



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Data Protection Technical Guidance Note

The application of schedule 12A of the Local Government Act 1972

The Local Authorities (Executive Arrangements) (Access to Information) (Amendment) (England) Regulations 2006 made certain amendments to schedule 12A of the Local Government Act 1972 (schedule 12A). When these amendments came into force, the Information Commissioner received several requests for guidance regarding the disclosure of personal information as a result of the publication of documents relating to council meetings.

From the enquiries we have received it appears that some councils are experiencing difficulties in reconciling the amendments to schedule 12A with section 100 of the Local Government Act 1972 (the Act), the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

Background

Schedule 12A originally referred to the publication of documents, including agendas, reports and minutes, which related to council meetings. Exemptions 1 to 6 and 11 of the original schedule contained lists of 'exempt information', which outlined certain categories of personal information which should be redacted (edited) from these documents before publication, to prevent disclosure to the general public. For example, information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority. However, this implied that personal information which was not listed in the exemptions could be disclosed, regardless of whether the disclosure complied with the DPA.

Schedule 12A was amended following a public consultation: Local Authority Access to Information – A Consultation (the consultation), produced in September 2004 by the Office of the Deputy Prime Minister (now the Department of Communities and Local Government).

The consultation document stated:

“The government wanted to ensure the specific local government access to information rules were compatible with both the Data Protection Act 1998 and the Freedom of Information Act 2000”.

For this reason it was proposed to delete the limited categories of personal data listed as exempt information in schedule 12A, and exemptions 1 to 6 and 11 of the pre-amendment version.

This had the effect of making sure that councils would be unable to determine which personal information should be redacted merely by referring to the categories listed in schedule 12A. Instead, it would be necessary for councils

to consider all the personal information contained within meeting related documents, and determine whether redaction was necessary before publication, to comply with the requirements of the DPA.

This is consistent with a further statement in the consultation document explaining that although schedule 12A now lists much less personal information as exempt from disclosure, “the information [no longer listed] would continue to be protected under the Data Protection Act”.

The data protection implications of Schedule 12A

Section 100A of the Local Government Act 1972 states that council meetings must be open to the public unless the discussions would involve disclosing confidential information. This confidential information may, or may not contain personal information. For the purposes of section 100A, confidential information is defined in section 100A (3) as:

- (a) “information furnished to the council by a government department upon terms (however expressed) which forbid the disclosure of the information to the public; and,*
- (b) information which the council is forbidden to disclose to the public by or under any enactment or by the order of a court”.*

While there is a clear obligation on councils to make sure their meetings are, in general, open to the public, there will be some matters coming before a council where it will be fairly obvious that a closed session should take place or that the public should be excluded from some parts of the discussions. Section 100 anticipates such circumstances by providing that the public may be excluded from some or all of a meeting and confirms that nothing in Part VA of the Act authorises or requires the disclosure of confidential information in breach of the obligation of confidence.

Information provided for council sessions may include information that is confidential information, as defined by section 100A (3) (b), in the form of personal information the disclosure of which to the public is forbidden by the provisions of the DPA. Wherever information provided for council meetings includes personal information, it is important for a council to bear in mind that this must be dealt with in compliance with the DPA. Any personal data the disclosure of which would contravene the DPA must be carefully redacted or anonymised before being delivered to councillors for discussion at any open council meetings. Alternatively, where redaction or anonymisation is not possible without adversely affecting the usefulness of the information, such information may only be considered in closed council sessions.

Discussions in closed session

Despite the need to discuss some matters in private, members of the council will need to be advised in agendas of matters which will be raised in council meetings, and may also need some additional documents or reports to inform their discussions. Where agendas and support documents are likely to be made available to the public, careful thought should be given to the content of

such documents, in particular the inclusion of confidential or personal information, before and during their preparation.

The preparation of agendas, background documents and reports for a closed session should be done in such a way that members of the council have all the necessary information available to them. But it would be good practice to mark, before the meetings, any documents or parts of documents which will need to be redacted before publication.

It would also be helpful to minute the need for redaction of these documents, as a matter of course, in those meetings where it is likely to be required. A specific action point should be noted in the minutes to make sure that a named individual will have responsibility for this, and it would be good practice to create a procedure for this which includes a final independent check before publication. It would also be good practice to mark the original documents from which the redacted documents are created as "not for publication" where required, and insert a description of the redacted information referring to the relevant exemption under schedule 12A or the exemption for confidential information in section 100 A(2) .

Discussions in open session

Section 100 A requires that documents for open sessions including agendas, background papers and minutes should be published.

These papers need to be as carefully prepared as those required for closed sessions. Care should be taken to make sure that members of the council have all the necessary information available to them but the effect of the DPA on any personal information contained within these documents must also be considered. Personal information which should not be disclosed should be redacted from these documents, provided that this can be done without compromising the purpose of the session or the functions of the council. Where personal information is vital to the session, only minimal detail should be included. The reasons for this should be explained to attendees and they should be cautioned against using any personal information in the course of discussions. The disclosure of personal data contrary to the provisions of the DPA, or indeed the disclosure of any other information contrary to a statutory restriction, is expressly prohibited by section 100 A (2) and (3).

The FOIA and EIR implications of schedule 12A

The schedule 12 exemptions which the consultation recommended should stay are related to non-personal information and therefore would be subject to the FOIA and EIR.

Conclusion

Openness in government is desirable, and it is clearly in the public interest for individuals to be able to see how a council applies its policies and procedures in practice. Access to council meetings and meeting documents are ways to make sure the workings of a council are as transparent and accessible as possible to the communities they serve. Councils must bear in mind that while they have a duty to facilitate this access, they also have a duty under the DPA

to make sure that personal information entrusted to them by individuals is dealt with in compliance with that legislation.

More information:

If you need any more information about this or any other aspect of data protection,

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