

INFORMATION MANAGEMENT AND ACCESS

Part 1 – Data Protection and the publication of personal details on representations

1. The Commission is invited to review, where necessary refresh and agree its policy on Data Protection and, in particular, the treatment of personal details received during its public consultations. This paper has been prepared by the Secretariat, drawing on the Commission's policy established for the last constituency review.
2. The Data Protection Act 1998 (DPA) has six principles imposing an obligation upon the Commission (as a public authority). Two of these principles apply directly to the Commission: personal data 'shall be processed fairly and lawfully' and 'shouldn't be retained for any longer than necessary'. The Commission's Secretariat has identified four types of personal data held or collected during the course of a review, and this paper outlines that data and the treatment of the data held. **The Commission is invited to agree the approach outlined in paragraphs 5 – 7.**
3. The Secretariat has considered in particular detail the issue of the treatment of personal data contained in representations received during the consultation periods, given the statutory requirement to publish those received in response to initial proposals. Following the precedent of the 2013 Review the Secretariat invites the Commission to consider the options outlined **in paragraphs 8 – 20** regarding this personal data, and **confirm the approach it intends to take.**
4. It should be noted that the policies proposed in this paper apply only to matters relating to the Commission's obligations in the conduct of the review; data protection matters relating to issues such as employment, recruitment and staffing are covered by the policies of the Commission's sponsoring body, the Cabinet Office.

Data held by the Commission

5. The Commission has identified four types of personal information that it does, or will, hold during the course of a review of parliamentary constituencies:
 - a. electoral registers;
 - b. names, addresses and other contact details of respondents to the consultations, or who contributed at public hearings;
 - c. names, addresses and other contact details of people on (or requesting to be on) the Commission's mailing lists; and
 - d. names, addresses and other contact details of people wishing to attend a public hearing, collected during the organisation of the hearings.
6. In relation to a), the Commission is entitled under the Representation of the People Act 2000 (the 'RPA') to hold the 'full' version of electoral registers for the conduct of its work. They are kept in electronic format only on its secure network and in accordance with the RPA will never be released to a third-party.
7. In relation to c) and d), these details are held in electronic format on the Commission's secure network, and are used only for the purposes of mailing information to those who have made enquiries to the Commission. This personal

information will never be released to a third party (notwithstanding any decision taken on the release of addresses or address identifiers referred to below).

Representations

8. The Secretariat needs to consider the potential conflict of its obligations under both the Parliamentary Constituencies Act 1986 (the 1986 Act), to publish representations on its initial proposals, and the DPA, to protect personal data. The Secretariat anticipates that there would typically be up to five different pieces of personal data received in a representation:

- a. Name
- b. Signature
- c. Address
- d. Telephone number
- e. Email address

9. In order to adhere to its obligations under the DPA, and also to avoid discouraging participation in the review by publishing personal contact details, the Secretariat recommends that some elements of the personal data in some representations are redacted. In considering the proposals to redact certain data, the Secretariat has balanced the Commission's obligations under the DPA against both the need to publish copies of representations on the initial proposals (under the 1986 Act) and its commitment to the transparency of what is a public consultation.

10. In addition, the Secretariat has considered the type of respondent, and invites the Commission to agree that, in some cases, it is not necessary, or in the public interest, to redact personal data (except signatures, which will be redacted from every document). Examples would include a representation received from a publicly elected member, or on behalf of an organisation. The Secretariat considers that representations from MPs should only ever have signatures redacted; those from peers, councils, councillors or other elected members, or local, public or private organisations should only have signatures redacted *unless they specify they are writing in a personal capacity*, in which case they will be treated as members of the public.

11. In summary, the Secretariat recommends that:

- names are not redacted from any representation (notwithstanding exceptional requests referred to below);
- signatures are redacted from every representation;
- telephone and email details will be redacted from representations from members of the general public (or others writing in a private capacity).

The Commission is invited to agree to these recommendations.

