

# DATA PROTECTION ACT 2018 AND UK GENERAL DATA PROTECTION REGULATION

## REPRIMAND

**TO: City of Edinburgh Council**

**OF: City Chambers, High Street, Edinburgh, EH1 1YJ**

1.1 The Information Commissioner (the Commissioner) issues a reprimand to City of Edinburgh Council, hereafter CEC, in accordance with Article 58(2)(b) of the UK General Data Protection Regulation (UK GDPR) in respect of certain infringements of the UK GDPR.

### **The reprimand**

1.2 The Commissioner decided to issue a reprimand to CEC in respect of the following infringements of the UK GDPR:

- **Article 12 (3)** which states 'The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.'
- **Article 15 (1)** which states 'that the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data.'
- **Article 15 (3)** which states 'The controller shall provide a copy of the personal data undergoing processing.'

1.3 The reasons for the Commissioner's findings are set out below.

1.4 The City of Edinburgh Council is the local government authority covering the City of Edinburgh council area. The council has over 17,000 employees.

### **Article 12 (3)**

1.5 From the information provided to the Commissioner by CEC it is evidenced that CEC has continually failed to meet its data protection obligations in responding to Subject Access Requests (SARs) within the legislated timeframe. This has infringed Articles 12 and 15 of the UK GDPR.

1.6 Statistics provided by CEC demonstrate that during 2022 CEC received 665 SARs. The Council responded to 69% of these SARs within the timeframes set out in Article 12 (3) of the UK GDPR. This meant that 31% of SARs - amounting to 206 in total - did not receive a response within the required timeframes.

1.7 In 2023, CEC received 698 SARs. The Council responded to 60% of these SARs within the timeframes set out in Article 12 (3) of the UK GDPR. This meant that 40% of SARs - amounting to 279 in total - did not receive a response within the required timeframes.

1.8 The oldest SAR in CEC's backlog in January 2023 was received by CEC in July 2020. By December 2023 the oldest case received by CEC dated from March 2021. This evidences that CEC is taking years to respond to some SARs, in significant excess of the statutory time periods that apply. The latest statistics received by the Commissioner from CEC in December 2024 continue to demonstrate an ongoing backlog consisting of 116 overdue SARs from a total of 213 open cases. Of these, eight cases are between 18 and 24 months old, demonstrating that SAR compliance remains an ongoing concern.

### **Article 15 (1) and Article 15 (3)**

1.9 The ICO considers that CEC has failed to provide access to personal data and provide copies of the personal data owing to the significant delays in SAR responses. These delays have been occurring at least 12 months.

### Mitigating factors

1.10 In the course of the Commissioner's investigation we have noted that CEC have been under significant and continual pressure regarding the number of SARs being made in relation to the Scottish Child Abuse Inquiry and the financial redress schemes that are associated with the Inquiry. This has led to an increase in the number of SARs that CEC have received, as well as an increase in the complexity of those SARs. It is noted that some SARs are taking the best part of 12 months to complete and the SAR responses are, in some cases, running to many thousands of pages. This has caused delays in the compiling, checking and releasing of the SARs.

#### Remedial steps taken by CEC

1.11 The Commissioner has also considered and welcomes the remedial steps taken by CEC to help improve the rate of response to SAR's received going forward. In particular the Commissioner notes that CEC has committed to recruiting further staff to support its work on SARs and to help absorb the increased demand.

#### **Decision to issue a reprimand**

1.12 Taking into account all the circumstances of this case, including the mitigating factors and remedial steps, the Commissioner has decided to issue a reprimand to CEC in relation to the alleged infringements of Article 12 (3), Article 15 (1) and Article 15 (3) of the UK GDPR set out above.

#### **Further Action Recommended**

1.13 The Commissioner has set out below certain recommendations which may assist CEC in rectifying the infringements outlined in this reprimand and ensuring CEC's future compliance with the UK GDPR. Please note that these recommendations do not form part of the reprimand and are not legally binding directions. As such, any decision by CEC to follow these recommendations is voluntary and a commercial decision for CEC. For the avoidance of doubt, CEC is of course required to comply with its obligations under the law.

1.14 If in the future the ICO has grounds to suspect that CEC is not complying with data protection law, any failure by CEC to rectify the infringements set out in this reprimand (which could be done by following

the Commissioner's recommendations or taking alternative appropriate steps) may be taken into account as an aggravating factor in deciding whether to take enforcement action - see page 11 of the Regulatory Action Policy Regulatory Action Policy (ico.org.uk) and Article 83(2)(i) of the UK GDPR.

1.15 The Commissioner recommends that CEC should consider taking certain steps to improve its compliance with UK GDPR. With particular reference to Articles 12 (3), Article 15 (1) and Article 15 (3) of the UK GDPR, the following steps are recommended:

1. Ensure that the subject access team has the required staff and resources to provide SAR responses within the legislated timeframe.
2. Continue to keep data subjects up to date and informed on where their request is up to, particularly if it is delayed.
3. In order to ensure compliance with the wider UK GDPR, continue to engage with the ICO's Assurance team while they undertake a voluntary audit of CEC's data protection compliance.