

Meeting:	Audit and governance committee
Meeting date:	Wednesday 29 November 2017
Title of report:	Potential data breach – record of officer decision
Report by:	Assistant director communities

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To provide the audit and governance committee with a requested briefing on a recent potential data breach following publication of a record of officer decision and of the controls in place to manage publication of records of officer decisions in future.

Recommendation(s)

That:

- (a) the committee determine any recommendations they wish to make to improve robustness of internal systems and controls.**

Alternative options

1. None.

Key considerations

2. The council has agreed a set of guiding principles which anyone taking a decision on behalf of the council is expected to follow. These principles are that decision makers will:

- a) be clear about what the council wants to happen, how it will be achieved, who is accountable for the decision and who is accountable for implementing it and monitoring implementation;
 - b) consult properly and have regard to the professional advice from the council's officers;
 - c) have regard to the public sector equality duty and respect for natural justice and human rights;
 - d) make the decision public unless there are good reasons for it not to be;
 - e) give due weight to all material considerations, only take relevant matters into account, and make sure the action is proportionate to what the council wants to happen;
 - f) explain what options were considered and give the reasons for the decision; and
 - g) follow proper procedures
3. Regulations introduced in 2014 require that a record of certain decisions taken by officers under delegation should be published; this requirement is reflected in the council's recently adopted [constitution](#) (part 3 section 7). Included in the types of decision to be recorded are those decisions whose effect will be to affect the rights of an individual. The published record must state the date the decision was taken, the decision and reasons for reaching it, and the alternative options considered. In accordance with the wider access to information regulations (part 4 section 2 in the constitution) certain information may be exempt from publication. Following adoption of the new constitution a new process was introduced to ensure that the requirements of the 2014 regulations are being met and that records of officer decisions are available to the public in a consistent format on the council's website.
4. On 30 June a record of an officer decision was published that related to a legal injunction being taken against a county resident for their failure to comply with previous enforcement action; such action could result in possible imprisonment. The record of the decision was in the public domain (council's website) for no more than three minutes before concerns were raised that the resident was inappropriately identified in the published record which was immediately unpublished. The system produced an automated email summarising the record of decision which was also sent to all 53 members and 9 libraries generic email accounts.
5. This incident has been investigated fully and has found that there was no breach as legal proceedings are a matter of public record. However the investigation did identify some process improvements that could be made to the new system to ensure that the decision-maker identifies potentially exempt information within the record and seeks advice before publication. As a consequence the following actions have been implemented:
- a. Lead officers will ensure that they clearly state in their requests to publishing officers the nature of the information contained within the officer decision. Any exempt/confidential information needs to be clearly highlighted and any areas for redaction clearly indicated in decision notices.
 - b. In the event that officers feel unsure as to whether or not the information in the notice should be exempt, seek advice from monitoring officer.

- c. Information governance advice is issued alongside training for officers on new constitutional arrangements to ensure all officers are aware of their role and responsibility in maintaining good information governance practice
 - d. Publishing officers should always provide a 'safety net' review of the decision notice and flag up any concerns they have with the decision taking officers. In the event of any concerns arising, the publishing officer will publish the decision on the intranet only and seek clearance from the decision taking officer to review and agree full publication to the internet and circulation to members and others.
 - e. Once any suspected data/legal breach has taken place urgent mitigating steps need to be taken immediately, notifying managers of the breach with a clear timescale of when the breach took place and the type of data/legal breach that has occurred. The incident should also be reported immediately to the council's data security team who will advise on the action to be taken. In accordance with [council procedure](#) all "identified breaches must be reported to the Council's Information Governance Team as soon as they are detected. Even where there is some difference of opinion regarding breach, err on the side of caution and report it". Notwithstanding the action taken to 'unpublish' the decision, governance support staff have been reminded of the need to follow council procedures and report incidents to managers.
6. Annual mandatory training reinforces the risks and dangers of data protection breaches. Despite council procedures not being applied as soon as the incident happened, the staff concerned were quick to respond by un-publishing the data from the public domain and seeking clarification. However, further action should have been taken earlier in response to the information that had been distributed by automated email. This incident has brought to the forefront the problems that can occur with publication to the public domain. The need to be wary and provide attention to detail is recognised and has been reinforced to all officers concerned.

Community impact

7. None

Equality duty

8. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
A public authority must, in the exercise of its functions, have due regard to the need to -
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
9. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the

delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

10. None.

Legal implications

11. The requirements of the Openness of Local Government Bodies Regulations 2014, as set out above required the publication of this decision notice. However because the notice identified an individual, section 100I of the Local Government Act 1972 provides the ability to exempt information that reveals the identify of an individual where so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The decision to exempt information is in accordance with our constitution a decision of the monitoring officer. The monitoring officer's view is that the name of this individual should have been provided in an exempt appendix.
12. Not exempting the name of this individual will not affect the court case because the general principle is that, save in exceptional circumstances, court proceedings should be conducted in public.

Risk management

13. With ongoing training and the application of council procedures, the likelihood of another incident occurring is extremely low; it is accepted that this incident was caused by human error. The risk of data breach is already identified and mitigated for within the council's risk register.

Consultees

14. None.

Appendices

15. None

Background papers

16. None identified.