

Agenda item 6.1.3 Full Council 20 April 2020

Briefing Note re GDPR

NB This has in all material respects been previously circulated to the Working Practices Group on 12 March 2020 as a Briefing Note re anonymous contributions from the public at meetings being inappropriate.

Only the most minor of modifications have been necessary to enable it to address the GDPR issues arising out of recording Zoom meetings and then uploading them

NB Not confidential on basis of privilege because HDC has specifically stated that it is giving guidance, not legal advice.

Background

Anonymity is not generally considered appropriate for contributions at public meetings.

For meetings which I chair I wanted to use the following protocol:-

“Up to 15 minutes will be available to allow the public to make representations, ask questions, or give evidence in accordance with Standing Orders (2 minutes per person). We do not take anonymous contributions and so anyone wishing to contribute is asked to give their name and state whether or not they are a Steyning resident. By doing this you will be consenting to your name, your area of residence and your contribution being recorded in the minutes of the meeting which are made available to the public.

Please also note that other members of the public could be making audio or video recordings for their own purposes.

Written questions are also encouraged, particularly if submitted to the Clerk in advance of the meeting on complex issues as this maximises the likelihood of an answer being given at the meeting.

If you wish to have your name withheld then, before the meeting, please put your contribution including your name and place of residence in a written request to the Clerk stating the reason for wishing this to remain confidential within the Council.”

Concerns were expressed by Cllr Tim Lloyd and by John Fullbrook about GDPR implications.

Sources of Advice

1 In drafting the wording I had been mindful of GDPR and in particular the advice given in the Guide at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/lawfulness-fairness-and-transparency/> attached separately.

2 I subsequently spoke with the ICO on 9 March 2020 who confirmed that my position had been correct. The wording in my document achieved the necessary degree of consent.

While consent obtained via the wording of my notice was sufficient to justify naming of contributors at meetings and in minutes, because consent can be withdrawn, the ICO advised that it would be wise to also document the other lawful bases for processing on which we could rely. She referred me to page 53 of the Guide.

The potential lawful bases given in the Guide are:-

- a) Consent: the individual has given clear consent for you to process their personal data for a specific purpose. (This is the one I had addressed in the announcement).
- (b) Contract: the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.
- (c) Legal obligation: the processing is necessary for you to comply with the law (not including contractual obligations)
- (d) Vital interests: the processing is necessary to protect someone's life.
- (e) Public task: the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.
- (f) Legitimate interests: the processing is necessary for your legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)

The Guide goes on to say

"You need therefore to keep a record of which basis you are relying on for each processing purpose, and a justification for why you believe it applies. There is no standard form for this, as long as you ensure that what you record is sufficient to demonstrate that a lawful basis applies. This will help you comply with accountability obligations and will also help you when writing your privacy notices. It is your responsibility to ensure that you can demonstrate which lawful basis applies to the particular processing purpose."

3 Sharon Evans at HDC.

John sought advice by email of 28 January 2020. I spoke with Sharon and Robert Baxendale on 10 March. Sharon confirmed that refusal to accept anonymity is increasingly common and she thinks it wise. HDC requires questioners to give their name. Sharon said that she had been asked by several other councils because of the increasing tendency for anonymity not to be considered appropriate at parish council level. Mayfield was cited as somewhere that strange questions had come concerning development issues.

We just have to be careful not to put inappropriate fetters on participation.

Later that morning Sharon's colleague Natasha Rafatnia emailed SPC confirming this. See the email string below for full details.

Analysis

Both the ICO and HDC have confirmed that the desired approach is fine and in the case of the latter, probably desirable.

Personally, I think some of HDC's advice is slightly wide of the mark.

"... there does not appear to be any GDPR/DPA implications ..." In fact, there are rather large implications. We need to document all the lawful bases and not just rely on consent – see the Guide and conversation with ICO quoted above.

"... Therefore, asking a person to provide reasons for their personal information to be withheld from disclosure at a public meeting may be taking it a step too far ..." This just seems to me a misjudgement. If we are going to permit anonymised contributions then there has to be a reasoned

basis for that. The alternative would be to refuse anonymous contributions which seems to me unnecessarily restrictive.

In addition to the express consent basis of lawful processing (basis a) above), we would be wise to document the others we are relying on.

I suggest they are: -

Basis c) - Legal obligation. We are required by law to keep minutes of our meetings.

Basis e) - Public task. Our official functioning requires us to undertake our business at meetings held in public and uploading the recording of the meeting has a proper basis in law and is necessary for us to perform the task of keeping the public informed and involved in a manner which is in the public interest .

Recommendation

That we:-

- 1 Adopt the GDPR wording shown on the agenda for the meeting of 20 April 2020, namely:-

"GDPR Notice

Please note that the Council is, and members of the public and individual councillors could be, making audio or video recordings of this meeting.

The Council's recordings will be uploaded to a cloud-based website of record and will be available indefinitely to the general public.

By participating at the meeting, including by merely logging-in to it, you consent to this.

If you do not consent to these terms you should please not log-in to the meeting"

- 2 Document the GDPR compliant lawful bases for processing as:-

- 1 Consent (a above)
- 2 Legal obligation (c above); and
- 3 Public task (e above)

Email exchange with HDC follows below:-

From: paul campbell

Sent: 11 March 2020 04:00 PM

To: Sharon.Evans

Subject: Acknowledgement Memo: Steyning PC - Advice Re: Representatives - NR/001109

Thanks for responding so promptly, Sharon. It does help focus on the issue.

