

GUERNSEY STATUTORY INSTRUMENT2009 No. 72

**The Data Protection (Processing of Sensitive Personal Data)
(Elected Representatives) Order, 2004**

*Made**15th December 2004**Coming into operation**1st January 2005**Laid before the States**26th January 2005*

THE HOME DEPARTMENT, in exercise of the powers conferred on it by section 66(2) and paragraph 10 of Schedule 3 to the Data Protection (Bailiwick of Guernsey) Law, 2001^a and all other powers enabling it, and after consultation with the Data Protection Commissioner in accordance with section 66(3) of that Law, hereby makes the following Order -

Circumstances in which sensitive data may be processed.

1. For the purposes of paragraph 10 of Schedule 3 to the Law, the circumstances specified in any of the paragraphs in the Schedule to this Order are circumstances in which sensitive personal data may be processed.

Interpretation.

2. (1) In this Order, unless the context otherwise requires -

"the Law" means the Data Protection (Bailiwick of Guernsey) Law, 2001, and

"elected representative" means -

^a

Order in Council No. V of 2002.

(a) a member of the States of Deliberation of Guernsey^b;

(b) a holder in Guernsey of the office of -

(i) Constable,

(ii) Douzenier^c,

(iii) Procureur of the Poor, or

(iv) Overseer of the Poor^d;

(c) a member of the States of Alderney^e; or

(d) a member of the Chief Pleas of Sark^f.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^g apply to the interpretation of this Order -

(a) throughout the Bailiwick, and

^b As to membership of the States of Deliberation of Guernsey, see article 1 of the Law Reform (Guernsey) Law, 1948, as amended by section 1 of the Reform (Replacement of Conseillers (Guernsey) Law, 1998 and the Reform (Guernsey) (Amendment) Law, 2003.

^c Election to the offices of Constable and Douzenier is governed by Part V of the Reform (Guernsey) Law, 1948, as amended.

^d Election to the offices of Procureur of the Poor and Overseer of the Poor is provided for under article XVII of the Public Assistance Law, 1937, as amended.

^e As to membership of the States of Alderney, see section 27 of the Government of Alderney Law, 1987, as amended by the Government of Alderney (Amendment) Law, 1998.

^f As to the composition of the Chief Pleas of Sark, see section 1 of the Reform (Sark) Law, 1951.

^g Ordres en Conseil Vol. XIII, p. 355.

- (b) as they apply to the interpretation of a Guernsey enactment.

(3) Unless the context otherwise requires, references in this Order to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

Citation.

3. This Order may be cited as the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order, 2004.

Commencement.

4. This Order shall come into force on the 1st January, 2005.

Article 1

SCHEDULE

CIRCUMSTANCES IN WHICH SENSITIVE PERSONAL DATA MAY BE
PROCESSED

Processing by elected representatives

1. The processing -
- (a) is carried out by an elected representative or a person acting with his authority,
 - (b) is in connection with the discharge of his functions as such a representative,
 - (c) is carried out pursuant to a request made by the data subject to the elected representative to take action on behalf of the data subject or any other individual; and

- (d) is necessary for the purposes of, or in connection with, the action reasonably taken by the elected representative pursuant to that request.

2. The processing -

- (a) is carried out by an elected representative or a person acting with his authority;
- (b) is in connection with the discharge of his functions as such a representative;
- (c) is carried out pursuant to a request made by an individual other than the data subject to the elected representative to take action on behalf of the data subject or any other individual;
- (d) is necessary for the purposes of, or in connection with, the action reasonably taken by the elected representative pursuant to that request; and
- (e) is carried out without the explicit consent of the data subject because the processing -
 - (i) is necessary in a case where explicit consent cannot be given by the data subject,
 - (ii) is necessary in a case where the elected representative cannot reasonably be expected to obtain the explicit consent of the data subject,
 - (iii) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the action taken by the elected representative, or

- (iv) is necessary in the interests of another individual in a case where the explicit consent of the data subject has been unreasonably withheld.

