

REPORT OF THE GROUP MANAGER, LEGAL SERVICES**DATA PROTECTION ACT****Purpose of the Report**

1. To update Standards Committee on the Council's discharge of its duties under the Data Protection Act (DPA).

Information and Advice

2. The Standards Committee has responsibility for overseeing the implementation of, and advising the County Council on, the implementation of all codes of conduct and practice.
3. The DPA places legal responsibilities on the County Council in relation to how it handles and stores the personal information of individuals. It also gives individuals the right to know what information the Council holds about them.
4. Since April 2010 the Information Commissioner's Office (ICO) has had power to fine organisations up to £500,000 for breaches of the DPA. This change was reported to Standards Committee in March 2010.
5. Potential breaches include: where information is not kept securely, where it is used for a different purpose than for which it was collected, where it is inaccurate, excessive or kept for longer than necessary, or where an individual's rights under the DPA are breached. A number of local authorities have received substantial fines for data security breaches resulting from serious contraventions of the data protection principles. A number of cases related to organisations losing sensitive personal data as a result of failing to take adequate steps to ensure the personal data was kept secure, for instance, losing laptops holding unencrypted data or repeatedly sending information to the wrong recipients.
6. In light of these cases news items have been published on the intranet, reminding staff about the importance of handling personal information properly and the potential consequences of failing to do so. Intranet guidance for staff has also been reviewed and updated. This includes links to "Think Privacy" promotional materials published by the ICO.
7. In addition, the Council has published specific data protection guidance for staff, on its intranet, in relation to sending sensitive personal information; and Internal Audit are tasked with carrying out reviews of the effectiveness of the Council's information management arrangements as part of their work programme.

8. In March 2011, the Standards Committee recommend to full Council that a revised Data Protection Policy be adopted. A revised Data Protection Policy was adopted by the County Council on 19 May 2011.

Complaints

9. Over the past year, the Council is aware of a total of two data protection complaints involving the Council which have been referred to the ICO:
 - a. **Complaint A** – The complainant referred a complaint to the ICO on the grounds that the Council had not provided all the information the complainant thought they were entitled to in response to their subject access request. The ICO did not uphold the complaint and found no breach of the DPA. It was held that the Council had provided the complaint with all the information they were entitled to.
 - b. **Complaint B** - The complainant referred their complaint to the ICO on the grounds that:
 - a) the Council had not provided all the information the complainant thought they were entitled to in response to their subject access request; and
 - b) the Council may not have had adequate security arrangements in place to protect certain personal information.The complaint is still under investigation by the ICO and no finding has been made at this time.

Additional measures

10. The Council has allocated funding for two new full time posts in Children, Families and Cultural Services. The office holders will be tasked with responding to subject access requests. Dealing with subject access requests relating to social care files can be very time consuming as they often involve reviewing many years' social services files. The additional resources will help the Council meet its statutory obligations in relation to data protection.
11. The Council is currently undertaking a strategic service review. The review will assess, amongst other things, the effectiveness of the Council's working practices in relation to data protection and data loss. The review is expected to be completed later this year.
12. Although it is not currently a legal requirement, many organisations have a designated Data Protection Officer. It is common for the Council to receive correspondence addressed to the Data Protection Officer; these are currently referred either to Legal Services or to the Complaints and Information Team.
13. The Group Manager, Performance, Complaints and Research has been named the Council's 'Data Protection Officer'. It is hoped that this will provide a clear point of contact for the public and officers within the Council; helping to ensure enquires are dealt with more efficiently.

Future proposals

14. The European Commission has proposed a number of reforms to the data protection regime to ensure data protection laws are applied consistently across the European Union. Proposed measures include providing individuals with a 'right to be forgotten' (when individuals no longer want their data to be processed and there are no legitimate grounds for

retaining it, the data will be deleted); a requirement for an individual's explicit consent to be obtained in cases where consent is necessary to allow personal information to be used; a requirement for organisations to appoint a data protection officer who will implement and review measures designed to ensure the organisation's data protection compliance; and there will be a requirement for organisations to notify the ICO of all data security breaches.

15. The ICO has issued a statement in response to the European Commission's proposals. Whilst the proposals are broadly welcomed, the ICO has raised concerns about some of the proposals calling them 'unnecessarily and unhelpfully over prescriptive'. The proposals are still being developed and are subject to change and implementation. The Council complies with the current data protection regime, which the ICO independently oversees, and will keep its policies and procedures under review in order to comply with any legislative changes in this area.

Other Options Considered

1. N/A

Reason/s for Recommendation/s

2. N/A

Statutory and Policy Implications

3. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

1) That the report is noted.

**HEATHER DICKINSON
GROUP MANAGER, LEGAL SERVICES**

For any enquiries about this report please contact: Simon Gill ext. 73620

Constitutional Comments

4. Because this report is for noting only no Constitutional Comments are required.

Financial Comments (MB 17/02/12)

5. There are no specific financial implications arising from the report.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

The European Commission's proposals on new data protection regulations:

ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm

ICO's statement on its initial response to the European Commission's proposals:

www.ico.gov.uk/news/latest_news/2012/statement-initial-response-new-data-protection-regulation-proposals-25012012

Electoral Division(s) and Member(s) Affected

All