

# Data Protection and the Elected Council

# Role of Councillors

- **Policy role of elected council.**
- **Local Government Act 2001 (as amended)**
- **Section 130.**—It is a function of the elected council of a local authority to determine by resolution the policy of the local authority subject to and in accordance with this Act and the other enactments relating to that authority.
- Functions of a Local Authority are divided into Reserved and Executive Functions. Reserved functions are set down in legislation and are summarised in Schedule 14 of the Local Government Act 2001 (as amended).

# Furnishing of Information to Elected Council

- **136.**— (1) Without prejudice to section 105, 135, 137 or 138, where relevant, a chief executive shall, whenever requested—
  - (a) by an elected council of a local authority for which he or she is the chief executive or by its Cathaoirleach,
  - (b) by municipal district members of a local authority for which he or she is the chief executive or by the Cathaoirleach of a municipal district,
  - (c) by a strategic policy committee of a local authority for which he or she is the chief executive or by its chairperson,
  - (d) by a local community development committee of a local authority for which he or she is the chief executive or by its chairperson, or
  - (e) by a joint body for which he or she is the chief executive, or by its chairperson,
- afford to the council, municipal district members, Cathaoirleach, committee, chairperson or joint body concerned (as the case may be) all information that may be in the possession or procurement of such chief executive in regard to any act, matter or thing relating to or concerning any business or transaction of such local authority, municipal district members, committee or joint body (as the case may be) which is mentioned in the request.

# Register of Orders- Section 151

- (3) Every chief executive shall keep, in respect of each local authority for which he or she is chief executive, a register in which is entered a copy of every order made by him or her in accordance with this section for such local authority.
- (4) At every meeting of a local authority, there shall be available for inspection by the elected council so much of the register referred to in *subsection (3)* as contains any orders made by the chief executive since the last previous meeting of the local authority.
- (5) Any member of a local authority is entitled on request to be furnished by the chief executive for the local authority with a copy of a particular order made by the chief executive

## Data Protection Legislation- Data Protection Act 1988 (as amended)

- 2.—(1) A data controller shall, as respects personal data kept by him or her, comply with the following provisions:
  - (a) the data or, as the case may be, the information constituting the data shall have been obtained, and the data shall be processed, fairly,
  - (b) the data shall be accurate and complete and, where necessary, kept up to date,
  - (c) the data—
    - (i) shall have been obtained only for one or more specified, explicit and legitimate purposes,
    - (ii) shall not be further processed in a manner incompatible with that purpose or those purposes,
    - (iii) shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they were collected or are further processed, and
    - (iv) shall not be kept for longer than is necessary for that purpose or those purposes,
  - (d) appropriate security measures shall be taken against unauthorised access to, or unauthorised alteration, disclosure or destruction of, the data, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.]

# Data Protection Legislation – GDPR Article 5 – Principles of Processing

- Personal data shall be:
- processed **lawfully, fairly** and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; ('purpose limitation');
- adequate, relevant and **limited to what is necessary in relation to the purposes for which they are processed** ('data minimisation');
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');
- kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; ('storage limitation');
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

# Data Protection Legislation – GDPR Article 6 – Lawful Basis

- Processing shall be lawful only if and to the extent that at least one of the following applies:
- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for **compliance with a legal obligation** to which the controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- (e) processing is necessary for the **performance of a task carried out in the public interest** or in the **exercise of official authority vested in the controller**;
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

# DPC advice regarding putting personal data in the public domain

Where the processing of personal data is concerned, the principles of the GDPR and data protection law must be applied in every instance. For example,

- Is there is a clear legal basis to publish,
- Are they being processed legally in the first place,
- Is it **necessary and proportionate** to publish and share;
- Is it fair and transparent;
- Does it comply with the principle of **data minimisation**? etc.

The GDPR does not prevent any controller from meeting its legal obligations under other enactments but where the processing of personal data is concerned they must be read together.

Ultimately, as data controller, Limerick City and County Council must ensure and be able to demonstrate compliance with the Regulation.

# Conclusion

- The Council must balance the requirements of any specific legislation in relation to publishing or sharing personal data against the requirements of the GDPR and related legislation in terms of necessity, proportionality, fairness and data minimisation.
- Where Elected Members have a concern in relation to any business or transaction of the Local Authority their powers under Section 136 of the Local Government Act 2001 ( as amended) come into play.