

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: The Royal Borough of Kensington and Chelsea

Of: Town Hall, Hornton Street, London, W8 7NX

1. The Information Commissioner ("the Commissioner") has decided to issue The Royal Borough of Kensington and Chelsea ("the Council") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is being issued because of a serious contravention of the seventh data protection principle by the Council.
2. This notice explains the Commissioner's decision.

Legal framework

3. The Council is a data controller, as defined in section 1(1) of the DPA in respect of the processing of personal data. Section 4(4) of the DPA provides that, subject to section 27(1) of the DPA, it is the duty of a data controller to comply with the data protection principles in relation to all personal data in respect of which he is the data controller.
4. The relevant provision of the DPA is the seventh data protection principle which provides, at Part I of Schedule 1 to the DPA, that:

"Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data".

5. Paragraph 9 at Part II of Schedule 1 to the DPA provides that:

"Having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to –

(a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle, and

(b) the nature of the data to be protected".

6. Under section 55A (1) of the DPA the Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that –

(a) there has been a serious contravention of section 4(4) of the DPA by the data controller,

(b) the contravention was of a kind likely to cause substantial damage or substantial distress, and

(c) subsection (2) or (3) applies.

- (2) This subsection applies if the contravention was deliberate.

(3) This subsection applies if the data controller –

(a) knew or ought to have known –

(i) that there was a risk that the contravention would occur,
and

(ii) that such a contravention would be of a kind likely to
cause substantial damage or substantial distress, but

(b) failed to take reasonable steps to prevent the
contravention.

7. The Commissioner has issued statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties that has been published on the ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.
8. The DPA implements European legislation (Directive 95/46/EC) aimed at the protection of the individual's fundamental right to the protection of personal data. The Commissioner approaches the data protection principles so as to give effect to the Directive.

Background to the case

9. On 14 June 2017, a fire broke out at the 24-storey 'Grenfell Tower' block of public housing flats in North Kensington causing 71 deaths. A total of 151 homes were destroyed in Grenfell Tower and the surrounding area. People from surrounding buildings were also

evacuated due to concerns that the building might collapse. In the circumstances, there were calls for empty private property in the Borough to be requisitioned to provide homes for those displaced by the fire.

10. In the aftermath of the fire, some media outlets provided social commentary on the inequality between owners in the Borough who could afford to leave their properties empty, and the residents of Grenfell Tower who lived in relative poverty.
11. On 30 June 2017, the Council received three separate requests (one from a journalist) for the statistical information used in a Report in 2015; specifically the addresses of empty properties in the Borough. It later transpired that the applicants were all journalists with links to a national daily newspaper ("the newspaper"). The requests were made under the Freedom of Information Act 2000 ("FOI").
12. However, the statistical information was no longer held by the Council. So a member of the 'Revenue Systems Administration' team produced a pivot table that included a list of named owners against the addresses of empty properties in the Borough. The Council did not intend to disclose this information because of the risk of criminal activity.
13. The Council Tax Manager then compiled a list of the number of empty properties in the Borough to be disclosed to the applicants, copied and pasted the information into a new Excel spreadsheet and sent it to the 'FOI team'. But the underlying personal data on the pivot table hadn't been removed.

14. A member of the 'FOI' team then scrolled over the spreadsheet and clicked it once to check for hidden data. Double-clicking on any cell would have revealed the identities of 943 empty property owners in the Borough and their addresses.
15. On 21 July 2017, the spreadsheet was sent to the applicants by email with the underlying personal data still on the pivot table.
16. On 1 August 2017, the number of empty properties in the Borough was published on the newspapers website together with the names of three high profile owners. One of the journalists also disclosed the response to a data analyst who published the spreadsheet on an online blog for approximately one hour.
17. The Commissioner has made the above findings of fact on the balance of probabilities.
18. The Commissioner has considered whether those facts constitute a contravention of the DPA by the Council and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

19. The Commissioner finds that the Council contravened the following provisions of the DPA:
20. The Council failed to take appropriate organisational measures against the unauthorised processing of personal data in contravention of the seventh data protection principle at Part I of Schedule 1 to the DPA.

21. The Commissioner finds that the contravention was as follows:
- (a) The Council did not provide the FOI team with any (or any adequate) training on the functionality of Excel spreadsheets or possible alternatives.
 - (b) The Council had in place no guidance for the FOI team to check spreadsheets for data hidden in any pivot table before they are disclosed under FOI.
22. This was an ongoing contravention from 1 January 2005 when the relevant part of FOI came into force, until the date the security breach was discovered on 1 August 2017 and remedial action was taken.
23. The Commissioner is satisfied that the Council was responsible for this contravention.

