



MELTON PARISH COUNCIL

MPC(18)07.04

REPORT ON CHANGES TO DATA PROTECTION LEGISLATION

Background and summary

The legislation on data protection will change on 25 May 2018. It has been described as the biggest change in privacy legislation for over 20 years. Driven by the advent of the social media age, it will reverse ownership of personal data, giving control back to the individual.

NALC is in continuing discussions with the Government Department responsible – Department for Digital, Culture, Media and Sport. Legal advice so far is that neither a Councillor or the Clerk can be the DPO because of conflict of interest. Also the DPO must be an “expert” in the field and have recognisable training / qualifications. SALC are looking at options for expert third parties to provide the DPO role. So far there is an offer from one specialist provider to provide an impact assessment, identify issues and provide a full outsourced DPO service for a council the size of Melton at a cost of £2.2k for the first year and £1.4k thereafter.

This report relies on material provided by Suffolk Association of Local Councils (SALC), 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.

Report

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, and which will apply after Brexit.

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 of the requirements to **local councils and parish meetings** 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 Digital, Culture Media & Sport. **It seems highly unlikely that the provisions will be disapplied to local councils and parish meetings.** Further sector specific guidance is anticipated in due course.

The new rules apply to data controllers and processors of personal data where 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 Council may employ a DPO or appoint an external party. It cannot be a councillor as they are insufficiently independent. The DPO must have sufficient expertise for the role and would need to attend training. To date, the only training accessed by the Council has been introductory training held by SALC and the DPO Centre (an external commercial provider of data protection services), which has been helpful in providing an initial understanding of what is known and unknown about the data protection framework at this time.

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. We are waiting for definitive advice from NALC lawyers through SALC, but provisionally we have received an indication that, as things stand, **it seems likely that their advice will be that the Clerk cannot be the DPO owing to their inherent conflict of interest.** We will be anticipating clear advice on whether small councils with only one relevant staff member will be effectively forced to outsource this service at an additional cost.

Options such as whether the District Councils or County Council or SALC can/will accommodate this role are being considered. 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. It is important that initial work is conducted within the Council to ensure its administrative and electronic systems are suitably robust with data being suitably controlled and sharing suitably restricted.

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 (encryption tools etc), 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 it is considering the available options for appointing a DPO and has accessed initial training on the new regime.
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 as and when it becomes available.
3. The Clerk will review the administrative and data systems and seek advice as necessary to ensure compliance and will report any areas of concern to Council.
4. The Council will also consider (via delegation to its Finance, Employment and Risk Management Committee) whether it needs to obtain a third party assessment or employ the services of an external Data Protection Officer service.
5. The determination of the purpose or manner of processing personal data be delegated to Finance Employment and Risk Management Committee until further guidance on managing conflicts of interest are obtained and/or an external party is appointed with DPO responsibility.
6. The Clerk alerts Council to any further developments and guidance.
7. 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.
8. 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.

William Grosvenor

Clerk to the Council

8 January 2017