

# Report to Cabinet

**13 September 2023**

<b>Subject:</b>	Information Governance- Records Retention
<b>Cabinet Member:</b>	Leader of the Council – Councillor Carmichael
<b>Director:</b>	Surjit Tour Director- Law and Governance and Senior Information Risk Owner
<b>Key Decision:</b>	No
<b>Contact Officer:</b>	Vanessa Maher-Smith, Legal Services Manager – Governance and Regulatory and Data Protection Officer  <a href="mailto:vanessa_mahersmith@sandwell.gov.uk">vanessa_mahersmith@sandwell.gov.uk</a>

## 1 Recommendations

- 1.1 That approval be given to the Council’s Corporate Retention Schedule as set out in Appendix 1.
- 1.2 That the Director Law and Governance and SIRO, in consultation with the Leader, be authorised to undertake requisite steps to ensure the Council complies with the approved Corporate Retention Policy.
- 1.3 That the Director Law and Governance and SIRO, in consultation with the Leader, be authorised to amend the Corporate Retention Policy to comply with changes in good practice and legislation as and when required

## 2. Reasons for Recommendations

- 2.1 The Council has a legal obligation in relation to the collection, use and retention of information relating to individuals.
- 2.2 The purpose of the Corporate Retention Schedule is to help ensure that the Council manages the data that it holds appropriately and in



accordance with the legislative framework as principally set out in the UK General Data Protection Regulation (UKGDPR) and the Data Protection Act 2018 (DPA 2018).

Article 5 (1) (e) of the UKGDPR states:

*“1. Personal data shall be:*

*(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;”*

2.3 The Corporate Retention Schedule will also ensure the Council meets the requirements of its Information Governance Framework which requires that the Council maintains an up to date retention schedule accessible to employees, elected members and anyone working for and on behalf of SMBC.

2.4 This schedule should be reviewed on an annual basis. The last review was approved by Cabinet in February 2022.

### 3. How does this deliver objectives of the Corporate Plan?

		UKGDPR is a statutory requirement. The Council is not permitted to keep personal information for longer than the purpose for which it was originally collected.
		
		This contributes to the Council's Corporate plans indirectly as proper records management allows the Council to operate more efficiently, respond to queries faster and easier and provides the residents of the Borough with assurance that the Council is not retaining personal information for longer than is required.



## 4. Context and Key Issues

4.1 The UK General Data Protection Regulation (UKGDPR), outlines the seven data protection principles which are at its core. These are set out in Article 5 and are:

- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimisation
- Accuracy
- Storage limitation
- Integrity and confidentiality (security)
- Accountability

4.2 The Council handles personal data and must comply with these principles. Article 5 (1) (e) the Storage Limitation principle specifically outlines the Council's obligations in relation to storage limitation and stipulates;

- Records must not be kept for longer than is necessary
- Organisations can keep personal data for longer if keeping it archiving purposes in the public interest, scientific or historical research or statistical purposes.

The UKGDPR also stipulates that the Council:

- Must establish and document standard retention periods for the different categories of information held.
- Be able to justify how long it is keeping personal data for
- Must regularly review the personal information it holds and delete or anonymise anything that it no longer needs.
- Should carefully consider challenges to the retention of data

The regular review of the Councils Retention Schedule helps it to meet these requirements.

4.3 In July 2022, the Covid-19 Inquiry was launched. The Inquiry has provided a 'Protocol for the Transfer and Handling of Documents' which includes:

*The procedure and conduct of the Inquiry are to be such as*



*the Chair of the Inquiry may direct (s.17(1) Inquiries Act 2005 ('the Act')), and are subject to the provisions of the Inquiries Act and the Inquiry Rules 2006 ('the Rules').*

*It is an offence under s.35 of the Act to do anything which is intended to have the effect of:*

- a. distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the Inquiry panel, or*
- b. preventing any evidence, document or other thing from being given, produced or provided to the Inquiry panel, or to do anything that the person knows or believes is likely to have that effect.*

