

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**DEMOCRATIC SERVICES COMMITTEE**

**19<sup>TH</sup> MARCH 2019**

**GDPR REQUIREMENTS FOR ELECTED MEMBERS WHEN PROCESSING PERSONAL DATA  
IN THEIR CAPACITY AS A DATA CONTROLLER WHEN UNDERTAKING CASEWORK**

**Author(s): Louise Evans, Data Protection & Improvement Officer**

**1. PURPOSE OF THE REPORT**

- 1.1 The report sets out a proposal to support Members in fulfilling the legal obligations placed upon them by the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA), in situations where they are undertaking casework on behalf of their constituents and individuals they may represent.
- 1.2 To update Members on changes to their annual data protection registration requirements as a data controller with the Information Commissioner's Office.

**2. RECOMMENDATIONS**

- 2.1 It is recommended that the Committee:
  - i. Review and endorse the Councillor Privacy Notice template, Record of Processing Activity (RoPA) template and Authority to Act form as contained in Appendix I-III of this report;
  - ii. Agree that the Privacy Notice and RoPA templates be published on the Council's website under each Member's profile (where a Member has elected to utilise the Council's website to publish such documents);
  - iii. Acknowledge that it is the responsibility of each individual Member to ensure that their legal obligations under the GDPR and DPA are met when dealing with casework.
  - iv. Acknowledge that with effect from the 1<sup>st</sup> April 2019 Members are no longer required to annually register with the Information Commissioner for data protection purposes and to pay the required registration fee.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To support Members in complying with the legal obligations placed upon them by the GDPR and DPA in their capacity as data controller, when dealing with casework.

## **4. BACKGROUND**

- 4.1 Following feedback from the GDPR Awareness session that was provided to Members in November 2018, it was proposed that standard templates be developed that could support Members to meet their legal obligations (GDPR/DPA) when dealing with casework.
- 4.2 The GDPR and DPA govern the use of personal information. The GDPR's data protection 'principles' set out the main responsibilities that data controllers must adhere to when processing personal information.
- 4.3 The data controller is the person or organisation that determines the manner and means in which the personal data is processed.
- 4.4 When undertaking casework, a Member is a data controller in their own right and is responsible for compliance with the requirements of the GDPR and DPA.

## **5. WHAT IS CASEWORK?**

- 5.1 Dealing with the people in your community, understanding the issues and concerns they face, and being equipped with the skills, confidence and ability to take action in response to their queries, is an important and valued role for any councillor. The problems and issues local people raise with elected Members is often referred to as 'casework'.
- 5.2 Casework can sometimes lead on to policy development or issue campaigning, but can be distinguished from these by virtue of the fact that casework usually deals with the resolution of an individual problem.
- 5.3 It may arise as a result of a 'direct query' – a neighbour asks if you could find out what progress has been made in processing her application for a renovation grant; an 'indirect query' – a daughter, ringing up on behalf of her frail, elderly parent, asks if her mother is entitled to claim a benefit; a 'complaint' – a social housing tenant e-mails you to complain about the repeated vandalism to her property; a Service request – a shopkeeper asks if you could arrange for an extra trade waste collection at his premises or a 'community issue' – a group of parents lobby you to prompt the council to remove a burnt out vehicle from a nearby park.
- 5.4 For the purposes of data protection it does not cover any work undertaken by a Member when:
  - representing the Council for official business purposes;
  - if acting in a capacity as school governor; or
  - for party political and campaigning purposes.
- 5.5 In such instances, the Council, Schools and/or national, regional or local political party is the accountable body (and data controller) for ensuring that personal data is managed in accordance with data protection legislation requirements.

## **6. GDPR TRANSPARENCY REQUIREMENTS**

- 6.1 The transparency requirements of the GDPR requires data controllers, in this case Members, when undertaking casework and processing personal data, to be open, honest and transparent with people about how their personal data will be used.

If individuals are well informed and know from the outset what information a Member holds about them, how and for what purpose or purposes it will be used and who it will be shared with, they will be more confident that Members are using their information in the right way and protecting their privacy rights.

