



DECISION PAPER

DECISION: 2018/116	DATE: 23. May 2018
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TITLE: APPOINTMENT OF A DATA PROTECTION OFFICER

REPORT BY: ANGELA HARRISON - DIRECTOR

Executive Summary

This purpose of this report is to appoint a Data Protection Officer for the Police and Crime Commissioner's Office

Recommendation

1. The Police and Crime Commissioner is recommended to appoint Carl Melling of Lancashire Constabulary as the Data Protection Officer (DPO) for the Office of the Police and Crime Commissioner with effect from the 25th May 2018.
2. That the sum of £40,000 for the financial year 2018/19 be appointed to contribute to the provision of the DPO role.
3. That this ongoing revenue commitment for the post of the DPO hereafter be provided as part of the budget setting process for future financial years.

Signature

A handwritten signature in black ink, appearing to read 'Clive Grunshaw', written over a horizontal line.

Police and Crime Commissioner

Date

23rd May 2018

PART II

1. Background and Advice

1.1. The General Data Protection Regulation (GDPR) is the new data protection framework for the EU and will apply in the UK for the 25 May 2018. It replaces all current data protection legislation, including the Data Protection Act 1998 (DPA), although the data protection principles within the GDPR are similar to those in the DPA.

2. Appointment of Data Protection Officer

2.1 The GDPR requires all public authorities to appoint a Data Protection Officer (DPO). The DPO's minimum tasks are defined in Article 39 of the GDPR and these are:

- To inform and advise the organisation and its employees about their obligations to comply with the GDPR and other data protection laws;
- To monitor compliance with the GDPR and other data protection laws, including managing internal data protection activities, advise on data protection impact assessments; train staff and conduct internal audits;

2.2 The previous report in November 2017 concerning GDPR is attached at Appendix 1, which provides more detail about the post and its responsibilities. The post-holder is required to report to the highest management level in the organisation and in this instance will report to the Director.

2.3 Separate guidance issued by Article 29 Data Protection Working Party advises that the officer performing the DPO role must avoid any conflict of interest. The effect of this is that other statutory positions in the office (e.g. Head of Paid Service/Monitoring Officer or Section 151 Officer) are ruled out from taking up the DPO role, or for that matter those at management level with responsibility for looking after data sets comprising personal data.

2.4 Importantly, the GDPR specifically allows public authorities to share the DPO role with other organisations including other local authorities. In this instance the OPCC would propose to share a DPO with Lancashire Constabulary.

3. Reporting Breaches

3.1 For serious breaches the ICO can issue a monetary penalty notice of up to £500,000. Under GDPR this could be up to 20 million euros or 4% of turnover, whichever is the greater sum.

3.2 The GDPR will introduce a duty on the DPO to report certain types of data breach to the relevant supervisory authority, and in some cases, to the individuals affected. Also, under GDPR a breach is more than just the loss of data; inappropriate access to personal data due to the lack of internal controls is also deemed to be a breach.

4. Other Changes Introduced by the GDPR

- 4.1 The GDPR creates some new rights for the individuals and strengthens some of the rights that currently exist under the DPA. These are:

- The right to be informed
- The right of access
- The right to rectification
- The right to erasure
- The right to restrict processing
- The right to data portability
- The right to object
- Rights in relation to automated decision making and profiling.

- 4.2 The GDPR also requires organisations to have comprehensive governance measures in place, which have previously only been considered as best practice e.g. privacy impact assessments are now a legal requirement. Also, running through the heart of the new legislation will be a principle of accountability; meaning that all data controllers must maintain records to show how it is complying with the GDPR. Also, data controllers may be required to demonstrate to ICO that it is complying with the GDPR when processing personal data.

5. The Recommendation

- 5.1 The PCC is therefore recommended to appoint Carl Melling of Lancashire Constabulary as the Data Protection Officer (DPO) for the Office of the Police and Crime Commissioner with effect from the 25th May 2018.

- 5.2 Further that the sum of £40,000 for the financial year 2018/19 be made for Constabulary for the provision of the DPO role. Thereafter this ongoing revenue commitment for the post of the DPO will be provided as part of the budget setting process for future financial years.

6. Links to the Police and Crime Plan

- 6.1 Good governance underpins the operation of the office and further the appointment is a statutory duty.

7. Consultations

N/A

8. Implications:

a. Legal

Articles 38 and 39 of the GDPR set out the requirement to appoint a DPO and details the requirements of the role. The guidance issued by the Article 29 Data Protection Working Party clarifies that the post-holder must avoid potential conflicts in performing the role, which rules out certain officers in

the office from performing the role. The recommendation to appoint the DPO at Lancashire Constabulary is an appropriate one.

b. Financial

A contribution to the post of DPO of £40,000 for 2018/19 will be made to Lancashire Constabulary. Thereafter this will be absorbed into the ongoing budget for Constabulary.

c. Equality Impact Assessment

N/A

d. Data Privacy Impact Assessment

N/A

9. Risk Management

5.1. The PCC must appoint a DPO, to include the duties required by Articles 38 and 39 of the GDPR. If this appointment was not made the office would be in breach of the law and would expose itself to sanctions from the ICO. An entry has been made on the Commissioner's risk register for the introduction of GDPR.

10. Background Papers

Decision Paper November 2017 by the Commissioner on GDPR

11. Conclusion

The DPO role joins the ranks of the other important statutory officer roles within public sector organisations such as the Head of Paid Service/Monitoring Officer and the Section 151 Officer. Significantly, the role is afforded the same statutory protections as these other roles too. As such, this demonstrates the importance of the position and indeed the importance of the need for compliance with the data protection legislation, which will be supported by the increase in the potential level of fines that will become available to the ICO where breaches of the GDPR are found to have occurred.

Chief Executive Officer (Monitoring Officer)

I have been informed about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Police and Crime Commissioner for Lancashire.

Signature:  Date: 23.5.2018