

AEA response to the ICO Public Consultation – Review of exemptions from paying charges to the Information Commissioner’s Office

(submitted via online form 19 July 2018 – red text indicates our response to each question)

Consultation questions

The consultation questions are below. Please visit the Department’s online tool https://dcms.eu.qualtrics.com/jfe/form/SV_baucMyDLEWCIUPX to submit your response.

Introduction

The Data Protection (Charges and Information) Regulations 2018 require data controllers who are processing personal information to pay a charge to the Information Commissioner's Office (ICO), unless they are exempt. More than 500,000 organisations are currently registered. The Schedule to the Data Protection (Charges and Information) Regulations 2018 provides a number of exemptions for individuals and organisations from paying charges to the Information Commissioner. Each current exemption is described in the questions to follow.

Completing the form

We encourage everyone to consider all sections of this form, but we understand that there will be sections which may be more relevant to you, or your organisation. You can choose to respond to as many questions as you like. You can also return to the form at a later date to continue with your response, as long as you use the same internet browser and the same computer when returning to the form. Partially completed responses will be automatically submitted one week after last activity or on the closing date. When you are ready to submit your response click on ‘Submit’ and follow the instructions. To improve your experience, we recommend that you complete this form on a larger screen type rather than a mobile phone.

You can download the full set of questions on the GOV.UK consultation page. Please only use this as a reference document.

About you

Are you responding as an individual or on behalf of an organisation?

Individual **Organisation**

If organisation What is the name of the organisation?

Association of Electoral Administrators (AEA)

If organisation Which of the following statements best describes your organisation?

Public Sector

Private Sector

Charitable Sector

Other (please specify) **An organisation providing help and advice for UK Professionals involved in Electoral Administration.**

Are you a data controller? (**yes**, no, don't know)

If Data controller

Do you currently pay a notification fee to the ICO? (**yes**, no, don't know)

We may wish to contact you in order to discuss your response in more detail. If you are happy to be contacted, please provide your details below. If not, please move on to the next question.

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Survey

Please indicate which exemptions you consider are still appropriate, and should therefore be retained, and which exemptions you consider are no longer appropriate and should either changed or removed. The review will also consider if any new exemptions are appropriate. Although optional, it would be very helpful if you are able to provide reason(s) for your response for each exemption.

1. 'Core business purposes' exemptions

Individuals and organisations do not have to pay charges if they are only processing personal data for one or more of the 'core business purposes'. These are listed below and are: (a) staff administration, (b) advertising, marketing and public relations, and (c) accounts and records. These exemptions could, for example, cover many small businesses or sole traders that do not conduct extensive electronic marketing. Although these exemptions are effectively interlinked, please consider them separately.

a) Staff administration (including payroll)

- This exemption covers organisations that only process personal data for administration in relation to their staff, including past, existing and prospective staff (as well as contractors and volunteers). It includes processing of staff members' personal data for the purposes of appointments or dismissals, pay, discipline, superannuation, work management and other personnel matters.

Do you consider this exemption:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

Returning Officers at elections employ staff to administer the poll and count. The administration of an election is a statutory function and a not-for-profit function. Therefore, the exemption is still appropriate.

b) Advertising, marketing and public relations (in connection with an individual or organisation's own business activity);

- This exemption allows an individual or organisation to market or advertise its business activity, goods and services to past, existing or prospective customers and suppliers. The exemption does not apply where an organisation sells lists of customers' details to other organisations.

Do you consider this exemption:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

This activity does not impact electoral administrators and therefore we do not feel that it is appropriate for us to make a comment.

c) Accounts and records, accepting customers and suppliers, and financial forecasts;

- This exemption covers processing for the purposes of keeping accounts or records of transactions, deciding whether to accept a customer or supplier, or making financial forecasts. However, the exemption specifically does not apply in respect of information processed by or obtained from credit reference agencies. In addition, controllers who are providing accounting services for their customers are not exempt.

Do you consider this exemption:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

This activity does not impact electoral administrators and therefore we do not feel that it is appropriate for us to make a comment.

2. Other exemptions

d) Judicial functions;

- This exemption is for the processing of personal data carried out by a judge, or person acting on behalf of a judge, in relation to exercising “judicial functions”. This can include case work, and also covers the processing of personal data in relation to the appointment, discipline, administration or leadership of judges. ‘Judge’ includes a justice of the peace (or, in Northern Ireland, a lay magistrate); a member of a tribunal; and a clerk or other officer entitled to exercise the jurisdiction of a court or tribunal.

Do you consider this exemption:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

This exception is still appropriate as the judicial functions are statutory functions and a not-for-profit function. The Electoral Registration Officer has a statutory duty to provide the full electoral register for jury service purposes.

e) Personal, family or household affairs (including recreational purposes);

- People are exempt from paying charges if the only information they process is for their own personal, family or household affairs that have no connection to any commercial or professional activity. The exemption includes recreational activities and the capturing of images (photographs or video footage) that contain personal data, even if such images are captured in a public space, provided they are for their own personal, family or household affairs. Examples could include a personal address book, or an individual's personal social media account. The exemption includes a householder's personal CCTV, even if the CCTV is capable of collecting images of public spaces.

Do you consider this exemption:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

This activity does not impact electoral administrators and therefore we do not feel that it is appropriate for us to make a comment.

f) Some not for profit organisations;

- This exemption is for not-for-profit organisations carrying out processing of personal data for membership purposes, or in the context of activities for

members or other individuals who have regular contact with the organisation concerned. Examples could include a food bank or a park's volunteer group.