- 6.2 The GDPR sets out what information should be provided to people when you process their personal information. The table in Appendix IV lists the information that must be provided, but the starting point should always be to tell people:
- who you are
  - what you are going to do with their information; and
  - who it will be shared with.
- 6.3 For many data controllers, the easiest way of communicating this information is to develop a 'Privacy Notice' which is given to individuals in the form of a leaflet and/or displayed/published in a way that individuals seeking to use services are likely to see (e.g. on a website or displayed in a meeting room).
- 6.4 An example of a privacy notice, which outlines the processing activities undertaken by elected Members when undertaking casework is set out in Appendix I.
- 6.5 It is entirely up to Members to decide whether or not:
- this notice is adequate and accurately reflects the processing undertaking when dealing with casework; and
  - whether to adopt the notice or choose to meet the duty to inform individuals about processing in other ways.
- 6.6 In view of the above, the Council has considered how it may give assistance to Members in offering facilities to communicate this privacy information. Where a Member has elected to do so, it is proposed the Council host and publish a privacy notice for that Member on its website. This will be done by inserting a privacy notice link after the contact information on a Members individual webpage. When clicked, the link would display a common privacy notice for all Members (as appended in Appendix I). Members would then be in a position to reference this privacy notice when dealing with constituents in addition to any other privacy information Members may provide when communicating directly with constituents.
- 6.7 This arrangement would assist an elected Member in satisfying the transparency requirements under the GDPR.
- 6.8 Please note that it is entirely up to Members to decide whether or not they adopt the form of privacy notice and choose to host a privacy notice on the Council's website.

## **7. RECORDS OF PROCESSING ACTIVITIES (RoPA)**

- 7.1 The GDPR requires data controllers to maintain an accurate record of their processing activities and supply this on request, to the Information Commissioner. Within the Council RoPA are recorded and maintained in the Data Protection Register.
- 7.2 RoPA is not necessary for a data controller with fewer than 250 staff, unless the data processing:
- is likely to result in a risk to the rights and freedoms of data subjects; or
  - is not occasional; or
  - involves personal data defined as 'special category data' (e.g. data revealing or relating to racial or ethnic origin, genetic data, biometric data, health data etc.) or relates to criminal convictions and offences.

- 7.3 Whilst the vast majority of processing undertaken by Members when undertaking casework is unlikely to fall into one of the above categories, and therefore will not require RoPA to be documented and maintained, as the development of RoPA for Member purposes is not unduly onerous, an example has been provided in Appendix II.
- 7.4 As with the privacy notice, the Council is not required to produce an RoPA for Members for this purpose, and it is entirely up to Members to decide whether or not it is adequate, accurately reflects the processing they undertake in relation to casework and whether they chose to adopt it.
- 7.5 Where Members are in agreement and choose to adopt the RoPA template, the Council would host and publish a common RoPA for all Members.

## **8 AUTHORITY TO ACT**

- 8.1 Whilst not a specific requirement of the GDPR, following a previous request from Members an 'Authority to Act' form has been developed.
- 8.2 This form may be used by Members to seek 'authority' from constituents for the Member to act on his/her behalf. This may be useful in situations where the query or concern is of a sensitive nature or where an organisation that you are dealing with is seeking confirmation that you are acting on behalf of the constituent/individual.
- 8.3 An example form is given in Appendix III. Members are free adopt this form and make changes to suit their own individual needs.

## **9 ICO ANNUAL NOTIFICATION – For information only**

- 9.1 The Data Protection (Charges and Information) Regulations 2018 (the 'Regulations') set out a requirement for data controllers to provide information, and to pay a charge to the Information Commissioner. The Regulation sets out the different charge levels for different data controllers, depending of the size of the organisation and the number of staff it employs. The process of providing information and paying a charge to the Information Commissioner is more commonly referred to as annual registration.
- 9.2 The registration fee for a Member, in their capacity as a data controller, when processing personal data when undertaking casework is currently set at £35 per annum.
- 9.3 The annual registration process is undertaken and paid for by the Council on behalf of Members, with the exception of one Member who registers directly with the Information Commissioner.
- 9.4 Following an amendment to the Regulations from 1<sup>st</sup> April 2019, elected representatives (as defined in the Regulations) will be exempted from the requirement to notify the Information Commissioner and therefore pay the required registration fee.

## **10. EQUALITY AND DIVERSITY IMPLICATIONS**

- 10.1 There are no equality and diversity implications as a result of the recommendations set out in the report

## **11. CONSULTATION**

11.1 There are no consultation implications as a result of the recommendations set out in the report

**12. FINANCIAL IMPLICATIONS**

12.1 There are no adverse financial implications as a result of the recommendations set out in the report. As a result of the change in legislation referenced in Section 9 of the report the Council will no longer be required to pay the £35 annual registration fee on behalf of Members.

