

## Briefing Notes to BKA AGM Agenda Item 7b

### BY-LAW 20 : Member requests for BKA data

#### **Note from the Chairman:**

*Hmmm... we were VERY reluctant to make these changes - given that we value transparency and democracy. However, again the reality of having to cope with outside legislation forces us to consider this amendment. We have experienced a couple of data requests from members and - whilst this is their right, no problem - the work involved placed an unbearable burden on the Officers dealing with it. The latter had to gather, read and redact 1000s of emails, often with repeated text embedded via "Replies" etc.*

*Please note that this Bylaw relates to BKA information and does not affect your rights to your own personal information.*

*Basically, the view we took when the Constitution was drawn up was that members should be entitled to see all Association working emails and the idea was that we would simply copy them to any member who asked etc. This would not take too long. However, outside legislation forces us to check for and redact any third party personal data in EVERY email! This is the problem - the time and mental energy it takes to blank out all references to third parties etc. Frankly, I don't think anyone would volunteer to serve the Association if they had to do this kind of work for free. Hence the amendment, which is intended to ensure that members are entitled to information answering their query but allows the disclosure to be kept proportionate to the request.*

***I recommend that you vote: Yes***

#### **What is Bylaw 20?**

Bylaw 20 is the provision governing the terms of disclosure of the Association's data to members of the BKA.

It is a separate and different issue to the right to apply for *personal* data under current data protection legislation. It is more like 'Freedom of Information' (Fol) requests from government departments.

#### **What is the problem with the current wording?**

Unlike data protection and Fol legislation, which have some exceptions for unreasonable or disproportionate requests (and in the case of Fol, a £450 limit on requests to public authorities), the

current wording of the Constitution puts no limits on what information members can ask for (except for confidential information e.g. complaints).

The BKA has historically wanted transparency for all of its data, and indeed still wants that in principle.

Since the original Constitution was drafted however GDPR rules require that '3rd party' personal data is not disclosed, and therefore this means that someone has to go through all emails and redact anything involving someone else's data or obtain their consent.

For many requests this may not be too much of a problem, eg if there is no extensive email trail. However for requests for large amounts of data this can amount to hundreds of 'officer-hours' of work which may not be tenable for unpaid officers, and may be disproportionate to the reason it has been asked for.

If outsourced, these may be expensive to handle, and therefore may be an unreasonable burden on a small association.

### **What changes are proposed?**

The amendments to Bylaw 20 are intended to address this by ensuring that members still have the right to know what is being done in their name and why, and that requests for information are compiled with as fully as is reasonable.

This is why members are asked to be specific about what they want to know, timescales and reasons. The NC will then be able to tailor its research and disclosure to answer the question. The aim is to focus disclosure of the BKA's business data on what is proportionate to the members request, but not require an extensive trawl through all officers' data where the request can be adequately dealt with by the disclosure of key data.

Most requests will not be dealt with any differently, but this process allows more focus.

This proposal does limit members' rights to data. However this is in line with the exceptions and conditions which exist within GDPR and the Freedom of Information Act, allowing refusal of excessive, trivial or unreasonable requests.

Where there is a request for a large amount of data, especially from a long way back in the past, the NC would need to weigh up the reason for requesting this and take a view on whether they consider it a reasonable use of BKA resources.

This provision is intended to allow members to be informed of decisions made in their name and raise any matters they wish to at the next AGM.

If a request is refused there will be written reasons and the member can raise the matter under AoB at the next AGM. If the membership feels the request was reasonable they can overturn the decision.

### **Things that won't change:**

- This provision does not apply to financial data which can still be seen in full.
- This provision does not affect members rights under GDPR.
- This provision does not affect whether the BKA keeps emails from the past, it just deals with disclosure.

### **Why is there a charging provision?**

This is not a deterrent to members or any sort of penalty, but a question of the reasonableness of incurring costs. It should be emphasised that this is a provision which would only apply to onerous requests.

Officers are unpaid of course, but the BKA would not be able to sustain the workload of a large data request (which takes dozens of officer hours to process) and would therefore have to consider outsourcing to a redaction company.

The costs of such outsourcing may be in the hundreds of pounds. The NC view is that it is not fair on the general membership to have to pay these costs, and therefore if you are seeking a large amount of data for a reason which is largely historical, or does not appear to the NC to be proportionate to the cost, you can still have the data- but you would have to agree to pay the costs of the disclosure.

Alternatively, you could then raise it at the AGM and the membership can decide that it should be paid from BKA funds if they felt this was right.

### **Why isn't there a requirement to disclose ALL related emails on a given subject?**

If you make an application for the documents relating to a particular decision, you will be entitled to key documents showing the reasoning /discussion. For example, if the background documents and main discussion show the reasons for this decision, then seeing the drafting discussion of the first few versions of the document, or asking all officers for emails in which a proposal might have been

mentioned in passing, is not likely to add much value to you, and creates a lot more work for officers.

### Why isn't there a set timescale for disclosure?

There is a requirement that disclosure should be made within a reasonable time. Not having set times allows for flexibility and what is reasonable depends on the circumstances. If the request is urgent what is reasonable is less time than if it for example, relates to a past incident. This should allow officers to prioritise their work more effectively, without allegations that they have acted unconstitutionally if a set timescale cannot reasonably be adhered to.

### Conclusion:

It is up to members to decide what they want the balance of the rights and obligations of members of the association to be. These decisions may involve associated consequences; for costs and possibly the ability to recruit officers in the future.

### The wording:

#### Byelaw 20: Data Protection:

This para has been deleted

~~A basic tenet of this Constitution is that members are entitled to see all data and documents of their Association (as embodied in the Articles, Byelaws etc). It is however recognised that all provisions of this Constitution are subject to the requirements of current legislation and that members will be afforded the MAXIMUM access to data and documents permitted in law.~~

#### Byelaw 20: Data Protection

*Members are entitled to see all data and documents of their Association, but it is recognised that all provisions of this Constitution are subject to the requirements of current legislation. Members will be afforded access to data and documents on the following basis:*

- ❖ *The member should give sufficient reason for the request to allow the Association to identify key information relating to the matter requiring disclosure<sup>1</sup>*

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<sup>1</sup> but disclosure need not include all ancillary emails and discussion

- ❖ *The information sought should normally relate to the time since the last AGM; unless there are valid reasons for requesting information further back in time<sup>2</sup>*
- ❖ *The member shall be entitled to key information and supporting documents sufficient to explain any decision by officers of the BKA*
- ❖ *Where the request involves substantial work to process data to which the Applicant is not otherwise entitled under the Data Protection Act 2018, the Association may notify the member that any such disclosure will be subject to the member bearing the cost of processing.<sup>3</sup>*
- ❖ *The Association may refuse or limit disclosure on any request which is, in the opinion of the NC, unreasonable or excessive. The NC shall give the Requesting Member written reasons for any such refusal<sup>4</sup>*
- ❖ *If refused, members shall have the right to add the matter to the next AGM under AoB.*
- ❖ *The Association should endeavour to respond to requests within a reasonable timescale and when the request is made, should inform the member of the approximate expected date for disclosure<sup>5</sup>*

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<sup>2</sup> e.g a matter that has just come to light or the information is required by a member to defend themselves against an allegation

<sup>3</sup> This provision shall not apply to the financial records of the Association

<sup>4</sup> Unreasonable or excessive- may include unlimited requests for information; requests where the amount of work involved for officers is disproportionate to the reason for the request; where the amount of data sought would be severely burdensome in terms of officer time to respond to the request; where the request is frivolous or made in bad faith.

<sup>5</sup> But there shall be no formal time limits for disclosure