

**Committee: FULL COUNCIL**

**Agenda Item**

**Date: 11 January 2016**

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**Title: REPORT OF THE MONITORING OFFICER  
PURSUANT TO SECTION 5, LOCAL  
GOVERNMENT AND HOUSING ACT 1989**

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Legal, 01799 510416**

Item for decision

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## **Summary**

1. Under s.5(2) Local Government & Housing Act 1989 as the council's Monitoring Officer I have a statutory duty to prepare a report for consideration by the council if I am aware of any contravention of any enactment by the council or by any person employed by the council. As required by s.5(3) before preparing this report I have consulted with the council's Head of Paid Service and the S.151 Officer. This report is to inform members of breaches of the Data Protection Act 1998.

## **Recommendations**

2. That members note this report.

## **Financial Implications**

3. The information Commissioner has power to impose a financial penalty not exceeding £500,000 if he considers that the contravention is serious, is of a kind likely to cause substantial damage or substantial distress and either the contravention was deliberate or the council knew or ought to have known that there was a risk that the contravention would occur and that the contravention would be likely to cause substantial damage or substantial distress but failed to take reasonable steps to prevent the contravention.

## **Background Papers**

4. None.

## **Impact**

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None

Human Rights/Legal Implications	As set out in the body of this report.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

## Situation

6. On 24 July 2015 the council received a request for information under the Environmental Information Regulations. This request asked for all data in any format relevant to Countryside Properties work in Takeley to include all notes, minutes, correspondence and other communications external and internal.
7. The information was collected and the reply sent on or about 24 August 2015. The material involved was voluminous extending to approximately 2000 pages of double sided paper. In collating the material to respond to the request, a great deal of personal data relating to individuals was redacted. Unfortunately, the person dealing with the collation of the documents omitted to redact the name and email address of one individual, the name and telephone number of two others and the names and postal addresses of two further individuals. Those details were therefore passed to the person making the information request.
8. The dissemination of this information clearly breached the Data Protection principles contained in the Data Protection Act 1998. Having had this failing drawn to my attention I have written to the four individuals concerned to inform them of the council's breach of the Data Protection Act, to apologise for the error on the council's behalf and to inform them of their right to complain to the Information Commissioner should they wish to do so. I have also written to the Information Commissioner informing him of the breach.
9. There is no evidence to suggest that the person making the information request has used this information for any improper purpose although she has herself made a complaint to the Information Commissioner concerning the council's breach of the Data Protection Act notwithstanding the fact that she is not the victim of that breach.
10. This failing has exposed the council to a risk of a financial penalty. However, clearly the contravention was not deliberate. It is fairly obvious that when dealing with requests for information which require the production of voluminous documents that errors may occur and therefore the council knew or ought to have known that there was a risk of a contravention. It is unlikely that the contravention would cause substantial damage but doubtless the individuals concern would be distressed that their personal details have been made available. However, the member of staff was given full instruction on how to approach the task and the work was subject to a spot check which were reasonable steps to prevent the contravention occurring.

## Risk Analysis

11.

Risk	Likelihood	Impact	Mitigating actions
A complaint is made to the Information Commissioner	4, a complaint has already been made	3, assuming the complaint is upheld the council will suffer reputational damage	The council has put in place a requirement that all information request responses are double checked to prevent repetition of this error.
A financial penalty is imposed by the Information Commissioner	2, it is unlikely that the Commissioner would conclude that either the contravention was deliberate or that the council had failed to take reasonable steps to prevent the contravention.	3, if a financial penalty is imposed it is not possible to gauge at what level this would be pitched.	The council cooperates fully with the Information Commissioner in any investigation undertaken.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.