

REPORT TO: SCRUTINY COMMITTEE - 18TH AUGUST 2010
REPORT ON: DISCLOSURE PRACTICES
REPORT BY: DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)
REPORT NO: 432-2010

1.0 PURPOSE OF REPORT

1.1 This Report reviews the Council's Disclosure practices.

2.0 RECOMMENDATION

2.1 The Committee is asked to note the contents of the Report.

3.0 FINANCIAL IMPLICATIONS

3.1 There are no financial implications arising directly out of the Report.

4.0 MAIN TEXT

4.1 At their meeting on 19th May 2010 the Scrutiny Committee remitted to the Chief Executive to reconsider the Corporate Guidance and submit a report to the Scrutiny Committee (Article I (ii) refers). The Report fulfils that remit.

4.2 Disclosure Scotland was introduced to increase protection for children and vulnerable adults by the then Scottish Executive in 2002. It was designed to enhance public safety by helping organisations make safer recruitment decisions and give parents and relatives increased peace of mind. The City Council registered with Disclosure Scotland.

4.3 Registered organisations are expected to have policies on the Secure Handling, Use, Storage and Retention of Disclosure Information and on the Recruitment of Ex-Offenders. The Council adopted policies based on Disclosure Scotland's model policies adapted for use by the City Council (Policy and Resources Committee 21st October 2002, Article VII refers) and adopted updated policies when Disclosure Scotland updated their model policies (Policy and Resources Committee 14th January 2008, Article II refers) (See the Appendix to this Report).

4.4 The Committee queried what the Council's policy on the retention of disclosure information is. As can be seen from Paragraph 4 of the Policy on the Secure Handling, Use, Storage and Retention of Disclosure Information such information should be kept for no longer than is required after a recruitment (or any other relevant) decision has been taken. In general this is no longer than 90 days. Disclosure information should only be retained in exceptional circumstances which necessitates retention for a longer period.

4.5 I have confirmed with all relevant Departments that they adhere to this procedure.

4.6 The Committee also queried what the Council's policy on re-checks is. For checks and also for re-checks the general principle is that a Disclosure is only requested where this is considered proportionate and relevant to the particular position based on a thorough risk assessment of the position and having considered the relevant legislation which details whether or not a Standard or Enhanced Disclosure is available to the position in question. (See Paragraph 5 of the Policy on the Recruitment of Ex-Offenders).

4.7 Checks are carried out regardless of whether the "preferred candidate" is currently an employee of the Council or is an external candidate. Checks are undertaken for new starts, and upon promotion (or acting up), transfer or redeployment. In Education or Social Work checks may be undertaken where a work location is changed.

4.8 I am satisfied that this procedure is in accordance with the relevant legislation and the Council's policy.

- 4.9 Legislation on the Protection of Vulnerable Groups has recently been passed by the Scottish Parliament and a new Vetting and Barring Scheme is to be introduced later this year. Should this necessitate reconsideration of the Council's current policies and practices on the retention of Disclosure information , on re-checks or on any other issues, I shall report the matter to the Policy and Resources Committee for consideration of any appropriate changes. At the same time all Departmental practices will be reviewed to ensure consistency where possible.

5.0 POLICY IMPLICATIONS

- 5.1 The Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-poverty, Equality Impact Assessment and Risk Management. There are no major issues so far as Equalities are concerned. The Policy on Recruitment of Ex-Offenders commits the City Council to treat all applicants for positions fairly and not to discriminate unfairly against the subject of a Disclosure on the basis of conviction or other information received.

6.0 CONSULTATIONS

- 6.1 The Depute Chief Executive (Support Services), the Head of Personnel, Head of Environmental Health and Trading Standards, Director of Education, Director of Finance, Director of Housing and Director of Social Work have been consulted in the preparation of the Report.

8.0 BACKGROUND PAPERS

- 8.1 None.

David K Dorward
Chief Executive

23rd July 2010

DUNDEE CITY COUNCIL

POLICY ON THE SECURE HANDLING, USE, STORAGE AND RETENTION OF DISCLOSURE INFORMATION

General Principles

1. Dundee City Council complies fully with the Code of Practice, issued by Scottish Ministers, regarding the correct handling, holding and destroying of Disclosure information provided by Disclosure Scotland under Part V of the Police Act 1997 ("the 1997 Act"), for the purposes of assessing applicants' suitability for employment purposes, voluntary positions, licensing and other relevant purposes. It also complies fully with the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and has a written policy on these matters. This policy is available to anyone who wishes to see it on request.

Usage

2. We use Disclosure information only for the purpose for which it has been provided. The information provided by an individual for a position within the Council is not used or disclosed in a manner incompatible with the purpose. We process personal data only with the express consent of the individual. We notify the individual of any non-obvious use of the data, including further disclosure to a third party, identifying the Data Controller, the purpose for the processing, and any further relevant information.

Handling

3. The Council recognises that, under section 124¹ of the 1997 Act, it is a criminal offence to disclose Disclosure information to any unauthorised person. We, therefore, only pass Disclosure information to those who are authorised to see it in the course of their duties. The Council will not disclose information provided under subsection 113(B)(5)² of the 1997 Act, namely information which is not included in the Disclosure, to the applicant.

Access and Storage

4. We do not keep Disclosure information on an individual's personnel file. It is kept securely, in lockable, non-portable storage containers. Access to storage units is strictly controlled to authorised and named individuals, who are entitled to see such information in the course of their duties.

