



Home Office

Information fact sheet for Members of Parliament acting on behalf of their constituents

The Data Protection Act 1998 (DPA) (“the Act”) provides a legal framework to protect personal data, building on other legal safeguards provided by the common law and the **Human Rights Act 1998**. Broadly speaking, the DPA requires any data controller (in this case, the UK Border Agency) who wishes to give out personal information to be satisfied that:

1. It is fair to do so (e.g. by ensuring the data subject has been notified that the data might be given to third parties).
2. It is lawful to do so (i.e. there are no legal bars to disclosing the information, for example it would be an unjustified infringement of the data subject's human rights or any duty of confidentiality owed to the data subject).
3. That one of the conditions in Schedule 2 of the Act is met (the conditions listed in Schedule 2 set out a range of permissible reasons for disclosing personal data, e.g. the data subject has consented, or the processing is necessary, for the functions of either House of Parliament).
4. In the case of sensitive personal data (see Annex A for full list) one of the pre-conditions in Schedule 3 to the Act must also be met (Schedule 3 lists a more restrictive set of permissible reasons for disclosing sensitive information over and above Schedule 2). In order to assist the work of MPs acting on behalf of their constituents, an Order modifying the requirements under the DPA in relation to sensitive personal data was passed in 2002 (the **Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002**). This allows MPs to have access to sensitive personal data just as they have to other personal data – they do not require explicit consent as other third parties would under Schedule 3 of the Act.

MPs are deemed to have **implicit consent** from their constituent for us to disclose their personal data to that MP – thus satisfying Schedule 2 of the Act where a data subject must consent to the processing (i.e. sharing) of his/her data.

This fact sheet sets out how we will approach requests for information from MPs in a number of common scenarios.

This note is, however, intended only as a guide to our general policy (full guidance can be found on our website at:

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/IDIs/ and select Chapter 24 “Disclosure of Information”.

MPs should be aware that any disclosure of personal data will be considered on a case-by-case basis – where necessary, further guidance and support will be given to our staff by our Information Management Team to ensure requests are handled appropriately and consistently.

Scenarios

MP acting on behalf of their constituent who is the main applicant:

We will generally disclose personal data (including sensitive personal data) to the MP providing it is clear from the request that the MP is acting on behalf of the data subject and it is necessary to disclose the information to deal properly with their request. The MP is deemed to be acting with the Implied Consent of the data subject and, as such, we do not require explicit signed authorisation/consent as proof.

However, there may, nonetheless, be circumstances in which we cannot disclose certain information, notwithstanding the fact that the request is made on behalf of the data subject (e.g. ongoing criminal investigations). In such circumstances it may be appropriate to disclose such information to an MP 'in confidence'.

MP acting on behalf of their constituent who is the sponsor of an applicant:

We will generally provide some limited information, relating to an application, to MPs who are acting on behalf of a constituent who has formally sponsored an applicant to visit or settle in the UK. The limited type of information that is likely to be disclosed will be:

- current status of the application;
- confirmation of a decision (i.e. whether or not an application has been successful);
- if an appeal has been received;
- the date an appeal will be heard.

We will normally be unable to confirm **why** an application has been refused as this is personal data specific to the applicant (the data subject) rather than the sponsor (the MP's constituent).

In such circumstances, the MP only has implied consent from their constituent (the sponsor) not the data subject (the applicant). If the MP was able to demonstrate that the data subject had explicitly consented for information to be provided to them, we would be able to do so. In most cases, however, we could only disclose aspects of the refusal that relate to the constituent (as the sponsor) – e.g. we can disclose to the MP whether the sponsor had insufficient funds to support the applicant, or limited accommodation, as this is information which relates specifically to the sponsor.

In practical terms, the applicant is always given a copy of any reasons for refusal and can choose to share this with their sponsor and, as necessary, the sponsor's MP.

MP acting on behalf of their constituent who is a relative of an applicant:

An MP may write to us requesting information on behalf of a family member of a constituent who is representing an applicant. This may occur where the applicant is unable to approach the MP directly (e.g. they are in detention or housebound). In these circumstances, the applicant (i.e. data subject) must provide explicit written consent for the relative (which satisfies the MP) to act on their behalf before we can disclose any information to the MP. Where we are satisfied consent has been given, we will treat the request as if it has come from an MP acting directly on behalf of the applicant themselves. The MP must be able to demonstrate such explicit consent has been given by the applicant in such circumstances, either verbally or by producing the authorisation/consent itself.

