

DECISION-MAKER:	GOVERNANCE COMMITTEE
SUBJECT:	FREEDOM OF INFORMATION, DATA PROTECTION AND REGULATION OF INVESTIGATORY POWERS ACTS: ANNUAL REVIEW 2015-16
DATE OF DECISION:	6 th JUNE 2016
REPORT OF:	SERVICE DIRECTOR-LEGAL & GOVERNANCE

CONTACT DETAILS

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STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

A report detailing statistical information for the financial year 2015-16, the eleventh year of implementation of the Freedom of Information Act 2000 (FOIA) and associated legislation. This report also details statistical information on requests received under the Data Protection Act 1998 (DPA) and the Council's activity under the Regulation of Investigatory Powers Act 2000 (RIPA).

RECOMMENDATIONS:

- To note and comment on the update of the statistical information for the year 1st April 2015 – 31st March 2016 relating to:
- a. FOIA and associated legislation;
 - b. DPA 1998;
 - c. RIPA 2000;

REASONS FOR REPORT RECOMMENDATIONS

1. To keep members informed as to the impact of the legislation to the Council and to detail the form and type of requests received in 2015-16, the eleventh full year of FOIA implementation.
2. To keep members informed as to the type of DPA requests received and the Council's activity under the RIPA.
3. To ensure that members continue to be aware of the Council's statutory obligations under FOIA and associated legislation, DPA and RIPA.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4. The alternative to bringing this report before members is to not report the yearly analysis. This was rejected because it is considered to be good governance to report such matters to members, provides an audit trail to demonstrate to the Information Commissioner that the Council has robust structure in place to comply with the legislation, and to maintain the profile of information law requirements and resource implication within the organisation.

DETAIL (Including consultation carried out)

5 This report will be published on the Council's website.

FOIA

6 The FOIA came fully into force on 1st January 2005, marking a major enhancement to the accessibility of information held by public authorities.

7 Running parallel to the FOIA regime is the Environmental Information Regulations (EIRs) that give a separate right to request environmental information from public authorities, the DPA which gives an individual the right to access their own personal data and the Re-Use of Public Sector Information Regulations (RUPSIRs) which allow a requester to re-use (under licence) information provided to them by a public authority.

8 Under the FOIA and associated legislation, anybody may request information from a public authority with functions in England, Wales and/or Northern Ireland. Subject to exemptions, the FOIA confers two statutory rights on applicants:

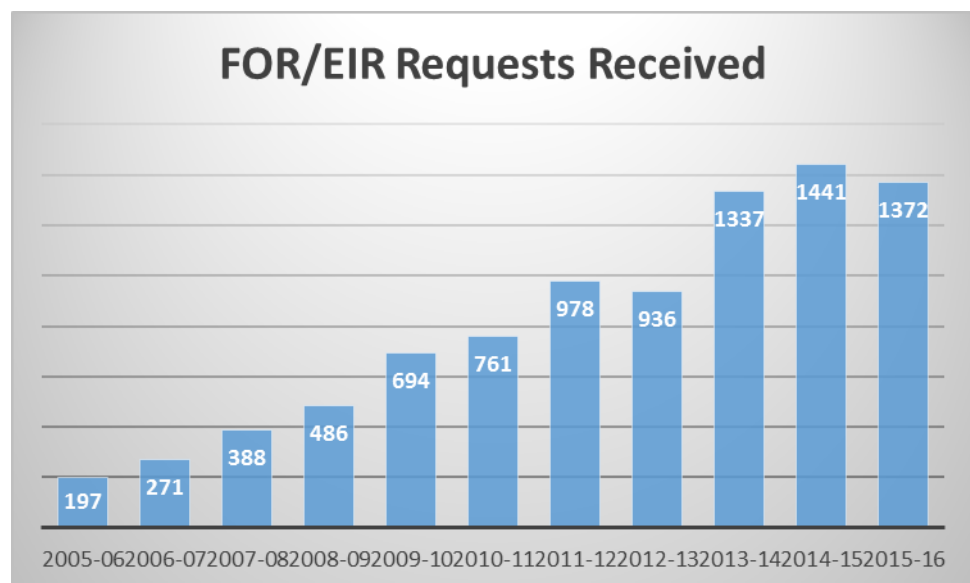
- i. The right to be told whether or not the public authority holds that information; and
- ii. The right to have that information communicated to them

9 There are two types of exemptions that may apply to requests for information – absolute and qualified.

10 Information that falls into a particular exemption category, for example, information relating to commercial interests, will have to be disclosed unless it can successfully be argued that the public interest in withholding it is greater than the public interest in releasing it. Such exemptions are known as qualified exemptions.

