

# DATA PROTECTION ACT 2018 AND UK GENERAL DATA PROTECTION REGULATION

## REPRIMAND

**TO: Southend on Sea City Council**

**OF:** Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ER

1.1 The Information Commissioner (the Commissioner) issues a reprimand to **Southend on Sea City Council** (the Council) in accordance with Article 58(2)(b) of the UK General Data Protection Regulation (UK GDPR) in respect of certain infringements of the UK GDPR.

### The reprimand

1.2 The Commissioner has decided to issue a reprimand to the Council in respect of the following alleged infringements of the UK GDPR:

- Article 5 (1)(f) of UK GDPR which states that personal data shall be, “processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage using appropriate technical or organisational measures (integrity and confidentiality)”

1.3 The infringement occurred when a response to a Freedom of Information (FOI) request was provided to the What Do They Know (WDTK) website. The response included a spreadsheet which contained personal data hidden within the files provided. The spreadsheet was a list of the personal details of Council employees and former employees, and certain other groups of people associated with the Council such as agency workers and office holders.

1.4 The list of employees and former employees contained a significant amount of personal information, including special category data and listed contact details, employment and pay details, and health, gender, and ethnicity information.

1.5 The reasons for the Commissioner’s findings are set out below.

1.6 Information had been provided to WDTK on 17 May 2023, in response to a Freedom of Information (FOI) request. On 27 October 2023, five months after the response to the FOI request was delivered, WDTK

advised the Council that an Excel spreadsheet submitted, had been found to contain the hidden personal data. The incident affected over 2000 individuals and disclosed personal and special category data.

1.7 Although there has been no evidence of the hidden data being used, the possibility that malicious actors may access and exploit the data remains.

1.8 A further concern is that the intent of the Council to be transparent about the breach in their public communications may have alerted those in possession of the spreadsheet to the hidden data.

1.9 From the evidence presented, the cause of the breach was a lack of proper checks for hidden data prior to the releasing of spreadsheet. This can be directly linked to the lack of staff training with Excel software. Specifically, that staff concerned were not taught how to use the available 'Inspect Document' option when checking Excel files. The error still occurred despite the document being checked by two members of staff prior to releasing the document to WDTK.

1.10 It is considered that this incident would not have occurred had the members of staff concerned received training and documented guidance on hidden data and how to appropriately check a document using the 'Inspect Document' function.

1.11 It was a concern that evidence pointed to the Council not being openly aware of the possibility of an incident of this kind occurring. The Council therefore did not make staff aware of a function that would have protected the personal data. This is considered to be evidence of a lack of understanding by the Council regarding the technology it has been using for FOI requests.

1.12 Only after this incident occurred did the Council realise that it needed to increase training and make staff aware of the 'Inspect Document' tool to ensure that spreadsheets would be fully secure when responding to FOI requests. It would be expected that a public organisation of this type, particularly one that deals with substantial amounts of personal data, would have identified this risk, and implemented steps to prevent an incident of this nature occurring.

1.13 Overall, after reviewing all the evidence provided, this case has shown a failure to comply with data protection legislation by the disclosure of special category data. This is due to the failures in training and awareness of the packages that the Council uses. This has given cause for concern given the large amount of data subjects, and the potential for a significant amount of damage to be caused to the data subjects impacted.

## Mitigating factors

1.14 In the course of the investigation, it was noted that there is no evidence that the data has, been republished by anyone other than WDTK. A Google analytics search for the dataset on the internet did not produce any results.

1.15 Evidence also pointed to a generally satisfactory level of data protection training for staff, though more specialist training was found to be lacking.

1.16 The cooperation of the Council with this investigation has also been a consideration. It was noted that the Council has been extremely open, transparent, and cooperative with the ICO throughout the course of the investigative process, something that has been appreciated.

1.17 The investigation has also noted the Council did have some steps in place to prevent unauthorised disclosures which is evidenced by checks conducted by two members of staff prior to disclosure to WDTK.

## Remedial steps taken by the Council

1.18 The Commissioner has also considered and welcomes the remedial steps taken by the Council following this incident. The Council has implemented some wide ranging and appropriate remedial measures to counter the breach. This is in order to ensure that the personal data of those affected will remain as secure as possible, as well as measures to improve the security of the data it provides when responses are provided to FOI requests going forward.

1.19 The response from the Council immediately after being alerted to the breach was positive with the Council swiftly confirming the extent of the breach, verifying the extent of the personal and special category data disclosed, and implementing its Data Security Incident Management Procedure. It is noted that the Council took steps to contact all affected data subjects, which was a significant number.

1.20 The ongoing remedial measures were also noted to be positive, with further training planned and with increased FOI training. It was also noted that since the breach, the Council's FOI policy and procedure has been updated to avoid the disclosure of Excel spreadsheets where possible but includes the requirement to use the 'Inspect Document' facility when Excel documents do need to be shared.

## Decision to issue a reprimand

1.21 After considering all the circumstances of this case, including the mitigating factors and remedial steps, the Commissioner has decided to issue a reprimand to the Council in relation to the infringements of Article 5 (1)(f) of the UK GDPR set out above.

1.22 The Council was invited to provide representations. On 28 August 2024 the Council notified the ICO that it did not intend to make and representations.

### **Further Action Recommended**

1.23 The Commissioner has set out below certain recommendations which may assist the Council in rectifying the infringements outlined in this reprimand and ensuring the Council's future compliance with the UK GDPR. Please note that these recommendations do not form part of the reprimand and are not legally binding directions. As such, any decision by the Council to follow these recommendations is voluntary and a commercial decision for the Council. For the avoidance of doubt, the Council is of course required to comply with its obligations under the law.

1.24 If in the future the ICO has grounds to suspect that the Council is not complying with data protection law, any failure by the Council to rectify the infringements set out in this reprimand (which could be done by following the Commissioner's recommendations or taking alternative appropriate steps) may be taken into account as an aggravating factor in deciding whether to take enforcement action - see page 11 of the Regulatory Action Policy [Regulatory Action Policy \(ico.org.uk\)](https://ico.org.uk) and Article 83(2)(i) of the UK GDPR.

1.25 The Commissioner recommends that the Council should consider taking certain steps to improve its compliance with UK GDPR. With particular reference to Article 5 (1)(f) of the UK GDPR, the following steps are recommended:

1. To ensure compliance with Article 5 (1)(f) of UK GDPR the Council should ensure that all proposed remedial measures are implemented.
2. To ensure compliance with Article 5 (1)(f) of UK GDPR the Council should ensure that all staff across the Council, who use Excel as part of their role are fully trained and conversant with all relevant Excel tools, in particular the 'Inspect Document' option.