Processing limited to disclosures to elected representative

3. The disclosure -

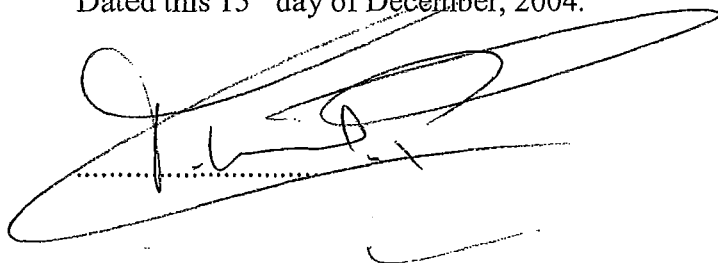
- (a) is made to an elected representative or a person acting with his authority;
- (b) is made in response to a communication to the data controller from the elected representative, or a person acting with his authority, acting pursuant to a request made by the data subject;
- (c) is of sensitive personal data which are relevant to the subject matter of that communication; and
- (d) is necessary for the purpose of responding to that communication.

4. The disclosure -

- (a) is made to an elected representative or a person acting with his authority;
- (b) is made in response to a communication to the data controller from the elected representative, or a person acting with his authority, acting pursuant to a request made by an individual other than the data subject;
- (c) is of sensitive personal data which are relevant to the subject matter of that communication;
- (d) is necessary for the purpose of responding to that communication; and

- (e) is carried out without the explicit consent of the data subject because the disclosure -
- (i) is necessary in a case where explicit consent cannot be given by the data subject,
 - (ii) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject,
 - (iii) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the action taken by the elected representative, or
 - (iv) is necessary in the interests of another individual in a case where the explicit consent of the data subject has been unreasonably withheld.

Dated this 15th day of December, 2004.

A large, stylized handwritten signature in black ink, appearing to read 'M.W. TORODE', is written over a horizontal dotted line.

M.W.TORODE

Minister for the States Home Department

For and on behalf of the Department.

EXPLANATORY NOTE.

(This note is not part of the Order)

The first data protection principle set out in paragraph 1 of Schedule 1 to the Data Protection (Bailiwick of Guernsey) Law 2001 ("the Law") prohibits the processing of sensitive personal data unless one of the conditions in Schedule 3 to the Law is met. The condition set out in paragraph 10 of that Schedule is that the processing of sensitive personal data is carried out in circumstances specified by the States Advisory and Finance Committee (now the Home Department). The Schedule to this Order (which applies throughout the Bailiwick) specifies a number of such circumstances, which relate to the processing of sensitive personal data by, and disclosures of sensitive personal data to, elected representatives.

An "elected representative" is defined for these purposes in Article 2 of the Order, and means a member of the States of Deliberation, the States of Alderney or the Chief Pleas of Sark and, in Guernsey, a Constable, a Douzenier a Procureur of the Poor or an Overseer of the Poor.

Paragraphs 1 and 2 of the Schedule cover certain processing carried out by an elected representative (or a person acting with his authority) in connection with the discharge of his functions as such.

Paragraph 1 covers processing carried out pursuant to a request made by the data subject to the elected representative to take action on behalf of the data subject or any other individual. The processing must be necessary in connection with the action reasonably taken by the elected representative pursuant to the request.

Paragraph 2 covers processing carried out pursuant to a request made by an individual other than the data subject to the elected representative to take action on behalf of the data subject or any other individual. The processing must be necessary in connection with the action reasonably taken by the elected representative pursuant to the request. Further, one of the specified reasons for carrying out the processing without the explicit consent of the data subject must apply.

Paragraphs 3 and 4 of the Schedule cover certain disclosures made to an elected representative (or a person acting with his authority) by another data controller. They are of particular applicability to the situation where a States Department or other public body is responding to a request for information made by an elected representative on behalf of a constituent, for example.

Paragraph 3 covers disclosures made in response to a communication to the data controller from an elected representative (or person acting with his authority) who is acting pursuant to a request made by the data subject. The sensitive personal data disclosed must be relevant to the subject matter of the communication and the disclosure must be necessary for the purpose of responding to the communication.

Paragraph 4 covers disclosures made in response to a communication to the data controller from an elected representative (or person acting with his authority) who is acting pursuant to a request made by an individual other than the data subject. The sensitive personal data disclosed must be relevant to the subject matter of the communication and the disclosure must be necessary for the purpose of responding to the communication. Further, one of the specified reasons for carrying out the processing without the explicit consent of the data subject must apply.

This Order contributes to the implementation of European Community Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Additional circumstances in which sensitive personal data may be processed are specified in the Data Protection (Processing of Sensitive Personal Data) Order 2002 (G.S.I. 2002/17).