

Report to Cabinet

23 February 2022

Subject:	Information Governance- Records Retention
Cabinet Member:	Leader of the Council – Cllr Kerrie Carmichael
Director:	Surjit Tour Director- Law and Governance and Senior Information Risk Owner
Key Decision:	No
Contact Officer:	Maria Price, Service Manager-Legal and Assurance and Data Protection Officer maria_price@sandwell.gov.uk

1 Recommendations

- 1.1 That approval be given to the council's Corporate Retention Policy, E-mail Retention Policy and the Information Rights Policy as set out in Appendix 1,2 and 3 for the purposes of complying with UKGDPR and in line with good practice as required.
- 1.2 That the Director Law and Governance and SIRO, in consultation with the Leader, be authorised to undertake requisite steps to ensure the Council complies with the approved E-mail Retention Policy, Corporate Retention Policy and Information Rights Policy.
- 1.3 That the Director Law and Governance and SIRO, in consultation with the Leader, be authorised to amend the E-mail Retention Policy, Corporate Retention Policy and Information Rights Policy to comply with changes in good practice and legislation as and when required.



2. Reasons for Recommendations

- 2.1 The Council has a legal responsibility to comply with its legal obligation in relation to the collection, use and retention of information relating to individuals.
- 2.2 The purpose of the policies set out in the appendices to this report help ensure that the Council manages the data that it holds appropriately and in accordance with the legislative framework as principally set out in UKGDPR and the Data Protection Act 2018.

3. How does this deliver objectives of the Corporate Plan?

- 3.1 UKGDPR is a legal and statutory requirement. In addition to this the objective contributes to all of the Council's Corporate plan's indirectly as proper records management allows the council to operate more efficiently, respond to queries faster and easier and provides the residents of the Borough with assurance that the council no retaining personal information longer than required.

4. Context and Key Issues

- 4.1 UKGDPR (previously GDPR), stipulates the seven data protection principles at the core of the GDPR and as set out in Article 5 which are as follows;
- Lawfulness, fairness and transparency
 - Purpose limitation
 - Data minimisation
 - Accuracy
 - Storage limitation
 - Integrity and confidentiality (security)
 - Accountability
- 4.2 The Council handle personal data and must comply with the principles. Article 5 (1) (e) specifically deals with the Council's obligations in relation to storage limitation and stipulates;
- Records must not be kept for longer than needed
 - Organisations need to be able to justify how long personal data is kept



- Organisations need a policy setting standard retention periods
- There should be a periodic reviews of the data held and it should be erased or anonymise when no longer needed
- Organisations should carefully consider challenges to retention of data
- Organisations can keep personal data for longer if keeping it for public interest archiving, scientific/historical research or statistical purposes.

- 4.3 The council have made significant progress on Information Governance compliance since May 2019. There is now a strong Information Governance Framework in place, led by the SIRO and the DPO. A dedicated Information Governance Board with key stakeholders from every council department meets monthly to embed good practice in both the Council and Sandwell Childrens Trust, the Council have reviewed all policies and Procedures, reviewed Information Asset registers for every department and recently reviewed the Council's Privacy notice. The Council's Privacy notice is a public document, published on the council's website detailing the records held but the council, what we do with those records and how long we will retain them.
- 4.4 There has been significant investment in the Governance Team, with a strong focus on information Governance and embedding good practice.
- 4.5 The team have recently trained the whole council in data protection. Where members of staff have required reasonable adjustments to complete training the team have tailored sessions to those staff members to ensure that the training was open and available to everyone.
- 4.6 However, despite the vast achievements so far in this area full UKGDPR compliance has been delayed in relation to records retention (particularly those records stored in the council's internal e-mail system). A variety of different documents are sent by e-mail. Such documents are covered by their own retention periods, as detailed in the Corporate Retention policy at Appendix 1. E-mail should not be



used as a primary storage system and information/records should be moved from e-mail to the appropriate filing system with the correct retention period applied to the information.

- 4.7 The council's internal e-mail system has in the past been used as a records/case management system by default as many users did not move records to other case management systems or file and or correctly apply and manage a retention period to the records.
- 4.8 Information must be stored in the correct location or system to preserve its integrity and prevent unintentional or deliberate loss.
- 4.9 The email retention policy will enable the organisation to have greater control over its information with regards to audit and applying the correct retention periods in line with its statutory responsibilities. Officers will have the opportunity to move all appropriate records from the e-mail system to the appropriate files so that the correct retention periods can applied to the records as detailed in the Corporate Retention Policy.
- 4.10 The Council publishes the privacy notice which includes the council's retention policy but for openness and transparency it is proposed that the Corporate Retention Policy, E-mail Retention Policy and Information Rights policy are also published.
- 4.11 Each Service area completes an annual review of the Information Asset Register for their individual area. The information Asset register assist in identifying information held for that particular area. The Information Asset Register informs the Corporate Retention Policy and privacy notice and provides a clear framework of how the Council will manage the information it holds. Some of the council's records, i.e children's records, are covered by a statutory retention period; in these circumstances the council follows the statutory periods. Other records are not covered by statutory time scales such as employee records, where the retention polices are a matter for each Local Authority to determine what is reasonable.



In such circumstances the Council's retention and disposal policies are in line with and or broadly similar to both our neighbouring Authorities and National Local Authorities.

- 4.12 Records beyond retention should not be kept for the purposes of Freedom of Information (FOI) and it is not a requirement of FOI to keep information indefinitely.
- 4.13 The ICO's Code of Practice published under Section 46 of Freedom of Information Act (FOIA), provides recommended good practice to public authorities in relation to keeping, management and destruction of their records. The email retention policy aligns to best practice and compliant working.
- 4.14 The Information Governance Board, Governance team, SIRO and DPO have evaluated the risk associated with the policy implementation and have ensured mitigations are in place to negate any concerns regarding information loss. It is noted that this is a significant change to the organisation, but a vital step in leading the organisation to a state where information is managed compliantly.
- 4.15 The policy will be implemented in phases. The initial phase will be to identify all e-mail records 8 years and older on the e-mail system and move them to the appropriate filing system or erased if they are no longer needed.
- 4.16 Robust processes will be in place to ensure that all relevant information has been removed from E-mail systems and stored in the appropriate forum prior to implementation of the policy and that the Council comply with its legal obligations in relation to UKGDPR, Data protection Act 2018 and related legislation.



5 Alternative Options

- 5.1 The current state and management of email information is an area which lacks compliance and governance controls and therefore there are no other known options to consider.

6 Implications

- 6.1 The Council have a mandatory legal requirement to comply with UKGDPR, the current proposal is in line with the legislation. Failure to comply with UKGDPR could result in a maximum fine of £17.5 million or 4% of annual global turnover – whichever is greater. The ICO can also issue improvement notices, reprimands, warning, a temporary or permanent ban on data processing.
- 6.2 The Freedom of Information Act (FOIA) amends the Public Records Act 1958 and places obligations on public authorities to maintain their records in line with the provisions of a code of practice on records management issued by the Secretary of State under Section 46 of FOIA. Failure to comply with the code is not in itself a breach of FOIA or the EIR. However, following the code will help the organisation comply with the legislation.

7. Appendices

The Corporate Retention Policy (Appendix 1)
E-mail Retention Policy (Appendix 2)
Information Rights Policy (Appendix 3)

8. Background Papers

N/A

