

## Member Guidance – Access to Constituent Information.

This document sets out guidance on how councillors may gain access to information processed by the Council, in particular access to constituent data. It details the process for members and officers to follow in relation to requests for personal information. If further advice regarding a particular situation is required, this can be obtained from the Information Governance team.

As a councillor, you have data protection responsibilities for the personal information you process. You are **data controllers** under Data Protection Legislation. This means you are responsible for making sure all personal data handled by you and your office is done in a way that complies with the requirements of Data Protection/General Data Protection Regulation (GDPR).

Data Protection legislation places more emphasis on transparency and openness and the information that you will need to show that you are complying with the law.

Further information is available on the ICO website at: [Home | ICO](#)

### As a data Controller.

Data controllers are required to have a legal purpose to process personal data, Consent is one of them but there are alternatives. There are six available lawful bases set out in Article 6 of the GDPR.

These are:

- Consent
- Contract
- Legal obligation
- Vital interests
- Public task
- Legitimate interests

No single basis is better or more important than the others. Which is most appropriate will depend on your purpose and the relationship with the individual, as the data controller this is for you to decide.

In addition to the above, **Special Categories of Data** (set out in Article 9 of GDPR), those which are more sensitive relating to, race, ethnicity, political opinion, genetic or health related data and sexual orientation, and so need more protection.

If processing of data falls within this category, Councillors must first identify a lawful basis under Article 6 (above) and a separate condition for processing special category data under Article 9.

There are 10 conditions for processing special category data:

- (a) Explicit consent
- (b) Employment, social security and social protection (if authorised by law)
- (c) Vital interests
- (d) Not-for-profit bodies
- (e) Made public by the data subject
- (f) Legal claims or judicial acts
- (g) Reasons of substantial public interest (with a basis in law)
- (h) Health or social care (with a basis in law)
- (i) Public health (with a basis in law)
- (j) Archiving, research and statistics (with a basis in law)

As a councillor how and what you do with the personal data should be detailed in your **Privacy Notice**

### **Councillor acting on behalf of local residents**

A local authority does not generally have to get the consent of an individual to disclose their personal information to councillor as long as:

- a. The elected member represents the ward in which the individual lives;
- b. The elected member makes it clear that they are representing the individual in any request for their personal information to the local authority; and
- c. The information is necessary to respond to the individual's complaint

A Councillor and the Council are however required to be able to prove they have acted in accordance with Data Protection principles, as a local authority we are responsible for the information we provide to Councillors and ensuring they know how it can be used.

Consent from residents helps with proof and lawfulness and ensures data minimisation.

Acting upon implied or verbal consent alone may expose the Council or the Councillor to a subsequent complaint of poor data handling and lead to an investigation by the ICO.

### **Process for obtaining information**

To support Councillors in accessing information and to ensure we strive to protect customers data, the revised process is

- An online form, completed by Councillors when requesting access to TBC data on behalf of a constituent
- The form can be accessed through Members' Zone,
- There will be an online form as well as Word and PDF documents.
- Forms should be sent to [member-enquiries@tamworth.gov.uk](mailto:member-enquiries@tamworth.gov.uk)
- If an email is received without a completed form, one will be emailed. Requests will be logged once a form is received. If the form is not received within 5 working days, the request will be closed and not actioned.
- All requests for information will be logged and providing we have all the necessary information acknowledged within 2 working days and a response provided within 5 working days.
- Any information shared by TBC will be provided only to help the individual and **MUST** not be used for any other purpose.
- Any information received **MUST** not to be shared with any other 3<sup>rd</sup> parties, including other Councillors, unless explicit consent is given.
- If access is required and the above requirements are not met, consent from the resident will be required. The Information Governance team will advise if this is the case and request you obtain consent from your constituent.

Some case examples are available at **Appendix 1 of this document.**

For any queries, please contact the Information Governance team.

### Contacts

Name	Title	Tel	Email
Nicola Hesketh	Information Governance Manager (Data Protection Officer/ Monitoring Officer)	01827 709266	<a href="mailto:Nicola-Hesketh@tamworth.gov.uk">Nicola-Hesketh@tamworth.gov.uk</a>
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Paula Buchanan-Lawrance	Information Governance Administrator	01827 709587	<a href="mailto:Member-Enquiries@tamworth.gov.uk">Member-Enquiries@tamworth.gov.uk</a>

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## Appendix 1

### Access to information examples

#### **Example 1**

Jo Bloggs contacts Cllr A about potholes covered by a number of wards, and within these wards we have Cllr's A, B & C.

Cllr A will need to establish if it is reasonable to share the personal data they have collected for Jo Bloggs with Councillors B & C, or if sharing just the query in general will suffice.

If Cllr A is liaising with Jo Bloggs directly, then it is reasonable to suggest sharing of the query in "general only" would suffice and any personal data relating to Jo Bloggs is removed from any correspondence shared with Cllrs B & C.

Any comments/information the other councillors may have can be directed to the Jo Bloggs directly by Cllr A.

If Jo Bloggs has provided consent to having their personal information shared with Cllrs B & C then the information in its entirety will be ok to share.

#### **Example 2**

Cllr A has been contacted by a resident and they have requested some support with their housing application. The Cllr processes the information they require in order to assist the resident and then submits a 'Member Enquiry' to the Council requesting details about the resident's housing application.

The council has not received an ATR, the email received doesn't provide enough information to be satisfied they can share information however they do note the Cllr is one of the ward members.

DP requirements have not been met and the council are not satisfied they can share data. Cllr A is contacted and advised to obtain consent from the resident before the enquiry can be processed and an update provided.

#### **Example 3**

Cllr A has been contacted by a resident and they have requested some support with their neighbours causing a nuisance. The Cllr processes the information they require in order to assist the resident and then submits a 'Member Enquiry' requesting details about the case.

The Cllr completes the new online form and identifies they have further information to share, in addition to submitting the new online form they also forward an email received from the resident.

With the form completed, and an email from the resident demonstrating they have instigated support from the Cllr, the Council will be satisfied they can share the data requested, in addition the Cllr is aware of the requirements from a DP legislation perspective (EG: Only use the data for the purpose it is shared / not share with 3<sup>rd</sup> parties.)

#### **Example 4**

A Cllr submits a new online form asking for a resident to be contacted and provided with an update to an ongoing enquiry about when their Housing repair will be completed.

An ATR on this occasion would not be needed, no data is being shared however the enquiry will be recorded and acknowledged and passed to the relevant team for action.

The above is not exhaustive and there are many different situations where an ATR form may or may not be required.

As data controllers in your own right when processing personal data about your constituent, you are responsible for ensuring data protection requirements are being met.

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