11 Where information falls within the terms of an absolute exemption, for example, information reasonably accessible by other means or information contained in court records, a public authority may withhold the information without considering any public interest arguments.

12 The Council has now experienced the eleventh full year of the FOIA and statistics show a slight decrease in the number of information (FOI/EIR) requests received



The number has decreased from 1441 for the year ending March 2015 to 1372 for the year ending March 2016.

The directorate breakdown of the requests is as follows:

2015-16	FOI			EIR		
	Rec'd	Resp %	Days	Rec'd	%	Days
Corporate	454	87.9	14.2	1	100.0	19.0
People	502	89.6	12.4	0	n/a	n/a
Place	387	91.5	13.1	6	50.0	25.8
Transformation	12	75.0	17.5	0	n/a	n/a
Total	1355	89.5	13.2	7	57.1	24.0

13 To summarise, the Council has received a total of 1372 requests between 1st April 2014 and 31st March 2015. This comprises 1355 dealt with as FOI requests and 7 EIR requests. This figure also includes 10 requests not allocated to a directorate, as it was not clear from the request which service area held the information, and clarification from the requester was not received.

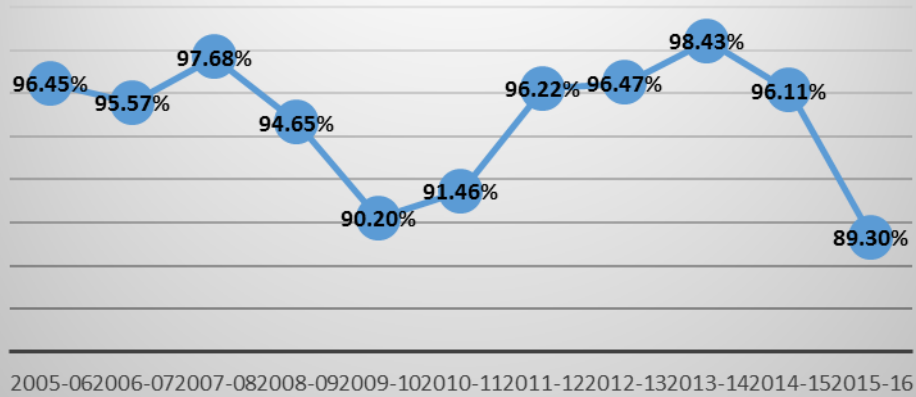
14 2015/16 has seen an overall decrease in the volume of requests received in comparison to previous years. The average number of requests received per month was 114, compared with 120 last year.

The reason for this decrease is unclear. During 2015/16, Corporate Legal worked with service areas who receive a large number of similar requests in an effort to proactively publish the information requested. Examples include public funeral data, and details on FOI requests themselves. It is also thought that improvements to the Council's website, and its search function has made information easier to locate, reducing the number of written requests.

It should be noted, however, that other Councils were approached during the year, and many had also recorded a decrease in the number of requests received over the previous year.

15 During the year, 89.3% of all monitored FOI and EIR requests (excluding those 'on hold' or lapsed) were dealt with within the statutory deadline of 20 working days. This is a significant decrease on last year, and is the lowest recorded by the Council in the history of the FOIA.

% FOI/EIR answered within 20 working days



This decrease coincided with the implementation of Business Support, who have taken on the role of co-ordinating and responding to FOI and EIR requests.

Compliance rates have been affected by the implementation of a new system for processing requests through the Council by Business Support Officers, many of whom had not had previous experience of processing information requests.

