

- **Questions that should be asked and answered on the use of personal data in elections**

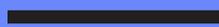


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Intro

At Privacy International, we find ourselves even busier than usual come election time, like many others working on human rights and technology. Personal data now plays a fundamental role in democratic processes. Through the amassing and processing of vast amounts of data, individuals are profiled based on their stated or inferred political views, preferences, and characteristics. These profiles are then used to target individuals with news, disinformation, political messages, and many other forms of content aimed at influencing and potentially manipulating their views. Data is also becoming integral to the ways in which we vote - from the creation of vast voter registration databases, sometimes including biometric data, to reliance on electronic voting. Such voting processes are often implemented without sufficient consideration for their considerable privacy and security implications.

And yet there should be safeguards and protections applied to prevent the exploitation of personal data. It is important that those with responsibilities for protecting our data be transparent in order to ensure that there are effective safeguards in place, and civil society plays an important role in holding them accountable.

At Privacy International we developed the following questions to help obtain information from bodies/authorities who should be safeguarding personal data in the run up to and during elections: the Data Protection Authority (provided there is one); the Electoral Management/ Oversight Body; Companies (Platforms); and Political Parties. For example, Privacy International used these questions to frame letters sent to political parties in the UK in the run up the General Election in December 2019.¹

Information from these bodies can help inform civil society, reveal gaps in safeguards and therefore signal where efforts and pressure should be applied. They are a general starting point. The stakeholders, questions and mechanisms of obtaining this information will vary depending on the national context.

¹ <https://privacyinternational.org/press-release/3268/pi-and-other-rights-groups-demand-political-parties-come-clean-user-voters>

Data Protection Authority

In order to ensure responses from public authorities, like the Data Protection Authority, it may be worth considering sending Freedom of Information (FOI) requests, to the extent which the actor exists and is covered by a FOI regime. The best way of drafting and process for submitting a FOI request may vary depending on the national context.

- What guidance are you providing to political campaigns in advance of the elections?
 - If so, is such guidance limited to political parties or other players as well including companies involved in the campaign, such as data brokers?
- Are there any specific provisions/ conditions or exemptions in the data protection law that apply to political parties, or which they can take advantage of?
 - What guidance/ interpretation are you providing in relation to such conditions?
- Are you coordinating with the Electoral Authority (or similar authority) and how?
- How many complaints have you received about the processing of data in the political campaign context including a breakdown by political party and other actors and the type of issue raised?
 - In the last year?
 - In the last 5 years?
 - In the year before the previous election?
- Have you audited the main political parties?
- Have you taken any enforcement action in the political context? If so, what form did it take - information or assessment notices, undertakings, restriction on processing of personal data, monetary penalties, other sanctions etc.?
- What remedies are open to individuals? What remedies, if any, are open to organisations, such as civil society or consumer organisations?
- Do you plan on providing guidance about data protection in the future in the context of digital campaigning in the political context?
- Are you cooperating with other data protection authorities on compliance in the political context?
 - If so, where and how?
- Do you consider that the current data protection law requires to be revised in order to prevent the exploitation of people's data in the political context?
- Is there any proposal (e.g. governmental, parliamentary) to regulate the role of personal data in the political context?
 - If so, have you made any submissions/ provided advice on the topic?

Electoral Management Body and /or Electoral Oversight Body

In order to ensure responses from public authorities, like the Electoral Management Body and/ Electoral Oversight Body, it may be worth considering sending Freedom of Information (FOI) requests, to the extent which the actors exist and are covered by a FOI regime. The best way of drafting and process for submitting a FOI request may vary depending on the national context.

- Who is allowed to access the electoral register and what are the conditions for such access?
 - What personal data is openly accessible, to whom, on what basis and under what conditions (e.g. consent of voter/ by law)?
 - What security measures are adopted to ensure that the personal data contained in the voters' register is safe from unauthorised access? How often are these measures reviewed? And how are they assessed?
 - Is the national data protection authority consulted on the administration and updates related to the voters' register?
 - If biometric registration is used, is it subject to enhanced safeguards due to the special sensitivity of the data and has it been designed with privacy in mind and limited to specific, relevant use cases?
- How do you ensure transparency, fairness and accountability in digital political campaigning?
- Are political parties/ candidates/ campaign groups required to make available copies of their communications and disclose the targeting criteria used in the dissemination of political communications?
- Are voters entitled to information explaining why they are receiving a particular message, who is responsible for it, and how they can exercise their rights to protect their data and prevent being targeted?
- Are political campaigns required to disclose the third parties they contract with as part of their campaigns both to obtain data and to further process data, including profiling and targeting, such as data brokers and political advertising and communications companies
- What are the sanctions for failure to comply with these requirements?
- What remedies do individuals, civil society and electoral observers have?
- Do campaign finance laws require reporting on spending on online campaigning? To whom? How granular are those requirements? Within which timescale? What are the sanctions for failing to comply?

