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Anne Gibson

cc: Tom McCabe
Victoria McNeill

Review into missing submissions to Norwich Northern Distributor Road consultation process

[Note: this version is as per the version submitted to Anne Gibson, except that the email addresses of the complainants have been redacted]

A. Issue

1. You have received complaints from three parties that their submissions to the Norwich Northern Distributor Road (“NDR”) consultation process have apparently gone missing, and have not been analysed or included in the file submitted to the Planning Inspectorate.
2. An initial review conducted by the Environment, Transport and Development directorate (“ETD”) proved inconclusive.
3. You asked me to conduct an investigation, independent of ETD.

B. Conduct of the investigation

1. I am grateful to two staff members, the ICT Information Architect and the ICT Security Architect, who have assisted me in my investigation.
2. As you may wish to share this report, wholly or in part, I have redacted the names of the more-junior staff involved in the consultation process.
3. The investigation has been protracted for a number of reasons. In particular, there was a major failure of the corporate email system in the course of the investigation, which left a significant number of users without email. It was clearly inappropriate to divert ICT resources away from resolving this issue.
4. Similarly, I have taken care not to divert resources away from the rollout of the DNA programme, which will, inter alia, deliver both greater resilience and accreditation of the council’s ICT systems to ISO 27001 (the international standard for information security management).

5. It was also necessary to take legal advice as to the Council's authority to search local computer hard drives.
6. Email server logs had been overwritten in accordance with the council's standard retention periods for such logs (99 days) before the issue of the missing emails was raised by the complainants. The direct technical evidence concerning what happened is therefore scant.
7. I have reviewed with ICT colleagues what other logs might assist. A comprehensive set of logs is retained for six months or longer, including the following:
 - malware alerts – virus and spyware alerts
 - host intrusion detection alerts
 - network intrusion detection alerts
 - failed login reports
 - removable storage device logs
 - web proxy logs
 - web infrastructure logs.
8. However, none of these is of assistance to the current investigation, and we do not record successful logins (only failed login attempts, which may be indicative of attempts to break into the system).
9. We do have records of what was printed during the relevant period, in the print billing system. This was of some assistance in the investigation.
10. It was also possible to review the saved message files created manually as part of the logging process, and to see when they were created and by whom.

C. Conclusions as to fact

1. I have been unable to arrive at a definitive view as to what happened.

Receipt of the emails

2. I conclude on the balance of probabilities that the three emailed submissions were received by the Council's email server. I find the alternative – that receipts were 'spoofed' by the complainants or that the complainants submitted emails which they then managed to recall without the council's knowledge – far-fetched.

Logging of the emails

3. I conclude that it is unlikely that the emails were ever logged by the NDR team, for two reasons.
 - a. The print logs show they were never printed by the logging officers. Printing normally took place at or shortly after the point of logging.
 - b. To 'invisibly' remove a submission from the spreadsheet log would have required amendment also of paper files and electronic records. Because the logs, the paper files and the electronic records were sequentially numbered, this would

have required significant effort and risk of detection. Anyone amending the record would have had to renumber each email received after the deleted email in the spreadsheet; copy the emails back into the mailbox in order to change the email title; save the emails under a different name; and print new paper copies and insert them in the file.

Loss or deletion of the emails

4. I have no evidence of a common cause for the loss of the three emails and there may be different explanations for each.
5. I have contemplated three possible motives for deliberate deletion of an email but have found no evidence for any of them. The possible motives are:
 - a. that the NDR team deleted one or more emails in order to somehow improve the prospects of the NDR being approved;
 - b. that a disaffected member of staff deleted one or more emails in order to damage either the case for the NDR or the reputation of the council;
 - c. that a member of staff with access to the submissions was subverted by an outsider, hoping to either increase the likelihood of the NDR being built or to damage its prospects.
6. I find (a) implausible.
 - It would have been obvious to anyone in a reasonably senior position contemplating such a course that it would make matters worse for the NDR proponents (indeed loss of the emails has, predictably, generated bad publicity for the council and the complainants have made the Planning Inspectorate aware of the content of their submissions).
 - I have also noted that, according to the planning inspectorate, the missing emails did not raise any unique issues – so again the benefit to a senior member of the team in deleting them is not obvious.
 - Similarly it seems unlikely that a junior member of staff would have been motivated to take such a risky step off their own bat.
7. Many people had access to the mailbox and the shared drive and so (b) and (c) cannot be ruled out.
8. The alternative explanation is that one or more of the emails was either inadvertently deleted – by a person or some automated process - or put aside to be dealt with later – perhaps because of their complexity.
9. I questioned why the lack of submissions from these prominent opponents of the scheme had not raised concerns at the time. It was clear that the lack of submissions from the Green Party and SNUB at least had been noticed – though perhaps not the lack of a submission from the CPRE – but that those managing the consultation from day to day had not considered that they should make contact with the protesters and ask why no submission had been received.