Seriousness of the contravention

24. The Commissioner has gone on to consider whether the conditions under section 55A DPA were met.
25. The Commissioner is satisfied that the contravention identified above was serious due to the number of affected data subjects, the sensitive nature of the personal data that was disclosed to the applicant's in the context of the Grenfell Tower tragedy, and the potential consequences. In those circumstances, the Council's failure to take adequate steps to safeguard against unauthorised disclosure was serious.
26. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Contravention of a kind likely to cause substantial damage or substantial distress

27. The relevant features of the kind of contravention are:
28. The Council was required to comply with the provisions of FOI in its capacity as a public authority. In this case, the Council sent a spreadsheet to three journalists with links to the newspaper. The spreadsheet erroneously contained underlying personal data that connected 943 individuals with empty properties in the Borough. At the time of the security breach, the feeling of social inequality was running high in this wealthy Borough. Such disclosures therefore required guidance and oversight.
29. This is all the more so when personal data of a sensitive nature is concerned – in particular, as regards owners responsible for the payment of Council Tax on empty properties who provided the information to the Council under a statutory obligation, in the expectation that it would be held securely. This heightens the need for robust measures – in organisational and procedural terms – to safeguard against unauthorised disclosures. The Council appears to have overlooked the need to ensure that it has robust measures in place for no good reason.
30. The Commissioner therefore considers that, by reference to the features of the contravention, it would cause distress to at least some of the affected data subjects if they knew that their name and address has been disclosed to three journalists with links to the newspaper who would discover that they owned empty properties in the Borough.

31. In this context it is important to bear in mind that the newspaper published the number of empty properties in the Borough on its website, together with the names of three high profile owners. One of the journalists also disclosed the response to a data analyst who published the spreadsheet on an online blog for approximately one hour. One of the affected data subjects complained to the Council that he was distressed by a home visit from a journalist with links to the newspaper.
32. Further, the affected data subjects would be distressed by justifiable concerns that this information would be further disseminated even if those concerns do not actually materialise. The newspaper has only provided the Council with limited assurance that the information will not be re-published.
33. If this information has been misused by the persons who had access to it, or if it was in fact disclosed to hostile third parties, then the contravention would cause further distress to the affected data subjects and damage, such as exposing their empty properties to criminal damage, burglary and/or squatting.
34. The Commissioner therefore considers that, by reference to the features of the contravention, it was of a kind likely to cause damage or distress. The Commissioner also considers that such damage or distress was likely to be substantial having regard to the number of affected data subjects and the sensitive nature of the personal data in the context of the Grenfell Tower tragedy.
35. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

Deliberate or negligent contravention

36. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that the Council's actions which constituted those contraventions were deliberate actions (even if the Council did not actually intend thereby to contravene the DPA).
37. The Commissioner considers that in this case the Council did not deliberately contravene the DPA in that sense. She considers that the inadequacies outlined above were matters of serious oversight rather than deliberate intent to ignore or bypass the provisions of the DPA.
38. The Commissioner has gone on to consider whether the Council knew or ought reasonably to have known that there was a risk that this contravention would occur. She is satisfied that this condition is met, given that the Council was used to undertaking disclosure processes of such a kind involving Excel spreadsheets. It is estimated that over a two year period, the FOI team would have sent approximately 500 Excel electronic spreadsheets to applicants.
39. The Council ought reasonably to have been aware that it needed to ensure so far as possible that the correct information was disclosed to applicants in response to FOI requests.
40. It is worth noting that the Commissioner's office issued two monetary penalty notices on 30 July 2012 (Torbay NHS Trust) and 28 April 2016 (Blackpool NHS Trust) which raised awareness about the issue of data that could be hidden in pivot tables. The Commissioner's office also published a blog on 28 June 2013 entitled "The risk of revealing too much".

41. In the circumstances, the Council ought reasonably to have known that there was a risk that this contravention would occur unless it ensured the process was governed by written procedures, undertaken by staff with appropriate training and that the spreadsheet was checked for hidden data prior to disclosure.
42. Second, the Commissioner has considered whether the Council knew or ought reasonably to have known that the contravention would be of a kind likely to cause substantial damage or substantial distress. She is satisfied that this condition is met, given that the Council was aware that the responses were going to journalists and that the information was newsworthy. The Council did not intend to disclose the underlying personal data on the pivot table because it knew there was a risk of criminal activity.
43. Therefore, it should have been obvious to the Council that such a contravention would be of a kind likely to cause substantial damage or substantial distress to the affected data subjects.
44. Third, the Commissioner has considered whether the Council failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met. Reasonable steps in these circumstances would have entailed using simple text formats such as CSV files instead of spreadsheets and/or putting in place a policy whereby the FOI team had to properly check the spreadsheet for data hidden on any pivot table before disclosure to the applicants. The Council did not take those steps. The Commissioner considers there to be no good reason for that failure.
45. The Commissioner is therefore satisfied that condition (c) from section 55A (1) DPA is met.

