



Policy on Section 40 Data Protection Act, 2018. Management of Representations from Elected Representatives

1. Purpose

Kildare County Council ('the Council') and Elected Representatives are both legally obliged under the General Data Protection Regulation and the Irish Data Protection Acts 1988- 2018 to ensure that the rights & freedom of individuals are respected when processing their personal data.

The purpose of this document is to set out the policy on how Kildare County Council and Elected Representatives shall safeguard the fundamental rights and freedoms of an individual when processing personal data through representations and how disclosure is necessary and proportionate to enable the elected representative to deal with constituent(s) request(s)

2. Legal Basis

Section 40 Data Protection Act 2018

3. Process for Receiving Representations

Non-personal service representations:

If the representation is an enquiry about a service and no personal data needs to be used in the reply, then the representation can be made via the channels outlined in point 4 below.

Representations requiring the disclosure of personal data:

Where a public representative wishes to make a representation on behalf of a constituent under Section 40, involving the disclosure of personal (non-sensitive/special category) data, the initial representation must be made in writing (via the channels outlined in point 4 below). The Council will then process that representation on the basis that the constituent has given their permission for the release of personal data necessary to respond to the representation.

Requests for representations requiring the disclosure of special category/sensitive personal data

Section 40(4) and Commission Guidance require that additional controls be applied in case of processing of special category or sensitive special data. It is generally envisaged that the provision of special category or sensitive personal data should not be required for the purposes of responding to a representation. However, where it is absolutely necessary the data should be the minimum required and the process should be as follows:

The 'Special Category-Sensitive data or Third-Party Representation Form' (the Form) must be signed by the Elected Representative and by the constituent, giving consent for release of said data to the Elected Representative. Given the nature of such data, use of the Form is the only means by which the Council can provide data to the elected representative.

Requests for representations by a Third Party (on the constituent's behalf) requiring the disclosure of personal data in reply

Where a request for a representation is made by a third party on behalf of the constituent (for example on behalf of an elderly person by a family member), using the Form or through the Members Portal it must be accompanied by either the written consent of the constituent/data subject or, where this is not possible, a



written explanation (with supporting documentation) why consent cannot be given and how the representation is in the interests of the constituent.

Representations made verbally:

The Council will not as a rule accept verbal representations that require the disclosure of personal data/special category data/sensitive data where the initial request has not been made in writing.

Note:

If there is any doubt on the part of the Council in relation to the representation being made, and where it is deemed appropriate, the Council may request a signed authority or confirmation by some other means that the individual agrees to the disclosure of their personal data to the elected representative. The Council may contact the constituent to verify his/her identity and to advise them that a representation has been made on his/her behalf.

4. How to submit a representation

A representation can be submitted as follows:

- through the Members Information Portal
- by email to the relevant Municipal District email address for Councillors
- by email to reps@kildarecoco.ie for Oireachtas Members
- by post to Kildare County Council, Members Services, Corporate Services, Áras Chill Dara, Devoy Park, Naas, Co Kildare. W91 X77F.

5. Elected representative's data protection obligations

It is the responsibility of the elected representative as an independent data controller to first of all ensure that they have appropriate technical and organisational measures in place to protect the data that they process, and secondly to ensure that they appropriately communicate this as part of the general principles of accountability and transparency.

6. Definitions

Data '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

Personal data is defined in the GDPR as any information relating to an individual or identifiable natural person ('data subject'): an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an ID number, location data, an on-line identifier or to one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that natural person.

Special Category Data: personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation



Sensitive Personal Data: Records related to criminal investigations/criminal prosecutions and/or convictions, PPS Nos; Details re income or other personal financial circumstances, including social welfare status.

Supporting Documentation: for the purpose of determining whether a person who is making a request on behalf of the individual has the legal standing to do so (e.g.) formal declaration or undertaking from person making the request; details of guardianship; enduring power of attorney, etc.

7. Further information:

Further information on Section 40 of the Data Protection Act 2018 and on the General Data Protection Regulations are available at the links below:

[Guidelines on the Processing of Personal Data by Elected Representatives under Section 40 of the Data Protection Act 2018](#)

[Data Protection Commission website](#)