



Report to Full Council 17 October 2017

1.3 Data Protection

Overview:

This report advises the Council of forthcoming changes to the data protection regime. These changes will affect local councils and you will wish to consider what steps the Council should be taking to ensure compliance.

Sources:

This report relies on material provided by Suffolk Association of Local Councils (SALC) (forthcoming LAIS), briefings from the National Association of Local Councils (NALC), published guidance by the Information Commissioner's Office and documents connected with the progress of the Data Protection Bill through Parliament.

Detail:

The General Data Protection Regulation (GDPR) has direct application and provides new rules, rights and obligations relating to hard copy and electronic management and use of personal data. The Data Protection Bill is the connected and complementary legislation which is currently passing through Parliament.

Although the interpretation and application of the legislation is not fully clear at this stage, there are certain requirements that are known and, accordingly, there are steps that the Council can take to work towards compliance by the relevant date of 25 May 2018.

The process of ensuring compliance and conducting an assessment of the Council's processes will help the council to focus on embedding best practice data management and administration, protecting the rights of individuals and, avoiding the interruption to business and costs associated with breaches and enforcement.

The application to local councils is confirmed in the wording of the legislation, in briefings from NALC lawyers and in a letter of 21 September 2017 from the Department of Department for Digital, Culture Media & Sport. It seems highly unlikely that the provisions will be disapplied to local councils. Further sector specific guidance is anticipated in due course.

The new rules apply to data controllers and processors of personal data. The council holds personal data including personnel information and records relating to members of the public. As a processor of data, the Council will have additional controls and, as a public body, it must appoint a Data Protection Officer (DPO) to advise and support the Council.

The Clerk has the DPO role built into her job description. This will remain the case until the Council has more staff or decides to appoint an external party. The DPO must have sufficient expertise for the role. As part of developing this knowledge, the Clerk has attended introductory training held by SALC and the DPO Centre. The DPO must represent the interests of individuals about whom data is held and as such should not be the person who determines the purpose or manner of processing personal data. In due course the Council will also wish to consider whether the DPO role should be transferred to another member of staff or an external party e.g. a district council or a commercial entity, such as the DPO Centre. Use of a third party would not absolve the Council from the need for responsible practices and the need to deal appropriately with any breach.



Councillors will need to be mindful of the need for tighter controls over emails and data-sharing. In particular, it will be necessary to encrypt or anonymise personal data and ensure that personal data is only processed where lawful to do so. Some initial work has been conducted within the Council to look at options for sharing information and an online portal that is being considered has been checked to ensure that it is appropriate under the new rules.

The new burdens being created by this legislation, which might include additional staff hours and infrastructure for safe storage and use of hard copy and electronic information, such as encryption tools, are being considered through negotiations between NALC and Government. However, as is often the case, guidance and new burdens money, if forthcoming, are likely to come only at a late stage.

Recommendations:

1. The Council minutes the fact that the Clerk has been appointed as DPO and has attended initial training.
2. The Council notes that all councillors will need to develop their own knowledge in this area and will be provided with guidance to support this.
3. The Clerk, as DPO will assess the systems as they are developed, seek advice as necessary to ensure compliance and will report any areas of concern to Council. Although the Council could appoint an external party to conduct an assessment, the Council is at the early stage of developing its own paper and electronic systems, and the cost of a third party's assessment would be premature.
4. The determination of the purpose or manner of processing personal data be delegated to Finance and Governance Committee for the duration of the period while the Clerk is the DPO at least until further guidance on managing conflicts of interest are obtained and/or a new member of staff/external party is appointed with DPO responsibility.
5. The Clerk alerts council to any further developments and guidance.
6. The Clerk contacts the Council's insurers to determine the scope of any insurance cover in connection with the new rules and to determine whether there are any additional requirements from the insurers in order for any insurance to be effective.
7. The Clerk contacts the council's contractors to determine the steps that are in hand to ensure that they are compliant with the new rules.

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