

## **Report to the Audit & Governance Committee**



**Report reference:** **AGC-023-2009/10**  
**Date of meeting:** **8 February 2010**

**Epping Forest  
District Council**

### **Portfolio:**

**Subject:** **Data Protection Breach – Licensing Sub-Committee 3 December 2009**

**Responsible Officer:** **Ian Willett (01992 564243).**

**Democratic Services Officer:** **Gary Woodhall (01992 564470).**

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### **Recommendations/Decisions Required:**

- (1) To note the Data Protection Act breach discovered on Wednesday 25 November 2009 after the agenda for the Licensing Sub Committee on 3 December 2009 had been published;**
- (2) To note the action taken in response to the Data Protection Act breach;**
- (3) To receive an update on the response of the Information Commissioner, to whom the Data Protection Act breach was reported; and**
- (4) To await the outcome of the Information Commissioner's investigation.**

### **Executive Summary:**

This report details a breach of Data Protection Act requirements in respect of the Licensing Sub-Committee meeting on 3 December 2009.

The agenda for that meeting was published on 20 November 2009 and included exempt information relating to five applicants for taxi drivers' licences. This disclosure subsequently became the subject of press reports.

The breach was reported to the Information Commissioner who has initiated an investigation.

This report outlines:

- (a) the nature of the disclosure;**
- (b) action taken as a response; and**
- (c) the information being sought by the Commissioner.**

### **Reasons for Proposed Decision:**

A report was requested by a member of the Committee and is submitted with the consent of the Chairman.

## **Other Options for Action:**

None.

## **Report:**

### Introduction

1. The agenda for the Licensing Sub Committee on 3 December 2009 was published on the night of 24/25 November 2009 via the Modern.Gov system.

2. The agenda comprised a number of licensing items and included licence renewal applications by five taxi drivers. Those five items were due for publication in private session because the reports detailed the actual applications submitted by the drivers and made reference to various personal data including dates of birth, addresses, mobile phone numbers, National Insurance numbers and, in some cases details of past criminal records. The applications also enclosed copies of the drivers' licences in each case.

### Data Protection Act Breach

3. The Modern.Gov IT system is set up to deal with Part 2 items. Such items are published with an annotation "Restricted" and the exempt information category number used to justify exclusion of the public from that part of the meeting. This is in line with standard procedure for all agendas. Modern.Gov is configured so that an author publishing private sector reports receives a prompt immediately prior to publishing the agenda on the website. This asks the author to check whether it is appropriate to publish the private session items on the website and, if not, for the author ensure that the two parts of the agenda are published separately.

4. In this case, the prompt was activated because separate publication of the two parts of the agenda had not been requested through the system. That prompt was not acted upon, with the agenda being published with all the private session paperwork on the website on the following morning.

5. The error did not become apparent until a journalist contacted Public Relations querying the publication of personal data on a public agenda. Prior to this, the journalist had contacted at least two of the taxi drivers to acquaint them with the fact that their details were available publicly and seeking quotes on what the Council had done. The Public Relations Section had drawn this to the attention of Democratic Services staff late in the afternoon on 25 November 2009 and the offending material was immediately withdrawn from the website.

6. Overall, these documents were available through the website for approximately 18-24 hours. Publication events for the Licensing Sub-Committee on 3 December 2009 were as follows:

- (a) agenda 3/12 published at 14.33 on 20 November 2009;
- (b) agenda available at around midnight 1.00 a.m. on 21 November 2009;
- (c) agenda unpublished at 17.04 on 25 November 2009;
- (d) agenda republished correctly at 17.16 on 25 November 2009; and
- (e) agenda available at around midnight 1.00 a.m. on 26 November 2009 (scheduled job).

6. Contacts from the press occasioned two taxi drivers to contact the Council. One driver contacted Democratic Services and the other the Licensing Section in the Corporate Support Services Directorate. Both were offered apologies for the mistake and an assurance that the material had now been removed from the website. I Willett followed up with letters to each of the five drivers making apologies for what had happened and enclosing details of the papers which had actually been published. Subsequently, on the morning of the Licensing Sub Committee meeting, I Willett spoke to four of the five drivers and offered further apologies for what had happened.

