



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Ref: HRC-RES-ELECTIONS

Mr. Martyn Roper, OBE
His Excellency the Governor
Government Administration Building
P.O. Box 10261
Grand Cayman, KY1-1003
CAYMAN ISLANDS

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16 November 2020

Your Excellency,

The Commission writes in relation to its recent discussions surrounding the legal requirement to publicly disclose an elector's personal information such as their physical home address in the official List of Electors.

Following these discussions, the Commission made enquiries of the Supervisor of Elections regarding s.13 and s.14 of the Elections Law (2017 Revision) ("the Law") which require the disclosure of personal data of registered voters (as contained in the official List of Electors); and enquiries of the Office of the Ombudsman regarding these legislative provisions as they relate to the principles of data protection in accordance with the Data Protection Law, 2017 ("the DPL").

The Office of the Ombudsman indicated that *"the DPL outlines certain requirements for the processing of personal data, one of which is to identify a legal basis for the processing (under Schedule 2 of the DPL). One of the possible legal bases is where the processing is necessary for compliance with any legal obligation to which the data controller is subject. The processing involved in compiling and publishing the Register would be covered by this."* The Office of the Ombudsman was unable to conclude *"that the disclosure of physical addresses of registered electors would be a breach of the DPL, given that this is explicitly required under the Elections Law (2017 Revision)"* and s.25(1) of the DPL provides for such releases (*"Personal data are exempt from the non-disclosure provisions if the disclosure is required by or under any enactment, by any law or by the order of a court."*).

There was however, no determination made as to whether publishing this information (whilst lawful) is necessary for any elections processes. The security (integrity and confidentiality) data protection principle indicates “integrity and confidentiality means that personal data must be kept secure using both technical and organizational means and that only individuals and entities who *need* [my emphasis] to use it actually have access to it.”

As you are aware, public disclosure of such personal and sensitive information has the potential to jeopardise an individual’s personal safety, particularly for those persons who work in areas such as the police and prison service; and those persons who may be considered vulnerable such as victims of assault and domestic violence. Research conducted by the Commission indicated that other jurisdictions handle this sensitive matter in many different ways.

For instance, the Electoral Commission (England & Wales) maintains two electoral registers: The Full Version and the Open Version. Both Versions list the names and addresses of everyone who is registered to vote in public elections however as the Open Version can be sold to persons, entities, etc., registered voters have the option to opt out of having their details published in the¹.

Another example is the Electoral Office in Northern Ireland which maintains three Electoral Registers: The Full Register, The Edited Register/Open Register and the Marked Register.² The Full Register lists the names and addresses of everyone entitled to vote, however “only certain people and organisations are entitled to obtain copies of the full register and they may only use it for specified purposes.” It is a criminal offence for persons with access to pass the Full Register on to other persons, or to use it for unauthorized purposes. The Edited/Open Register omits the names and addresses of electors who requested to be excluded from that version of the Register. Members of the public are able to inspect the current Edited/Open Register in-person at the Electoral Office. The Marked Register “is the polling station register on which a mark has been placed against the name of every person who was issued with a ballot paper.” Various rules exist regarding the supply, sale, and inspection of the Marked Register.

The Commission is concerned that the provisions as set out in the Law may constitute a breach of s.9 of the Constitution (Private and Family Life) and notes that the Supervisor of Elections himself has concerns about this release of information given that, in January 2020, he “*submitted recommendations to the Deputy Governor in relation to the Elections Law which included a recommendation for the address and occupation of Electors to be removed from the online, and printed register of Electors.*”

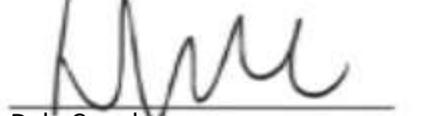
The Commission fully supports this recommendation and believes that amendments to the Law are required to ensure the rights of all registered electors are respected and protected. Can you therefore please advise whether the Supervisor’s recommendation has been considered and if so, what consensus has been reached.

¹ <https://www.gov.uk/electoral-register>

² <https://www.eoni.org.uk/Register-To-Vote/About-the-electoral-register-page>

In accordance with s.116(7) the Commission will publish this correspondence to our website in 7 calendar days. The Commission would be happy to also publish any responses on our website.

Kind regards,

A handwritten signature in black ink, appearing to read 'Dale Crowley', written over a horizontal line.

Dale Crowley

Chairman

cc: Honourable Deputy Governor
Supervisor of Elections