

**Elected Representatives, the General Data
Protection Regulation and the Data
Protection Act 2018 (the DPA 2018)**

Introduction

The General Data Protection Regulation (EU) 2016/679 (the GDPR) came into effect on the 25th May 2018, representing the most significant change in data protection law for over twenty years. As a directly effective regulation, the GDPR is designed to harmonise data protection laws across the EU, introducing a regime of accountability on the part of all controllers and processors who process personal data underpinned by strong regulatory enforcement. The DPA 2018 which was signed into law on the 25th of May 2018 has given further effect to the GDPR¹ and, in particular, has provided a framework which should ensure the ongoing ability of elected representatives to continue to process personal data as part of their functions.

In a free and democratic society, elected representatives provide an extremely important function. These functions and duties include, amongst other things, meeting constituents and holding advice clinics, attending sittings of the Dáil/Seanad or meetings of a Local Authority/City Council to raise and discuss matters of local and national interest, attending Committee meetings and generally representing their constituents. It is clear from such a wide and varied role that elected representatives will invariably need to process personal data and special categories of personal data² to carry out their tasks in an effective manner in the public interest. Elected Representatives, based on the factual context in which they carry out their role, are likely in most scenarios to be data controllers.³ As a data controller they must ensure that the processing of their constituents'

¹ Where national discretion is permitted under the Regulation

² See Article 9(1) of the GDPR.

³ See Article 4(7) of the GDPR for a definition of data controllers. See Judgment of Keane J In the matter of Mount Carmel Medical Group (South Dublin) Limited & Companies Acts [2015] IEHC 450 confirming that the identity of a data controller is a question of fact i.e. Who in reality exercises control over the purpose and means of the data?

personal data is lawful, fair and transparent. They equally must ensure that the purpose for the collection of personal data is specific and the use of personal data is limited to what is required to achieve that purpose. They must ensure that they only keep personal data for a justifiable period and that it is accurate and kept securely. Ultimately, the accountability principle outlined in Article 5(2) of the GDPR requires an elected representative, as a data controller, to be able to demonstrate compliance with the principles relating to processing of personal data. The purpose of this webpage/guidance is to assist elected representatives in having a strong awareness of their obligations and responsibilities as data controllers under the GDPR and the DPA 2018. The materials set out herein should be viewed and read as resource to facilitate the implementation of practical solutions and methods to ensure the adequate protection of the personal information collected, used and held by public representatives⁴. This guidance may also be assist as a platform for relevant stakeholders⁵ to collectively take progressive steps towards devising a code of conduct⁶ to give further effect, clarity and consistency to the processing activities of all elected representatives.

These materials have been developed on foot of extensive consultations carried out by the Data Protection Commission with relevant stakeholders with the aim of identifying and addressing the most pertinent issues regarding the processing of personal data, which affect public representatives in carrying out their functions. The guidelines do not intend to cover every aspect or particular context in relation to the processing of personal data carried out by elected

⁴ The materials should also assist other organisations insofar as the processing activity relates to their engagement with elected representatives

⁵ Bodies which represent categories of elected representatives such as political parties, controllers from the public sector such as local government and health and private data controllers who are regularly engaged by elected representatives.

⁶ Note Article 40 and 41 of the GDPR.

representatives. Notwithstanding, the guidelines will remain under review by the Commission and may be updated and amended where necessary in the future.

December 2018