

FALKIRK COUNCIL

Subject: THE DATA PROTECTION ACT 1998 AND HOUSING ALLOCATION LISTS
Meeting: FALKIRK COUNCIL
Date: 27 JUNE 2007
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1. INTRODUCTION

- 1.1 Prior to the May election information on housing allocation lists had been available to Members as a matter of course. In light of prevailing legal opinion that this practice was questionable under the Data Protection Act 1998, which situation would have been exacerbated by the introduction of multi-member wards, the decision was taken to cease this practice. This report explains the reasons for the decision and looks at alternative ways of providing Members with information to allow them to perform their civic duties whilst protecting an individual's personal data.

2. HOUSING ALLOCATION LISTS – PREVIOUS PRACTICE

- 2.1 Housing Services maintain for management purposes, separate lists showing offers of tenancies made and accepted. These lists reveal the names and addresses of the applicants and the properties they have been offered or have accepted. There is also a deal of sensitive information such as family circumstances (e.g. two parent family children under 17; one person household aged over 60; childless couple one or both over 60; one parent family children under 17). The applicants' categorisation relative to their priority and points is also revealed e.g. "homeless", "waiting list", "transfer", "moving on", "medical". Details of this nature would be considered sensitive personal data under the Data Protection Act. Sensitive personal data is given greater protection under the Act.

The lists are prepared according to the local housing office areas. Historically these have been available to local Councillors as a matter of course. The concern was that this practice was not permissible. The concern arises from a number of factors :-

- (1) The legal argument has hardened against the practice of allowing members access to allocation lists as a matter of course. East Lothian Council have obtained the opinion of Senior Counsel confirming a similar practice as unlawful.

- (2) Communities Scotland are conducting their inspections of Councils across Scotland. Inspection of Falkirk Council is being undertaken at the moment. The Council's practices in relation to housing allocation are likely to be examined as part of this process.
- (3) The unlawful obtaining or disclosure of personal data is a criminal offence under section 55 of the Act. With an increased awareness of data protection officers were anxious about the propriety of the former practice.

3. THE DATA PROTECTION ACT 1998, COUNCILS AND COUNCILLORS

- 3.1 The Data Protection Act (DPA) regulates the holding and processing of personal data, that is, information relating to living individuals. This would include applications for tenancies and similar information which would identify the individual, such as housing allocation lists.
- 3.2 The Council is the "data controller" of such personal data. It is not permitted to disclose personal information to another person otherwise than in accordance with the law (*e.g.* if that other person has a right to receive that information, such as when police officers are investigating a crime) or the data subject (in this case an applicant for a tenancy) has consented to the disclosure to another person.
- 3.3 Fundamental to appreciating the data protection implications is to recognise that there is a distinction between Councillors and the Council as a corporate body. The UK Information Commissioner, who is responsible for data protection, identifies three possible roles.
 - (1) As a member of a committee engaged in the business of the committee.
 - (2) As a representative of the constituents, for example, in pursuing complaints.
 - (3) As a representative or a member of a political party, particularly at election time.

Copies of the Commissioner's compliance advice for elected members (V2, April 2007) and on disclosing of personal information to elected members (V2 April 2007) are attached as appendix 1. The statutory foundations for the Commissioner's guidance is s.56 of the Local Government etc (Scotland) Act 1973.

- 3.4 In the first role, acting as a member of a committee engaged in committee business, the Councillor is considered synonymous with the Council. Therefore, information passed to the Councillor in this circumstance is still considered to be held by the Council, *i.e.* it has not been disclosed to anyone outwith the Council. In such circumstances, the Councillor is in the same position as an officer. So, for example, the information held on behalf of the Council by a Councillor is potentially accessible under Freedom of Information.

- 3.5 In the second and third roles, the Councillor is considered to act independently of the Council as a corporate body. Therefore, passing information to Councillors in these circumstances is disclosing information **outwith** the Council. Therefore, it must be considered if disclosure to Councillors is permitted under the Data Protection Act. This is examined in paragraphs 4 and 5.
- 3.6 Clearly, there is importance in first of all establishing which role a Councillor is performing in any given circumstance. The likelihood is that a Councillor will only be considered as part of the Council in limited circumstances. This would retain some clarity between Council information held by a Councillor and a Councillor's own information. (see page 2 of the Commissioner's guidance on disclosing personal information to elected Members - Members should only be given access to as much information as is necessary to carry out their duties).

