

**REPORT TO THE SCRUTINY PANEL - PEOPLE  
MEETING OF 1<sup>st</sup> September 2011**

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**Status:** For information and comment  
**Title:** Requests For Information Under the Data Protection Act 1998  
**Originator:** S Done (Team Leader for Corporate Administration)  
**Where from:** Scrutiny Commission  
**Where to next:**

*Objective: On 26<sup>th</sup> May 2011 the Scrutiny Commission agreed the scope for this report (Minute 51, 2011/12 refers), to discuss the current position of the Council in relation to requests for information under the legislation cited.*

1. Outcome sought from Panel

1.1. To consider and comment on the Council's processes and procedures for handling subject access requests under the Data Protection Act.

2 Background

2.1. The purpose of this report is to demonstrate Harborough District Council's commitment to and compliance with the provisions of Data Protection Act 1998.

2.2. The Data Protection Act 1998 extended the right of public access to personal data held about them to include data held on systems which are not exclusively computerised (The Data Protection Act 1984 had previously limited access to information held on computers).

2.3. The Data Protection Act aims to ensure that personal information is only held and processed where necessary and the operative presumption is in favour of keeping personal data confidential unless an exemption is applicable which will allow for that data to be released or shared. The Act allows individuals to find out what information the Council holds about them through submission of a Data Subject Access Request.

2.4. Each request, herein referred to as a section 7 Data Subject Access Request, must be dealt with on an individual basis.

2.5. All Data Subject Access Requests must be dealt within 40 calendar days.

### 3. Key Facts

3.1. All personal data processed by the Council must adhere to the following eight principles:

3.1.

- Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 (of the Data Protection Act) is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

- Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
- Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- Personal data shall be accurate and, where necessary, kept up to date.
- Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- Personal data shall be processed in accordance with the rights of data subjects under this Act.
- Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

3.2. With the overarching goals above in mind, Harborough District Council has developed a process for dealing with Data Subject Access Requests submitted under this Act (Appendix A).

3.3. This process highlights the major characteristics of the legislation and documents the rights and obligations of the various concerned parties.

- 3.4. The aim of this procedure is to ensure access for data subjects to personal data, held by the Council in order to promote greater openness, provide increased transparency and to build public trust and confidence. The process guarantees the data subject the right of access to their own personal data in line with statutory provisions. These aims will be balanced against the need for organisational responsibility in relation to such areas as personal privacy, the need for confidentiality and the responsible use of personal data.
- 3.5. For quick reference, Appendix B shows the process of differentiating between the types of information access legislation.
- 3.6. Appendix C shows how a service area is to handle a Data Subject Access Request, where it receives it directly.

#### 4. Performance

##### 4.1

<b>Year<sup>1</sup></b>	<b>Number Received</b>	<b>No responded to within 40 Calendar Days</b>	<b>No responded to outside 40 Calendar Days</b>	<b>Compliance Performance %</b>
2009	4	4	0	<b>100</b>
2010	11	10	1	<b>90.9</b>
2011 (to 4 <sup>th</sup> August)	4	4	0	<b>100</b>

#### 5. Performance Monitoring

- 5.1 All requests for personal data are logged electronically and a unique number is allocated to each request. The date of receipt is recorded and the date for response is calculated. The progress of the request is monitored by the Team Leader for Corporate Administration once the request has been allocated to the relevant service area. Reminders are sent to prompt a response before the due date.

#### 6. Charging Mechanisms

- 6.1. Harborough District Council has adopted the £10 fee in relation to the S7 Data Subject Access Requests which is provided for in the legislation.
- 6.3. Section 9A Data Protection Act 1998 creates an exemption where the cost of locating the requested information within an unstructured filing system, exceeds the appropriate limit Section 9A(3). This limit is set at £450 calculated at 18hrs of staff time charged at £25 per hour. The Council do not have to respond to requests which would be above this threshold.

#### 7. Implications for Elected Members

- 7.1. Elected members are subject to the requirements of the Data Protection Act.

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<sup>1</sup> There is no recorded numerical data regarding the number of request prior to 2009.

7.2. In instances where elected members are acting in a Council capacity e.g. as a member of a committee, they are covered by the Council's data protection registration but need to observe the requirements of the Act.

7.3. In instances where an elected member is acting in their capacity as a ward member (for example in taking forward issues raised by residents), then the information Commissioner has advised that they are not covered by the Council's data protection registration and may need to register themselves as a Data Controller in their own right (if they are holding and/or processing personal data). Advice has been provided to all members on this issue.

## 8. HDC and the Information Commissioner's Office [ICO]

8.1. The Information Commissioner's role is regulatory. Any issues relating to the fidelity of personal data held or processed by the Council is of concern to the Information Commissioner's Office.

8.2. Section 18 of the Act sets out an obligation to notify the Commissioner's Office of the types of personal data the organisation processes. This must be checked regularly in order to ensure that the Council is compliant.

8.3. The Information Commissioner's Office must be notified of any breaches of the Data Protection Act (i.e. data losses), where certain criteria apply.

8.4. HDC has not had cause to notify the Information Commissioner's Office of any such breaches.

## 9. Equality Impact Assessment Implications/Outcomes (attach completed EIA)

9.1. There are no equality implications arising directly from this report as it reflects current policy and procedure and does not propose any changes. Existing policies and procedures are determined by legislation and are applicable to all with no adverse impact on any group. A full review of DPA/FOI policies and procedures is included in the Council's 3 year rolling programme of Equality Impact Assessments and will be undertaken in 2012/13.

## 10. Legal Issues

10.1. The Council has a mandatory obligation to comply with the legislation as referred to throughout this report.

10.2. Failure to comply could result in performance compliance notices being served and or punitive sanctions i.e. pecuniary fines.

## 11.1. Resource Issues

11.1. None specifically arising from this report.

## 12. Carbon Management Implications

12.1. None specifically arising from this report.

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**Previous report(s): Y**

**Scrutiny Commission dated 26<sup>th</sup> May 2011**

**Information Issued Under Sensitive Issue Procedure: N**

**Appendices:**

**A: Data Protection Guidelines. (*Data Protection.doc*)**

**B: Legislation Differentiation Guide (*Legislation Diff Guide.pdf*)**

**C: Data Subject Access Request — Process Flow. (*DPA Process Flow.pdf*)**

**Information Issued Under Sensitive Issue Procedure: No**