or seven members and also taking into account the fact that members are free to represent persons who do not reside in their own district, there may be situations where a member who represents an individual may need to pass on that person's personal information to another States Member. He will only be allowed to disclose to the other States Member the personal information that is necessary either:

- to address the individual's concerns; or

- where the particular issue raises a matter which concerns the other elected States members; **and**

- the individual has been made aware that this is going to take place and why it is necessary. If a person objects to a use or disclosure of his information, his objections should be honoured.

The personal information which disclosed should be strictly limited to that which is connected to the individual's case.

Offences

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

- When someone is required to notify and does not do so. For example, a States Member who holds computerised records of individual's details for casework purposes, would commit an offence if he had not notified this use of personal information.

- Making unauthorised disclosures of personal information. For example, a States Member who disclosed personal information held by the States to any third party for electioneering purposes without the relevant department's consent could commit an offence.

- Procuring unauthorised disclosures of personal information. For example, a States Member who obtained a copy of personal information apparently for States purposes, but in reality for his own personal use (or for political purposes) is likely to have committed an offence.

Security

The States 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
A States Member helps an individual with a particular issue and wishes to use the individual's personal information to progress a political matter on the same issue.	The States Member seeks the consent of the individual before using his personal information.	The States Member uses the individual's personal information without his consent.
An individual asks a States Member for help about teenagers acting in an intimidating way in the area. The States Member wishes to share the individual's complaint with the other States Members because it is an issue of general concern.	The States Member lets the individual know that he wants to give the details of his complaint to the other States Members and why he wants to do that rather than giving a general description of the complaint to other States Members. If the constituent objects, then his wishes are respected and only the general nature of the complaint is shared.	The States Member does not inform the individual that he intends to give the details of the particular complaint to the other States Members and releases the information. The individual finds out and is afraid of reprisals if the information they have leaks out.
An individual asks a States Member for help with a noisy neighbour.	The States Member lets the resident know he intends to give the individual's personal information to another States Member because that particular States Member has knowledge and experience with this subject. If the individual objects, he does not disclose the information.	The States Member does not tell the individual that he intends to give his personal information to another States Member and goes ahead anyway. The individual finds out and makes a complaint.