

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED: 9 June 2017

To: Medway Council

of: Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR

1. Medway Council is the data controller, as defined in section 1(1) of the Data Protection Act 1998 (the 'DPA'), in respect of the processing of personal data by Medway Council and is referred to in this notice as the data controller.
2. The Commissioner's office carried out a consensual audit of the data controller in October 2014 which provided 'limited assurance'.
3. The audit report recommended (among other things) that mandatory data protection training should be given to all staff and that there is regular refresher training which is monitored.
4. The Commissioner's office carried out a 'follow-up' audit in June 2015. Although mandatory data protection training had been implemented, the Commissioner's office advised the data controller to continue to roll out the training.
5. The Commissioner's office has now carried out a further investigation into the data controller's compliance with the provisions of the DPA following two security breaches. The data controller has failed to take adequate steps to ensure that mandatory data protection training has been rolled out, as

advised.

6. The Commissioner has considered the data controller's compliance with the provisions of the DPA in light of these matters.
7. Section 4(4) of the DPA provides that, subject to section 27(1) of the DPA, it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller. The relevant provision of the DPA is the Seventh Data Protection Principle.
8. The Seventh Data Protection Principle provides at Part I of Schedule 1 to the DPA that:

"Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data".

Paragraph 9 of Part II of Schedule 1 to the DPA further provides that:

"Having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to –

- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle, and
 - (b) the nature of the data to be protected."
9. The Commissioner is also satisfied that the data controller has contravened the Seventh Data Protection Principle in that the data controller failed to take appropriate organisational measures against the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

10. The Commissioner considered, as she is required to do under section 40(2) of the DPA when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner took the view that the likelihood of distress to the data controller's data subjects is self-evident.
11. **In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires that Medway Council shall within 6 months of the date of this Notice take steps to ensure that:**
- (1) There is a mandatory data protection training programme for staff and refresher training at least every two years. Delivery of the training should be tailored to reflect the needs of the staff following a training needs analysis; and
- (2) Completion of any such training is monitored and properly documented.
12. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.

Dated the 9th day of June 2017

Signed: 

Stephen Eckersley
Head of Enforcement
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that she ought to have exercised her discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Leicester
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

The notice of appeal should be served on the Tribunal within 28 days of the date on which the enforcement notice was sent.

4. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and

Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).