**13. LEGAL IMPLICATIONS**

13.1 There are no direct legal implications on the Council as a result of the recommendations set out in the report. The legal implications in respect of the contents of the report for Members are set out within the report.

**14. LINKS TO THE CORPORATE AND NATIONAL PRIORITIES AND THE WELL-BEING OF FUTURE GENERATIONS ACT.**

14.1 There are no links to corporate and national priorities and the Well-being of Future Generations Act.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**DEMOCRATIC SERVICES COMMITTEE**

19th March 2019

**REPORT OF THE DIRECTOR OF FINANCE AND DIGITAL SERVICES**

**Author: Louise Evans, Data Protection & Improvement Officer**

**Item: GDPR REQUIREMENTS FOR ELECTED MEMBERS WHEN PROCESSING PERSONAL DATA IN THEIR CAPACITY AS A DATA CONTROLLER WHEN UNDERTAKING CASEWORK**

**Background Papers**

General Data Protection Regulation 2018

Data Protection Act 2018

Data Protection (Charges and Information) Regulations 2018

Data Protection (Charges and Information) Amendment Regulations 2019

Overview and Scrutiny Committee – 14 November 2017

**Other information:**

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## COUNCILLOR PRIVACY NOTICE

**How I will use your personal information in my capacity as Councillor when I deal with matters and issues you raise with me on your behalf.**

### 1. Who am I, what is my role?

As an elected Councillor within the borough of Rhondda Cynon Taf, I am often approached by constituents asking for my advice and assistance in resolving matters and issues that they have with organisations and agencies. These matters may range from, for example:

- Providing assistance;
- Supporting a resident to report a broken streetlight; and
- Assisting a claimant in resolving a matter associated with claim.

Undertaking this work means that I often need to collect and process personal information about the person who has asked me for advice, support and/or to represent them. It is therefore important that I explain to people via this privacy notice how I may need to use their personal information in order to deliver my role as Councillor.

### 2. What and whose personal information do I hold?

If you contact me in my role as your Councillor by phone, letter, email or in person, I am likely to collect and process some personal information about you in order to deal with your request.

The personal information I will process about you is likely to vary depending on the nature of the problem or concern that you have asked me to support you with. Generally I will ask for your personal information such as your name, address and contact information together with details of your problem or concern. Sometimes, the information relating to the detail of your problem or concern may include:

- Family, lifestyle and social circumstances
- Financial details
- Education and employment details
- Housing information
- Detail of complaint / concern

I also may need to process more sensitive information (known as special category) such as:

- Physical or mental health details
- Racial or ethnic origin
- Offences including alleged offences etc.

I will only ask for this information if absolutely necessary.

Typically I will process information about you, but I may also process personal information relating to others that are involved or I come into contact with during the course of my enquiries. This may include for example information about:

- family members, relatives, guardians and associates of the person whose personal information I am representing.
- council employees
- landlords and social landlords
- business or other contacts

### 3. Where do I get your information from?

The information I process is likely to come from a variety of sources depending on the nature of your problem or concern and the individuals or organisations I come into contact with during the course of my enquiries. Typically I will obtain information from:

- You when you ask for my advice or for me to represent you.
- Organisations and agencies that may be involved (see question 6 below for examples)
- I may also generate my own information for example when responding to your concern and updating my records.

### 4. What will I use your information for?

I will only use the information to deal and respond to the problem or concern you have asked me to assist you with.

### 5. What is the legal basis for the use of this information?

The legal basis for the use and processing of this information is:

#### **Personal data:**

- Article 6 (e) – processing necessary for the performance of a task carried out in the public interest or the exercise of official authority vested in the controller.

#### **Special category data**

- Article 9 (g) – processing is necessary for reasons of substantial public interest, on the basis of Union or Member state law: DPA2018, Schedule 1, Part 2 (23 & 24)

#### **Criminal conviction data**

- Article 10 - processing of personal data relating to criminal conviction and offences shall be carried out only under the control of official authority or where processing is authorised by Union or Member state law: DPA2018, Schedule 1, Part 2 (23 & 24).



## 6. Do you share my information with anyone else?

In order for me to deal with your request and resolve your problem or concern, I am likely to share your information with other agencies and organisations who may be involved or identified during the course of my enquiries. Any information will be disclosed with these individual/organisations on a 'need to know' basis.