7. In the meantime, a disciplinary meeting was held with a member of the Democratic Services Section regarding this lapse in procedure and as a result an informal warning under the Council's Disciplinary Procedure was given. A requirement was imposed whereby publishing Part 2 items should not take place without prior checking of the agenda by a senior member of staff over a period of three months. The interview was conducted by the Line Manager and the officer in question was very contrite about the whole issue. That member of staff has however been left in no doubt that any recurrence of such a breach will be treated very seriously.

#### Remedial Measures

8. Since this occurrence, Democratic Services staff have met together to discuss ways of reducing the risk of this happening again. A range of measures have been agreed which are now open for discussion with the Licensing Section of Corporate Support Services.

9. These measures are as follows:

(a) all previous published Licensing Sub Committee paperwork to be re-checked back to 2005 to ensure no other issues exist (completion by 11 December 2009);

(b) in future all licensing application information to be redacted at source within Licensing Section (in consultation with legal staff as necessary) prior to transmission to Democratic Services, particular attention being given to personal information/signatures/address details or objectors for premises licences which may be irrelevant to the Licensing Sub-Committees decision making;

(c) Licensing Section/Chair of Licensing Committee to consider whether driving licence copies are required in the information supplied in advance, given that offences are read to the Sub Committee as part of the opening statements;

(d) Licensing Section to consider using a case reference for each driver's case in order that cases can be anonymised for agenda and minutes purposes; and

(e) all future agenda merge packs to be checked by a senior officer prior to publication.

10. Further meetings between Democratic Services representatives and Licensing staff will be held to finalise these arrangements.

11. Subsequently, the Data Protection Officer has suggested that training on Data Protection Act principles be arranged for Democratic Services and Licensing staff. This is in the process of being arranged at the present time and will be regarded as mandatory for all Democratic Services staff involved.

12. There is no necessity to re-configure Modern.Gov in the light of this error. The system is well provided with appropriate checks. The failure to follow those checks was the subject

matter of the disciplinary case. Data from the system is hosted off site and is not available other than through the Council's website and only if it has been published with public access in mind.

#### Information Commissioner

13. The data protection breach was reported to R Palmer and D Newton (the nominated Data Protection Act Officer for the Council) and was reported on the same day to the Information Commissioner's office. The Commissioner's office have commented informally about the situation indicating that in the five cases the number of instances and the nature of some of the material required that this should be treated as a formal breach of the Data Protection Act. The Commission has responded with the enclosed letter (Appendix 1).

#### Audit And Governance Committee

14. With the consent of the Chairman, a member of the Audit and Governance Committee has asked for a report on the circumstances of this breach of data protection requirements following a press report on 11 December 2009.

15. The request states:

(a) that the Committee be advised of the outcome of the recent loss of personal information - *this is detailed earlier in this report*;

(b) a report, in confidence, as soon as it can provided but well ahead of the next meeting so that members can have an informed debate - *now submitted, this report was not completed until recently*;

(c) what internal control failure allowed it to happen – *none, the failure was as a result of human error*;

(d) was the control failure previously noticed in an internal audit of the responsible department – *no*;

(e) if so, was the Department advised to improve the control and did they do so - *N/A*;

(f) have controls now been reviewed again and if so, what improvements have been recommended and what deadline has been set for implementation – *Yes, as outlined in the remedial measures section above and changes have been implemented*; and

(g) has the status of risk number 18 (loss and theft of data) been reviewed in EFDC's risk register and if so what is its revised status (Currently it is at D2, where the D equals low likelihood which now appears over optimistic) - *the Council's risk register has been amended to C2 (significant likelihood)*.

#### **Resource Implications:**

None.

#### **Legal and Governance Implications:**

The Information Commissioner's investigation will determine whether the Council has breached the Data Protection Act. The Council's governance arrangements have not been compromised as the appropriate procedures have been adhered to.

**Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

Information Commissioner; and  
Director of Finance and ICT.

**Background Papers:**

Letter dated 19 January 2010 from the Information Commissioner.

**Impact Assessments:**

Risk Management

See paragraph 15(g) of the report.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? N/A

What equality implications were identified through the Equality Impact Assessment process?  
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?  
N/A.