

Committee(s):	Date:
Risk Committee of the Barbican Centre Board	17 January 2018
Subject: General Data Protection Regulation (GDPR) Update	Public
Report of: Sean Gregory – Director of Learning and Engagement	For Information
Report author: Nicholas Triantafyllou – Head of Business Systems and Data	
<p style="text-align: center;"><u>Summary</u></p> <p>This report provides an update to the information presented at the November Risk Board and more specifically on consent for direct marketing purposes and outlines progress on the 12 step plan recommendations from the Information Commissioner’s Office.</p> <p>The work has been undertaken in collaboration with the CoL Comptroller & City Solicitor department, DLA Piper and external consultants Marts & Lundy.</p> <p style="text-align: center;"><u>Recommendation</u></p> <p>It is recommended that Members note the contents of this report.</p>	

Main Report

Background

1. The European Union's (EU's) [General Data Protection Regulation \(GDPR\)](#) is the result of four years of work by the EU to bring data protection legislation into line with new, previously unforeseen ways that data is now used by organisations such as the Barbican.
2. Currently, the UK relies on the Data Protection Act 1998, which was enacted following the 1995 EU Data Protection Directive, but this will be superseded by the new legislation. It introduces tougher fines for non-compliance and breaches, and gives people more say over what companies can do with their data. It also makes data protection rules more or less identical throughout the EU.

Legitimate interest update

3. One of the most significant changes under the GDPR are the special rules which will apply directly to public authorities.
4. Under the GDPR, public authorities can no longer use the legitimate interest condition to process personal data "in performance of their tasks". As part of the GDPR Readiness Assessment the Barbican Centre did seek clarity from the City of London Corporation's Comptroller & City Solicitor department to

ascertain its position with regards to the use of the Legitimate Interest condition.

5. The CoL responded to confirm that as a “function” of the CoL, “none of the Corporation’s local authority powers and duties can be supported by use of the legitimate interest ground for the processing of personal data under GDPR.” Further stating; “The Barbican is therefore exercising, at least as far as the activities above are concerned, a local authority function and therefore not able to benefit from the legitimate interest ground.”
6. The CoL went on to state that as an alternative to the legitimate interest condition, the Barbican can apply the “public task” justification for processing personal data “necessary for the exercise of a function conferred on a person by any enactment. Thus, processing necessary to run an effective venue providing entertainment is permissible and should provide an effective alternative to legitimate interest processing”.
7. As recommended by the CoL the Barbican can apply the “public task” justification provided that the Barbican can demonstrate that the processing is necessary for the purpose of the Barbican’s activities.

Consent update

8. Having reviewed current procedures and justifications in place, the Barbican, with regards to its Business to Consumer processing currently relies on consent to process personal data for electronic direct marketing activities. This also includes:
 - Sending electronic direct marketing.
 - Processing sensitive data.
 - Carrying out profiling which results in automated decision making
 - Fundraising purposes (direct marketing)
9. As part of the data audit, the Marketing and Business Systems Data team identified that in most cases, where an individual was signing up to receive the electronic newsletter, that the Barbican had positive opt-in consent to continue marketing to those individuals by email.
10. Clarification on this point was requested from the CoL Comptroller & City Solicitor’s department. The CoL also concluded that the affirmative action of submitting the email address in addition to actively having to select the preferred types of curated marketing newsletter content was demonstrating a clear positive opt-in.
11. Further detailed data analysis of the consent data confirmed that the data would be GDPR compliant as the consent was granular, stored against the customer record in the ticketing/CRM system, time stamped and consent could be easily withdrawn and updated.

