

<b>BRIEFING NOTE</b>	
<b>Subject Matter</b>	Data Retention Compliance/Covid 19 Inquiry
<b>Meeting</b>	None
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<b>Date</b>	

## **1. PURPOSE**

- 1.1 To review the Council’s compliance with its Retention Schedule in consideration of the requirement to preserve information that may be required for the Covid-19 Inquiry.

## **2. BACKGROUND/CONTEXT**

- 2.1 The Council has been implementing a data cleanse project for a number of years to ensure compliance with its retention schedule.
- 2.2 In particular, the council intends to introduce the application of an automatic retention to officers’ mailboxes.
- 2.3 On 23<sup>rd</sup> February 2022, Cabinet resolved:
  - 1.1 That approval be given to the council’s Corporate Retention Policy, Email Retention Policy and the Information Rights Policy as set out in Appendix 1,2 and 3 for the purposes of complying with UKGDPR and in line with good practice as required.
  - 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 E-mail Retention Policy, Corporate Retention Policy and Information Rights Policy.
  - 1.3 That the Director Law and Governance and SIRO, in consultation with the Leader, be authorised to amend the E-mail Retention Policy, Corporate Retention Policy



and Information Rights Policy to comply with changes in good practice and legislation as and when required.

- 2.4 In accordance with this decision, the Council embarked on a plan of action to apply the Retention Schedule, with particular focus on Officers and Members' mailboxes.
- 2.5 The first phase was to deal with leavers (employees or members), the process for this being:
  - i) The retention period is 365 days;
  - ii) ICT will run monthly reports of mailboxes due for deletion and circulate them to key contacts in Audit, Legal, Information Governance.
  - iii) The key contacts will consider the report and identify any where an audit, litigation, subject access request, freedom of information request or investigation is pending or ongoing. Those mailboxes will be retained pending the resolution of the relevant action.
  - iv) The report will then be circulated to Directors for final approval for deletion.
- 2.6 The second phase is the deletion of emails over 8 years old. Officers have been encouraged to review their own mailboxes and ensure that information with a retention period of over 8 years is stored outside of outlook and on the appropriate file share/business system and to soft delete emails that are no longer required or are outside of the relevant retention period.
- 2.7 The plan is to reduce the retention period gradually to 365 days for officers and 6 years for Directors, PA's and Members.
- 2.8 Alongside this, officers have also been encouraged to review their own file shares to ensure that they are only retaining information in accordance with the retention schedule.
- 2.9 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.

2.10 As such, the Council paused the above work pending a risk assessment.

### **3 RISK ASSESSMENT**

- 3.1 The Council has to balance the UK GDPR risk of not complying with its Retention Schedule against the risk of unintentionally deleting Covid-19 related data that may become relevant for the Covid-19 Inquiry.
- 3.2 The Council has not been a Core Participant for the Covid-19 Inquiry Modules so far, but has engaged with the Local Government Association, who was a Core Participant in relation to Module 1 which related to Resilience and Preparedness as follows:

**Module 1** will examine the resilience and preparedness of the UK for the Coronavirus pandemic. It will consider the extent to which the risk of a Coronavirus pandemic was properly identified and planned for and whether the UK was ready for that eventuality. The module will look at the UK's preparedness for whole-system civil emergencies, including resourcing, the system of risk management and pandemic readiness. It will scrutinise government decision-making relating to planning and seek to identify lessons from earlier incidents and simulations and international comparisons.

- 3.3 All of the information required as evidence to support the Council's contribution for Module 1 has been identified and stored in a file share. There is no risk of this information being deleted.
- 3.4 The Council has not been asked to provide any response or information for Module 2 or Module 3 so far, which are:

**Module 2** - Core UK decision making; political governance, and

**Module 3** – Impact of Covid-19 pandemic on healthcare systems in the 4 nations of the UK.

- 3.5 The Council has recently (May 2023) been contacted by the LGA in relation to Module 6 – Procurement of PPE and has started the process of identifying relevant information.
- 3.6 The Inquiry will announce further modules in 2023. These will likely cover both ‘system’ and ‘impact’ issues including;
- Vaccines, therapeutics and anti-viral treatment
  - The care sector
  - Government procurement and PPE
  - Testing and tracing,
  - The Government’s business and financial responses
  - Health inequalities and the impact of Covid-19
  - Education, children and young persons
  - Other public services, including frontline delivery by key workers
- 3.6 It is highly likely that the Council will be required to respond and provide evidence to the Inquiry in future modules, whether by itself as a Core Participant or through the LGA. As such, it is essential that information is preserved to ensure the Council does not fall foul of its obligations under s35 Inquiry Act 2005.
- 3.7 The risk assessment can be broken down into the phases the Council had planned in relation to the application of the retention schedule as follows:

#### **Phase 1 – Deletion of Leavers’ Mailboxes**

The Council currently holds mailboxes of officers and members who have left since 23<sup>rd</sup> January 2017.

