

Personal Data Privacy: Guidance on Electioneering Activities

1. This guidance note serves as a general reference on compliance with the requirements of the Personal Data (Privacy) Ordinance ("the PD(P)O"), in relation to electioneering activities that may involve the collection and use of personal data of an individual. Very often, candidates and/or their election agents make lobbying approaches by telephone to prospective voters with the intention of influencing their votes. Candidates may also choose to lobby potential voters by various forms of mailings such as fax messages, SMS or E-mails. In some cases, the individuals have no previous dealings with the caller and/or the candidate and they are concerned that the candidate might have obtained their personal data from sources other than the voter register.

2. The act of canvassing support for votes is not in contravention with the PD(P)O provided that personal data are obtained by means that are lawful and fair in the circumstances and the use of these data is directly related to the purpose for which the data are collected. Of direct relevance are the data protection principles 1 and 3 ("DPP1" and "DPP3") in Schedule 1 to the PD(P)O:

- (a) **DPP1(2)** requires that personal data shall be collected by means that are lawful and fair; and
- (b) **DPP3** requires that personal data shall not, without the prescribed consent of the individual, be used for any purposes other than the purpose for which the data were to be used at the time of collection of the data or a directly related purpose.

3. Candidates, who use personal data to facilitate electioneering, should be mindful of the provisions stated in the PD(P)O.

4. Candidates should assume direct responsibility for briefing and supervising members of their campaign staff to ensure their compliance with the requirements of the PD(P)O.

5. Candidates, who solicit personal data directly from an individual for electioneering, should ensure that the individual is informed about the potential use of the data for such a purpose.

6. Candidates should not collect personal data for electioneering by deceptive means or by mis-representing the purpose of the collection.

7. With respect to the use of personal data gathered from the published register of voters, due care should be taken to ensure that they are used only for purposes relating to an election as prescribed by relevant election legislations.

8. Candidates should not use personal data from sources other than the voter register or published data sources for electioneering unless the candidates have obtained prior express consent of the individual for such a purpose.

9. With respect to the use of personal data gathered by a third party, eg a trade union or professional body as a means of accessing members of those bodies for lobbying purposes, the proper course of action would be for these bodies to determine whether this is a permitted purpose for which the personal data have been collected, and mailings should preferably be handled by these bodies. As a matter of good practice, prior notification to member of such use of their data is recommended.

10. As a matter of good practice, candidates, who use any form of the mailings through professional bodies to lobby support, should allow those individuals to whom such mailings are directed to decline receipt of any subsequent mailings by providing for the exclusion of the individual from any future mailings.