

J. Meade Commissioner, Ireland

Data Protection and Political Marketing

General comment

I recognise and accept that the need, for candidates in an election or public representatives in the course of their work, to contact as many potential voters as possible is fundamental to the proper operation of the democratic process. However such contacts must be made in accordance with legal requirements. In considering this topic the following matters must be considered and a full appreciation of political life has to be understood as otherwise democracy may not flourish in a transparent world.

Political activity overall

The following are important matters to be taken into account when considering political marketing and data protection as politicians have

- Important role and a difficult life as security of tenure not great
- To inform the electorate and freedom of expression is desirable

As democracy demands that people are fully informed by all candidates why put 'barriers' in the way.

Should Data Protection law apply to political activity?

Politicians are processing personal data including sensitive data . Marketing campaigns may be intrusive and why treat as special exemptions. Direct marketing was and is an irritant in DP area. Therefore Data Protection law must apply.

Is Data Protection law a barrier to political marketing?

We must consider what is legally allowed and nature of complaints received. It must be considered whether politicians be treated different and in this context the question to ask is - How responsible are the parties or candidates
Therefore data protection law is an enabler overall.

Is political canvassing direct marketing?

When you consider

- Recommendation R(85)20 of CoE
- F.E.D.M.A. (1998)
- Recital 30 of 95/46 EC Directive
- DPC decision 4/2002 in Ireland

the answer is yes

Can politicians direct market and how to do it legitimately ?

Yes by adhering to

- Register of electors, legal right to have access to it and to use it for political purposes
- Direct mailing exemption in Irish Data Protection Acts
- EU Communications Directive 2002/58

What are peoples DP misconceptions in this area

The following misconceptions arise

- Politicians should not contact me ever
- Why have they got my details and where did they get them
- I do not like the message so you must prevent it
- It is not right that they can direct market me by using the electoral register when the DPC prevented its use for commercial purposes
- How can a DPC be independent anyway

Are there DP special problem areas for political activity ?

The following can cause problems

- Automated dialling and recorded message
- Automated faxes
- Adhere to phone 'opt out' register
- SMS texting
- Harvesting of email addresses
- Using charitable databases to deliver a political message
- Rogue member not adhering to party policy
- Arrogance of power

How to deal with complaints about political marketing?

The following steps must be taken

- Investigate as a normal complaint and assemble all facts
- Issue Draft decision to Parliamentarians and complainants
- Consider responses
- Meet with parties and outline basis in detail
- Consider their concerns re publicity
- Note any mitigating factors
- Issue the decision
- Prepare for an appeal

In effect treated as any normal complaint

If no complaint received

Matter may come to notice in a variety of ways-media, personal contact, opposition party, whatever and indeed the Data Protection Commissioner can initiate procedure on own initiative if considered necessary.

Thereafter treat as a normal complaint problem.

If matter needs to be dealt with urgently then do so

Make sure that you are clear as to purpose of investigation

Special factors in dealing with a complaint

These must not be overlooked

- It may be sensitive and diplomacy is necessary
- Explore all angles but do not compromise on principles
- Be sure to act independently
- Outcome the same as for an ordinary complaint by anybody

Conclusion

This is an important area because

- Political marketing creates unique data protection considerations
- Demands of political life needs consideration
- Pragmatic and sensible approach is best

It is reasonable to assume that the area will present challenges in future.