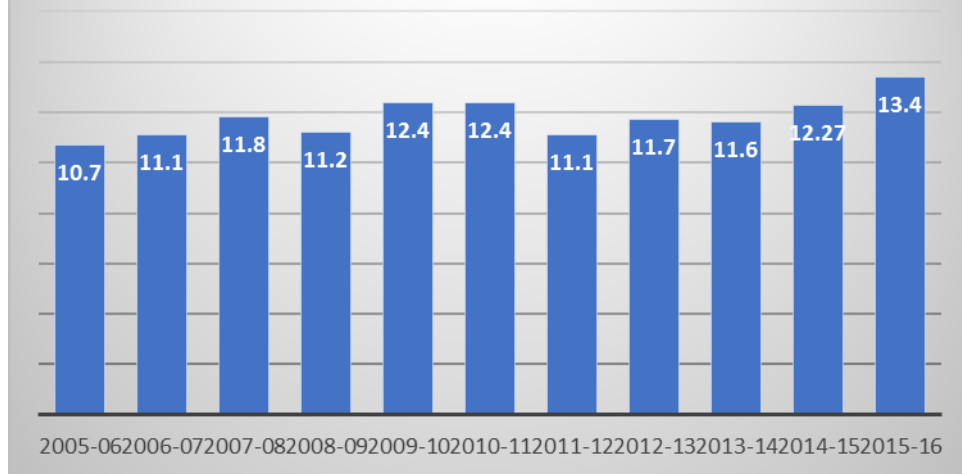
It is hoped that now Business Support has now taken on this role for a year, an improvement in compliance will be seen in 2016/17. It should also be noted that – while this change in the Council’s compliance is disappointing overall given previous excellent performance, the Information Commissioner’s Office stated during their recent audit that it considered the Council’s compliance rates to exceed minimum expectations for a Local Authority, as they generally consider 85% to be an acceptable compliance rate.

The complexity of requests have remained similar to 2014/15, with the average number of pieces of information sought per request dropping slightly from 7.5 in 2014/15 to 6.8 in 2015/16.

16 The overall response time remains good, with the Council responding to requests within 13.4 days on average.

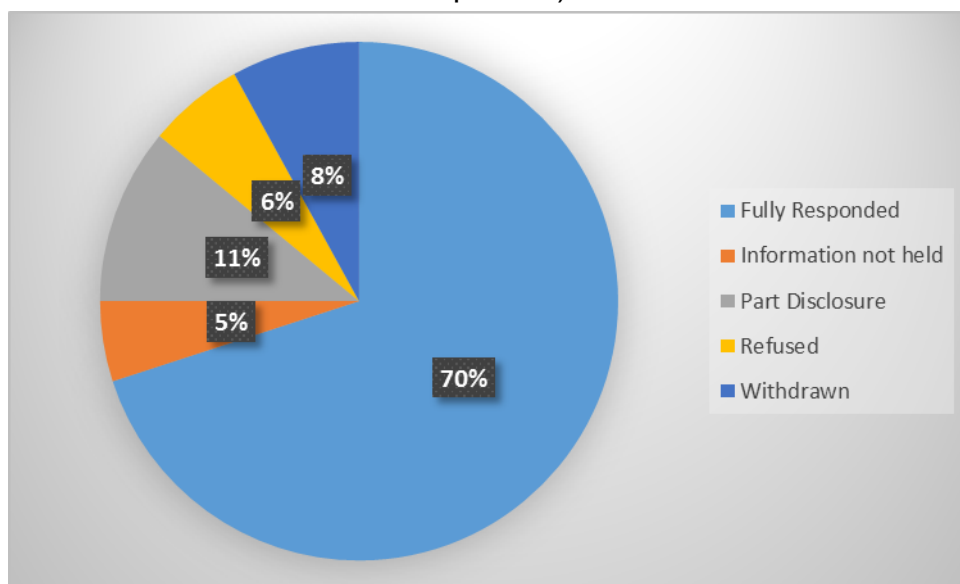
Whilst this is again a slight increase on last year (and the highest average recorded), it still represents an excellent turnaround, in light of the changes to the FOI process implemented by the Council this year.