Retention

5. We do not keep Disclosures or Disclosure information for any longer than is required after a recruitment (or any other relevant) decision has been taken. In general, this is no longer than 90 days. This is to allow for the resolution of any disputes or complaints. Disclosure information will only be retained for longer than this period in exceptional circumstances which justify retention for a longer period. The same conditions relating to secure storage and access will apply during any such period.

¹ The Serious Organised Crime and Police Act 2005 ("the 2005 Act") Schedule 14, Paragraph 12 amended section 124

² Subsection 163(2) of the 2005 Act inserted subsection 113B into the 1997 Act. Subsection 113B(5) of the 2005 Act replaces subsection 115(8) of the 1997 Act.

Disposal

6. Once the retention period has elapsed, we will ensure that Disclosure information is immediately destroyed in a secure manner i.e. by shredding, pulping or burning. The Council will ensure that Disclosure information which is awaiting destruction will not be kept in any insecure receptacle (e.g. a waste bin or confidential waste sack). We will not retain any image or photocopy or any other form of the Disclosure information. We will, however, keep a record of the date of issue of the Disclosure, the name of the subject, the Disclosure type, the position for which the Disclosure was requested, the unique reference number of the Disclosure and details of the recruitment decision taken.

Umbrella Bodies

7. Before acting as an Umbrella Body (i.e. a body which countersigns applications for Standard or Enhanced Disclosures on behalf of another organisation), Dundee City Council will take all reasonable steps to ensure that the organisation on whose behalf we are acting will comply with the Code of Practice, and in full accordance with this policy. We will also take all reasonable steps to satisfy ourselves that they will handle, use, store, retain and dispose of Disclosure information in full compliance with the Code of Practice, and in full accordance with this policy. We will also ensure that any body or individual at whose request applications for Disclosures are countersigned, has such a written policy and, if necessary, will provide a model policy for that body or individual to use or adapt for this purpose.

DUNDEE CITY COUNCIL

POLICY ON THE RECRUITMENT OF EX-OFFENDERS

1. Dundee City Council complies fully with the Code of Practice, issued by Scottish Ministers, in connection with the use of information provided to registered persons, their nominees and other recipients of information by Disclosure Scotland under Part V of the Police Act 1997, for the purposes of assessing applicants' suitability for employment purposes, voluntary positions, licensing and other relevant purposes. We undertake to treat all applicants for positions fairly and not to discriminate unfairly against the subject of a Disclosure on the basis of conviction or other information revealed.
2. This policy is made available to all Disclosure applicants at the outset of the recruitment process.
3. We are committed to equality of opportunity, to following practices, and to providing a service which is free from unfair and unlawful discrimination. We ensure that no applicant or member of staff is subject to less favourable treatment on the grounds of gender, marital status, race colour, nationality, ethnic or national origins, age, sexual orientation, responsibilities for dependants, physical or mental disability, or offending background, or is disadvantaged by any condition which cannot be shown to be relevant to performance.
4. Dundee City Council actively promotes equality of opportunity for all with the right mix of talent, skills and potential, and welcomes applications from a wide range of candidates, including those with criminal records. The selection of candidates for interview will be based on skills, qualifications and experience.
5. We will request a Disclosure only where this is considered proportionate and relevant to the particular position. This will be based on a thorough risk assessment of that position and having considered the relevant legislation which determines whether or not a Standard or Enhanced Disclosure is available to the position in question. Where a Disclosure is deemed necessary for a post or position, all applicants will be made aware at the initial recruitment stage that the position will be subject to a Disclosure and that the Council will request the individual being offered the position to undergo an appropriate Disclosure check.
6. Where a Disclosure is to form part of the recruitment process, the Council will encourage all applicants selected for interview to provide details of their criminal record at an early stage in the application process. Applicants will normally be requested to complete a criminal records self declaration form. We ask that this information be sent under separate, confidential cover, to a designated person within the Council and we guarantee that this information will only be seen by those who need to see it as part of the recruitment process.
7. In line with the Rehabilitation of Offenders Act 1974, the Council will only ask about convictions which are defined as "unspent" in terms of that Act, unless the nature of the position is such that we are entitled to ask questions about an individual's entire criminal record.
8. At interview, or under separate discussion, we undertake to ensure an open and measured discussion on the subject of any offences or other matters that might be considered relevant for the position concerned. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
9. We undertake to discuss any matter revealed in a Disclosure Certificate³ with the subject of that Disclosure before considering withdrawing a conditional offer of employment.
10. We ensure that all those in the Council who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of Disclosure information. We also ensure that they have received appropriate guidance and training in the

³ We are only able to discuss what is contained on a Disclosure Certificate and not what may have been sent under separate cover by a police force.

relevant legislation relating to employment of ex-offenders (e.g. the Rehabilitation of Offenders Act 1974).

11. We undertake to make every subject of a Disclosure aware of the existence of the Code of Practice, and to make a copy available on request.

HAVING A CRIMINAL RECORD WILL NOT NECESSARILY DEBAR YOU FROM WORKING WITH DUNDEE CITY COUNCIL. THIS WILL DEPEND ON THE NATURE OF THE POSITION, TOGETHER WITH THE CIRCUMSTANCES AND BACKGROUND OF YOUR OFFENCES OR OTHER INFORMATION CONTAINED ON A DISCLOSURE CERTIFICATE OR PROVIDED DIRECTLY TO US BY A POLICE FORCE.