- Do laws or regulations require political parties (and other political actors) to disclose amount paid on online political advertisements? What are the details of such disclosure (e.g. disaggregated by digital platforms; etc.)?
- Are you coordinating with other relevant authorities such as the data protection authority and how?
- Do you have expertise in data protection and cybersecurity?
- Do you consider that electoral law needs to be updated in order to response to developments in digital campaigning? If so, are you involved in any process looking to update them, do you have the power to recommend or implement such changes or will you raise this with the legislature?
- How do you engage with political parties with respect to their digital campaigning?

Companies (Platforms)

It can be difficult to obtain responses from the big companies, or find the right person to speak to. Therefore, where a data protection law applies, you may wish to supplement your action by using the right of access, to request information about, as well as a copy of, all the data they hold about you personally.

- How can political campaigns use your platform (inc. to reach users, for advertising, targeting and profiling) and are there any restrictions in place?
- Do you have a policy for transparency of political ads and other political communications, and of targeting?
- Have you made any specific commitments or introduced any measures in relation to the upcoming election, including related to ads transparency?
- Are users easily and quickly able to see who paid for a political ad or political issue ad?
- How do you define political ads and political issue ads?
- Are users easily and quickly able to understand why they are being targeted with an ad?
 - Does this include insight into what data was used to target the ad, including the source of that data?
 - Does this include detailed insight into the target and actual audience of an advertiser?
- Do you provide users in this country with a functional Ad Library?
- Does it contain both political and political issue ads?
 - If so, how do you define these?
- Do you work directly with any political campaigns?
- Do you have an in-country contact person?
- Are users easily and quickly able to report an ad and monitor your progress rectifying it?
- Have you enabled access for public interest researchers to monitor and review the ads in the run up to the election? For example, see demands in the EU² and Latin America and the Caribbean³.
- What steps have you taken to ensure that sponsored content and other forms of alternative advertising occurring on their platforms are included in any transparency efforts?
- What steps do you plan to take in relation to expanding transparency of advertising outside of political or political issue advertising?
- What steps can users take to opt-out of targeted advertising?

² <https://privacyinternational.org/advocacy/2734/pi-joins-open-letter-facebook-regarding-ads-transparency>

³ <https://privacyinternational.org/advocacy/3183/facebook-google-twitter-upgrade-your-ad-archive-api>

Political Parties

The best way to obtain information from political parties will vary depending on the national context. In cases where they are covered by a Freedom of Information (FOI) regime you may wish to send a FOI request to try to ensure a timely response. Where possible under data protection law, you may wish to supplement your action by using the right of access, to request information about, and a copy of, the data they hold about you personally.

- Do you have a data protection/privacy policy? If so, is this displayed in a conspicuous location on all the materials you disseminate?
- What mechanisms/ tools/ techniques do you use to reach/ engage with voters?
- Where these allow for targeting of messages, what targeting criteria have you used?
- What sources of data do you use e.g. direct communication with the individual, is so where and how, the electoral register, collected or purchased from third parties, if so please name? [Consider adding names of any particularly concerned about]
- The categories of personal data that you process.
- What processing activities you undertake on this data and for what purposes?
- Who you share data with and on what basis? [Consider adding names of any particularly concerned about]
- An explanation of any profiling carried out, including making inferences?
- An explanation of any automated decision-making
- Have you carried out data protection impact assessments?
- Have you been subject to complaints to the Data Protection Authority?
 - If so, how many?
- Have you been subject to an assessment/ audit or other investigation by the Data Protection Authority?
 - If so, what was the result?
- What is your legal basis for processing personal data in the campaign?
 - If you rely on consent how do you obtain this, or if not what other justifications do you use for your various processing operations?
- How long you hold personal data?
- What third parties have you contracted with as part of your campaign, including for campaign software, advisory/ consultation services, advertising services? What voter data do these third parties have access to and what agreements do you have in place?
- What mechanisms/ procedures do you have in place for individuals/ organisations to report concerns and to respond to such complaints?

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