

The Data Protection Act 2002 (the DPA) imposes certain obligations on all data controllers. These include compliance with the data protection principles and the rights of individuals, and the requirement to maintain an entry in the register of data controllers.

Entry in the register of data controllers

All data controllers are required to notify the Information Commissioner “Commissioner”) of the processing of personal data that is undertaken, and an entry will be made in the register of data controllers. It is an offence to process personal data without an entry in the register of data controllers, unless an exemption from that requirement applies.

As an elected representative you will process personal data in a number of ways; for example, an MHK will process personal data in Tynwald, as a minister or member for a Department, and for constituency casework. Personal data processed in Tynwald or as a member or minister for a Department, falls within the purposes notified to the Commissioner by the Clerk of Tynwald or the Department respectively.

However, when an elected representative processes personal data for the purpose of constituency casework they will be a data controller in their own right and are required to have a register entry in their own name.

The elected representative determines what information is processed, and how, and is, therefore, a “data controller” for the personal data processed. This applies even when a secretary provides the administrative services to the elected representative as the secretary will be acting on the elected representative’s instructions as a ‘data processor’.

An elected representative can only claim an exemption from the requirement to notify if the elected representative, or any third party acting on their behalf, does not use a computer or any other form of electronic equipment to process personal data in their role as an elected representative.

If you notified as a candidate for election, that register entry will continue in force. However, if you did not notify as a candidate for election, it is likely that you will now be required to notify and you should contact the Information Commissioner’s office. No fee is payable.

The register entry is valid for 12 months and a reminder is sent out approximately 6 weeks prior to the expiry date. The register entry must be renewed prior to expiry and is renewed from the date of expiry for a further 12 months – it is therefore irrelevant whether the renewal form is returned as soon as it is received, or the day before the expiry date.

Further guidance on notification and the registration process is available on the website.

Compliance with the Data Protection Principles

The elected representative must comply with the DPA and all the data protection principles, irrespective of whether an entry in the register of data controllers is required or not, and should in particular be mindful of the security of any sensitive personal data being processed.

The Data Protection Principles are summarised as follows:-

Personal data must be:

1. Obtained and used fairly **and** lawfully;
2. Processed for specific and lawful purposes, in a manner that is compatible with those purposes;
3. Adequate, relevant and not excessive;
4. Accurate and where necessary kept up to date;
5. Kept for no longer than necessary;
6. Used in accordance with the rights of individuals under the DPA;
7. Kept secure to avoid unauthorised or unlawful use and accidental loss, destruction, or damage;

Personal data must NOT be:

8. Transferred to another country unless that country has an adequate level of protection.

Further guidance on all the data protection principles is available on the website.

Compliance with the rights of individuals

Individuals have many rights under the DPA; one of the most commonly exercised is the right of access to personal data.

This right can be exercised at any time and includes a right of access to all information processed about that individual.

Comprehensive guidance on complying with subject access requests, and other rights exercised by individuals, is available on the website.

FAQs

- My constituent has asked me to take up a matter on their behalf that involves seeing their medical records. Can I ask their doctor for their medical records?
 - Yes - but you should obtain written authority from the constituent to seek access to their medical records on their behalf. In addition, it is also important that the individual is made aware that if they say you can have access to "all their records" that is precisely what the doctor will consider supplying, whether it is relevant or not to the matter in hand. It is better to seek to limit the request to the relevant information at the outset. On receipt of such requests many doctors will supply the patient record directly to the individual for their onward transmission to you; the individual thus has control over what information you see and also the issue of irrelevant information can be mitigated.
- Can I use personal data I obtain as an elected representative, such as the full electoral register for my constituency, for any other purpose, for example marketing my private business?
 - No – the personal data you obtain as an elected representative is strictly for use in that capacity and for no other purpose.

- Can I use a shared computer at home for constituency work?
 - Yes – providing you ensure that no person has unauthorised access to the personal data and there are adequate security measures in place, such as firewalls, anti-virus and a password-protected area for your constituency work. In addition, on disposal of such equipment you should ensure that the drives are professionally erased before any onward sale or disposal. If you are supplied with a computer specifically for your role, then this should be kept secure, and not left unattended or in unlocked vehicles. The personal data held on the computer should not be accessed or viewed by persons who are not entitled.

- Who is legally responsible for the personal data I use in relation to my work as an elected representative?
 - Even if you have a secretary or assistant to do any administration on your behalf, or if your computer is supplied as part of your role, you, as the 'data controller', are legally responsible for the security of the information you, or a third party acting on your behalf, processes in connection with your role.
 - Personal data processed in your capacity as an elected representative should not be used for any other purpose.
 - You are also responsible for ensuring that personal data is only held (processed) for as long as is necessary for the particular purpose in accordance with an appropriate data retention and deletion policy.