In the case of housing allocation lists, these should only be made available to the extent that they are required for any specific business of a committee rather than as a matter of course. Even for members of the Housing and Social Services Committee, there does not appear to be any particular remit to justify the general availability of these lists to such members because the Committee does not decide housing allocations. Particular reference is made to S.20(3) of the Housing (Scotland) Act 1987. This provides:-

“A member of a local authority shall be excluded from a decision on the allocation of local authority housing, or of housing in respect of which the local authority may nominate the tenant, where (a) the house in question is situated; or (b) the applicant for the house in question resides, in the electoral division or ward for which that member is elected”.

- 3.7 With the introduction of multi-member wards the problem was exacerbated because instead of there being one local member there are multi-members. Therefore any failings in the process would be multiplied. In addition, the information was made available based on housing management areas. There are implications in circulating area based information to Members representing multi-member wards. Wards are not coterminous with housing management areas. For Members to receive information relating to their ward would currently involve making available information not relevant to that ward.

4. ALTERNATIVE INFORMATION

- 4.1 Circulation of the lists of properties allocated and let ceased at the end of April 2007. Members have made clear their desire to remain involved in the housing allocation process to the extent that the law permits. To enable this to be done the following process is necessary.
- (i) Identify the civic duty or duties that Members wish to perform in relation to housing allocation.
 - (ii). Identify the capacity in which a member is to receive the information ie as part of the Council or as a Councillor in own right.

- (iii) Identify the type of information required to perform that civic duty or duties.
- (iv) Establish if the information can be released under the Data Protection Act (generally will involve balancing Members' legitimate interests against the individual's legitimate interests).
- (v) Set out in clear terms the purpose for which the information may be used.

4.2 Consultation with Members is necessary to inform this process. From this Member consultation it is proposed that new practices be developed which are compliant with the Data Protection Act. This may involve seeking the advice of Counsel.

4.3 Meantime it is proposed that information be provided to Members that will permit local scrutiny and provide a strategic overview of the allocations process.

4.4 Local Scrutiny

To allow Members to scrutinise that the allocations policy is being applied correctly it is proposed that the following information is provided:

- The address of the property allocated
- The points level on which it has been allocated
- If, in allocating the property, any of the following policy parameters have been used:
 - has anyone been bypassed to make this allocation?
 - was the property block profiled and allocated accordingly?
 - have social or management points been used to facilitate the allocation?

A person's address is still their personal data. The anonymisation of the information is to protect the individual's personal data. It is part of the balancing between the legitimate interests of Members to scrutinise and the individual's legitimate rights. This practice will be reviewed as part of the consultation process with Members.

4.5 Strategic Information

Officers are keen to share information which will impact on the strategic framework for the allocation of our housing, and which may signpost the direction for any future changes to the allocations policy.

This information may be most relevant to Members of the Housing and Social Work Committee, but could also form part of the Service's performance reporting to the Best Value and Audit Forum.

The type of information which can be provided looks at, and analyses trends in supply and demand for our stock. Specific measures can include:

- Types, numbers and locations of void property
- % of lets to applicants groups
- Reasons for refusal

4.6 Timescales

The provisions of alternative local information will require changes to our IT based performance management framework. These adjustments are not major but do require a translation of information from current housing management boundaries to ward boundaries.

Regular reports on these will be available by mid July.

The strategic information is available now.

5. **RECOMMENDATION**

It is recommended that Council:

- 5.1 authorise a consultation process with Members with a view to identifying a permissible civic role to be undertaken by Members in relation to housing allocations in accordance with the process set out in sections 4.1 and 4.2 above; and
- 5.2 note that in the interim local information will be provided in the format given in sections 4.4 and 4.5 above.

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Director of Housing and Social Work

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Date: 21 June 2007

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LIST OF BACKGROUND PAPERS

NIL