12. As a result, the Barbican will be able to continue contacting a significant proportion of its active customers for direct marketing purposes in May 2018 without having to take any additional action such as re-seeking consent.
13. The Barbican also currently contacts customers for direct marketing purposes that have consented to being kept up to date with news and offers but have not positively selected a specific newsletter using “affirmative action”. The consent question for this segment of customers is a “soft opt-in” and therefore will no longer be compliant from May 2018.
14. It was also investigated with the Comptroller & City Solicitor’s department whether it would still be possible to contact this segment of customers via e-mail using the Privacy and Electronic Communications Regulations (PECR) consent - which permits soft opt-in. However, the advice was that this was not an option as it was likely that PECR would be aligned with GDPR.
15. The Barbican Marketing team is therefore planning to start a consent campaign in early 2018 to re-seek GDPR compliant consent from this smaller segment of active customers in order to continue being able to continue its direct marketing campaigns. It is unlikely that all customers in this smaller segment will actively choose to opt-in again, however the Marketing team will test and establish the most effective campaign that will maximise the opt-in rate.

Consent for Fundraising

16. The Barbican Centre Trust Ltd and its representatives are currently working with DLA Piper, Marts & Lundy and the CoL Comptroller & City Solicitor department to establish whether consent will have to be re-established for fundraising purposes under GDPR and under which circumstances other forms of lawfully processing data can be used. The Barbican Centre Trust Ltd has now also been registered with the ICO (Information Commissioner’s Office) in preparation to any changes required.

Update on 12 Step recommendations from the ICO (December 2017)

17. Other work currently being undertaken is led by the following 12 recommendations for preparing for GDPR from the ICO - <https://ico.org.uk/media/1624219/preparing-for-the-gdpr-12-steps.pdf>
 - i. **Awareness** – we have made key senior decision makers aware of the upcoming changes. This includes updates to Management Team/Directorate/Board and we also added GDPR as a risk into the risk register, regular updates are also being provided to Barbican Risk Committee - **Completed**
 - ii. **Audit information we hold** – all internal departments completed a data audit to assess the type of data that we collect and process in October 2017. This is aligned with a similar exercise undertaken by the CoL Comptroller & City Solicitor department. The information has been analysed and risk has been assessed and risk log created - **Completed**

- iii. **Communicating privacy information/policy:** we have engaged with DLA Piper and reviewed our Privacy Policy. It was published on our website in August 2017 and customers were made aware of the update via e-mail and a banner on the Barbican website. It is likely that this will have to be fine-tuned again prior to May 2018 - **In Progress**
- iv. **Individuals' rights** - we are in the process of auditing systems and processes to ensure that we will comply with the additional rights that data subjects will have (such as the right to be forgotten) – work on this will be ongoing with the CoL and expected to be completed by March 2018
- v. **Subject access requests** – these are handled centrally by the CoL – we have trained additional staff as Access to Information Network Representatives - **Completed**
- vi. **Lawful basis for processing data – Completed**
- vii. **Consent** – please see updated in the Consent Section above
- viii. **Children / age verification** – The Creative Learning Team are working on establishing the amount of data that will require action – the Young Barbican Scheme (open to 14 – 26 year olds) is not in scope as the additional verification requirements only apply to Children under the age of 13 – **Feb 2018**
- ix. **Process for Data breaches** – we already have a robust process in place to address this under the existing Data Protection Act (Risk Committee was updated in November 2016) and we are reviewing processes to ensure that any additional requirements are incorporated. CoL IT are working on updating processes and the Barbican IT team are aligning their approach – **Jan 2018**
- x. **Data Protection by Design** – our ticketing system and website will be updated in **March 2018** with the additional preference/data protection options.
- xi. **Data Protection Officers** – the CoL has a Data Protection Officer and two assistants. The Barbican requested to appoint their own Data Protection Officer however this was rejected as unnecessary by the Comptroller & City Solicitor as support and compliance will be provided within the existing structure.
- xii. **International** – this does not apply to the Barbican as we do not operate an office in other EU countries.

Conclusion

- 18. The Barbican continues making good progress on achieving compliance to the General Data Protection Regulation Act. Auditing of information held and risk assessments have concluded with the appointed consultant (Marts & Lundy). Further work is now being undertaken with the CoL Comptroller & City Solicitor's department who have been advising the Barbican throughout the process.

19. It has been confirmed that most of the pre-existing recorded customer consent will be GDPR compliant in May 2018.
20. Further actions such as targeted consent campaigns will be undertaken to convert a smaller segment of customers for which there is currently no GDPR compliant consent.

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