
Licensing and Gambling Acts Committee

3 October 2008

Report of the Director of Neighbourhood Services

DISCLOSURE OF PERSONAL DETAILS OF INTERESTED PARTIES AT LICENSING HEARINGS

Summary

1. The purpose of this report is to examine the Licensing Act 2003 (Hearing) practice adopted by this authority of an assumed none disclosure of interested parties personal details unless written consent to the contrary is received.

Background

2. The Licensing Act 2003 came into force in November 2005 transferring the liquor licensing function from the Magistrates Court to the local authority.
3. The Act created statutory provision of responsible authorities and interested parties both of which can make representation to the licensing authority about any application, to grant vary or review for a premises licence or club certificate.
4. For the first time the new act gave residents living in the vicinity of licensed premises a much greater say in the licensing process. This has resulted in many long standing crime and disorder and public nuisance issues being resolved.
5. Interested parties for the purpose of the Licensing Act 2003 includes :-
 - A person living in the vicinity of the premises in question
 - A body representing persons living in the vicinity, for example residents associations
 - A person involved in a business in the vicinity in question and
 - A body representing persons involved in such business.
6. In the early stages of the implementation of the Act and in the absence of any statutory guidance the authority adopted the practice of disclosing the personal details of interested parties to the applicant with the notice and copies of the relevant representation letters as well as publishing details in the hearing report.

7. This practice was challenged by an interested party who was reluctant to make a representation because of the fears of intimidation if their personal details such as name and address was divulged to the applicant.
8. As a result the practice of keeping all personal details of interested parties confidential unless written consent is given was adopted by the Democracy Support Group. A pro-forma used in this process can be found at Annex 1.
9. The licensing officer/legal department can find no documentation why this procedure was adopted. It appears to have evolved following one genuine challenge to the procedure. This has resulted in the majority of interested parties personal details been kept confidential.
10. New supplementary Guidance was issued by the Department for Culture, Media and Sport in June 2007. This Guidance is issued under section 182 of the Licensing Act 2003. It is now the view of officers that the practice of keeping interested parties personal details confidential is challengeable, as the Guidance in relation to disclosure of personal details of interested parties states.
11. Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearing) Regulation 2005 to provide to the applicant with the notice and copies of the relevant representations that have been made.
12. In some exceptional and isolated circumstances interested parties may be reluctant to make representations because of fear of intimidation or violence if their personal details, such as name and address are divulged to the applicant. However, withholding such details should only be considered where the circumstances justify such action and the licensing authority is satisfied that the complaints are not frivolous or vexatious.
13. Should it be considered an exceptional circumstances exist the licensing authority may decide to withhold some or all of the interested party's personal details from the applicant, giving only enough details such as street name or general location within a street which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises. A copy of the Secretary of State's Guidance notes can be found at Annex 2.

Options

14. Option 1:
 - (a) To disclose personal details of interested parties during the licensing hearing procedures.
 - (b) That only in exceptional circumstances as outlined in the Supplementary Guidance issued under section 182 of the Licensing Act 2003 are personal details withheld. But consideration must be given to release enough details, which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises.

- c) That all Licensing Act 2003 (Hearings) Regulations correspondence reflect (a) and (b) and the current tick box pro-forma section regarding personal details is withdrawn.

Option 2:

To continue to withhold interested parties details unless written consent is given.

Analysis

15. The reasoning and analysis of the proposal has been set out in previous paragraphs.

Corporate Priorities

16. The effective exercise of the licensing legislation and guidance notes ensures the licensing function will impact on the councils priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

Implications

17. **Financial**

None

18. **Human Resources (HR)**

None

19. **Equalities**

There are no equalities implications.

20. **Legal**

In carrying out its licensing functions, the Licensing Authority must have regard to any guidance issued by the Secretary of State. The Licensing Authority may, if it appears appropriate, depart from the Secretary of State's Guidance but would need justifiable and identified reasons for doing so in order to withstand a legal challenge.

21. **Crime and Disorder**

The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authorities responsibility to co-operate in the reduction of crime and disorder in the city.

22. **Information Technology (IT)**

There are no information technology implications.

23. **Property**

None.

24. **Other**

There are no other implications.

Risk Management

25. In compliance with the Council's risk management strategy any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty.

Recommendation

26. Members are recommended to approve option 1.

Contact Details

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Report Approved **Date** 16.9.2008

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Wards Affected:

All

For further information please contact the author of the report

Background Papers

The Licensing Act 2003.

The Department for Culture, Media and Sport Guidance issued under section 182 of the Licensing Act 2003. June 2007 addition.

Annexes

Annex 1 – Democracy Support Group hearing notification pro-forma.

Annex 2 – DCMS Guidance notes on Disclosure of personal details of interested parties.