The likelihood of any information relevant to the Covid-19 Inquiry being held on emails of staff who left pre-2020 is low and therefore mailboxes of officers/members who left up to 31<sup>st</sup> December 2019 can be permanently deleted.

Consideration needs to be given to mailboxes of officers who left after 1<sup>st</sup> January 2020. Pertinent questions are:

- Can the list of consultees pre-deletion be extended so that the individuals line manager or service manager can determine whether that individual held any information that was Covid-19 related?
- Are there a core group of officers who were involved in the decision making around the council’s Covid-19 response that could be included in the consultation process?
- Is it possible to undertake a search of mailboxes for key terms to extract any relevant Covid-19 data before deleting the mailbox?
- Would that be sufficient to ensure the Council does not fall foul of the data preservation requirement?

Information Governance Board members have been consulted on this and the proposal is:

- Mailboxes of staff leavers up to 31<sup>st</sup> December 2019 can be permanently deleted
- Mailboxes of staff leavers after 1<sup>st</sup> January 2020 can continue to be deleted with additional consultation with core officers who were involved in Covid-19 related activities and/or the officer's line manager
- Communication to all staff to notify them of the requirement to preserve Covid-19 related information and ensure that it is saved outside of outlook. This will reduce the risk for any leavers post this decision and communication.
- Where there is any uncertainty, an electronic search of the mailbox can be conducted with key words relating to Covid 19 and relevant emails can be preserved before the mailbox is deleted.

## **Phase 2 – Deletion of Emails over 8 years**

No emails are currently being deleted permanently from outlook. As such, there are 14 million emails/notifications over 8-years old affecting over 6600 Mailboxes. Some of those will be deleted as and when the leavers mailboxes are deleted.

Whilst the plan would be to apply an automatic retention period to outlook for 8 years, staff would be given time in the first instance to move any emails over 8 years old that need to be kept out of outlook and into another case management system or fileshare. Officers should still be encouraged to do this and to delete any emails that have already exceeded the applicable retention period. The risk given this is being done as a manual process is low as officers will be made aware of the need to keep Covid-19 related data and guidance will be issued to ensure they preserve relevant information.

An 8 year retention period would go back to pre April 2016. The likelihood of any information relevant to the Covid-19 Inquiry being held on emails pre 2016 is low and as such it is proposed that this process can continue.

Consideration needs to be given to whether the 8 year automatic retention period should be implemented. It is likely that information relevant to the Covid-19 Inquiry will be held on emails from January 2020 and as such any automatic retention period would need to be paused by January 2028 if the Covid-19 Inquiry has not concluded by that date. There are not currently any timescales provided for when the Covid-19 Inquiry may conclude.

Information Governance Board members have been consulted on this and the proposal is:

- Staff should continue to manually cleanse their mailboxes to delete or move items over 8 years.
- A date should be identified for this to be completed.
- ICT to permanently delete all items over 8 years as a one off exercise.

- Review whether the automated retention can be implemented depending on feedback as to the manual process.
- Guidance to be issued to all staff on the preservation of Covid-19 information to ensure compliance.

### **Stage 3 – Data Cleanse**

Given this is a manual process, whereby each team reviews the information they hold on fileshares, it is considered that this should continue. As long as officers are aware of the need to keep Covid-19 related information and store it in place that is easily accessible should it be needed, there should be no risk of deletion of information that would be in breach of the preservation requirements.

By failing to do this, the Council may be in breach of other UK GDPR principals in particular, failing to comply with the storage limitation principal (ie adherence to the retention schedule).

The Retention Schedule is being reviewed and makes clear reference to the need to preserve Covid-19 related information. Provided that officers adhere to the retention schedule, the risk of any Covid-19 data being deleted through this process is low.

Information Governance Board members have been consulted on this and the proposal is:

- This should continue as it is low risk due to it being a manual exercise.

## **4. NEXT STEPS**

- 4.1 Leadership Team to consider what actions can be continued and which actions should be paused.