

 <p>Feidhmeannacht na Seirbhíse Sláinte Health Service Executive</p>	Feidhmeannacht na Seirbhíse Sláinte Standard Operating Procedure	SOP No: XXX002 Revision No: 2 Page: 1 No of Pages: 3 Date: December 2018
SOP Title: Dealing with the Provision of Information to Public Representatives (TD's, Senators, MEP's and Local Representatives)		
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1.0 Purpose

The Data Protection Commission (DPC) has issued new guidance documents for elected representatives which sets out how data controllers including public organisations should deal with elected public representatives with regard to the disclosure of information to representations and parliamentary questions in the context of GDPR and the Data Protection Act 2018. In this regard the DPC guidance document entitled *Guidelines on the processing¹ of personal data² by Elected Representatives³ under section 40 of the data protection act 2018 (the DPA 2018)*, is the document that is relevant to public bodies, *particularly pages 11-18* should be carefully read and considered alongside this SOP. A copy of the DPC advice document is circulated with this SOP and it can also be downloaded from the Commission website at: www.dataprotection.ie/en/guidance-landing/elected-representatives-general-data-protection-regulation-and-data-protection-act

2.0 Scope

This SOP is to ensure that we understand the DPC guidance documents, handle sensitive personal data carefully and at the same time provide an efficient and effective service to Oireachtas members as required under the Health Act 2004.

3.0 Definitions and Abbreviations

Article 9 (1) of the GDPR sets out the Special categories of personal data which include:

- Race
- ethnic origin
- political opinion
- religious or philosophical beliefs
- trade union membership
- genetic data
- biometric data for the purpose of uniquely identifying a natural person
- data concerning health
- data concerning a natural person's sex life or sexual orientation.

If a request for the above category of data were requested by an elected representative specific safeguards would have to be in place. If a request is ever made for this special category of personal data **please in the first instance discuss it with your line manager and/or contact the PAD office for advice.**

¹ See Article 4(2) of the GDPR

² See Article 4(1) of the GDPR

³ These Guidelines are for the benefit of elected representatives as defined by section 40(5) of the DPA Act 2018 and for those organisations engaged by elected representatives.

The above three footnotes are attached to the DPC guidance document on the front page.

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Data Controller:

‘**controller**’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.

(Article 4(7) of the GDPR)

4.0 Responsibilities and Procedures

In order to further assist the HSE organisation, the following updated standard operating procedure should be used when dealing with public representatives (local, national and European) and their representations and in the case of Oireachtas members, their parliamentary questions.

1. Where the HSE receives parliamentary questions or a representation from a public representative which requests information on behalf of a constituent and this information is of a routine nature such as when Mrs. X will get her medical card or where on the waiting list is Mrs. X or what disability services Mr. Y is entitled to etc., these should be answered in line with the DPC guidance document *Guidelines on the processing⁴ of personal data⁵ by Elected Representatives⁶ under section 40 of the data protection act 2018 (the DPA 2018).*

On page 11 of this guidance document it states as follows:

The DPC advises that where a public representative makes a written representation on behalf of a constituent on foot of Section 40, the organisation can generally assume that the constituent has given their permission for the release of personal data necessary to respond to the representation. In other words the organisation may accept the bona fides of elected representatives who state they are acting on behalf of a member of the public. As the organisation is accountable for the personal data it has chosen to release, it should be satisfied that it is reasonable to assume that the individual whose personal data is released would have no objection to such a release through a public representative.

2. Where a HSE Data Controller is not clear as to whether the information being requested by the public representative is of a more sensitive personal nature or comes under the special categories of data as per the GDPR and is not sure as to whether to release the information to the public representative, the data controller should in the first instance check with their Line Manager to clarify the matter and then proceed as guided. If further advice is needed it should be sought from the PAD office. Following that, the advice of the HSE's Data Protection Officer can be sought.

⁴ See Article 4(2) of the GDPR

⁵ See Article 4(1) of the GDPR

⁶ These Guidelines are for the benefit of elected representatives as defined by section 40(5) of the DPA Act 2018 and for those organisations engaged by elected representatives.

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3. When the HSE receives a PQ or a representation from a public representative on behalf of a constituent and the information requested *is determined to be of a sensitive personal nature or comes under the special categories of data as per the GDPR* (e.g. What procedure did Mrs X have, what illness does she have, how much is Mr Y receiving, what race is Mr X, what is Ms W's sexual orientation) the Data Controller should where feasible check with the patient or client that he/she has given consent for the information to be released to the public representative. If the client or patient cannot be contacted the Data Controller in agreement with the Line Manager should contact the public representative's office to check if the public representative has consent from the patient or client to obtain the requested sensitive personal data. The details should be noted on the file, inter alia, including the date on which the contact was made, by whom and the name of the person confirming the information. When this procedure is used it needs to be handled in a sensitive manner.
4. Where after consulting local management, there is still doubt with regard to the sensitive nature of the data being requested in Parliamentary Questions or Representations the Data Controller should contact the Parliamentary Affairs Division (PAD) on (01) 6352505 or pad@hse.ie for advice and assistance. Where necessary the HSE'S Data Protection Officer can be contacted at dpo@hse.ie

5.0 Frequency of Review

To be updated as is required.

6.0 Method used to review operation of Standard Operating Procedure

Performance indicator data collected on a routine basis to demonstrate level of performance etc.

7.0 References

GDPR (EU) 2016/679 (Implementation date: 25th of May 2018)

Data Protection Act 2018

Data Protection Acts 1988 and 2003 (**)

(** as retained/amended by sections 7 and 8 of the Data Protection Act 2018)

For any advice or assistance regarding this SOP please contact the PAD office at pad@hse.ie or 01 6352505.