

Report of:	The Data Protection Officer
Submitted to:	Corporate Affairs and Audit Committee of 30 September 2021
Subject:	Subject Access Requests – Compliance Update

Summary

Proposed decision(s)
That the Committee notes the content of this report and provides comment as it sees fit.

Contribution to delivery of the 2021-24 Strategic Plan		
People	Place	Business
The right of subject access is fundamental to our ability, not only to maintain legal compliance, but also to ensure that our citizens, of all ages, are positively engaged with us and that they can count on integrity and transparency in their relationships with our representatives across all services, especially where they have significant lasting cause and effect on their rights and freedoms.		
Ward(s) affected		
All Wards		

What is the purpose of this report?

This report provides an update regarding Middlesbrough Council’s legal compliance with the right of subject access.

Why does this report require a Member decision?

This report is for information.

Report Background

The Committee previously received the Annual Senior Information Risk Owner (SIRO) Report at its meeting on 29 April 2021 which included an update regarding the ‘backlog’ of subject access requests (SARs).

“The second priority for 2020 was to clear the Council’s backlog of subject access requests (which fall largely within Children’s Services) and put in place arrangements to ensure compliance for all information requests within statutory timescales in at least 90% of cases...This resulted in only minor reduction in the Council’s backlog of SARs, which reduced from 32 at the end of 2019 to 26 at the end of 2020.”

Since the last update to the Committee, the temporary post in the Children's Services department has been put on a more permanent footing within the Medium Term Financial Plan. The effect of that role, and the existing post dedicated to historical Children's Services SARs, has resulted in a reduction of the backlog of cases received prior to 2021 to 10 within that department.

A small number of these cases are awaiting 'life story work' to be provided by the Children Looked After Service to ensure that those requestors receive the information they have asked for but with the right level of pastoral support and explanation about their time in care. The other requests are taking a significant amount of time to process due to the nature of those cases – some of whom have spent a significant number of years in care. In one example there is in excess of 650 files totalling 6,000 pages, all of which must be reviewed and redacted to comply with the data protection legislation. The requestors in those cases are aware of the reasons for the delays and are content to receive the information in a number of partial responses as the work progresses.

The Committee should also note that a further 56 SARs were received by the Children's Services department in 2021 so far, 42 of which have been responded to. In total, the current number of open SARs in the department is 24, with 17 of those being overdue.

What decision(s) are being asked for?

That the Committee notes the content of this report and provides comment as it sees fit.

Why is this being recommended?

To assist the Committee with its responsibilities of keeping the Council's arrangement for Corporate Governance under review.

Other potential decisions and why these have not been recommended

This report responds to a request from the Committee to provide an update on this subject.

Impact(s) of recommended decision(s)

Legal

The UK General Data Protection Regulation 2016 and Data Protection Act 2018 impose duties on the local authority as a data controller to respond to certain rights of the data subject including the right of access. Failure to adequately respond to these requests within the statutory timescales can lead to enforcement action from the Information Commissioner's Office (ICO) - the UK information rights regulator. In addition, the deliberate alteration of data after the receipt of a subject access request is a recordable criminal offence.

Financial

Although the ICO has a number of enforcement options available to it, the maximum monetary penalty that can be issued against the Council is at the 'tier 2 level' of up to £17.5 million. These penalties are payable by the data controller, regardless of their sector or organisation type, and cannot be paid from insurance funds.

Policy Framework

This report has no effect on the Policy Framework.

Equality and Diversity

This report does not raise any new matters in relation to Equality and Diversity.

Risk

The Council has recorded a risk (reference O5-022) 'Legal Non Compliance with Subject Access Requests' which was reviewed by the Director of Children's Care on 24 August 2021 and the risk score reduced with specific reference to the number of outstanding requests reducing due to the impact of the new resource. The Data Protection Officer agrees with this assessment and is assured that the risk is being managed in the right direction.

Actions to be taken to implement the decision(s)

The Data Protection Officer will reflect the reporting of the update to the Committee within their records and notify the relevant Directorate Management Teams.

Appendices

None.

Background papers

No background papers were used in the preparation of this report.

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