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Cambridgeshire and Peterborough
Association of Local Councils

Official information held in Private Email Accounts

Councillors need to understand their relationship, from a data protection point of view, that they have with the council and the constituents they represent and it is this;

A Councillor is a joint controller with the Council with regard to personal data and as a result have responsibilities regarding that personal data even though, as of April this year, they no longer need to pay the ICO fee.

A Councillor will also be responsible for personal data processed when dealing with political situations (such as electioneering), however, as this is not council work it falls under the auspices of the political party to which they are affiliated and therefore subject to those Technical and Organisational Measures (TOMs). It is up to each Councillor to ensure a clear divide between party political and council business and a council email address is one way to do this.

To the Councillor – Council relationship; by definition, a Councillor is a member of the Council, both of which are joint controllers and each subject to complaint by affected data subjects (and as such liable). Therefore the condition imposed by data protection obligations is that Technical and Organisational Measures (TOMs) need to be put in place to demonstrate a high regard for the protection of rights and freedoms (*article 24 (1) see below and feel free to read it out to them. The bold words are key, they can't just say they are doing it they must be able to show it), such as a council email address, which will also address data retention issues in the future when the Councillor may no longer be a member. If a Councillor uses their personal email there are also implications from a Freedom of Information perspective. It is possible, in the event of a dispute, that the ICO, tribunals or courts may end up having to access all the councillors personal emails when investigating the dispute, with a council domain email this would be avoided.

In summary, failure to use a council domain email puts the data subjects personal data at risk, puts the council at risk because personal data it controls is outside its eco-system and it also puts the individual councillor at risk of litigious claims because they are taking individual responsibility for that personal data. It would therefore be my strong recommendation that, for Council purposes, emails are created and used with the council domain name as soon as possible.

*Article 24 (1) of GDPR:

Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller shall implement appropriate technical and organisational measures to **ensure** and to be able to **demonstrate** that processing is performed in accordance with this Regulation. Those measures shall be reviewed and updated where necessary.