

By: Ben Watts, General Counsel (Data Protection Officer)
To: Policy and Resources Cabinet Committee – 29th June 2018
Subject: **Data Protection Update**
Classification: Unrestricted

Summary: This report provides an update regarding the implementation of new Data Protection legislation.

Introduction

1. Members of this Cabinet Committee and Governance and Audit Committee have received updates over the past two years in relation to the implementation of the General Data Protection Regulation (GDPR) last month. These updates included information regarding the obligations on the organisation and importantly the expectations placed upon Members by the new legislation.
2. The Data Protection Officer (DPO) is the officer responsible across the whole Council for ensuring compliance with Data Protection legislation. The DPO's minimum tasks, as set out in the new legislation, are;
 - a. To inform and advise the organisation and its employees about their obligations to comply with the GDPR and other data protection laws.
 - b. To monitor compliance with the GDPR and other data protection laws, including managing internal data protection activities, advise on data protection impact assessments; train staff and conduct internal audits.
 - c. To be the first point of contact for supervisory authorities and for individuals whose data is processed (employees, customers etc).
3. The DPO will work closely with the Senior Information Risk Owner (SIRO) to set strategy and manage information risks and between them they will continue to provide regular updates to this Cabinet Committee and Governance and Audit Committee.
4. Information Governance means the effective management of information in all its forms and locations. It encompasses efficient ways of handling information, robust management of the risks involved in the handling of information and compliance with the regulatory and statutory guidance including the new Data Protection Act 2018 and the General Data Protection Regulation (GDPR).
5. Information governance is about electronic and paper-based information, including audio and visual information, and how it is held, used and shared. The importance of good information governance has been highlighted by the Information Commissioner and the Permanent Secretary for the Department for

Communities and Local Government. Members of this Committee will have read the stories of significant fines faced by other public-sector bodies for failures to manage information properly.

6. Information governance is also concerned with keeping information safe and secure and ensuring it is appropriately shared when necessary to do so. This is a significant challenge for all organisations but particularly so for large complex public-sector organisations such as KCC dealing with a wide range of functions.

The General Data Protection Regulation (GDPR)

7. Members have previously been advised of the implementation of the General Data Protection Regulation (GDPR) on 25th May 2018. On that date, the Data Protection Act 2018 also gained Royal Assent. Both pieces of legislation are now law.
8. Both pieces of legislation are intended to strengthen and unify data protection for individuals and are now applicable to Kent County Council and Members. The standards required are higher and there are new obligations. These include changes to legal justifications for processing data, changes to the requirements for consent, requirements for privacy notices and increased rights for the people whose data is being processed.
9. As mentioned in previous updates, the regulations allow for the Information Commissioner's Office (ICO) to impose administrative fines up to a maximum of 20 million Euros (approx. £18m) for infringements. The ICO has made public statements of reassurance around its intention to proportionately regulate despite their new and increased powers.
10. In preparation for the new legislation, officers across the council have been looking at the readiness of directorates for the necessary changes to how the council processes data across the organisation and with our partners, providers and members of the public.
11. The preparedness of the council has been underpinned by regular discussions at CMT who in the autumn of 2017 nominated officers who have been leading for their respective areas of the business and contributing to a cross directorate working group. The working group has proactively addressed and worked through a range of significant issues raised by the implementation of GDPR. The council also utilised external expert support from a barrister to go through some of the unique challenges presented by the legislation and for which there was no definitive answer available.
12. CMT has determined that the working group will continue to meet to work on the organisation's compliance with GDPR. It is recognised that the implementation date was not the finishing line for compliance but rather the starting point.