Average Days Taken to Respond



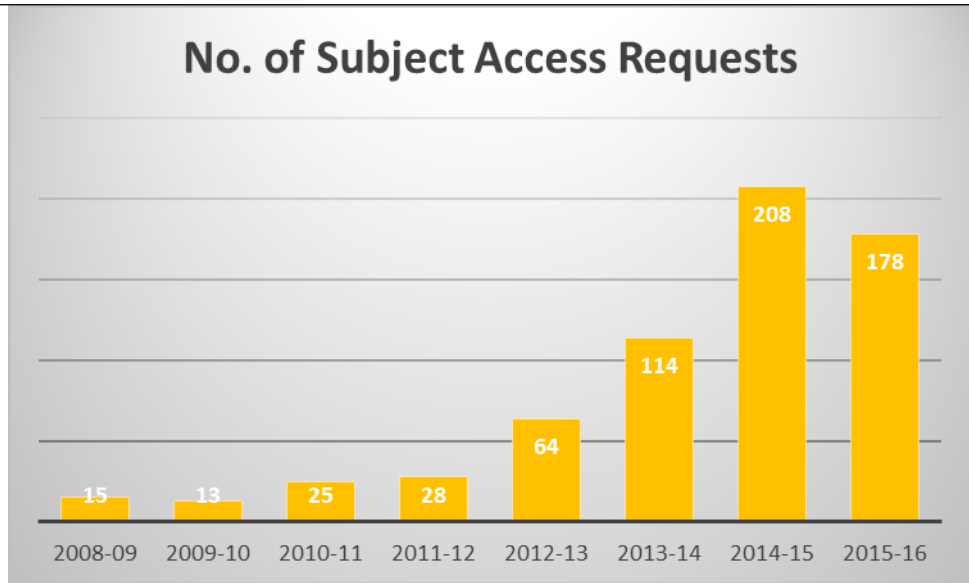
17 The complexity and detail of requests has increased again this year. Under FOIA, where the cost of responding to the request will exceed the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (which is currently set at £450 for local authorities), the Council may refuse to comply with it. For 2015/16, the Council issued 73 Refusal Notices on fees grounds, which represents an increase, with 54 being issued last year.

18 Of all requests received during the year, 70% of information requested was disclosed in full. Of the remaining requests, 5% of information was not held by the Council, 11% were partly responded to by the Council (i.e. some parts of the request were subject to an exemption), and 6% were completely refused as information was withheld because a fees notice was issued or it was exempt (e.g. requests for personal information such as individual/contact details or confidential/commercially sensitive contract or financial information). The remaining 8% of the requests were withdrawn or lapsed (the requester did not respond to a request for clarification after 3 months had passed).