*It is also an offence for a person to:*

- a. intentionally to suppress or conceal a document that is, and that he knows or believes to be, a relevant document, or*
- b. intentionally to alter or destroy such a document.*

*The procedures set out in this Protocol are not intended to cover every eventuality, and where the Chair needs to make a decision as to the procedure or conduct of the Inquiry not covered by this Protocol, she will, in accordance with her obligations under the Act, act fairly and with regard to the need to avoid unnecessary cost.*

- 4.4 As a result of this, the Retention Schedule has been updated to include reference to the preservation of Covid 19 related information. A risk assessment has been conducted (see Appendix 2) which sets out the basis on which the Council can continue to meet its obligations under UKGDPR whilst ensuring it does not fall foul of the requirement to preserve Covid 19 related data that may be relevant for the Covid-19 Inquiry.
- 4.5 This year's review has also taken into consideration good practice and the Council has used a similar template to that used by the Information Commissioners Office. It has also been brought in line with the recent Corporate Restructure.



- 4.6 The review of the Retention Schedule and any updates has been completed by each Directorate, through their Information Governance Board representatives, and final sign off has been provided by the Council’s Information Governance Board (IGB), Senior Information Risk Owner (SIRO) and the Data Protection Officer (DPO).
- 4.7 The Retention Schedule and approach taken to apply the retention periods whilst preserving any Covid 19 related information was approved by Leadership Team on 13<sup>th</sup> June 2023.
- 4.8 The Council have made significant progress on Information Governance compliance since May 2019. There is now a strong Information Governance Framework in place led by the Senior Information Risk Owner and Data Protection Officer. A dedicated Information Governance Board with key stakeholders from every Council department meets monthly to embed good practice in both the Council and Sandwell Children’s Trust.

## 5 Alternative Options

- 5.1 That the Council relies on the Information Asset Registers to record its retention schedules. However, these are not as robust or detailed as a specific Corporate Retention Schedule which clearly outlines in one place the retention requirements for all the personal data held by the Council. Using Information Asset Registers to manage the Councils retention schedule would require the interrogation of several hundred documents for Officers to identify the correct retention periods.

## 6 Implications

<b>Resources:</b>	The only resources required is officer time to implement the Retention Schedule.
<b>Legal and Governance:</b>	The Council has a legal requirement to comply with UKGDPR, the reviewed Corporate Retention Schedule allows the Council to comply with legislation. Failure to comply with UKGDPR could result in a maximum fine of £17.5 million or 4% of annual global turnover – whichever is greater. The



	<p>ICO can also issue improvement notices, reprimands, warnings or a temporary or permanent ban on data processing.</p> <p>The Freedom of Information Act (FOIA) amends the Public Records Act 1958 and places obligations on public authorities to maintain their records in line with the provisions of a code of practice on records management issued by the Secretary of State under Section 46 of FOIA. Failure to comply with the code is not in itself a breach of FOIA or the Environmental Information Regulation (EIR). However, following the code will help the organisation comply with the legislation.</p>
<b>Risk:</b>	As set out above, the Council risks receiving penalties from the ICO if it does not have a retention schedule that it is compliant with.
<b>Equality:</b>	There are no equality implications.
<b>Health and Wellbeing:</b>	There are no direct implications on health and wellbeing of our communities. It is indirectly beneficial to our communities to be assured that the Council is processing personal information in accordance with legislation.
<b>Social Value:</b>	As set out above, there is the assurance to the public that the Council is handling personal information properly.
<b>Climate Change:</b>	There are no implications in relation to climate change.
<b>Corporate Parenting:</b>	There are no implications in relation to Corporate Parenting.



## 7. Appendices

The Corporate Retention Policy (Appendix 1)  
Risk Assessment re Covid-19 Inquiry (Appendix 2).

## 8. Background Papers

The Retention Schedule was last approved by Cabinet on 23<sup>rd</sup> February 2022:

<https://sandwell.moderngov.co.uk/ieListDocuments.aspx?CId=143&MId=217&Ver=4>