The organisations and agencies who I may share your information with will vary depending on the nature of your problem or concern and may include, by way of example:

- Council departments and services
- Central government departments such as HMRC, DWP
- Health organisations – Cwm Taf University Health Board, GP, Dentist etc. (if your problem is health related)
- Citizens Advice Bureau
- Law enforcement agencies and investigating bodies such as the Police, Probation Services
- Your landlord / housing association etc. (e.g. if you live in rented accommodation and your problem relates to your rent / accommodation).

Unless I am required to do so by law, for example for crime prevention/detection purposes or the safeguarding or vulnerable children or adults, no personal information obtained by me will be further disclosed other than for the purposes of dealing and responding to your request for support and assistance.

### **Use of Council email systems**

Should you contact me via my Council email address ([name@rctcbc.gov.uk](mailto:name@rctcbc.gov.uk)) you should be aware that the information contained within those emails will be stored by the Council on their secure IT systems. Emails may be scanned and monitored by the Council for security purposes (identifying and blocking harmful viruses for example).

## 7. How long will my information be kept?

As a matter of principle, I will not retain personal information for is longer than necessary in relation to the purpose for which it was originally obtained.

In order to manage this effectively I will review all records containing personal information every 6 months and delete those that are no longer needed.

Those records that need to be retained, will be kept by me for no longer than 3 years from the date the matter is brought to a close.

## 8. Your information, your rights

The General Data Protection Regulation (GDPR) gives you important rights. Your main rights in relation to the information I process about you are:

- Right to be informed – you have the right to know what information I am processing about you and when I intend to do with it (this privacy notice fulfils this requirement in relation to casework)
- Right of access – you have the right to request a copy of the personal information that I hold about you.
- Right to rectification – you have the right to correct information that I hold about you if it is inaccurate or incomplete.
- Right to restrict processing – in certain circumstances you have the right to ask me to stop processing your personal information.

For further information on your information rights and when they apply please visit <https://ico.org.uk>

## 9. How to contact me

If you have any concerns or would like to know more about how I use your personal information, please contact me in one of the following ways:

By email: (enter details)

By telephone : (enter details)

In writing : (enter details)

## 10. Your right to complain

You have the right to complain to the Information Commissioner if after contacting me about a data protection concern, you are not satisfied with my response.

If you wish to complain to the Information Commissioner the contact details are:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Helpline: 0303 123 1113

## APPENDIX II

### RECORD OF PROCESSING ACTIVITIES FOR AN ELECTED MEMBER WHEN PROCESSING PERSONAL DATA IN THE CAPACITY OF A DATA CONTROLLER, WHEN DEALING AND RESPONDING TO REQUESTS FROM CONSTITUENTS (CASEWORK)

Name and contact details of the Controller	[enter full name] [enter full address]
Name and contact details of the Data Protection Officer	Not applicable
Purpose for processing	Carrying out casework on behalf of individual constituents in my ward (dealing, responding to enquiries).
Lawful basis for processing	<p><b>Personal data:</b></p> <ul style="list-style-type: none"> <li>Article 6 (e) - processing necessary for the performance of a task carried out in the public interest or the exercise of official authority vested in the controller.</li> </ul> <p><b>Special category data</b></p> <ul style="list-style-type: none"> <li>Article 9 (g) - processing is necessary for reasons of substantial public interest, on the basis of Union or Member state law: DPA2018, Schedule 1, Part 2 (23 &amp; 24)</li> </ul> <p><b>Criminal conviction data</b></p> <ul style="list-style-type: none"> <li>Article 10 - processing of personal data relating to criminal conviction and offences shall be carried out only under the control of official authority or where processing is authorised by Union or Member state law: DPA2018, Schedule 1, Part 2 (23 &amp; 24).</li> </ul>
Description of the categories of data subjects	<p>Personal data is processed about the individual who is being represented.</p> <p>Personal data may also be processed about the individuals that I come into contact with, during the course of my enquiries. The individuals are likely to vary depending on the nature of the complaint or concern and who I need to contact / discuss matter with, but may include for example:</p> <ul style="list-style-type: none"> <li>family members, relatives, guardians and associates of the person whose personal information I am representing.</li> <li>council departments and employees</li> <li>central government department and employees</li> <li>landlords and social landlords</li> <li>business or other contacts</li> </ul>
Categories of personal data	Information processed will be relevant to the complaint or concern and may include:

