GDPR - Privacy and the Planning Process

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Express Data Protection and its acronyms in terms that people understand!

Requirement under article 12 GDPR
- “...using clear and plain language”

“Protecting Peoples Privacy”

The major difference is the legal obligation to maintain a record to demonstrate compliance.

The previous DPA 1998 Act had primarily focused on what should be done to protect information.
Demonstrating Compliance

• Privacy by default (tick boxes)
• Mistakes happen, need clear procedures to mitigate
• Training
• Guidance on record
• Clear demonstration that contributors know what their information will be used for - and why. (Article 12 GDPR - as part 2 DPA 2018)
• Demonstrate management controls around the process
Example Process - Breach

Disclosure of material on planning application

- **Complaint About Published Material**
  - Advise the Data Protection Officer of a 'breach'
    - Review and Remove
      - Advise the subjects that it has been disclosed
    - Ensure search tools re-index to remove stored copy (Google)
    - Advise subject of the legal reason not to remove.
    - Retain if a legal reason to do so
Know your reason to process

Development Management Procedure Order 2015
Planning (Listed Buildings and Conservation Areas) Act 1990
Town and Country Planning (Control of Advertisement) Regulations 2007
Town and Country Planning Act 1990: Section 191 as amended by section 10 of the Planning and Compensation Act 1991

The Environment Act 1995
The Hedgerows Regulations 1997
The Planning (Listed Buildings and Conservation Areas) Act 1990: sections 26H and 26I, as inserted by section 61 of the Enterprise and Regulatory Reform Act 2013
The Planning (Listed Buildings) (Certificates of Lawfulness of Proposed Works) Regulation 2014

The Town and Country Planning (Environmental Impact Assessment) Regulations
Recording why processes are being undertaken.

Article 30 GDPR – Records of Processing Activities:

Each controller and, where applicable, the controller’s representative, shall maintain a record of processing activities under its responsibility.

Test the legitimacy of why information assets are in use.
Advice Issued for Planners

• Parsol Guidance: Initial guidance from the ICO in 2005, updated in 2006:
  – Planning and Building Control Information Online – Guidance notes for practitioners
Advice Issued for Planners

Planning Advisory Service interim guidance.

(draft)

Released May 18th 2018

Where there is a conflict between domestic legislation (such as the Town and Country Planning (Development Management Procedure) (England) order 2015) and EU legislative obligations (such as GDPR) then **the latter prevails**

Link: Planning Advisory Service Guidance 18th May 2018
Reason to place online


Through the Town and Country Planning (Development Management Procedure) (England) Order 2015 there is a duty to undertake a consultation which is easier online.
Balancing the needs

- GDPR
- Law Enforcement Directive (part 3 DPA 2018)
- Data Protection Act 2018
- Human Rights Legislation
- Privacy Laws
- Proportionality
- Planning Law
- Access to Information Act 1985
- Confidentiality
- Common law duty
Checklist from Planning Advisory Service Guide.

• Can all staff recognize the differences between personal data and that classed as “special category” data

• Are there established procedures for checking items to be published online.

• Is there a robust privacy notice linked to local functions

• Templates and letters to include reference to privacy notices

• Risk assessed historic publication with special category data (microfiche or paper files)
“Special Categories”

- Processing of personal data revealing racial or ethnic origin,
- political opinions,
- religious or philosophical beliefs,
- or trade union membership,
- and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person,
- data concerning health
- or data concerning a natural person’s sex life or sexual orientation shall be prohibited.
Operational

• At Boston operate a policy where we routinely redact the following details before making forms and documents available online:
  • personal contact details for the applicant –
    – e.g. telephone numbers,
    – email addresses,
    – signatures
  • sensitive personal data
  • information agreed to be confidential (commercial in confidence)
Where to find

- Planning Application Form
- Planning objection letters
- Planning statements
- Covering letters
The Requirement Changes

- Depending on the stage of the planning process the requirement to publish may change.

- Lawful reason under GDPR changes!

- Once decided - additional redaction will be required.
Case Study: Basildon

• Tribunal halves fine for disclosure of sensitive information in planning case
  – The First-tier Tribunal has upheld the Information Commissioner’s decision to impose a monetary penalty on Basildon Borough Council for publishing sensitive personal information about a family in planning application documents that were made publicly available online.
  – However, in Basildon Borough Council v Information Commissioner & (Part Allowed: Data Protection Act 1998) [2018] UKFTT 2017_0124 (GRC) the FTT halved the penalty from £150,000 to £75,000, saying the ICO had not given sufficient weight to certain points in mitigation and not taken into account others.
A planning statement set out why the variation was being sought. This included details about the applicant’s family, including disability requirements, mental health issues, the names of all family members, their age and the location of the site. This meant it included sensitive personal data as defined by the
Basildon Case 3

• An ICO investigation subsequently concluded that publication of the un-redacted planning statement was not deliberate. Instead the error had occurred because of inadequacies in the council’s procedures for ensuring that planning documentation was uploaded to its portal in line with its policy.
Basildon Case 4

• The council had in place no adequate procedure governing the redaction of statements by planning technicians;
• It did not provide any (or any adequate) training to planning technicians on the redaction of statements;
• It had in place no guidance or procedures for a second planning technician or senior officer to check statements for unredacted data (and specifically sensitive personal data) before they were returned to the administrator to be uploaded to the online planning portal;}
Basildon Case 5

• The ICO found that the contravention was serious and of a kind likely to cause substantial damage or substantial distress. It decided to issue a monetary penalty and considered that £150,000 was appropriate and proportionate.
Basildon Case 5

• The FTT said the authorities cited by the Commissioner unequivocally stated that domestic legislation had to be read restrictively in the light of obligations imposed by EU Directives. "Indeed, where domestic legislation clashes directly with EU legislative obligations then the domestic legislation will be struck
Basildon Case Conclusion

Although 1998 Act outcomes are relevant

- Example of requirement to evidence processes.
- Requirement to train.
Conclusion

• Keeping records
  – of decisions around processing
  – training provided
  – breaches

– Data Protection Impact Assessments, in liaison with your DPO
Thank you

Questions?