Alternatively, where the family member (constituent) is legally responsible for the applicant, e.g. they are the parent of an applicant who is a minor or the appointee for the applicant, we can disclose personal data to the MP as if the main applicant themselves had approached the MP (provided that we are satisfied that the family member is the applicant's parent, or appointee).

MPs acting on behalf of an interested relative not representing the applicant:

There may be cases where an interested relative has approached an MP on their own behalf rather than on behalf of an applicant and has asked the MP to obtain information about an applicant.

Some, limited, information (as detailed previously) may be disclosed in these circumstances, provided it is clear that the individual has a legitimate interest in the application. However, sensitive personal data will not normally be disclosed.

In practice, we are likely to consider a relative has a legitimate interest in a case where the following all apply:

- They clearly support the applicant's case;
- There is evidence (either from the correspondence or in our records) which confirms the familial relationship between the relative and applicant;
- There is a legitimate reason why the relative has asked the MP to contact us.

We would also take into account, before any disclosure, whether there is information in its records relating to the case which indicate that disclosure of the information would have an adverse effect on the applicant e.g. evidence of a forced marriage. Such circumstances would impact upon our decision whether to disclose any information at all.

MP acting on behalf of their constituent who is a victim (or immediate family member, should the victim be deceased) of a foreign national convicted of an offence:

We will normally disclose to an MP certain limited information about the immigration case of a foreign national convicted of an offence where the victim(s) (or immediate family member, should the victim be deceased) is the MP's constituent provided either: 4

- the offender received a 12 month (or more) prison sentence;
- the Court recommended deportation of the offender;
- the offence was violent or sexual and the offender was sentenced to imprisonment (of any length).

The type of information we would generally disclose will be:

- confirmation of whether the offender is in prison or immigration detention or, where appropriate, if the offender has been released from prison or immigration detention;
- whether we intend to take deportation action against the offender (this may be a general statement of policy, information about the stage at which the offender is at e.g. appeal, or a definitive statement depending on the stage in the deportation process at which the offender has reached);
- if we cannot deport the offender it will provide an explanation, in general terms, of the reasons why, such as:
 - The individual does not meet the criteria for deportation at this time;
 - The individual has been warned that the decision not to pursue deportation, in respect of this offence, will be reviewed in the light of any further offending behaviour;
 - Deportation cannot be pursued because of the UK's "international obligations" (asylum or Human Rights grounds or other obligations);

- There are practical barriers to removal e.g. travel documentation or identity issues or absence of a route of return etc.

We will make it clear in our disclosure if further onward disclosure of this information (i.e. to anyone other than the victim or immediate family member, should the victim be deceased) could potentially jeopardise any subsequent deportation action.

MPs must satisfy themselves that the constituent is genuinely the victim (or immediate family member, should the victim be deceased) of the offence as claimed.

We will never disclose the home address (or reporting address) of the offender.

**UK Border Agency Information Management Team
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Annex A

DPA definitions:

Data means information which:

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68; (e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d).

Data Subject means an individual who is the subject of personal data;

Personal data means data which relate to a living individual who can be identified:

- (a) from those data;
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

Processing in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including:

- (a) organisation, adaptation or alteration of the information or data;
- (b) retrieval, consultation or use of the information or data;
- (c) disclosure of the information or data by transmission, dissemination or otherwise making available;
- (d) alignment, combination, blocking, erasure or destruction of the information or data.

Sensitive personal data means personal data consisting of information as to:

- (a) the racial or ethnic origin of the data subject;
- (b) their political opinions;
- (c) their religious beliefs or other beliefs of a similar nature;
- (d) whether they are a member of a trade union (within the meaning of the M1Trade Union and Labour Relations (Consolidation) Act 1992);
- (e) their physical or mental health or condition;
- (f) their sexual life;
- (g) the commission or alleged commission by them of any offence;
- (h) any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings