



Pensions Committee

10 December 2014

Report title	Information Governance	
Originating service	Pension Services	
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Recommendations for noting:

The committee is recommended to:

1. Note the contents of the report

1.0 Purpose

- 1.1 To outline proposals to register the Fund as a Data Controller under the Data Protection Act.

2.0 Background

- 2.1 The Data Protection Act 1998 (the DPA) is based around eight principles of good information handling. These give people specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it.
- 2.2 Currently the organisation responsible for the Fund's handling of data is Wolverhampton City Council as Administering Authority. However discussions with solicitors, who are considered experts in this field, have determined that under the provisions of the DPA, the Fund should register as being responsible for its own handling of data.

3.0 Data Controller or Data Processor

- 3.1 The DPA draws a distinction between a 'data controller' and a 'data processor' in order to recognise that not all organisations involved in the processing of personal data have the same degree of responsibility. While some organisations may hold information for a specific reason, other organisations may be in control of it and determine how it is stored, who has access to it, etc.
- 3.2 It is the data controller that must carry the data protection responsibility.
- 3.3 The DPA states that the Data Controller is a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be processed
- 3.4 The Data Processor is a person who, in relation to personal data, processes the data on behalf of the data controller.
- 3.5 The DPA further requires that every organisation that processes personal information must register with the Information Commissioner's Office (ICO), unless they are exempt. The Fund does not fall into one of the exempt categories.

4.0 The Fund as Data Controller

- 4.1 As Committee are aware the Fund holds information for all members of the pension scheme and currently, we have in excess of 270,000 accounts.
- 4.2 While some of that information is also held by Wolverhampton City Council as an employer, the Fund holds other information which is not accessible by the City Council and which is not required for their purposes (as they are not the sole employer of all members of the Fund).

4.3 For this reason the Fund are considered to be in control of this information, information which is sensitive personal data.

5.0 Duties of a Data Controller

5.1 As stated above the DPA includes responsibilities for data controllers. Non-compliance with these responsibilities may represent a contravention of the data protection principles and qualify as an offence under the DPA. It may even give way to legal action from an individual seeking compensation under section 13 of the DPA. Below is a summary of the key elements to be implemented.

5.2 All data controllers have a statutory obligation to respond to subject access requests usually within 40 calendar days of receipt

5.3 All data controllers must have a Fair Processing Notice (otherwise known as a Privacy Notice), which is available to data subjects. A Fair Processing Notice is intended to make sure that data subjects are aware of how data is collected and used by the data controller. It aims to ensure that data controllers process personal data fairly and lawfully.

5.4 Data controllers have a responsibility under the data protection principles to ensure there are appropriate technical and security measures to protect personal data. For example, portable and mobile devices including laptops and other portable media used to store and transmit personal data should be encrypted using encryption software which meets the current standard or equivalent.

5.5 Data controllers are obliged under the DPA to ensure personal data is only kept for as long as necessary. To comply with this it is recommended that data controllers have retention schedules that set out regular review periods for personal data that is held by the data controller and the purposes for which the data is held. These retention periods will vary dependent on the nature of the data and the purposes for which it is held.

5.6 In light of the above duties, the fund will have to ensure that strict controls are in place as there will be financial implications for non compliance.

6.0 Action required

6.1 Discussions with the Fund's Chief Legal Officer and the City Council's Scrutiny and Transparency Manager have determined that the Fund now need to take steps to ensuring its compliance with the DPA by registering as a Data Controller.

6.2 It was agreed with the Chief Legal Officer that this be implemented by 1 April 2015.

7.0 Next Steps

7.1 The Head of Governance together with the Compliance and Risk Manager will work with officers from the City Council to review the Council's corporate processes in relation to data management and their suitability for implementation into the processes of the Fund.

7.2 A further report will be brought back to Committee before 1 April to confirm these steps

8.0 Financial implications

8.1 There is a fee cost to the registration of the Fund as a data controller of £35.

8.2 In addition there is a resource implication to the Fund in setting up and adopting these processes which will need to be absorbed by Fund staff as part of their current duties.

8.3 Failure to comply with the requirements could amount to a significant financial penalty from the Information Commissioner which will need to be borne by the Fund.

9.0 Legal implications

9.1 Registration by data controllers is a legal requirement and our failure to meet this requirement would mean we are falling foul of the legislation which would leave us open to challenge.

10.0 Equalities implications

10.1 There are no equalities implications

11.0 Environmental implications

11.1 There are no environmental implications

12.0 Human resources implications

12.1 There are no human resource implications

13.0 Corporate landlord implications

13.1 There are no corporate landlord implications

14.0 Schedule of background papers

14.1 Data Protection Act 1998

<http://www.legislation.gov.uk/ukpga/1998/29/contents>