Policy on redaction of addresses

12. The Secretariat invites the Commission to finalise its policy on the redaction or otherwise of addresses of members of the general public. On the one hand, the origin of representations received are relevant to assessing the weight to be given to them – suggesting that addresses should not be redacted. The Commission's legal advisors did indicate that this approach would not be typical of public sector organisations, and the

risk of challenge in taking this course should therefore be mitigated against by clear communication of what data would be published and when, through the Commission's Data Protection and Privacy Statement (discussed later, below). This was the approach adopted by Commissioners at the last review.

13. The alternative option would be to redact fully the addresses from representations from members of the public. While this would mean that the geographic location of the respondent could not be identified, it would minimise the risk of challenge on the basis that the Commission was not processing personal data fairly and lawfully.

14. A middle way approach would be to redact the main identifiers of the address, (i.e. house number, street name, and last three digits of the postcode). While protecting the exact geographic identifying data contained in the representation, this would allow viewers of the published responses to have a good understanding of the broad area from which a response had come.

15. The Secretariat therefore recommends the redaction policy used for the 2013 Review, where no part of any address is redacted.

Special cases

16. The Secretariat has considered potential need for special treatment in relation to representations; for example, requests for non-publication or anonymity, or in the case of offensive, or potentially defamatory material.

17. In identifying an approach to such exceptional cases, the Commission will be aware of the obligation placed on it by section 5(4)(a) of the 1986 Act:

'After the end of the initial consultation period the Commission-
(a) shall publish, in a manner as they think fit, representations made as mentioned in subsection (1)(a) above and records of public hearings held under subsection (1)(b) above;'

18. In this regard, the Secretariat recommends that the Commission's policy on representations that includes a request not to be published is to disregard the representation, given the duty put on it by the 1986 Act to publish all representations.

19. Where anonymity is requested the Secretariat recommends that the Commission takes the view that strong justification will be needed for the request to be granted. The Secretary to the Commission should be delegated to consider any such request on a case by case basis and make a judgement, but retains the right to publish the name of the respondent.

20. In cases where representations contain material that is judged to be offensive, or potentially defamatory, our recommendation is that the Secretary be given the discretion *not to accept*, and hence not publish (nor consult on) any such representations.

Implementation and communication of the policy

21. Subject to the Commission's views on the Secretariat's proposals in this paper, the Secretariat intends to draft and publish a 'Data Protection and Privacy Statement', which will reflect the Commission's decisions. Modelled closely on that used in the last

review, this will be cleared by the Secretary, and published on the Commission's website.

22. In addition, appropriate steps will be taken before and during the consultation periods to make respondents (and potential respondents) aware of the Commission's approach to data contained in the representations, including in the Guide to the Review, on the consultation pages of the Commission's website, and in acknowledgments issued in response to representations received.

Part 2 – Freedom of Information: Policy and Revised Guide to Information

23. The Freedom of Information Act 2000 (the FoI Act) requires public authorities listed within a schedule to the Act (of which the Commission is one) to adopt and maintain a publication scheme that has been approved by the Information Commissioner's Office (ICO). Once the publication scheme has been adopted, the ICO advises public authorities to produce a Guide to information, which can be of varying forms. The Secretariat has revisited the Commission's existing Guide to information, and FOI Policy statement, and seeks agreement from the Commission to the proposed refreshed Guide, at Annex B.

24. With the commencement of the 2018 Review, the Secretariat has also taken the opportunity to revisit the Commission's current approach to its information and, in doing so, propose some options for change to the Commission's approach to the publication of information.

Context

25. In light of the evidence from the 2013 Review, it is very likely that the 2018 Review will be undertaken under much higher levels of scrutiny than earlier reviews. At the same time, since the last review, scrutiny of the public sector in general has led to public authorities taking a significantly more transparent approach to their information and its publication. Wider availability of internet access to the general public has allowed public authorities to publish information on their websites, thereby showing their commitment to the spirit of the legislation whilst, at the same time, mitigating against the resource demands that can be involved in only responding reactively to requests for information.