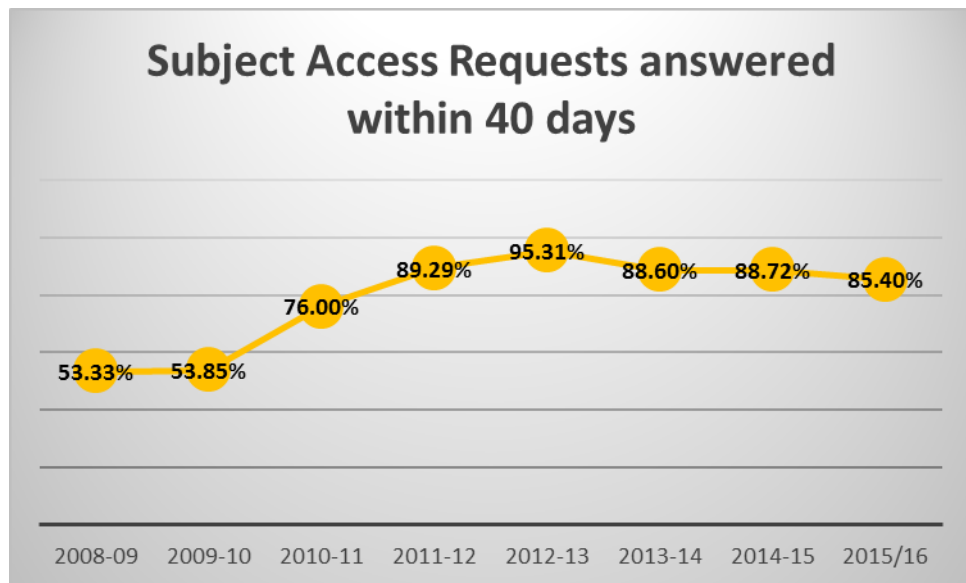


19	Of the 1266 requests responded to (106 were withdrawn, or are still on hold), 228 were deemed to be covered by absolute exemptions and accordingly some or all of the requested information was withheld
20	Of the 1266 requests responded to, 43 requests were considered by the Public Interest Test Panel as they were deemed to be covered by one or more qualified exemptions.
21	17 individuals requested internal reviews regarding decisions made to withhold, partially withhold information requested, or where they were generally unhappy with how their request was handled.
22	<p>There has only been two occasions where an appeal was made to the ICO as a result of the Council's decision in respect of their internal review.</p> <p>One of these was in respect of a late FOI response, as the Council had failed to provide the information requested within the statutory timeframe, and the other involved the Council's decision to withhold commercially sensitive information.</p> <p>The ICO upheld the Council's decision with regard to the latter, although the requester appealed the ICO's decision to the Information Tribunal, who upheld the requester's appeal.</p>
23	As with all years, types of requests have been varied and covered every service area of the Council, including budget, HR, council tax data, highways maintenance and social services.
24	For the period covered in this report, 53% of requests came from private citizens, 10% came from the media, 21% from companies/businesses. The remaining 16% came from a combination of charities, students, researchers, lobby groups, MP's / Councillors and other Councils etc.
25	<p>Previously, members requested information as to how much time and resources each directorate spends on dealing with requests. We do not record this information. Previous years (2011/12) have shown that it took us approximately 2 hours to respond to each request. However, current research from Parliamentary post-legislative scrutiny of the Act indicates "the best-performing local authorities took between one and six hours for each request". We can estimate that our time spend on requests is comparable to this, and using the £25 per hour rate that the Act allows us to charge for staff time when refusing requests, we can estimate that each request costs the Council between £25 and £150 to respond on average.</p> <p>Due to the use of a case management system, Corporate Legal are able to detail how much time it takes to log, monitor, and give advice on requests. For 2015/16, the average time taken per request was 1.75 hours. Most requests take less than half an hour to action within the Corporate Legal Team but, where detailed exemptions and redactions are needed, this can push time taken on a single request up to around 13 hours for very complex cases. The average therefor predominantly represents the time taken for detailed application of legal tests to requests where the Council seeks to withhold certain information from release.</p> <p>It should be stressed that this figure does not include the time taken for Business Support or the service areas to locate, collate, and send out the information requested and the Council does not have a mechanism for capturing that resource cost (which comprises the bulk of any cost to the Council).</p>

26	<p>In the Corporate Legal team there is only 1 FTE member of staff dedicated to providing advice and monitoring compliance with information law. We have added a Modern Apprentice post to the Corporate Legal Team, to assist in the administration of information law matters, but this is a “trainee” post, and requires considerable support and training alongside their contribution to workloads and is supported by day release to college during term time. Other members of staff and an innovative intern scheme with local and regional universities support this function when their capacity allows it.</p>
27	<p>Other members of staff who are involved in the FOI process are the Information Governance Co-Ordinators (Team Leaders within Business Support Services), who are responsible for managing information compliance within their respective Directorates, as well as being a single point of contact for providing advice and guidance at a “local” level.</p> <p>However, they are not wholly dedicated to information compliance as their roles within the Council are to support business generally</p>
28	<p>Data Protection Act</p> <p>The Data Protection Act 1998 (DPA) gives individuals the right to know what information is held about them and provides a framework to ensure that personal information is handled properly.</p>
29	<p>Under the DPA, an individual is entitled to access personal data, held by an organisation, of which that individual is the data subject. Such requests for information are known as subject access requests.</p>
30	<p>For the year 2015/16, the Council received 178 subject access requests compared with 208 last year. A proportion of these were dealt under the corporate procedures, but requests relating to closed social services (Adult Services and Children Services and Learning requests) were processed by the Customer Relations Team, with support from the Corporate Legal Team where appropriate.</p>



31 85.40% of the Subject Access Requests were responded within the statutory timescales of 40 calendar days compared with 88.72% last year.



The directorate breakdown is as follows:

2014-15	SAR		
	Rec'd	%	Av. Days Taken
Corporate	21	100.0	20.4
People	139	82.7	24.1
Place	6	100	5
Transformation	0	n/a	n/a
Total	166	85.4	24.5

