



## **GUIDANCE NOTES ON**

### **DATA PROTECTION AND POLITICAL PARTIES**

#### **1. Introduction**

There must be an election in The Bahamas by May 2011. Consequently, all political parties will be engaging the voters in our healthy democracy as their candidates campaign using a variety of communication methods to win their support. However, contacting an individual by any of the methods listed in the table below to promote the aims and ideas of a political party in order to gain support for a party or candidate, or otherwise influence an individual, is a form of “direct marketing.”

The Data Protection (Privacy of Personal Information) Act, 2003 (DPA) had something to say about an individual’s right to prohibit processing for the purpose of direct marketing:-

“Where a data subject makes a written request for the data controller to cease using, for the purpose of direct marketing, any data which was kept for that purpose, the data controller shall, as soon as may be and in any event not more than forty days after the request has been given or sent to him –

- (i) erase all data as was kept for the purpose aforesaid, or
- (ii) if the data are kept for that purpose and other purposes, cease using the data for that purpose, and
- (iii) notify the data subject in writing accordingly.”

<b>Communication Method</b>	<b>In summary we suggest you may use this method to promote a party or candidate</b>
(i) Post addressed to particular individuals	Unless the individual has asked you not to write to them or not to send them marketing material by post. Does the Parliamentary Elections Act 1992 have anything to say about this?
(ii) Email/text and other messages to mobile phones/voicemail.	Where the individual has consented to contact of that sort from you for those purposes.
(iii) Fax	Where the individual has consented to contact of that sort from you for those purposes.
(iv) Phone Calls	Unless you have grounds for believing the individual would not want you to contact them.
And in every case	You must normally identify yourself in the communication and provide contact details to allow individuals to contact you and easily opt out of unwanted direct marketing. Does the Parliamentary Elections Act 1992 have anything to say about this?

## 2. Why Comply?

The actions of a political party come under close scrutiny from the public and the media. It is not just in your interests to act lawfully but you should also have respect for the privacy of the individuals you seek to represent by treating fairly. Treating individuals fairly includes using their information

only in a way that they would expect, while respecting any preferences they have expressed about not receiving direct marketing.

### **3. What is direct marketing?**

Section 2 of the DPA states that direct marketing includes direct mailing. Broadly speaking, direct marketing is defined as communication (by whatever means) of any advertising or marketing material which is directed to particular individuals. It is not only the offer for sale of goods or services but includes the promotion of aims and ideas of any organisation including political parties. This would include appeal for funds or support for a campaign, encouraging individuals to take some form of direct action or to vote for a particular party or candidate.

### **4. Is political profiling & market research direct marketing?**

Political parties do not just communicate with individuals for promotional purposes. A political party can conduct genuine research in the same way that professional market research companies do to help inform their views and formulate policies. However, communications claiming to be for research that are in reality intended to gain support now or at some point in the future are covered. For example the following are direct marketing:

- A telephone call which starts by seeking an individual's opinions and then urges support or invites contact with a candidate or to provide promotional materials on request; and
- A telephone call which seeks an individual's opinions in order to use that data to identify those people likely to support the party and at a future date in order to target them with marketing:

It should be possible for market research to be carried out without recording the information in a way that identifies the individual respondent. If you record the responses in a way that it can be linked to the individual so that you can then follow up their responses and contact them in future you will be conducting marketing and will need to explain that to them before collecting their information.

## **5. I have received an objection to direct marketing from an individual what do I need to do?**

Individuals have an absolute right to object to direct marketing from any organization and the processing of their information for direct marketing purposes. You must respect any written request you receive from an individual not to send them promotional material (other than election addresses) or otherwise process their personal information for direct marketing purposes. In those cases you will not be able to contact them to promote your aims or ideas by post, email, text, video and voicemail messages to their mobile phone or line calling. You will note also not to use their information in any profiling of people in a particular area or other manipulation of a larger data set to determine who to contact with direct marketing during the campaign.

You should either keep a list of individuals who have exercised their right to object and screen all of your prospective communications against it, or you should have some other process to ensure that individuals are not contacted by you in circumstances where you should respect their wishes not to contact them.

