

<b>Committee(s):</b> Policy, Resources & Economic Development	<b>Date:</b> 27 <sup>th</sup> November 2019
<b>Subject:</b> Information Governance update/policies and Data Protection Support	<b>Wards Affected:</b> None Specifically
<b>Report of:</b> Paula Harvey, Interim Head of Legal Services & Monitoring Officer	<b>Public</b>
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### Summary

This report updates members on information governance developments.

Members considered a report on progress regarding GDPR compliance at committee on 11<sup>th</sup> September 2019, when it was reported that the Council continues to strengthen and improve its processes in relation to data protection. This report sets out work undertaken and details further work to embed compliance going forward.

At the time of writing this report, the Council is in a good position to evidence compliance with its data protection responsibilities. Robust data protection policies and procedures are in place and implementation is closely monitored. There have been no data breaches which required reporting to the ICO. All SARs have been completed within the statutory timeframe. Staff undertake mandatory training and maintain a good level of awareness of data protection responsibilities across the Council.

Officers are exploring new arrangements for data protection support following termination of the Memorandum of Understanding with Thurrock Council for the provision of this support.

The Council is in the process of implementing a new software solution for dealing with FOI requests, MyService.

### Recommendation/s

**Members are asked to:**

- R1. To delegate authority to the Head of Legal Services to enter into any interim arrangement(s) for the provision of data protection support in consultation with the Leader of the Council, Chair and Deputy Chair of PRED.**
- R2. To delegate authority to the Chief Executive to explore and implement suitable options for the permanent provision of data protection support in consultation with the Leader of the Council, Chair and Deputy Chair of PRED.**
- R3. To note the developments relating to Information Governance set out in this report.**

## Main Report

### **Introduction and Background**

#### Data Protection Support

1. The Council currently has a Memorandum of Understanding in place with the Information Management team at Thurrock Council for the provision of support in relation to data protection. The Information Management Team at Thurrock Council was commissioned to provide support to Brentwood in relation to Data Protection in June 2018 and compliance work is ongoing.
2. Thurrock have notified the Council that it wishes to terminate this arrangement with effect from 1<sup>st</sup> January 2020.
3. Officers are exploring suitable alternative arrangements for the provision of data protection support. Alternative options include the creation of a new Information Governance Officer post, entering into an alternative shared service arrangement, sourcing a private provider or some combination of these options.
4. It is proposed to create a new Information Governance officer post to provide expertise to help ensure the Council carries out its statutory duties relating to information security, data protection and freedom of information, to monitor ongoing compliance with the Data Protection Act 2018 across the council and to provide specialist advice and assistance within the organisation to Officers and Members on Freedom of Information (FoI)/Environmental Regulations (EiR)/Data Protection Act (DPA)/ General Data Protection Regulation (GDPR) type functions. The postholder will report to the Council's Data Protection Officer. The newly created post is currently being evaluated before recruitment.
5. It is also proposed to employ an apprentice to provide additional support who would work towards obtaining suitable qualifications in Information Governance. On the basis that the Council would not be required to pay the apprenticeship levy, the government will pay 95% towards the cost of training and assessing an apprentice. The Council would enter into an apprenticeship agreement covering duration, training, working conditions and qualifications for the apprentice. The apprenticeship would be open to new or current employees and must last for at least one year and can continue for up to five years, depending on the level the apprentice is studying. The postholder would also report to the Council's Data Protection Officer.
6. Officers are exploring temporary support from the private sector for the transitional period when the arrangement with Thurrock Council ends and whilst

the recruitment process for the newly created Information Governance officer and apprentice posts ongoing. A suitable provider with expertise in data protection has been identified through the Council's legal framework with EM Lawshare. This provider has proposed the secondment of an experienced paralegal for one or two days a week. Alternatively, the Council can access the provider's data protection team for an agreed number of hours for a fixed fee.

