

Mr Clive Betts MP
Chair – Levelling up, Housing and Communities Committee
House of Commons
London
SW1A 0AA

Sent by email to: luhccom@parliament.uk

8 September 2023

Dear Mr Betts,

Thank you for your letter of 17 July 2023 to John Edwards, the Information Commissioner, regarding the Levelling Up, Housing and Communities Committee (the committee) and its inquiry into Electoral Registration. I lead our Parliamentary Affairs team, including our engagement with the Electoral Commission, and so am responding on behalf of the Commissioner.

As you note in the conclusion of your letter, the ICO isn't able to provide a detailed analysis of the proposals at this time, but we are happy to provide some general reflections. We hope these are useful to the inquiry.

It is useful to highlight at this stage, the requirement for legislators to engage with the ICO under Article 36 (4) of the UK GDPR when they are proposing legislative changes which impact upon the processing of personal data. So if DLHUC or indeed another department were to take forward legislative changes, which you may recommend, then they would be required to consult with us at that time. This gives the ICO the opportunity to provide more detailed comment as well as allowing government to consider risks and governance at an early stage.

The ICO understands the advantages of these proposals in terms of efficiency and likely improved accuracy of electoral registers. However, as noted, any such proposals must be carried out in accordance with data protection law. The law provides a framework for how to use personal information effectively, proportionally and safely. Data protection law should not be considered a barrier to good public policy. With appropriate

governance, implementation and risk mitigation, policy that puts at its core a respect for privacy and a desire to build public trust in the use of information should be able to comply with data protection law.

Both proposals involve sharing government held data about a large percentage of the population so should be considered very carefully, taking a privacy by design approach to ensure data protection compliance and mitigation of potential risks. The ICO's Data Sharing Code of Practice provides further information on data sharing compliance and good practice.ⁱ

Transparency is of vital importance for both proposals. Under law, the processing of personal information must be transparent. As well as complying with the law, transparency (and public consultation) would be important elements to make this policy change a success. The ICO would encourage policymakers looking at a change of this scale to think carefully about how they are acting transparently, in order to build public trust for the initiative, and to ensure it complies with the law. In an automatic voter registration context, the organisations involved would also need to think about the different routes in which they could communicate transparency information (for example, if DWP information is being used by the Electoral Commission, it is likely that both the DWP and Electoral Commission would need to communicate this to individuals separately). Turning to the specific proposals in turn:

1. Full Automatic Registration

Whilst the ICO does not regulate electoral law, such a proposal is likely to require legislative changes to enable increased access to the register and/or to automatically enrol people. Legislative change could then create a lawful basis (the legal reason to use personal information) under data protection law.

It is unlikely that consent as a data protection lawful basis will be appropriate in this case. Consent is often not appropriate due to a power imbalance, and because an individual must be able to withdraw their consent as easily as they have given it. If the Electoral Commission, or a different organisation, need to retain personal information regardless of whether an individual opts into the register then consent would not be

valid.

Consent is, however, only one of several lawful bases. If there was a legal pathway under new legislation as referenced above, then other lawful bases including 'legal obligation' or carrying out a 'public task' would likely be available. Under these other lawful bases, then an opt out mechanism could be pursued (whereas any consent must be unambiguous and freely given). The decision about whether to pursue an opt in or opt out mechanism is ultimately a policy decision for the relevant government departments.

Accuracy is also of vital importance and a requirement of data protection law. The use of multiple systems across the public sector could present challenges in maintaining accurate information, as the Electoral Commission (or others) would be reliant on third party systems being up to date. There is a risk inaccuracies would be carried over to the register and not necessarily corrected if there was no onus on individuals to update them. This risk would need to be mitigated appropriately. The model for the annual canvas is one which could be considered.

2. Greater data access for electoral registration officers

Under this proposal accuracy could be a particular concern. There is a risk that registration officers could inadvertently disclose information by writing to the wrong address if communication was not effective between Electoral Registration Officers and the owners of the datasets they relied upon. Prompting users of different government services to update their electoral registration information when they update their details with a government department would be a lower risk option, although it would of course not guarantee full registration.

A final risk which is present across both proposals is the small number of anonymous registrations. It would be critically important that any overall change to the registration system ensured these individual's identities would be sufficiently protected. If for example other data sets were to be relied upon, then there would need to be some consistency/strict access controls between the multiple organisations involved in the process.

I do hope the above is helpful, but please do not hesitate to contact us if you require anything further. We would welcome a meeting with you or your committee staff to discuss the proposals in more detail when ready.

Yours sincerely

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Owen Prendeville

Parliamentary Affairs Group Manager

Information Commissioner's Office

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ⁱ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-sharing/data-sharing-a-code-of-practice/>