Do you consider this exemption:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

This activity does not impact electoral administrators and therefore we do not feel that it is appropriate for us to make a comment.

g) Maintaining a public register;

- o 'Public Register' in this exemption refers to those registers that are required by statute to be open for public inspection, or open to inspection by any person having a legitimate interest. For example, it covers the collection of personal data for the Electoral Roll, and the publication of the Open Register.

Do you consider this exemption:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

The Electoral Registration Officer is required by statute to maintain and publish the electoral register which is available for public inspection. The costs of maintaining and publishing the electoral register falls to the local authority for their area.

In your example above you only refer to the publication of the Open register. For the avoidance of doubt, the Electoral Registration Officer publishes a full register', list of overseas' electors and monthly alterations as well as an open register, all of which are available for public inspection as are other documents published by Electoral Registration Officers such as absent voting lists and post-election candidate returns.

h) Data Controllers that do not process personal data by automated means;

- o This exemption covers manual processing of personal data (but not where data is recorded manually, with the intention that it should be processed by automated means). For example, it would cover an organisation that only held customer records in a manual or hard copy filing system. Personal data that is processed using any kind of computer (including cloud computing, desktops, laptops and tablets) would not be covered by this exemption.

Do you consider this exemption:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

The Electoral Registration Officer as part of their statutory function receive paper applications for registration and absent votes, as well as paper notifications from other local government departments/public bodies informing them of potential electors or changes to a household e.g. registrar data. All of which are processed manually with the data being entered on to software and the document scanned. In addition, Returning Officers at elections receive and process election documents manually, for example, candidates' nomination papers and postal votes.

3. Automatic Fee Tier 1 (£40, or £35 if paid by direct debit).

N.b The following are not full exemptions but rather all data controllers eligible are automatically classified as being required to pay the tier 1 fee (£40, or £35 if paid by direct debit).

i) Small occupational pension scheme;

- A small occupational pension scheme is defined as a scheme with fewer than twelve members where all members are trustees of the scheme, and either all decisions made have unanimous agreement from the members; or the scheme has a trustee who is independent in relation to the scheme (for the purposes of section 23 of the Pensions Act 1995) and is registered with the Pensions Regulator.

Do you consider this automatic classification in fee tier 1:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

This activity does not impact electoral administrators and therefore we do not feel that it is appropriate for us to make a comment.

j) Charities;

- A data controller that is a charity automatically pays the lowest level of charge. For these purposes, "charity"
 - in England and Wales, has the meaning given in section 1 of the Charities Act 2011,
 - In Scotland, means a body entered in the Scottish Charity Register maintained under section 3 of the Charity and Trustee Investment (Scotland) Act 2005, and
 - in Northern Ireland, has the meaning in section 1 of the Charities Act (Northern Ireland) 2008;

Do you consider this automatic classification in fee tier 1:

Still appropriate No longer appropriate Don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

This activity does not impact electoral administrators and therefore we do not feel that it is appropriate for us to make a comment.

3. Proposed new exemptions

Elected representatives (separate to their elected assembly or political party) can be data controllers in their own right particularly where they engage with and undertake casework on behalf of their constituents. Government has previously committed to considering the appropriateness of elected representatives being required to pay a charge in respect of their processing of personal data. The Government is minded that this activity deriving from their public office and public function should not be liable to a charge. The Government also wishes to avoid barriers to democratic engagement, mirroring the approach that the Government has taken during the passage of the Data Protection Act through Parliament.

The Government is minded that all elected representatives should be exempt, as well as members of the House of Lords and (prospective) candidates for those elected offices.

N.b. Elected representatives as defined in Schedule 1 of the Data Protection Act 2018.

Do you agree? yes/no/don't know

If possible, please provide a reason for your response.

Reason(s) for your response (optional) 1,000 characters limit

For the reasons outlined above. Elected representatives use the data for their casework in their role of public office and public function and therefore should not be liable to a charge. As indicated above a charge could also be seen as a barrier to democratic engagement. We also believe that those seeking public office, i.e. candidates, should be able to use information in order to engage with voters.

(Non required field) Do you think that any other groups of data controllers or data processing that should be exempt from paying the charges? Please provide reasons for your response.

yes/no/don't know

New exemption(s) and reason(s) for your response (optional) 1,000 characters limit

Electoral Registration Officers should be exempt from charges for the reasons outlined, i.e. that they are under a statutory obligation to compile and maintain electoral registers, which in themselves are not sold for profit, only provided for sale as prescribed in the relevant legislation.

In addition, Returning Officers (ROs) should be exempt from the charges as their statutory function requires the processing of nomination papers and absent votes both of which contain personal data. Another reason was outlined at question 1a) above: ROs at elections employ staff to administer the poll and count, and 2h) above: ROs at elections receive and process election documents manually, for example, candidates' nomination papers, and postal votes. The administration of an election is a statutory function and a not-for-profit function. An exemption would be appropriate.

An option needs to be available as individual cases arise to apply for an exemption and considered on an individual basis.

4. The Equality Act 2010 defines discrimination as someone being treated unfairly because of who they are. There are nine protected characteristics in the Equality Act. Discrimination which happens because of one or more of these characteristics is unlawful under the Act.

The nine protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Do you consider any of the current or proposed exemptions to impact on any of the nine characteristics protected under the Equality Act 2010.

Yes/No/Don't know

If yes, please select from the below:

Age

Disability

Gender reassignment

Marriage and civil partnership

Pregnancy and maternity

Race

Religion or belief

Sex

Sexual orientation

Reason(s) for your response (optional) 1,000 characters limit

Not applicable.

5. Do you have any additional comments?

(optional) 1,000 characters limit

None.