

1. PURPOSE

These general guidelines have been adopted to provide a clear and uniform interpretation of the applicability of the Data Protection Act, CAP. 440 of the Laws of Malta (“the Act”) in the political environment where political parties and candidates process personal data for the purposes of carrying out political campaigning and promoting their political ideologies and messages.

2. DEFINITIONS

For the purposes of these guidelines, unless otherwise specified, the definitions contained in Article 2 of the Act shall apply.

Data controller shall mean any political party as defined under Article 2 of the General Elections Act, CAP. 354 of the Laws of Malta, Member of Parliament, movement or candidate who runs for election, be it a general election, local councils election or a European Parliament election, either on a political party’s ticket or independently.

Consent shall be explicit and the manner how a data subject shall signify agreement to the processing of personal data must involve a statement or a clear affirmative action.

Direct marketing shall include the promotion of the political aims and ideals of the data controller. The sending of a communication by a data controller where the nature of such communication is not political but is intended to politically influence the data subject by means of a personal message, such as the sending of greeting cards, shall also fall within the meaning of these general guidelines.

3. LEGAL BASIS FOR PROCESSING

It is recognised that, to ensure a healthy democratic process, political parties and candidates, need to engage the interest of eligible voters by transmitting their political messages by means of a variety of communication methods.

In this context, the data controller may process personal data, for the purpose of carrying out this marketing processing activity, only after obtaining the data subject’s consent. It is the responsibility of the data controller to demonstrate, at any time

when requested, that the data subject has indeed consented to the processing of his or her personal data.

In terms of Article 14 of the Act, political parties may, in the course of their legitimate activities and with appropriate guarantees, process sensitive personal data concerning their registered members and of other persons who have regular contact with the party.

The data controller shall take all necessary measures to identify itself in any political message sent for political campaigning purposes and shall observe the requirements for processing as listed under Article 7 of the Act, particularly, the purpose limitation principle, which establishes that personal data, legitimately collected by the data controller, shall be solely processed for the purpose for which such data has been originally collected.

4. DOOR-TO-DOOR POLITICAL COMMUNICATION

The provisions of the Act shall not apply where no personal data is processed by the data controller for the purpose of carrying out a political campaign, for instance, where the communication material is manually distributed and dropped in letter boxes. Persons engaged to distribute such material should, nevertheless, respect those households who would have indicated their objection on the letter boxes to receiving political or any other types of marketing material.

5. PERSONALISED POLITICAL COMMUNICATIONS TRANSMITTED BY CONVENTIONAL MEANS – POSTAL SERVICES AND TELEPHONE/MOBILE

The data controller may use the personal data contained in the electoral register or in the printed or online telephone directory services to communicate personalised political campaigning material or voice messages to the respective registered voters or listed subscribers, unless the data subject gives notice to oppose such processing.

The data controller shall provide data subjects with clear information to appropriately inform them of their right to oppose, at no cost, from receiving further communication. The opt-out option must be included on each communication and provide the data subject with a clear and simple option

to exercise such right. In the case of telephone calls, the data controller must respect the decision of those individuals who expressly indicate the wish not to proceed with the call and delete their personal contact details accordingly.

6. POLITICAL COMMUNICATION SENT BY EMAIL, SHORT MESSAGE SERVICE (SMS) OR BY MEANS OF AN AUTOMATED CALLING MACHINE

The data controller must ensure that political communications sent by electronic means are only addressed to data subjects who have given their prior consent or who have themselves provided their email addresses or mobile numbers during the membership enrolling process or during a political or related activity.

Where the contact details are not obtained directly from the individual but from other sources, such as activists or other third parties who are in contact with the data subject, the data controller must ensure that such consent had been obtained and documented.

The data controller shall provide the data subject with the opportunity to opt-out from receiving further communications. An information clause must be included on each outgoing message informing the recipient of his right to oppose, at no charge and in a simple manner. Whereas in the case of emails the use of an unsubscribe link is the best-practice technical solution, in the case of SMSs, the data controller shall adopt best-practice measures to ensure that the necessary contact information is provided to the data subject giving him or her an easy way to unsubscribe, such as including a contact number or email address on each and every message.

Where the data controller engages the services of a third party contractor to send bulk political communications on its behalf and specifically to mobile numbers which are held on the database of the same contractor, the data controller shall remain responsible for the messages that are transmitted. In these circumstances, the data controller must ensure that the contractor has indeed obtained the consent of those recipients to whom the marketing messages are directed by retaining the necessary documentation indicating their prior consent.

7. THE USE OF SOCIAL MEDIA FOR POLITICAL CAMPAIGNING PURPOSES

The use of social media has become a widely adopted tool which may be used by a data controller to carry out a political campaign. This means that the data controller's activities, carried out through the registered profile or account, shall be subject to the legal criteria and principles set out in the Act, where the principal legitimate basis for the processing of personal data shall be the data subject's consent.

It shall be clarified that where a user of a social networking site, hence a data subject, associates himself with the profile or account of the data controller by, for instance, liking or following a page, that action shall be tantamount to consent. Consequently, any personal information available on the user's profile, such as a mobile number or an email address, may be used by the data controller for political campaigning purposes. In any case, users should be provided with effective means, to exercise their right to object to the processing of their personal data for the purposes of the campaign, free of charge and without having to state the reason thereof.

8. CONTACTING VOTERS ON ELECTION DAY ENCOURAGING THEM TO CAST THEIR VOTE

The data controller may, on election day, adopt a system designed to implement a structured and dedicated process to contact eligible voters and encourage them to cast their vote, provided that the contact details have been supplied by the data subject himself, obtained from a telephone directory or made available on an open social media profile or account. A data subject shall, nevertheless, have the right to oppose from proceeding with the call or to be re-contacted.

9. FINES

To guarantee fair and lawful processing, the data controller shall assume the legal responsibility to comply with these guidelines. If the Commissioner concludes that personal data was processed or may be processed in an unlawful manner, he may impose an administrative fine in terms of his powers at law.



The Office of the Information and Data Protection Commissioner may be reached on the following contact details:

Information and Data Protection Commissioner

Floor 2, Airways House, High Street
Sliema, SLM 1549, Malta.

Tel: (356) 2328 7100

E-mail: idpc.info@gov.mt

Website: www.idpc.gov.mt

General Guidelines

on the processing of
personal data for political
campaigning purposes

Issued by the Information and Data Protection Commissioner
May 2017