

The data protection legislation imposes certain obligations on all controllers and processors. These include complying with the data protection principles and the rights of individuals, and the requirement to maintain an entry in the register of controllers and processors.

Entry in the register of controllers and processors

Elected representatives (this includes MHKs, MLCs and local authority Councillors/Commissioners) will process personal data in a number of ways; for example, an MHK will process personal data for Tynwald, as a minister or member for a Department, and for constituency casework. The controller for personal data processed by an MHK in connection with Tynwald is the Clerk of Tynwald; the controller for personal data processed by an MHK as a member or minister for a Department, is that Department.

However, when an MHK processes personal data in connection with their constituency casework, or election campaign, the MHK is the controller.

Similarly, local authority Councillors/Commissioners will process personal data in connection with the local authority's functions, for which the local authority will be the controller. However, the Councillor/Commissioner will be the controller in their own right for any personal data obtained through contact with local residents and processed for election purposes.

Elected representatives are required to have a register entry as a "controller" in their own name. No fee is payable for registration and failure to register is an offence

They will still be a controller even if administrative or secretarial services are provided, as the secretary, for example, will be a third party acting on the elected representative's instructions.

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

If you registered as a candidate for election, that register entry will continue in force. However, if you did not register as a candidate for election and have been elected, it is likely that you will now be required to register and you should complete the online registration form on the Commissioner's website. 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 is completed as soon as it is received, or the day before the expiry date.

Further guidance on registration is available on the website.

Controllers must only use personal data in accordance with the data protection principles.

The principles can be found in Article 5 of the Applied GDPR and are:

1. Lawfulness, fairness and transparency
2. Purpose limitation
3. Data minimisation
4. Accuracy
5. Storage limitation
6. Integrity and confidentiality

There is an overarching principle of accountability, and controllers must be able to demonstrate how they comply with the principles.

Controllers must put appropriate measures in place to ensure the security of personal data.

Information about political opinions (as well as about health, sexual orientation, racial or ethnic origin) is known as "special category data" and requires a greater level of protection.

Further guidance on the principles of data protection and the special categories of personal data is on the website.

Compliance with the rights of individuals

Individuals have many rights under the data protection legislation; 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 any personal data about the person. This extends to personal data in any correspondence, emails and any other information, whether that is held electronically or otherwise. This right requires controllers to supply that individual with their personal data in permanent form within a strict timeframe.

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 '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.

How long can I keep personal data obtained during an election campaign and term of office?

If you are an unsuccessful candidate, any personal data you obtained must not be retained after the election result and should be securely deleted or destroyed. This includes any copy of the electoral register provided to you.

When a term of office ends, there is no lawful purpose for personal data obtained in connection with that function to continue to be processed; arrangements must be made to securely delete or destroy personal data obtained during the term of office as soon as possible. This includes any copy of the electoral register provided to you.

May 2020