7. There is also scope to access traded services for data protection offered by other local authorities as an interim measure.
8. Paula Harvey (Interim Head of Legal Services and Monitoring Officer) was appointed Data Protection Officer in July at Policy, Resources & Economic Development (PRED) Committee. There is potential for a conflict of interest arising between the Monitoring Officer and Data Protection Officer roles and this is being kept under close review. The guidance issued by the Article 29 Data Protection Working Party clarifies that the DPO must avoid potential conflicts in performing the role, as well as those at management level with responsibility for looking after data sets comprising personal data.

#### Information Governance Update

9. The Council continues to embed GDPR compliance across departments and activities since the last update to Committee include: the introduction of an Information Governance risk register and incorporation of identified risks into the Council's Corporate Risk Register; ongoing audit spot checks; mid-tier service area privacy notices have been published; processing of SARs within the statutory/legal timeframe; ongoing ROPA review process to ensure its up to date with information assets/systems and the IAO annual return is underway.
10. The Council's auditor BDO is currently undertaking an audit of the Council's compliance with GDPR. The auditor is looking at information governance policies; procedures for responding to Subject Access Requests; procedures for responding to data breaches; data processing records; data protection impact assessments; privacy notices and training records. The DPO is working with officers and the Information Governance team at Thurrock to collate information for the audit. It is anticipated that the audit will be concluded by late November with a final report being made available during December.

## Freedom of Information Software Processes and Policy

11. The Council is in the process of implementing a new software solution for dealing with FOI requests, MyService. MyService is a multi-stage end-to-end process which allows citizens to raise an information request of any type, including Freedom of Information (FOI) and Environmental Information Regulation (EIR). The request can then take several routes, being handled by various teams. The process includes the ability to triage the case to the relevant team, request contributions from other teams, create a final response to the customer, send this response for approval if required and publish the response to the Disclosure Log. An internal review process has also been built in which allows customers to challenge the final decision made on the case.
12. The FOI solution provides powerful management capabilities, with an efficient workflow and the ability to easily manage FOI requests that require contributions from multiple service areas. Customers can search and view previously submitted requests relating to their topic, resulting in a reduction of duplicate requests.
13. For customers who make FOI requests via the 'foi@brentwood.gov.uk' email, they will be directed to MyService to submit their request. This ensures that all the right information relating to the request is gathered and in the same format. Other local authorities have reported a significant reduction of up to 75% in submitted requests in using this facility.

### **Reasons for Recommendation**

14. To ensure that that the Council can continue to meet its statutory obligations relating to information security, data protection and freedom of information.

### **Consultation**

15. Consultation with other local authorities and industry providers has been undertaken.

### **References to Corporate Plan**

16. Robust information security arrangements will support the delivery of all of the Council's objectives.

## **Implications**

### **Financial Implications**

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17. Officers have currently been exploring alternative options for providing data protection support since the notification from Thurrock to terminate the memorandum of understanding.
18. It is currently proposed to recruit to a new information Governance post, which is subject to Job Evaluation before recruitment can commence. Including employer on costs such as Tax and National Insurance contributions the post could range between £41,950 - £46,500. It is also proposed to employ an apprentice to provide additional support. The Council can use the apprenticeship levy to support any training required, however the Council will be required to fund the position. This could be approximately an additional £20,000.
19. At the time of writing this report, officers continue to work on the financial proposals for the service provision. It is likely that the overall cost of the service will result in a pressure for 2020/21 base budget.
20. Officers will work within 2019/20 existing budgets regarding any transitional arrangements required to maintain service levels, and any variances reported appropriately in the outturn report to PRED at the end of the financial year.

### **Legal Implications**

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21. The recommendation is lawful and within the Council's powers and duties. The Council has statutory obligations within an existing legal framework relating to information security, data protection and freedom of information. The recommendation and actions outlined in this report will support the Council in securing compliance with its statutory duties and managing risk.
22. Under section 112 of the Local Government Act 1972 the Council has power to appoint such officers as they think necessary for the discharge of any of its functions. Any recruitment exercise must be carried out in accordance with the Council's policies and procedures and employment law.
- 23.. Any formal agreements arising from the recommendation must be in a form approved by Legal Services.

**Economic Implications**

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24. No economic implications.

**Appendices to this report**

25. None