	<ul style="list-style-type: none"> <li>• Personal details</li> <li>• Family, lifestyle and social circumstances</li> <li>• Financial details</li> <li>• Education and employment details</li> <li>• Housing information</li> <li>• Detail of complaint / concern</li> </ul> <p>I may also process special category or criminal conviction data that may include but is not limited to:</p> <ul style="list-style-type: none"> <li>• Physical or mental health details</li> <li>• Racial or ethnic origin</li> <li>• Offences including alleged offences etc.</li> </ul>
<p><b>Categories of recipients to whom the personal data have or will be disclosed</b></p>	<p>Information will only be shared where necessary or required in relation to the above purpose. The categories of recipients who I may share personal data with will vary depending on the nature of the problem or concern and may include, by way of example:</p> <ul style="list-style-type: none"> <li>• Council departments and services</li> <li>• Central government departments such as HMRC, DWP</li> <li>• Health organisations – Cwm Taf University Health Board, GP, Dentist etc. (if your problem is health related)</li> <li>• Citizens Advice Bureau</li> <li>• Law enforcement agencies and investigating bodies such as the Police, Probation Services</li> <li>• Your landlord / housing association etc. (e.g. if you live in rented accommodation and your problem relates to your rent / accommodation).</li> </ul>
<p><b>Transfers of personal data to a third country and safeguards</b></p>	<p>Information processed for the above purpose of not routinely processed overseas.</p> <p>If on occasions IT software is used that makes use of cloud storage or hosted technologies where data is processed outside the EEA, such processing will be compliant with the requirements of the GDPR.</p>
<p><b>Time limits for erasure</b></p>	<p>Two years from the date the matter is brought to a close.</p>
<p><b>Technical and organisational security measures</b></p>	<p>I take reasonable security measures to ensure that personal data relating to constituency casework is protected from accidental loss or alteration, inappropriate access, misuse or theft.</p>

## AUTHORITY TO ACT

### How I will use your personal information in my capacity as Councillor when I deal with matters and issues you raise with me on your behalf

In order to resolve your complaint or concern I, **[enter Cllr name]**, will be required to collect and process personal information about you and others that I come into contact with as part of my enquiries.

The information that I collect and process will only be used by me to deal and respond to the problem or concern you have asked me to assist you with.

For more information on how I may use your personal information and your information rights please see my full privacy notice **[enter web link]** or ask me for a copy.

Please complete this form to authorise **[enter name of Cllr]** to act on your behalf in relation to your complaint or concern.

#### 1. Councillor details

<b>Cllr Name</b>	<b>[pre populate with Cllr details]</b>
<b>Address</b>	<b>[pre populate with Cllr details]</b>
<b>Post code</b>	<b>[pre populate with Cllr details]</b>
<b>Telephone Number</b>	<b>[pre populate with Cllr details]</b>
<b>Email Address</b>	<b>[pre populate with Cllr details]</b>

**2. Your details**

<b>Full Name</b>	
<b>Date of Birth</b> (if relevant)	
<b>National Insurance Number</b> (if relevant)	
<b>Address</b>	
<b>Postcode</b>	
<b>Telephone Number</b>	
<b>Email Address</b>	

**3. Brief description of the complaint / concern that you wish me to deal with on your behalf.**

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**4. Please provide me with any additional information that you feel is relevant and will help me in resolving your complaint / concern.**

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**5. Please provide me with any relevant account or reference numbers.**

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**6. Declaration**

I authorise [enter Cllr name] to act on my behalf in relation to the above complaint / concern.



















<b>Print Name</b>	
<b>Signature</b>	
<b>Date</b>	

## APPENDIX IV

### Privacy information that must be provided to individuals

The GDPR sets out what information should be supplied to people when you process their personal information. The information you supply is determined by whether or not you obtained the information directly from the individual or from another source. The table below lists the information that must be provided, but your starting point should always be to tell people:

- Who you are;
- What you are going to do with their information; and
- Who it will be shared with.

What information must be supplied to the individual?	Data obtained directly from data subject	Data not obtained directly from data subject
Identity and contact details		
Purpose and the lawful basis for processing.		
The categories of personal data you are processing		
Any recipient or categories of recipients of the personal data		
Details of transfer to third countries and safeguards		
Retention period or criteria used to determine the retention period		
The existence of data subject rights		
The right to withdraw consent at any time (where relevant)		
The right to lodge a complaint with the supervisory authority		
The source of the personal data		
Whether the provision of personal data part of a statutory or contractual obligation and possible consequences of failing to provide the personal data.		
The existence of automated decision making, including profiling and information about how decisions are made, the significance and the consequences	