## **6. What do I need to do when contacting individuals by post?**

If you use personal information, such as name, address and any information you have about the preferences of the individual, to promote a political party by sending them promotional messages by post you will need to make sure that you protect their personal information fairly and in most circumstances respect any requests not to receive information from you.

Political parties have unrestricted access to the full electoral register for electoral purposes which includes contacting individuals on the list by post. Indeed, under the Parliamentary Elections Act 1992, a candidate at a parliamentary election has a right to send election addresses by post. Broadly speaking, they may send one unaddressed postal communication addressed to each elector.

Quite apart from this specific right, your use of the full register during elections is, of course, perfectly legitimate and it will not be unfair to contact an individual to promote your party unless you are aware that the individual

objects to direct marketing. The same situation applies to any contact details you obtain from publicly available sources of information.

Where you collect information directly from the individual you must clearly explain to them that you will be using their information to target them with direct marketing unless it is otherwise apparent from your relationship with them that this contact will occur.

Where you send promotional mail to known supporters you need to be satisfied that those supporters would expect their personal information to be used for that purpose.

It is good practice to identify yourself in postal communications and to provide contact details for individuals who want to object to any further direct marketing from you. Parliamentary Elections Act 1992 also requires specific details to appear on each election publications.

## **7. What I need to do when contacting individuals by email, text message (SMS), video message (MMS) or voicemail left on answering machines?**

Bahamians, like other people around the world, are becoming very familiar with most modern means of communication. Therefore, it should not be surprising to see election campaigns using all types of communications going forward.

Email, text message, video message and voicemail are all forms of electronic communication and the same rules apply to them all. You must have the individual's prior consent to communicate with them in this way. In addition in all such communications you must identify yourself and provide an address that individuals can use to object and request that you do not send them any further communications.

You may have collected email addresses or mobile phone numbers from previous campaigns, so you must assure that the individual will always be happy to receive promotional emails, text messages etc. about other issues from your party.

Always check that you are not going to send direct marketing to individuals who have objected to such contact from you in the past.

## **8. What do I need to do when contacting individuals by fax?**

If the user of the fax is an individual as opposed to a corporate subscriber you must have their explicit consent to receive promotional materials from you by fax.

If you are collecting fax numbers from individuals in order to use them for direct marketing you will need to inform them that their information will be used in that way and obtain their consent before collecting the information from them. If you obtain fax numbers from third parties you will need to be sure that the individual has consented to their number being used for promotional purposes by a third party such as a political party or that the information has been obtained from publicly available directories. You must identify yourself in the fax and provide an address or number where you can be reached free of charge.

## **9. What I need to do when contacting individuals by telephone?**

You must treat individuals fairly. If you are collecting telephone numbers from individuals in order to use them for direct marketing you will need to inform that their information will be used in that way. If you obtain numbers from third parties you will need to be sure that the individual has been informed and has a reasonable expectation that their number will be used for promotional purposes by a third party such as a political party or the information has been obtained from publicly available directories.

When you do telephone an individual, you must identify yourself at the start of the call and if requested provide an address or number where you can be reached should you later wish to object to such calls. You should also record and respect any obligations to marketing made by the individual at the time of the call.

## **10. Are there any other things I need to consider when using information from direct marketing purposes?**

You will need to comply with the principles of good information handling from the point at which you first collect personal information to the moment it is deleted. You will need to be aware of what you hold and why and you should routinely assess and amend the information to ensure that it is fit for purpose. Amongst other things this will require you to:

- be transparent about your use of the individual's information and respect their preferences;
- use it only in ways that are compatible with the purposes you or a third party provider have informed the individual of;
- not collect any more information than you need for the purpose you have told the individual about;
- ensure that you do not keep the information for longer than necessary to fulfil those purposes;
- keep the information secure and delete or securely destroy information when it has served its purpose; and
- respect individuals rights of access to information you hold about them and to object to your using their information.

**11. Remember Privacy is the Best Policy!**