



## Data Protection and Political Marketing

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Joe Meade  
Data Protection Commissioner Ireland

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## 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.



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## Political activity overall

- Important role
- Difficult life
- Irish constitution and privacy of members of parliament
- Security of tenure not great
- Must inform the electorate
- Freedom of expression
- Democracy demands that people are fully informed by all candidates
- Why put 'barriers' in the way



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## Should Data Protection law apply to political activity?

- Process personal data
- Sensitive data
- Marketing campaigns may be intrusive
- Positions of trust
- Why treat as special exemptions
- Direct marketing was and is an irritant in DP area
- It must apply



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## Is Data Protection law a barrier to political marketing?

- What is legally allowed
- Nature of complaints
- Should politicians be treated differently
- What is at stake
- How responsible are the parties or candidates
- No its an enabler



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## Is political canvassing direct marketing?

- **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**
- **yes**



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## Can politicians direct market and how to do it legitimately ?

- Yes
- 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
- Adhere to EU Communications Directive 2002/58



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## What are peoples DP misconceptions in this area

- Politicians should not contact me ever
- Why have they got my details and where did they get them
- I do not like the message
- 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



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## Are there DP special problem areas for political activity ?

- 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



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## How to deal with complaints about political marketing?

- 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



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## If no complaint received

- Matter may come to notice in a variety of ways-media, personal contact, opposition party, whatever
- Can initiate procedure on own initiative if considered necessary
- Treat as a normal complaint problem then
- If matter needs to be dealt with urgently then do so
- Make sure that you are clear as to purpose of investigation



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## Special factors in dealing with a complaint

- 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



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## Conclusion

- Political marketing creates unique data protection considerations
- Demands of political life needs consideration
- Pragmatic and sensible approach is best
- Area will present challenges in future