Personally, I think that a binary choice – we do not accept anonymous contributions so

1 if you want to contribute you must give your name; or

2 if you do not want to give your name you cannot contribute

is more open to criticism than to include a third additional option saying –

3 there may be a good reason for an anonymous contribution. If you want to contribute anonymously, tell us the reason and we will consider taking your contribution on an anonymised basis.

Accordingly, while being very grateful to Natasha for her thoughts on this, I think I will be recommending the three-option route to colleagues on our working practices group to which this has been referred....

Many thanks,

Paul

From: Sharon.Evans <

Sent: 10 March 2020 06:36 PM

To: paul campbell <

Subject: RE: Acknowledgement Memo: Steyning PC - Advice Re: Representatives - NR/001109

Dear Paul

As mentioned in our conversation this morning, anything that could be seen as hindering or hampering public participation may be criticised. The comments made by my colleague are made in her opinion and not to constitute legal advice. There is nothing to stop you asking for the reason why there is a request for anonymity, that is the Council's decision but just be mindful that it may open you up to criticism.

I hope this helps.

Best regards

Sharon Evans

Head of Legal and Democratic Services, Monitoring Officer.



Horsham District Council, Parkside, Chart Way, Horsham, West Sussex RH12 1RL

Telephone: 01403 215100 (calls may be recorded) www.horsham.gov.uk Chief Executive: Glen Chipp

From: paul campbell <

Sent: 10 March 2020 14:59

To: Sharon.Evans <

Cc: standards <

Subject: Acknowledgement Memo: Steyning PC - Advice Re: Representatives - NR/001109

Hi Sharon

Really good to discuss matters with you and Robert this morning. Thank you very much.

Re my voicemail just now – if it was possible for you to call me before tonight's meeting when it is on the agenda it would be very much appreciated, please. 077 1178 8077.

Concerns the fact that we are (as kindly confirmed by your department in the advice below) entitled not to take anonymous questions.

It concerns the procedure whereby we seek to take anonymized questions in appropriate cases.

I.e. If someone wishes to ask a question but wishes to remain anonymous for good reason then we will anonymize if the question is in writing and the reason for anonymity is judged sufficient.

If the advice from your colleague that asking for reasons is a step too far then the only alternative is to refuse all anonymous questions which would then exclude potentially good questions from a person who has good reason to be anonymous. That is the opposite of the accountability of the council which we are trying to encourage by having a public engagement period (which is itself entirely voluntary).

Please could you give consider a re-think on that part of the advice?

Many thanks,
Paul

Cllr Paul Campbell SPC

From: Natasha.

Sent: 10 March 2020 11:49

To: John Fullbrook <

Cc: standards <

Subject: RE: Acknowledgement Memo: Steyning PC

Good morning John

Thank you for your email and apologies for the delay in responding back to you. Firstly, to cover all bases and from a data protection perspective, from the information you have provided there does not appear to be any GDPR/DPA implications. As long as the person who wants to provide the contribution is told in advance that their personal details are going to be made public, then they are aware and can choose to participate or not participate. It may exclude a few members of the public from participating at the meetings but anyone wishing to remain anonymous can provide written representations in advance.

Because there is an alternative provision for those wishing to remain anonymous, it is then difficult to argue that anyone is unfairly prejudiced by the process. Having said that it is important for public meetings to encourage participation and have a degree of fluidity. Any adopted measure should not act as or be seen to hinder public participation. Therefore, asking a person to provide reasons for their personal information to be withheld from disclosure at a public meeting may be taking it a step too far.

I have also looked at other councils' practices (including HDC's) and it seems like the majority of councils do ask for names/contact details which are also published in the minutes of meetings (as a minimum initials and surnames).

I hope this assists with your query.

Please note the above is general guidance on the matter and does not constitute legal advice.

Kind regards

Natasha

Natasha Rafatnia

Corporate Governance Solicitor



From: John Fullbrook <
Sent: Tuesday, January 28, 2020 2:35:17 PM
To: Sharon.Evans <
Subject: Advice please

Dear Sharon

I hope you are well

I wonder if you could check something for me please.

As a preamble we {either Clerk or Chair} make a speech at the beginning of a meeting and in it we talk about their being no Fire drill so if the alarm sounds etc... and also we have made the following comments about Questions from the floor.

Up to 15 minutes will be available to allow the public to make representations, (2 minutes per person) ask questions or give evidence, in accordance with Standing Orders. Please note that under new Data protection regulations we ask members of the public to only state their name if they agree to their name being recorded in the minutes, which are made available to the public, and also note that other members of the public could be making audio or video recordings for their own purposes.

One of my Councillors – Cllr Campbell, would like it to change to the following and I wonder if you feel this text is appropriate or could be refined as I am concerned we would be shutting out those residents who want to remain anonymous – please advise

Up to 15 minutes will be available to allow the public to make representations, ask questions, or give evidence in accordance with Standing Orders (2 minutes per person). We do not take anonymous contributions and so anyone wishing to contribute is asked to give their name and state whether or not they are a Steyning resident. By doing this you will be consenting to your name, your area of residence and your contribution being recorded in the minutes of the meeting which are made available to the public.

please also note that other members of the public could be making audio or video recordings for their own purposes.

Written questions are also encouraged, particularly if submitted to the Clerk in advance of the meeting on complex issues as this maximises the likelihood of an answer being given at the meeting.

*If you wish to have your name withheld then, before the meeting, please put your contribution including your name and place of residence in a written request to the Clerk **stating the reason for wishing this to remain confidential within the Council***

Thanks in anticipation
John

John Fullbrook
Clerk to the Council
01903 812042

Prepared by Cllr {Paul Campbell for WPG
Minor amendments for Full Council

12 March 2020
13 April 2020