
Executive Member for Corporate Services and Advisory Panel

12 Sept 2006

Report of the Assistant Director of Resources (Audit & Risk Management)

Staff Warning Register: extension of access and scope

Summary

- 1 This report recommends giving elected members access to the Staff Warning Register and proposes certain arrangements to ensure that its privacy safeguards are properly maintained.
- 2 It also describes an extension of its scope to cover not only harm (and risk of harm) through violence, but alarm, harassment or distress (or the risk) through behaviour described in the recently approved Violence and Aggression Policy.

Background

- 3 The Staff Warning Register was launched in April 2004 following approval of its procedure by Management Team in August 2003. That procedure was limited to the threat of harm or injury through violence. A working group reviewed the operation of the Register in Spring 2006 and decided to extend its scope.
- 4 The June meeting of the Executive Member for Corporate Services and Advisory Panel asked for a report on allowing members access, following incidents in which members had experienced hostility and abuse and been threatened by dogs at private houses.

Consultation

- 5 The register is a matter of the Council's internal management. Its outside impact is limited to those whose names are on the register, plus a small number of disclosures to other organisations. Therefore there has been no consultation with outside bodies regarding this matter.
- 6 The working group referred to above invited all directorates to send a representative (although not all did) and also included staff from the corporate Health & Safety service.

Options

- 7 Access to the Register might be granted to members, or refused.
- 8 The extension of scope is a management arrangement relating to the protection of staff from certain risks. It does not require a member decision and no options are presented here. But of course if members wish to give advice it will be taken into account when the revised procedure is published.

Options and analysis

Constitutional and legal aspects

- 9 The Constitution provides for members' access to any information needed to carry out their functions; describes some conditions restricting it; and relates these to the Code of Conduct. Disclosure of register data in breach of its procedure, or unauthorised access to it, would amount to a breach of the Code of Conduct¹.
- 10 The register was set up in response to guidance from the Information Commissioner intended to ensure compliance with the Data Protection Act 1998 (DPA). DPA requires the council to identify a lawful purpose for keeping such a register and the Health & Safety at Work Act 1974 is the main item.
- 11 Although members are not employees, the Health & Safety at Work Act includes a duty to any other person who may be affected by the employer's work. Members plainly do take part in the work of the council and may be affected by it – and be brought into contact with dangerous people, or exposed to other risks – and it would be unreasonable not to extend to them the same protections that are available to employees.
- 12 Further, members have a common law right of access to any information they reasonably need to carry out their duties. Clearly this should include information that would keep them safe.

Members' roles

- 13 The above provisions relate to members of the corporate body, carrying out its functions, but not to their roles as individual representatives of constituents, or work within a political party.
- 14 The Information Commissioner identifies three roles that members have at different times and considers that they amount to being different "data controllers". This is important, as one data controller can only disclose, in recorded form, personal data to another if the "data protection principles" permit it. Annex A describes the three roles.
- 15 The data protection policy explains all the principles but the most obvious one is that a person on the register must be made aware, at a suitable early

¹ See Part 5 of the Constitution, the protocol on member/officer relations, paragraphs 34 onwards.

moment, that a member is using information about him or her, provided in the corporate role, for one of the other roles.

Training

- 16 Data protection and health & safety are basically common sense matters but it is likely that many members would benefit from some training or more detailed explanation of the matters above. Suitable instruction can be included in members' induction and other training material, or special sessions can be arranged.
- 17 A set of Dos and Don'ts is at Annex B.

Unacceptable behaviour

- 18 The Violence and Aggression policy deals with behaviour that falls short of causing injury or harm – typically, shouting and swearing; what it calls “unacceptable behaviour”, and defined as causing alarm, harassment or distress. It also proposes responses to that behaviour. In some cases, inclusion on the Register may be appropriate.
- 19 Such unacceptable behaviour may interfere with an officer's or member's ability to fulfil his or her function. Forewarning through the register reduces that problem and so is conducive to, and facilitates, the council's functions, as provided at Section 111 of the Local Government Act 1972. This is therefore the legal basis for processing the personal data.
- 20 “Ability to fulfil the function” suggests a high threshold for inclusion. The register must not have so many entries that the small number of genuinely dangerous people is swamped. Annex C includes a series of guidelines for nomination, taken from the register's procedure, intended to define a high threshold.

Corporate Priorities

- 21 The Staff Warning Register contribute to the following corporate priority:
 - reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York
- 22 The Staff Warning Register also contributes to the following corporate objectives:
 - 4: ***create a safe city through transparent partnership working*** by ensuring personal data is shared in a structured and proper way.
 - 8: ***transform City of York Council into an excellent customer-focussed “can-do” authority.*** Feeling, and being, safe and confident in dealing with customers promotes good service.

Implications

Financial

- 23 The register will be administered by the Information Management Officer within existing budget and staff resources. If the number of names grows significantly or if there is a large demand for data from the register, it may have an impact on the other work of the section and a consequent cost. This will be reported at the time with recommendations to deal with the matter.
- 24 Staff and members suffering injury at the hands of these people can seek damages if adequate steps have not been taken to protect them. Data subjects can sue for damages if their rights under the Act are breached (although they would have to prove injury to claim damages). The register will help protect the council against these risks.
- 25 Development of the new database for the Register, including associated costs, is included in the IT development plan.

Human Resources (HR)

- 26 The Register is a component of the council's overall health & safety arrangements. The Violence and Aggression Policy is also supported by the use of the register. Both are enhanced by the proposals in this report.

Equalities

- 27 None in this report. But note that the register's procedure specifically excludes nominations based on prejudice.

Legal

- 28 In order to protect the Council from legal challenge from members, a strategy for effective information sharing about the wider risks faced by them, together with advice and guidance on appropriate responses to such situations, is required.
- 29 The analysis section above deals with the constitutional and legal basis for granting access, and for the restrictions that are to be imposed, and the applicability of the Code of Conduct.

Crime and Disorder

- 30 None in this report although perhaps crimes against members or staff may be avoided.

Information Technology (IT)

- 31 Development of the new database for the Register, including associated costs, is included in the IT development plan.

Property

32 None

Other

33 None

Risk Management

34 The recommendation below will help mitigate any risk of the adverse outcomes described in para 23 above. There are no new risks from adopting the recommendation.

Recommendations

35 It is recommended that the Advisory Panel advise the Executive Member that access to the Staff Warning Register be granted to all elected members and that suitable training be arranged.

Reason: to improve the safety of members

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Report Approved



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Wards Affected: List wards or tick box to indicate all

All



For further information please contact the author of the report

Background Papers:

City of York Data Protection Policy (December 2001)

Compliance advice: Violent warning markers: use in the public sector (Information Commissioner, 2002)

<http://www.ico.gov.uk/documentUploads/New%20Violent%20publication%20markers%20advice.pdf>

City of York Staff Warning Register and procedure

City of York Constitution

Annexes:

- A Members' three roles
- B Staff Warning Register dos and don'ts
- C Criteria for inclusion on the register