46. For the above reasons, the Commissioner considers there to have been a serious contravention of the seventh data protection principle on the part of the Council with respect to the disclosure of the spreadsheet to the applicant's with the underlying personal data. The contravention was of a kind likely to cause substantial damage or substantial distress. The Council knew or ought to have envisaged those risks and it did not take reasonable steps to prevent the contravention.

The Commissioner's decision to impose a monetary penalty

47. The Commissioner has concluded that the conditions for issuing a monetary penalty are in place. She has considered whether it is appropriate for her to exercise her discretion in favour of issuing a monetary penalty in this case. Her conclusion is that it is appropriate to do so in all the circumstances. The contravention is serious in terms of both the Council's deficiencies and the impact such deficiencies were likely to (and in this case did) have on the affected data subjects.
48. The issuing of a monetary penalty in this case would be fair and just. It would accord with the Commissioner's statutory guidance and regulatory objectives. It would act as an encouragement to ensure that such deficiencies are not repeated elsewhere.
49. The Commissioner has taken into account the following **mitigating features** of this case:
- The Council reported this incident to the Commissioner and was co-operative during her investigation.
 - The Council took prompt action to ensure that the journalists and the data analyst deleted the spreadsheet from their email accounts and the google cache.
 - The high profile data subjects were notified about this security breach.

- A full investigation was carried out by the Council.
 - The Council has now taken substantial remedial action.
 - There is no evidence of actual damage to property as far as the Commissioner is aware.
 - A determined person could have obtained the information via the electoral register and the Land Registry.
 - This security breach was exacerbated by the actions of the newspaper and one of the journalists.
 - A monetary penalty may have a significant impact on the Council's reputation and, to an extent, its resources.
50. The Commissioner has also taken into account the following **aggravating features** of this case:
- The Council received a complaint from an affected data subject.
51. The Commissioner has also considered whether the contravention identified above could be characterised as one-off events or attributable to mere human error. She does not consider that the contravention could be characterised in those ways.
52. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with the DPA and this is an opportunity to remind data controllers who use spreadsheets that personal information can be hidden from plain sight.

Conclusion and amount of penalty

53. The Commissioner confirms that she has taken account of the Council's submissions in response to her Notice of Intent.

54. Notwithstanding those submissions, the Commissioner has decided that she can and should issue a monetary penalty in this case, for the reasons explained above.
55. Taking into account all of the above, the Commissioner has decided that a penalty in the sum of **£120,000 (One hundred and twenty thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.
56. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **11 May 2018** at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.
57. If the Commissioner receives full payment of the monetary penalty by **10 May 2018** the Commissioner will reduce the monetary penalty by 20% to **£96,000 (Ninety six thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.
58. There is a right of appeal to the First-tier Tribunal (Information Rights) against:
- a) the imposition of the monetary penalty and/or;
 - b) the amount of the penalty specified in the monetary penalty notice.

59. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

60. Information about appeals is set out in Annex 1.

61. The Commissioner will not take action to enforce a monetary penalty unless:

- the period specified within the notice within which a monetary penalty must be paid has expired and all or any of the monetary penalty has not been paid;
- all relevant appeals against the monetary penalty notice and any variation of it have either been decided or withdrawn; and
- the period for appealing against the monetary penalty and any variation of it has expired.

62. In England, Wales and Northern Ireland, the monetary penalty is recoverable by Order of the County Court or the High Court. In Scotland, the monetary penalty can be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

Dated the 10th day of April 2018

Signed 

Stephen Eckersley
Head of Enforcement
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

SECTION 55 A-E OF THE DATA PROTECTION ACT 1998

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice or variation notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the 'Tribunal') against the notice.

2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or

 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that she ought to have exercised her discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

- a) The notice of appeal should be sent so it is received by the Tribunal within 28 days of the date of the notice.
 - b) If your notice of appeal is late the Tribunal will not admit it unless the Tribunal has extended the time for complying with this rule.
4. The notice of appeal should state:-
- a) your name and address/name and address of your representative (if any);
 - b) an address where documents may be sent or delivered to you;
 - c) the name and address of the Information Commissioner;
 - d) details of the decision to which the proceedings relate;
 - e) the result that you are seeking;
 - f) the grounds on which you rely;
 - g) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;
 - h) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time.

5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

6. The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).