



Information Commissioner's Office

The Information Commissioner's response to the Welsh Government's Consultation on the Local Election Survey (Wales) Regulations 2012

The Information Commissioner's Office (ICO) is the UK's independent public body set up to promote access to official information and the protection of personal information. We have responsibility for promoting and enforcing the Data Protection Act 1998 and the Freedom of Information Act 2000. We do this by providing guidance to individuals and organisations, solving problems wherever possible, and taking appropriate action when the law is broken.

General comments

The focus of this consultation is on the collection of personal data relating to councillors and unsuccessful candidates for election as councillors, as prescribed by the Local Government (Wales) Measure 2011 ("the Measure").

The ICO acknowledges (and welcomes) the requirement for responses to this survey and the subsequent published results to be anonymised as far as possible at all stages. We note that the individual questionnaires to be returned will not require the names of respondents, that local authorities will provide collated responses to the Welsh Government, and that the Welsh Government will publish only aggregated results.

Even though the bulk of the data collected may be considered to be anonymous, much identifiable and sensitive information will be in the Councils' possession as a result of the completion of the questionnaires, and procedures must be in place for its proper handling.

We would also recommend that if any further guidance is to be developed for local authorities in administering this process, data protection considerations should be included in that guidance to ensure that local authorities have in place adequate safeguards for this sensitive information.

If the survey is to be of any real value, it needs to be completed by a significant proportion of candidates. Adequate assurances that the data is being handled properly will increase confidence in the process and as a

result, the level of engagement with the survey, evidenced by the number of fully completed returns.

Our response below is provided from the perspective of the Data Protection Act 1998 ("the DPA"). We have commented specifically on the Statutory Guidance, and for clarity have linked our comments to specific sections of the Guidance text.

Anonymisation

The following text is included in the Statutory Guidance under the heading of "What the Measure requires", in the fourth paragraph:

"Any information that is gathered will be anonymous, i.e. the individual forms to be returned will not require the name of the respondent and collated results will not identify individual responses either".

Having viewed the range of personal data that is being collected for each individual, we consider it extremely likely that some questionnaires (and subsequent entry lines on the electronic spreadsheet) will identify living individuals. For example, as the Guidance already points out, if only one female candidate, one candidate from a minority ethnic group, or one candidate with a specific disability ran for a particular election, they could be identified from their responses, even without their name being included on their form.

The DPA distinguishes between personal data and "sensitive" personal data; with the processing of any sensitive personal data requiring an even more solid basis for processing, due to the possible detriment if something goes wrong. Around half of the categories of data under section 1(4) of the Measure are 'sensitive' as defined by the DPA, which requires a higher level of consideration in order for the processing to be fair and lawful. Those categories falling under the definition of "sensitive" include an individual's racial or ethnic origin, sexual orientation, political opinions, religious beliefs and physical or mental health. The sensitivity of this information contributes to our concerns that privacy will be adequately taken into account by local authorities.

The Statutory Guidance also states the following:

"Local authorities may publish their results but will need to be careful that they are not presented in such a way as to enable identification of any individual candidate"

Further to our comments above, it is very important that local authorities are careful not to identify any individual candidate when publishing

results, but we would reiterate that this does not mean merely removing individuals' names from their contributions. We would welcome something in the guidance to that effect. For information, the ICO is currently developing external guidance on anonymising data which may be of use to local authorities, and we would be happy to discuss this specific issue with the Welsh Government and individual local authorities as may be required.

Differentiating between councillors

The following text is included in the Statutory Guidance under the heading of "Content of Regulations", in the first paragraph:

"Local authorities may prefer to issue the forms to individuals as they submit their nomination papers. Should they do so, they will need to ensure that they are able to differentiate between successfully elected councillors and others".

We would point out that the process of being able to differentiate between individuals in this way will involve the processing of personal information in itself. Any mechanism that is put in place to ensure that individuals are issued the correct forms will be likely to involve a list of names along with an explanation – against each name – of whether or not they were elected councillors. This personal data too will be subject to DPA considerations, for example that it is not being kept for longer than necessary, and that appropriate security and access controls are in place. We consider that the Statutory Guidance should be amended at this point to make this clear.

Recent high-profile data losses have done much to undermine public confidence in how securely our personal information is being processed, and individuals must feel confident that their personal information will be secure. In the present context, consideration should be given to the way in which returned questionnaires are handled, stored and destroyed, and we would also advise that the security of the electronic spreadsheet used by each local authority is reviewed, to ensure that only staff who need to see the information have access to it.

Reminders

The following text is included in the Statutory Guidance under the heading of "Content of regulations" (first paragraph):

"Local authorities may also wish to issue reminders to recipients to return their forms but will not be required to do so. If they do, they will need to devise a system for recording which individuals had already returned their forms".

If local authorities are seeking to devise systems to record which candidates have returned their forms, this would mean having some way of identifying by whom forms have been completed. This calls into question the proposed “anonymous” nature of the forms. Any mechanism put in place for monitoring incoming forms and chasing up outstanding forms would involve the processing of personal data, and would therefore be subject to all of the DPA considerations mentioned within this consultation response.

Covering letter

In the ‘Content of Regulations’ section, the Statutory Guidance states that a covering letter will be provided by the Welsh Government, to be distributed with the forms. We would recommend that the covering letter would be an ideal opportunity to provide assurances on the local authority’s handling of the candidates’ information.

Part of the requirement of the DPA is for any processing of personal data to be done fairly. In practical terms, this means that individuals must be provided with enough information to understand what the processing involves, and to be satisfied that it will be fair. This must include the reasons why the data is being collected, and any other information that is needed to make the process fair.

In our view, including this information in the covering letter would be a good way to ensure fairness. The covering letter should also reassure the recipient that their response is not compulsory, and it provides an opportunity for the local authority to explain how the data will be held and stored.

It is hoped that this response provides a clear statement of the ICO position on this matter. The ICO would be pleased to discuss or expand upon any of the points raised above, or to provide any required assistance as this activity develops.

January 2012