Effect of the omission of the emails from the submission to the planning inspectorate

10. It is common ground that the disputed emails were not included in the submission to the planning inspectorate.
11. However, I note that the inspectorate has concluded that the complainants have not been prejudiced by these omissions, and has concluded as follows:

“Reading the responses, it is clear that the themes of objection in these groups’ letters have also been made by other consultees and consequently listed in the consultation report. Crucially the disputed consultation responses do not raise issues to which the applicant has not had regard. In addition, all parties will have the opportunity to participate in the examination to express relevant views on the merits of the scheme. It is, therefore, concluded that the interests of these campaign groups have not been prejudiced by the omission of their responses and that the issues they have raised have nevertheless been addressed by the applicant in its consultation report (doc 5.1).”

D. Conclusions as to the robustness and appropriateness of the process

1. I conclude that those running the process from day to day took their responsibilities seriously. They put in place appropriate logging processes and analysed the responses diligently. However, there were four problems with the process.
 - a. The use of a shared mailbox involves risks. There was no contemporaneous cross-checking of system logs, showing the emails received and automatically acknowledged, with the manually-compiled logs used for the analysis. And as I discuss below, too many people had access to the mailbox. Hence the system was reliant on the diligence of the loggers, and even if they were entirely diligent there was a risk that others with access to the mailbox might accidentally or deliberately move or delete emails.
 - b. The process does not leave the council in a position to be able to absolutely confirm or deny receipt of disputed emails.
 - c. The process was unnecessarily resource-intensive. Submissions were manually logged and filed; redaction was entirely manual; and tagging involved a laborious process of copying consultations to a spreadsheet, manual coding and the writing of macros to summate the results.
 - d. The process was not as pro-active as it could have been. The middle managers running the process realised that they had not received submissions from SNUB and the Green Party, but did not think it the council’s role to contact the protesters and check whether anything had been submitted.

E. Other matters raised

Counsel's opinion

1. Dr Boswell raised with me the comments in the Green Party's complaint to you concerning counsel's opinion provided to the council by Michael Bedford, of Cornerstone Chambers. He commented that in his view those who sought the advice must have seen the Green Party submission, as (again in his view) only it covered some of the legal issues to which Counsel responded.
2. I have not looked at this issue in any detail but have seen the response provided to you by ETD which lists other parties who had raised the same issues and says that, in any case, these were obvious issues on which to seek advice.
3. I also note from the print logs that the Green Party submission was not printed by any of those who had access to the email inbox in the period before Counsel's opinion was sought.

The Green Party statement to scrutiny

4. There has also been some comment on the statement read out at Scrutiny by Cllr Dearnley on behalf of the Green Party on 14 October 2013, which was included as a section 47 consultation response even though it was made after consultations were closed. It has been explained to me that this could not be submitted as a section 42 response as it was made on behalf of a political party rather than on behalf of the Council (in its capacity as a statutory consultee). For transparency's sake, it was therefore included as a section 47 response. This seems to me to be an appropriate explanation.

Public Services Network accreditation

5. During the course of the investigation, Dr Boswell has suggested that the Council's practice of automatically over-writing the email logs after 99 days in some way breaches the council's Public Services Network (PSN) accreditation. I do not think this is the case.
6. The PSN requirement to retain logs for a minimum of six months is explicitly stated to be "within legal constraints". It is therefore clear that there is no absolute requirement to retain logs for six months or more.
7. There are clear legal constraints concerning the retention of email logs – most notably the requirement under the fifth data protection principle that "personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes." It is by no means clear that there is, in general, any business need to retain email logs for six months or more.
8. Other logs – which are more obviously germane to investigating PSN security incidents – are retained for six months or longer.

