

Committee	Date
Barbican Residents Consultation Committee	4 th September 2017
Subject: General Data Protection Regulation Compliance 2018	Public
Report of: Town Clerk	For Information
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Summary

This report sets out the new requirements of the General Data Protection Regulation (GDPR) 2018 and the implications on the Barbican Estate's RTAs, in order to ensure they remain GDPR compliant.

Recommendations

That the report be noted.

1. Introduction

The current data protection regime is based on an EU Directive from 1995, implemented in the UK by the Data Protection Act 1998. Since then there have obviously been significant advances in IT and fundamental changes to the ways in which organisations and individuals communicate and share information.

As a result the EU has introduced, updated and harmonised data protection regulations, known as the General Data Protection Regulation ("GDPR") which is due to come into force on 25 May 2018. It will be implemented in the UK, notwithstanding Brexit, by legislation announced in the Queen's Speech.

The City Solicitor and Information Officer have been consulted on this report.

2. Current Position

The Information Commissioner's Office (ICO) which is responsible for guidance and enforcement of data protection has said:

"Many of the principles in the new legislation are much the same as those in the current Data Protection Act. If you are complying properly with the current law, then you have a strong starting point to build from. But there are some important new elements, and some things will need to be done differently".

3. Implications

Whilst much detail and, in particular, the domestic legislation and ICO guidance is not yet available, RTAs are asked to note the following key change and its implications:

Consent will be harder to obtain

Consent is one of the various conditions which can be relied on for processing and the GDPR will require a higher standard of consent by clear, affirmative action, demonstrating a freely given, specific informed and unambiguous consent. Members are asked to note that the burden of proof for establishing this will be on the Data Controller. It will therefore be necessary for RTAs to review current processing based on consent, to ensure that it will meet the new standards, or identify alternative grounds for processing.

In respect of the definition of '*personal data*', under the current law, i.e. the DPA 1998; personal data means data which relates to a living individual who can be identified:

(a) 'from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual'.

Under the GDPR, with effect from 25 May 2018, '*personal data*' means:

'any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person'.

The term 'processing' is specifically defined in both the DPA and the GDPR as doing anything at all with personal data. Therefore, any conclusions drawn from the processing of personal data also fall within the above definition of personal data, unless sufficiently anonymised. Membership consent will, therefore, need to be explicit, not assumed and members of an RTA would need to opt-in themselves, not automatically be opted-in. Members are asked to note that RTAs will need to amend their Constitutions to reflect this.

3. Options

1. The Barbican Association achieves RTA status without an opt in membership, and therefore fulfils the necessary criteria to be an RTA on behalf of the Barbican Estate.

2. With regard to the other RTAs, they may wish to continue but will need to be mindful that the necessary changes to their Constitutions may result in the failure to fulfil the new criteria.

As House Group Chairmen and Secretaries will be aware, this year's RTA Audit has been postponed to allow RTAs to consider their position in time for the new legislation in May 2018. Members are asked to note that this will not affect House Groups current RTA status in the interim.

4. Conclusion

Members are asked to note the implications of the GDPR 2018 compliance: i.e. the definitions of 'personal data' as set out above and the necessity for RTAs to review current processing based on consent, to ensure that it will meet the new standards, or identify alternative grounds for processing as set out in the 'options' section of this report.

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