



## Response to ICO consultation on the draft framework code of practice for the use of personal data in political campaigning

Submitted by

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# ICO consultation on the draft framework code of practice for the use of personal data in political campaigning

It is vital in any democratic society that political parties, candidates and campaigners are able to communicate effectively with voters. But it is equally vital that all organisations involved in political campaigning use personal data in a way that is transparent, understood by people and lawful.

Our current guidance on political campaigning is outdated. It has not been updated since the introduction of the GDPR and does not reflect modern campaigning practices. We have therefore drafted and are now consulting on a new framework code of practice for the use of personal data in political campaigning. This will serve both as helpful guidance in its own right as well as having the potential to become a statutory code of practice if the relevant legislation is introduced.

The framework code of practice does not introduce new requirements for campaigners but seeks to explain and clarify data protection and electronic marketing laws as they already stand. It also seeks to provide practical guidance and useful examples on ways campaigners could comply with their obligations whilst carrying out common political campaigning activities.

Before drafting the framework code of practice, the ICO launched a call for views in October 2018. You can view a summary of the responses and some of the individual responses on our website. The responses have helped inform the content of the draft framework code.

We welcome views on the draft framework code of practice. Please send us your responses by **Friday 4 October 2019**.

## Privacy Statement

For this consultation, we will publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full.

For more information about what we do with personal data please see our [privacy notice](#).

## Questions

Q1 Does the draft framework code adequately explain and advise on the aspects of data protection and electronic marketing laws which are relevant to political campaigning?

- Yes  
 No

Q2 If not, please specify where improvements could be made.

- Overall the draft framework code explains and advises on the legal framework in a rather clear and precise way. There are however two aspects of the GDPR on which the draft framework code could further elaborate:
- First, the notion of joint controllers, in particular with regard to how CJEU case law may have implications for political parties. In *Jehovan todistajat*, the Court clarified that, “by organising, coordinating and encouraging” the activities involving the use of personal data by its members, an organisation can be held as a data controller, whether or not it has actual access to the data concerned. This is particularly relevant to political campaigning as sometimes campaigning activities are conducted by members of political parties on a voluntary basis. Political parties should therefore be reminded to take into account the potential legal consequences when deciding how to facilitate the activities of its members.
- Second, the definition of “political opinion”, which is not explained in detail in the draft framework code. We encourage the ICO to take a more clear and inclusive stance when interpreting this concept, so as to cover not only personal data directly indicating the data subject’s political position on a particular matter, but also those revealing vulnerabilities that can be exploited to make the data subject more prone to political messages promoted by the campaigner. This is of significant importance as such details about one’s vulnerabilities can sometimes be more effective and dangerous than direct revelation of the data subject’s political viewpoints.

Q3 Does the draft framework code contain the right level of detail?

- Yes
- No

Q4 If no, in what areas should there be more detail within the draft framework code?

Q5 Does the draft framework code provide enough clarity on the law and good practice on the use of personal data for political campaigning?

- Yes
- No

Q6 If no, please indicate the section(s) of the draft framework code which could be improved, and what can be done to make the section(s) clearer.

- While the draft framework code has provided a fair amount of clarity on both the law and business practices, some of the practical implications of the data protection principles can be explained more explicitly.
- **Fairness:** It should be made more clear that, as a principle of data protection law, the legitimacy of unfair uses of personal data cannot be remedied simply with a legal basis such as consent or legitimate interest. This also offers an important opportunity for the ICO to clarify certain scenarios where the processing of personal data is unfair and thus prohibited regardless of individual consent.
- **Purpose limitation:** A similar remark can be made with regard to the purpose limitation principle, in particular considering the often overlooked condition of “legitimate purpose” as required by the clear wording of this principle. Again, any processing serving an illegitimate purpose cannot be permitted even with the explicit consent from the data subject.
- **Transparency:** The draft framework should further explore, and encourage certain desirable designs and practices that will not only enable individual data subjects to review the information, but also allow the general public, experts, and rights groups to scrutinise the use of personal data for political campaigning. Among other things, we are of the view that an effective regime designed to enhance transparency in online political campaigning should cover at least the following areas: (1) a requirement of a detailed statement on the political group’s spend on different online platforms and the marketing methods employed (which is perhaps more of a matter of electoral law); (2) a compulsory, publicly accessible archive of any online political advertisements and direct-marketing messages to internet users and the criteria of targeting; (3) a platform-specific – or ideally, cross-platform – portal to allow internet users to review when and how they have been targeted with political messages and by which political groups.

Q7 Does the draft framework code cover the right political campaigning activities?

Yes

No

Q8 If no, what other activities would you like to be covered in it?

Q9 Does the draft framework code appropriately recognise and understand the ways in which political campaigning takes place in practice in the online world?

Yes

No

Q10 If no, in what way does the draft framework code fail to recognise and understand this?

Q11 Does the draft framework code provide examples relevant to your organisation?

- Yes
- No

Q12 Please provide any further comments or suggestions you may have about examples in the draft framework code.

Q13 To what extent do you agree that the draft framework code is clear and easy to understand?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Q14 Are you answering as:

- An individual acting in a private capacity (e.g. someone providing their views as a member of the public of the public)
- An individual acting in a professional capacity
- On behalf of an organisation
- Other

Please specify the name of your organisation:

Thank you for taking the time to share your views.