26. Proactive early release of all permissible information also mitigates against the disruption repeated requests for the same information can create (though it should be noted that public authorities are permitted, under the FoI Act, to not comply with vexatious or repeated requests).

27. It is in this context that the Secretariat has reviewed the Commission's approach to the publication of its information in general.

Freedom of Information Act 2000 and the ICO's guidance

28. Section 19 of the FoI Act states that a public authority **must** adopt and maintain an approved publication scheme, publish information in accordance with that scheme, and from time to time review it. Section 20 of the FoI Act permits the ICO to approve model publication schemes from time to time, and allows public authorities to adopt such a scheme without further recourse to the ICO for approval.

29. The ICO currently publishes an approved model publication scheme, which is to be adopted as it is; rather than be amended to reflect the public authority's approach to information. The model publication scheme (which is at Annex B to this paper) details seven classes of information to be made publicly available. These are:

- **Who we are and what we do** (organisational information, locations and contacts, constitutional and legal governance);
- **What we spend and how we spend it** (financial information relating to projected and actual income and expenditure, tendering, procurement and contracts);
- **What our priorities are and how we are doing them** (strategy and performance information, plans, assessments, inspections and reviews);
- **How we make decisions** (policy proposals and decisions; decision making processes, internal criteria and procedures, consultations);
- **Our policies and procedures** (current written protocols for delivering our functions and responsibilities);
- **Lists and registers** (information held in registers required by law and other lists and registers relating to the functions of the authority); and
- **The services we offer** (advice and guidance, booklets and leaflets, transactions and media releases).

30. The ICO also publishes guidance (a 'definition document') for non-departmental public bodies (NDPBs) such as the Commission, that details what it would expect such bodies to provide in order to meet their commitments under the publication scheme.

31. The ICO's guidance **advises** that NDPBs, having considered and adopted the model publication scheme, should prepare a Guide to information – as the Commission currently has – that should detail what information the authority publishes and where it is accessible. The Guide to information is intended to show where and how the public authority makes information available, rather than be the resource through which information is made available. There is no recommended template or form for this Guide to take.

32. It should be noted that the ICO states that, for many authorities, their website and the publication of information on it may provide a comprehensive guide to information. However, there is no structure recommended for such websites: in keeping with the Commission's policy of being able to cater for people who do not have access to the internet, the Secretariat does not recommend relying solely on the website as the only Guide to information, so making available documents in paper form is also incorporated into Annex B to this paper.

The information we publish

33. The ICO's guidance states clearly that NDPBs should make available any information held that falls within the seven definitions above **unless**:

- The information is exempt under one of the FoI Act's exemption or is prohibited by another statute;
- The information is archived, out-of-date, or otherwise inaccessible;
- It would be impractical or resource-intensive to prepare the material for routine release.

34. The exemptions are detailed within Part 2 of the FoI Act and, those relating to the Commission, include:

Absolute:

- Information accessible to the applicant by other means (s.21);
- Information that, if released, would prejudice the conduct of public affairs (s.36);
- Information that constitutes personal data (s.40);
- Information provided in confidence (s.41);

Subject to a Public Interest Test:

- Information intended for future publication (s.22);
- Information relating to the formulation of government policy (s.35);
- Information that is covered by legal privilege (s.42).

35. The Commission's approach thus far has been to make available much of the information covered within the seven definitions (above) through either the website, in its Guide to information or on demand in hard copy form. It should be noted that many of the suggested pieces of information either do not relate to or are not held by the Commission (for example matters pertaining to corporate bodies such as capital programmes or employment policies would be held by the Commission's sponsoring department).

36. The Secretariat recommends continuing with an open and transparent approach, while making use of the Commission's website, which, being managed by the Information Manager, will allow greater flexibility for the Commission to publish information at greater speed. Annex A to this paper shows the ICO's guidance on what NDPBs should make available, and details through which medium the Secretariat proposes the information should be made available (subject to the Commission's decision on the options laid out below).