F. Recommendations

1. The Council should produce standard instructions for the conduct of statutory consultation processes and there should be mandatory training. The instructions and training should cover cultural issues as well as technical processes.
2. The Council should use a web-based system for receiving consultation responses, unless there is a compelling reason not to in a particular case.
3. The use of mailboxes for consultations should be eliminated if at all possible (see recommendation 2 above) but if unavoidable there should be detailed instructions which include controlling access to the mailbox and, if possible, reconciling manual logs with system logs.
4. ETD should review access to both shared mailboxes and shared drives and put processes in place to ensure that access is changed when people change roles.
5. The ICT department should review log retention policies (and the related issue of what is being logged in the first place) to ensure that the correct balance is being struck between the legal requirement for proportionality and the need to be able to investigate incidents. Log retention policies should be recorded in a statement of controls in accordance with ISO/IEC27002 (Code of practice for information security management controls).

G. Further information

1. Further information about the consultation process, the complaint and the investigation are at Annex 1.

Al Collier

Head of Procurement

ANNEX 1: Details of the consultation process, the complaint and the investigation

I. The consultation process and the complaints

Management responsibility

1. The NDR project is being managed by David Allfrey, Major Projects Manager. The consultation process was managed from day to day by a project engineer (“Manager 1”) who reported to a more-senior manager (“Manager 2”).

The consultation process

2. On 21 June 2013, and again on 28 June 2013, ETD placed adverts in the local and national press drawing attention to a *Statement of Community Communication* (SOCC) concerning the proposed construction of the Norwich Northern Distributor Road. The SOCC was made available on 24 June 2013 and invited responses to a consultation exercise.
3. Respondents were asked to submit responses no later than 20 September 2013. Respondents were able to complete a web-based survey or to send in email or letters.
4. The responses were analysed by Manager 1 and his team. A summary of the analysis was included in a paper to November Cabinet, which is in the public domain.
5. The council submitted the analysis and the comments (in anonymised form) in paper and electronic form to the Planning Inspectorate on 7 January 2014, and published both on the web on 14 January 2014. The Planning Inspectorate accepted the submissions on 4 February 2014.

The complaints

6. Complaints have been received from three organisations who state that their submissions (the “disputed submissions”) have not been analysed and were not included in the file sent to the Planning Inspectorate.
7. The complainants are:
 - a) Councillor Dr Andrew Boswell, concerning a submission from the Norwich Green Party;
 - b) Mr Stephen Heard, concerning a submission from *Stop Norwich Urbanisation* (“SNUB”)
 - c) The Norfolk branch of the Campaign to Protect Rural England (“the CPRE”).
8. I summarise below details of the disputed submissions.

Submission	Date said to have been submitted	Submission mechanism
SNUB	12 September 2013, 21:44	Email from [redacted] to norwich.transport@norfolk.gov.uk
CPRE	19 September 2013, 14:31	Email from [redacted]

		to norwich.transport@norfolk.gov.uk
Green Party	20 September 2013, 10:59	Email from [redacted] to norwich.transport@norfolk.gov.uk

II. Evidence provided by the complainants

The Green Party submission

1. On 26 January 2014 at 22:17 Dr Boswell forwarded a copy of his submission dated 20 September 2013, 10:59.
2. I visited Dr Boswell on 6 March. We sat at his computer and I was able to see his outbound email containing the submission and the automated response from the Council. Together we copied the headers from both emails.

The SNUB submission

3. On 30 January 2014 at 23:49, Mr Heard forwarded an email he had sent to the Planning Inspectorate the same day, at the bottom of which is a 'read receipt' from norwich.transport@norfolk.gov.uk dated 12 September 2013 at 21:45.
4. I visited Mr Heard on 6 March. Again, we were able to view both the outbound email and the automated response and to copy the headers.

