

EAST HERTS COUNCIL

PERFORMANCE, AUDIT AND GOVERNANCE SCRUTINY  
COMMITTEE- 13 MARCH 2018

REPORT BY HEAD OF LEGAL AND DEMOCRATIC SERVICES

GENERAL DATA PROTECTION REGULATIONS (GDPR)

WARD(S) AFFECTED: NONE

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Purpose/Summary of Report

This report is to update Members on the progress of the forthcoming General Data Protection Regulations due to come into force on 25 May 2018.

**RECOMMENDATION FOR PERFORMANCE AUDIT AND  
GOVERNANCE SCRUTINY COMMITTEE :**

<b>(A)</b>	<b>To receive the update and respond to the Monitoring Officer, as necessary.</b>
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1.0 Background

1.1 The General Data Protection Regulation (GDPR) is a new, Europe-wide law that replaces the Data Protection Act 1998 in the UK. Currently the data Protection Act 1998 governs how you process personal data (i.e. what you do to/with data which can identify a living individual including collecting using storing and managing such data. It is part of the wider package of reform to the data protection landscape that includes the Data

Protection Bill.

## 2.0 Summary

2.1 The GDPR's main concept and principles are very similar to those contained in the current Data Protection Act 1998. However there are some changes and additions which you need to be aware of

2.2 One of the main changes to note is that the GDPR places a much greater emphasis on transparency openness and the documents you need to keep in order to show that you are complying with the legislation.

## 3.0 Data Controllers

3.1 Councillors are deemed by the Information Commissioners Office (ICO) to be data controllers and as you are required to register with the ICO.

3.2 A data controllers are legal entities, public authority, agencies or other bodies that process personal data. A Controller must exercise overall control and determine the purposes for which and the manner in which any personal data are, or are to be processed

3.3 The following extract has been received from the ICO,

*In answer to your query as to whether a Councillor is required to register, a data controller is defined as a person (who alone or jointly in common with others) decides why and how any personal data is to be processed.*

*In the case of Councillors, they determine how they deal with complaints and respond to issues raised by constituents in their ward. The council does not tell them how they should deal with the issues raised; it is the individual Councillor themselves who diary*

*surgeries appointments, write letters as they see fit on behalf of their constituent and determine how and why that personal data is to be processed.*

*When the Councillor sits on a council committee (for instance to decide whether a taxi licence is to be renewed or a council tenant should be evicted) then that data is processed as part of the council's statutory function and will be covered by the council's data protection registration.*

*There is a clear distinction between when the Councillor is a data controller in his/her own right in their advocacy work when dealing with constituency casework, as they decide how personal data is processed and handled and when they are carrying out their duties as a representative of the council rather than as a representative of the constituent.*

*It is our opinion therefore that elected Councillors who process personal data electronically for the purpose of constituency casework will be required to have their own registration (the same as an MP, MLA, MSP and an AM has to) under the terms of the Data Protection Act 1998.*

3.4 The Information Commissioners Office publish useful and up to date guidance in relation to all aspects of privacy law- including data protection see <https://ico.org.uk/for-organisations/data-protection-reform>

#### 4.0 Implications/Consultations

Information on any corporate issues and consultation associated with this report are contained within **Essential Reference Paper B**.

There are increased fines for failure to comply with the requirements of the General Data Protection Regulations of up to €20,000,00 (or, 4% of annual, worldwide group turnover for businesses, whichever is higher).

Background Papers: None

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