Commission meeting minutes and papers

37. The Commission's current approach is to publish minutes for Commission meetings once they have been agreed in correspondence (marked as subject to formal approval). Agendas and papers are also routinely published, but are not viewed as exempt from publication (though those relating to constituency formulation decision during a review are proposed to be held back from publication of the relevant proposals or final recommendations). The minutes of the last review are available on demand from the Commission or from the National Archives. Minutes of Commission meetings since the last review are available on the website. This is in accordance with ICO's guidance to NDPBs that it expects minutes and papers of senior and board meetings to be made available to the public.

38. It might be useful to consider the two types of information that are generally contained in a set of the Commission's minutes – that relating to the deliberation of and decisions on a set of boundaries; and that relating to the effective governance of both the process of the review, and of the organisation as a whole (non-boundary-related matters). As mentioned previously, the Commission is committed to openness and

transparency in the way it conducts its work. The question therefore arises as to whether its commitment to openness and transparency is reflected in the way in which it records its deliberation and decision-making processes in full and thorough initial proposals and final recommendations reports, and whether it is necessary, or in the public interest, to publish minutes of non-boundary-related matters during the course of any review.

39. There is inherent risk in the Commission routinely publishing minutes of non-boundary-related matters, in that it could provoke further opportunity for the challenging of (non-boundary-related) decisions taken and hence cause unnecessary disruption to the Secretariat's key business of conducting the review. Equally, in the case where it was judged that much of the non-boundary-related business was exempt from publication, publishing minutes with the majority, or a significant part, redacted might lead to further criticism, or further enquiries as to the content of the redacted material.

40. However, it could be argued that this approach is open to criticism for not being transparent, nor being within the spirit of the legislation. It carries both legal and reputational risk, and does not compare favourably with many other public authorities. Arguably, it also invites requests for such information, creating further unnecessary work for the Secretariat in dealing with such requests. While such requests have not been made frequently – if at all – the likelihood of people wanting to gain access to these documents throughout the period of the 2018 Review must be higher, given the controversial nature of the passage of the enabling legislation for the review, and the expected levels of scrutiny during the review.

41. The Secretariat has also considered whether the Commission should publish all papers put to the Commission. Arguments for and against the routine release of such papers can be made on the same lines as those relating to the publication of the minutes, as above.

42. For contrast our counterparts in the Local Government Boundary Commission for England publishes its minutes once they have been approved, subject to exempt material being redacted, the last being 15 December 2015 along with annual reports and corporate planning.

43. Having considered the factors above, the Secretariat recommends the continued publication of minutes and papers on the existing basis. Inevitably, there will be certain items within each set of minutes which will be judged to be exempt from publication, either for a temporary period (such as the deliberation on the initial proposals prior to their publication) or permanently (such as discussions protected under legal privilege). In such cases, the relevant minute would be redacted and an explanation of the redaction would be included. The remainder of the minutes could then be published without redaction.

Internal handling

44. The Commission's support team has thus far dealt with FoI requests, and will continue to do so, being supported by the Review Teams as necessary. FoI responses will be issued in the name of the Information Manager, and when completed will be published on the website, to further underline transparency and to reduce the risk of repeated requests. The Commission will continue to be responsible for its own FoI requests, being a named public authority in the FoI Act, rather than being incorporated

into the sponsoring department's FoI procedures. The sponsor department will continue to be consulted on any request that concerns correspondence between it and the Commission.

Recommendations

45. Attached at Annex B is the Secretariat's recommended FoI policy. This includes an introductory policy section; followed by the ICO's model publication scheme; concluding with the Commission's revised Guide to information. This document will be on the website and available in hard copy. Annex A is intended to show Commissioners, in more detail, the publications or media through which all information recommended by the ICO is available. The Secretariat recommends to the Commission that it adopt the policies laid out in this paper, and the accompanying annexes.