13. Additional resources have been added to meet the increased volume of activity and obligations created under the legislation that have been regularly discussed at this Cabinet Committee.
14. Policies have been amended and changed to reflect the new requirements. Finalised policies have been published and further policies will follow in coming weeks. The ICO continues to release guidance that we are including in our amended policies and strategies.
15. As detailed in previous reports, the organisation has not allocated additional resource to deliver this significant change and officers are delivering in addition to their usual responsibilities.
16. It has been agreed that a proportionate response to compliance with the GDPR and DPA would be adopted by the council and this means that the work carried out to date and the council's journey towards compliance will continue. As part of our learning culture, we will continue to reflect on decisions and guidance from the ICO and develop and amend our policies as the regulation begins to be enforced.
17. In the run up to 25th May staff from Governance and Law worked with the Internal Communications team to raise awareness and significant key messages in relation to GDPR through a communications strategy that included updates on KNet, in KMail and across TV screens in KCC buildings.
18. In addition to mandatory e-learning, eight training sessions have taken place in the lecture theatre for officers. Drop-in surgeries using the lawyers from Invicta Law have also taken place to work on directorate-specific issues and learning.
19. Implementation of GDPR has required an intensive period of work, and that work will now continue. The corporate risk register reflects this. The DPO is supported by a range of talented officers across the organisation and the project continues to be led by Lauren McCann, Principal Solicitor. Corporate Management Team, individual Corporate Directors and Directorate Management Teams continue to receive regular strategic updates from the DPO, Project Manager and vitally from their lead officers. The Information Resilience and Transparency team are now working with Lauren to manage the transition to business as usual.
20. The council is investing in further training for these key officers to make sure the project group has the necessary development to meet this challenging environment. Colleagues in Learning and Development have been supportive of the different development packages needed and have helped immensely in designing a way forward that meets the needs of the officer cohort.
21. The officer working group established in autumn of 2017 had a period of intensive activity, meeting weekly since March 2018. The working group will continue past implantation and now meets fortnightly. Action plans for the continued journey towards compliance are being developed by Divisional Leads and these will be reviewed monthly within the working group and reported to the

Information Governance Group and CMT. The continued hard work and enthusiasm shown by officers is much appreciated.

22. Strategic Commissioning continues to lead on the significant task of working with the full range of KCC suppliers to ensure that they and the relevant contracts have reflected upon the change in the law.
23. There will be ongoing review and reflection on the work being undertaken, considering any further guidance from the ICO and implementing that guidance as necessary.
24. The renegotiation of the Kent and Medway Information Sharing Agreement, which received input from KCC Officers and other agencies across the county has been completed and the finalised agreement was completed prior to the 25th May 2018. The Information Sharing Agreement underpins much of the multi-agency work in Kent and ensures that all parties to the agreement have certainty about how their data is being shared.
25. Work on a privacy notice for Members to use, to help Members satisfy the requirements of the GDPR on them as Data Controllers in their own right, has been drafted and provided as an addition to Member's KCC email signatures.

Update on Information Governance Training

26. Given the importance of this issue, Members of this Cabinet Committee agreed on 16th March 2018 that Members should be required to complete the mandatory information governance, data protection and GDPR training.
27. To give life to that instruction, considerable resource was set aside to support Members in completing the necessary training and providing advice and guidance.
28. Over the past six weeks, over 20 sessions were run to support Members through the online training helping to ensure readiness for the new legislation which creates additional responsibilities for Members. A range of activities were undertaken to market the training opportunity including emails, face to face conversations and discussions with the group leaders/whip for each political party culminating in a reminder from the Chairman at the last full Council meeting.
29. The enthusiasm and engagement of those Members who attended the training sessions is appreciated. As a follow up to the training sessions a short document of useful information has been created for Members containing key information and contact details.
30. Unfortunately, despite the considerable resource and opportunity provided, more than 20 Members are still to complete the training.

31. It is the view of the General Counsel in his statutory capacities as Monitoring Officer and Data Protection Officer that this presents an unacceptable risk to the Council. Members through their role have access to sensitive information and data. KCC as a Data Controller should not continue to provide information and access to KCC systems to those who have not completed the training and who may compromise our systems or fail to follow our agreed policies and procedures. Members are separately registered as Data Controllers and KCC as a separate legal entity (and data controller) needs to be assured that those that we pass information to, including Members, are appropriately trained.
32. Whilst it is fully recognised that KCC is a Member-Led authority, legislation places a responsibility on the General Counsel to ensure that the council acts lawfully, reasonably and proportionately. Members of the Cabinet Committee are invited to discuss and comment on the next steps that could and should be taken pursuant to GDPR and the recommendation of this Cabinet Committee previously around Member completion of the training.

Recommendations

33. It is recommended that Members **NOTE** the report and **COMMENT** accordingly.