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Data Protection Technical Guidance Note Disclosures to Members of Parliament carrying out constituency casework

Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002. S.I.2002 No. 2905

Introduction

This Order was introduced because of concerns that the requirements of the Data Protection Act 1998 (the Act) were unduly hampering Members carrying out constituency casework. Some Members found that when they wrote to organisations on behalf of individual constituents the organisations sometimes took the view that they could not respond fully where this involved revealing information about the constituent without the constituent's consent. Particular problems arose where the matter involved 'sensitive personal data' within the meaning of section 2 of the Act. Organisations were properly concerned that any disclosures of sensitive personal information necessary to provide an appropriate response satisfied one of the conditions for processing set out in Schedule 3 or in the Order made under paragraph 9 of that Schedule. Previously the only relevant condition was that the individuals concerned had explicitly consented to the processing involved, including disclosure to his or her constituency MP. Such organisations accepted that Members carrying out constituency casework were doing so at the request of individual constituents. However they rightly took the view that in order for the "explicit consent" condition to be satisfied, constituents would have to expressly agree to disclosure. Not unreasonably some organisations wanted evidence in the form of a signed consent form or a formal assurance from the Member that such consent had been given.

Existing Guidance for Members

House officials have, in consultation with the Commissioner's office, produced detailed guidance for Members on the implications of the Data Protection Act 1998 (including the above Order) for their work. This technical guidance note concentrates, therefore, on the relevance of the Order for those responding to Members on behalf of individual constituents.

Conditions for Processing

The Act requires that all processing of personal information must satisfy one or more specified conditions and that, in addition, processing of 'sensitive personal data' satisfies one or more further specified conditions.

Sensitive Personal Data

The Act defines “sensitive personal data” as information about an individual’s racial or ethnic origin; political opinions; religious beliefs; trade union membership; health; sexual life; alleged criminal activity and court proceedings.

The Order

The Order is intended to provide a basis for:

- The processing of sensitive information by elected representatives in connection with their functions as a representative, including the disclosure of such information where necessary;
- The disclosure of sensitive personal information by organisations responding to elected representatives acting on behalf of individual constituents.

Non-Sensitive Personal Data

Where Members process non-sensitive personal information, that is information that does not fall within the definition of ‘sensitive personal data’, in connection with constituency casework, this does not present any significant difficulty. In general, Members can safely assume that constituents who have raised matters with them expect that the Member will retain any personal information provided, will disclose it as appropriate and that organisations asked to explain their actions will disclose personal information to Members where this is necessary to provide an appropriate response. In such circumstances the first condition in Schedule 2 is likely to provide the basis for processing to the extent that the constituents concerned can reasonably be considered to have implicitly consented to processing that is reasonably necessary to pursue their concerns.

Disclosures to Members of Parliament

The Order does not place an obligation on organisations to disclose personal data to Members. It merely gives those who want to disclose relevant sensitive personal information, when this is necessary to respond to matters raised on behalf of constituents, a basis to do so by providing an appropriate condition for the disclosure of ‘sensitive data’. However the requirements of the First Data Protection Principle go beyond this. In addition to establishing conditions for processing non-sensitive personal information (found in Schedule 2 of the Act) and sensitive personal information (in Schedule 3), personal information must also be processed fairly and lawfully. The fact that a Schedule 3 condition is satisfied does not mean that the processing concerned is inevitably fair and lawful. Nevertheless, in the great majority of cases organisations will be able to release sensitive personal information about the constituent concerned to the Member without advising the constituent of this.

However, there may be exceptional circumstances when an organisation responding to a Member is justified in contacting the constituent to inform them of intended disclosures despite the effect of this Order. An example would be where an organisation considered that to provide a proper response it was necessary to disclose sensitive personal information outside the likely expectation of the individual concerned where it was possible that such disclosure could cause genuine distress. In such circumstances the obligation to process fairly, and even perhaps the obligation to be properly mindful of a

duty of confidentiality, could dictate that the individual should be alerted to the intended disclosure.

Conclusion

This Order was introduced because Members were concerned that the requirements of the Data Protection Act 1998 were providing an undue hindrance to their work on behalf of constituents. It was intended to remove unnecessary bureaucracy and delay. However, in Standing Committee attention was drawn to the need to ensure that the response to the problem was proportionate, and that individual constituents and others do not feel that their privacy is being affected unreasonably by the Order. It would, therefore, be most helpful if Members inform the Lord Chancellor or the Commissioner of any instances where a constituent is unhappy about disclosures of sensitive personal information made in the course of constituency casework, whether by Members or organisations responding to them.

More information

If you need any more information about this or any other aspect of data protection, please contact us.

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