The CPRE submission

5. Ms Denise Carlo from the Norwich and Norfolk Transport Action Group sent an email on 30 January 2014 at the bottom of which is a read receipt from 'Norwich Transport' [the email address is not visible] dated 19 September 2013 at 13:31. This time appears to have been expressed as GMT, not British Summer Time
6. I visited Ms Katy Jones, CPRE's office manager, on 6 March. In the same way, we were able to extract the headers from the emails. These showed that the email was sent at 14:31 BST and the receipt received at 14:32.

III. The process for handling email submissions

Submission by email

The mailbox

1. Submissions were invited to a pre-existing, shared mailbox, *Norwich Transport* (norwich.transport@norfolk.gov.uk). During the consultation process, this was dedicated to receiving consultation responses. Inevitably, it also received a certain amount of 'spam' email and other extraneous material.
2. The mailbox had been used for a variety of purposes in the past, and some 25 people had access to it, although only two people were engaged in logging and filing the consultations. These were a business support assistant ("Officer A") and a project

technician (“Officer B”). Officer A was on loan from the community services department, to which he has since returned. Officer B is from the highways department.

The process for logging and filing email submissions

3. Each email submission was allocated a sequential reference number. The reference number and other details were recorded on a spreadsheet. Each email was saved to a shared file store. The file name consisted of the sequential reference number, followed by the subject header given by the sender. After the email had been logged and saved to the file store, the original was deleted from the mailbox to free-up space.
4. Once logged, the emails were printed and placed, in sequence, in a lever-arch file.
5. The process of logging, saving, printing and deleting the emails took place several times each day, depending on volume of traffic, typically starting with an early-morning session to deal with the emails received the night before.
6. An important point is that the logging staff read each email on receipt, in order to determine whether it simply made comments (which could be fed into the analysis) or asked questions which required a more-urgent response. They knew of the significance of both SNUB and the Green Party and might be expected to recall having seen their submissions.

The analysis process

7. Officers A and B copied each submission into the logging and analysis spreadsheet. Emails which made multiple points were broken up into chunks, so that each separate point could be tagged.
8. A technician (“Officer C”) checked the tagging and wrote Excel macros which were used to sum the number of respondents making each point.

IV. Receipt of the disputed emails

1. I have reviewed the data concerning receipt and saving of emails around the time of the disputed emails.
2. In the case of all three disputed emails, other emails were received and logged both before and after the time of the disputed emails. I set out the timings below.

Table 1

Email	Message received before	Time of disputed email	Message received after
SNUB	EM165, 20:57	21:45	EM166, 08:44
CPRE	EM259, 14:26	14:31	EM260, 14:48
Green Party	EM276, 10:43	10:59	EM277, 13:28

3. These data suggest that, at least on the balance of probabilities, the mailbox was working normally at the time of the disputed emails.

4. I asked the Information Architect to review the headers which I had retrieved from the email receipts provided by the complainants. These show, in detail, the servers which the receipts passed through en route to the complainants, and the times when the receipts passed through each. His view, and that of ICT colleagues, was that the receipts appeared genuine – although it would be possible to ‘spoof’ such receipts as they are not digitally signed.
5. I consider it very unlikely that the receipts were spoofed, both because this would indicate a conspiracy between the complainants which I consider intrinsically improbable and because the complainants were quite happy for me to look at the sent and received emails on their computers and to extract the headers and other information for later examination.
6. I asked the Information Architect to consult colleagues about the possibility that the emails had been rejected as ‘spam’, but had nevertheless generated a read receipt. They concluded that this would not have occurred. Similarly if the mailbox had been full, an error message would have been issued, rather than a receipt.
7. I also considered the possibility that the emails had been submitted (generating a read receipt) and subsequently recalled. Dr Boswell was using Gmail, which does not have such a recall facility; the other complainants were using Microsoft Outlook or Outlook Express. Microsoft states, in respect of Outlook¹: “Unfortunately, you can’t recall messages sent to email addresses outside your organization.” Attempting a recall causes a recall request message to appear in the recipient’s mailbox, alongside the original email.
8. In summary, then, I conclude that at least on the balance of probabilities the disputed emails were received by the Council and not subsequently withdrawn by the complainants.

