

Ms Jenny Marra MSP
Convener
Public Audit and Post-legislative Scrutiny Committee
Room T 3.60
The Scottish Parliament
EDINBURGH
EH99 1SP

14 March 2019

Dear Ms Marra

Control of Dogs (Scotland) Act 2010 – data protection issues

Thank you for your letter of 28 February to the Information Commissioner in relation to the above. As the Head of ICO Regions, I am responding on her behalf.

Since May 2018, data protection law in the UK is comprised of the General Data Protection Regulation 2016 (the GDPR) and the Data Protection Act 2018 (DPA 2018). Together, these pieces of legislation provide a framework for compliance around the six data protection principles of:

1. lawfulness, fairness and transparency;
2. purpose limitation;
3. data minimisation;
4. accuracy;
5. storage limitation; and
6. integrity and confidentiality.

When processing personal data for any purpose, the data controller (in this case the Local Authority) must be satisfied that that processing is lawful, ie, one of the six conditions for processing contained in the GDPR is met. These conditions include legal obligation and public interest as well as consent but it needs to be noted that consent is inappropriate where there is a power imbalance between controller and data subject such as may exist in this case. Where processing does take place other than through consent, it must be *necessary* for the purpose.

It is for the local authority to determine if it has the power to disclose the conditions of Dog Control Notice to the public. If that power exists but in the absence of a strict legal obligation to do so, this could be only done on a case by case basis; where the authority believes that it should be disclosed, then a record

of the grounds on which it is to be disclosed should be made. However, our expectation is that such disclosure would be an exception rather than the rule and only take place in the most serious cases. Non-disclosure does not, of course, prevent members of the public reporting ongoing behaviours causing them concern which the Local Authority could then investigate if required.

Information sharing between a local authority and another body can also take place if it is within the power of the authority to do so and a condition for processing can be found. Such sharing should be appropriate and proportionate and limited to particular situations (for example, the Local Authority is monitoring/enforcing compliance with a Notice and the owner/responsible person has moved to another Local Authority area). In this regard, please note that the Information Commissioner is currently preparing a revised Statutory Code of Practice on Data Sharing which will provide data controllers with good practice guidance on the sharing of personal information. It is hoped that the revised code will be published in the summer but, in the meantime, the contents of our existing Code can be drawn upon.¹

I trust that you find this helpful but do not hesitate to contact me if you require any further clarification.

Yours sincerely



Dr Ken Macdonald
Head of ICO Regions

¹ https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf