

# **Report to the Finance and Performance Management Cabinet Committee**



**Epping Forest  
District Council**

**Date of meeting: 10 December 2007.**

**Portfolio: Finance, Performance Management and Corporate Support Services.**

**Subject: National Fraud Initiative (NFI) - Supply of Electoral Register.**

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## **Recommendations:**

- (1) To note the response of the Corporate Governance Group, the Electoral Registration Officer and the Monitoring Officer to the NFI data matching initiative of the Audit Commission; and**
- (2) To ask the Corporate Governance Group to keep the situation under review and report back when necessary.**

## **Report:**

1. The Audit Commission contacted all District Councils with a request that an electronic copy of the electoral register for each District be supplied to them for the purposes of the NFI. The proposal was that the names and addresses on the register would be used to match against the names and addresses of those claiming Council Tax discounts or housing benefits in order to help in identifying any cases of fraud. An important element of this cross-matching of data is checking of single person Council Tax discounts.
2. The request was presented to Councils as relating to information to which the Commission is entitled by statute. The statutory authority quoted was the Audit Commission Act 1998 (Section 6(1)). This section refers to the Commission being able to request information relating to a body subject to Audit under that Act. It was argued that the cross-matching exercise under NFI was akin to an audit and related to bodies (i.e. District Councils) which are within the remit of the Commission.
3. This request provoked considerable controversy in local government circles, particularly among Electoral Registration Officers. Although many District Councils complied with the Commission's request, a number did not. The latter were supported in their stance by the Association of Electoral Administrators and legal opinions given by Monitoring Officers around the country.
4. These objections revolved around the Representation of the People Regulations 2001 which were argued as not giving the authority to supply the register to a third party. Regulation 94(3) enables a Registration Officer to disclose the full register only "in accordance with enactment", which would, in this case be the 1998 Act quoted above. The 2001 Regulations authorise the release of personal information on the register for law enforcement and crime prevention purposes. It was argued that this could only relate to specific cases not the whole register as there was no authority for wholesale supply of the register (a practice which has been termed "a fishing trip").
5. Arguments about the statutory powers abounded and a number of other issues arose, including:
  - (a) the need to give notice to Council Tax payers under the fair processing rules;

- (b) possible conflicts with the Data Protection and Human Rights Acts;
- (c) difficulty over electors who had specified that their personal data should not appear in the published register; and
- (d) the position of the Council as custodian of the register rather than the Electoral Registration Officer, to whom the Commission had addressed the request.

6. Eventually both the Information Commissioner, the Electoral Commission and the Ministry of Justice became involved in the debate. At the time of writing, the Ministry of Justice appears to be conducting a review of the position, working with the two Commissions to resolve the issue.

7. The Corporate Governance Group (CGG) considered this issue at its meeting on 3 October 2007. This is an officer group comprising the statutory officers of the Council and, where appropriate their deputies, plus the Chief Internal Auditor. Both the Electoral Registration Officer and the Monitoring Officer expressed reservations about the legal basis under which the register was to be supplied to the Audit Commission. It was the decision of the CGG to refuse the request for the reasons given in the Chief Internal Auditor's letter date, attached at Appendix 1.

8. It was also agreed that the action taken should be reported to the Audit and Governance and Finance and Performance Management Cabinet Committee.

9. Members should be reassured that the Council remains committed to anti fraud measures and is fully participating in all other aspects of the National Fraud Initiative. However, if the register is to be used for this purpose without clear statutory backing, any reasonable risk assessment would identify the high probability that an aggrieved elector would challenge that action. One benefit of this episode is the Government may now clarify the statutory requirements.

#### **Statement in Support of Recommended Action:**

10. This report is designed to brief the two Committees on a national issue regarding use of personal data.

#### **Other Options for Action:**

11. None at present.

#### **Consultation Undertaken:**

12. Corporate Governance Group.

#### **Resource Implications:**

**Budget Provision:** Existing resources.

**Personnel:** Existing resources.

**Land:** Nil.

**Community Plan/BVPP reference:** None.

**Relevant statutory powers:** Audit Commission Act 1998 and Representation of the Peoples Acts and Supporting Regulations.

**Background Papers:** Audit Commission letter dated

**Environmental/Human Rights Act/Crime and Disorder Act Implications:** Human Rights Act issues may arise, and are referred to in the report.

**Key Decision Reference (if required):** None.