V. Logging and filing of the disputed emails

1. The disputed emails do not appear in:
 - the spreadsheet used for logging or analysis
 - the file store of received messages
 - the paper file of messages received or
 - the redacted version of the paper file which was shown to Ms Denise Carlo of the Norwich and Norfolk Transport Action Group (NNTAG).
2. All of these sources are sequentially numbered. Anyone amending the record would have had to renumber each email received after the deleted email in the spreadsheet;

¹ <http://office.microsoft.com/en-001/outlook-help/recall-or-replace-an-email-message-after-it-is-sent-HA102749462.aspx>

copy the emails back into the mailbox in order to change the email title; save the emails under a different name; and print new paper copies and insert them in the file.

In view of the effort and risk of detection involved, it seems unlikely that the logs and files have been tampered with.

3. Nor is there any evidence of the disputed submissions having been printed by the two logging staff.
 - Print logs exist for the period of interest.
 - In the case of the SNUB email, which was received late in the evening, it is possible to correlate a batch of five emails saved the following morning (numbers EM162-166) and their printing. The SNUB email (which had an attachment) was not printed.
 - In the case of the Green Party and CPRE emails, which were received in the middle of busy days just before the consultation deadline, it is not possible to correlate saving and printing in the same way. But it can be seen that neither email was printed as the filename of the attachment does not appear in the logs
4. Manager 1 and Officers A and B have no recollection of seeing any of the disputed emails.
 - Manager 1 says that he was expecting submissions from SNUB and the Green Party and he is certain that he would recall any submission which was passed to him.
5. There is no evidence of the disputed email attachments having been opened by either of the logging staff.
 - With their agreement, I searched the computers used by Officers A and B for files created around the time that each of the disputed emails was sent. I found nothing to suggest that the attachments to the dispute emails had been opened. This is not conclusive, as files could routinely have been deleted – for example, on closing Outlook.
6. Similarly, there is no evidence of either of the logging staff having forwarded the disputed emails.
 - I reviewed Officer B's "sent items" folder to see whether he had forwarded any of the disputed emails. He told me that he had retained in this folder all sent items bar trivial or personal mails, and various other forwarded submissions could be seen from the relevant period, but none of the disputed emails. I noted that Sarah Rhoden's investigation similarly checked Officer A's sent items, and therefore did not repeat this exercise.
7. There is no evidence in the logs of the disputed emails having been printed by any of those with access to the email box during the period between their assumed receipt in September and the submission to the planning inspectorate.

8. I conclude, on the balance of probability, that the disputed submissions were never logged. It follows that they were deleted or moved prior to logging, or during the logging process.

VI. Explanations for loss of the complainants' submissions

1. I asked Manager 2 and Manager 1 whether they could have gone into the mailbox to look for submissions they were particularly expecting – perhaps so that they could start reviewing them immediately. Manager 2 said that he had never accessed the mailbox; Manager 1 that he had relied on the logging team telling him as soon as any such submission was received, rather than going into the mailbox himself.
2. I looked at whether it was possible to narrow down which of those with access to the mailbox were logged on at particular times. In particular, because the submission from SNUB was received late at night it is easier to separate it out from the general traffic.
3. However, attempts to isolate which users were logged on between the receipt of the SNUB submission and the logging of the other submissions received overnight at 09:02 the following morning were unsuccessful, since failed logon attempts are logged centrally but successful logon attempts are not. I looked at whether this information could be retrieved from individual PCs but it could not.
4. There is therefore no basis on which to narrow down who might have accessed the missing emails.

VII. Follow-up to the non-receipt of the complainants' submissions

1. At the outset of the investigation I asked Mr Allfrey why the lack of a response from the Green Party, CPRE and SNUB had not been noticed. He said he assumed that those running the consultation had been too busy to notice and that SNUB in particular sometimes engaged with the Council and sometimes did not.
2. When I interviewed less-senior people, however, it became clear that the lack of response from the Green Party and SNUB, at least, had been noted by them and had caused surprise.
3. Officer A told me that, in the closing stages of the consultation, Manager 1 had said he was surprised that nothing had been received from SNUB. Manager 1 agreed that he had been surprised at this, but said he had not seen it as the Council's role to chase up likely protesters. Manager 2 said that "with hindsight, perhaps I should have had a top-ten list of likely protesters" but that he did not at the time see chasing up those protesters who had not sent in submissions as something the Council should do.