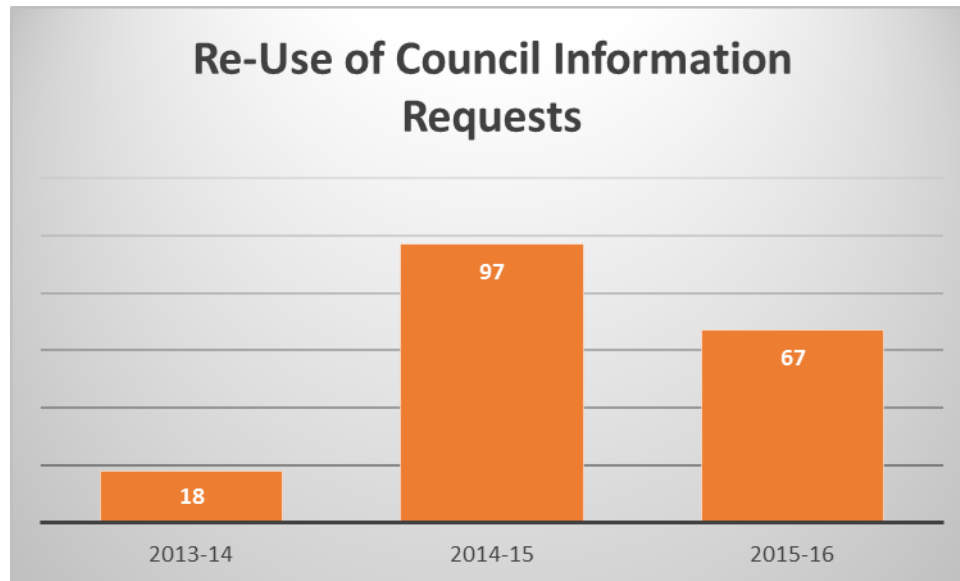
A further 12 requests were not allocated to a directorate, as it was not clear from the request which service area held the information, and clarification from the requester

	was not received.																		
32	3 individuals requested internal reviews regarding decisions made to withhold, partially withhold information requested, or where they were generally unhappy with how their request was handled.																		
33	There was only one occasion where the ICO contacted the Council in light of data protection concerns they had about how personal information was handled.																		
34	In the year 2015/16, the Council reported one instance of personal information disclosed in error to the Information Commissioner.																		
35	Sometimes there is a requirement to disclose personal data which might otherwise be in breach of the Act. Where an exemption from the non-disclosure provisions applies, such disclosure is not in breach of the Act. Examples of exemptions include section 29 (the crime and taxation exemption) and section 35 (disclosures required by law or made in connection with legal proceedings). Such requests are typically made to the Council by regulatory authorities such as the police, the Department of Work and Pensions and so on as part of their investigations																		
36	<p>For the year 2015/16 the Council received 928 requests for data from such third party organisations compared to 536 in the previous year..</p> <p>This is a steep increase from last year, but this can be attributed to increased staff awareness of the need to submit such requests to Corporate Legal for logging and approval before disclosing the information requested.</p> <div data-bbox="443 1077 1412 1653" data-label="Figure"> <table border="1"> <caption>No. of Third Party Requests Received</caption> <thead> <tr> <th>Year</th> <th>Number of Requests</th> </tr> </thead> <tbody> <tr> <td>2008-09</td> <td>366</td> </tr> <tr> <td>2009-10</td> <td>248</td> </tr> <tr> <td>2010-11</td> <td>275</td> </tr> <tr> <td>2011-12</td> <td>273</td> </tr> <tr> <td>2012-13</td> <td>332</td> </tr> <tr> <td>2013-14</td> <td>349</td> </tr> <tr> <td>2014-15</td> <td>536</td> </tr> <tr> <td>2015-16</td> <td>928</td> </tr> </tbody> </table> </div> <p>In addition to these requests, the CCTV control room (City Watch) and Licensing Team received 811 and 220 third party requests respectively (the majority of the Licensing requests were for footage from the internal Taxi Cameras).</p> <p>These requests are regulated by information sharing agreements, which removes the requirement to have each one authorised by Corporate Legal.</p>	Year	Number of Requests	2008-09	366	2009-10	248	2010-11	275	2011-12	273	2012-13	332	2013-14	349	2014-15	536	2015-16	928
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37	In addition to requests for information from external organisations, Corporate Legal also																		

monitor and authorise requests from internal departments to re-use personal information already held by the Council.

Such requests are commonly made where personal information is necessary when taking enforcement action, performing a statutory function, or improving the efficiency of Council services.

In 2015/16, 67 requests were processed, with Council Tax being the most common source of information (73% of requests), and CCTV being the next (13%).



38

ICO Audit

In January 2016 auditors from the ICO visited the Council. The ICO visited the Council and acted as a “critical friend” to audit the Council’s data protection practices. A team of 3 auditors conducted 47 interviews with staff as well as conducting a ‘walkaround’ of the Civic building and the Sea City stores. They also visited the SDC records store at Northam. The auditors looked at three areas of the Council’s choosing of compliance across the Council, these being: Governance; Records Management and Data Sharing.

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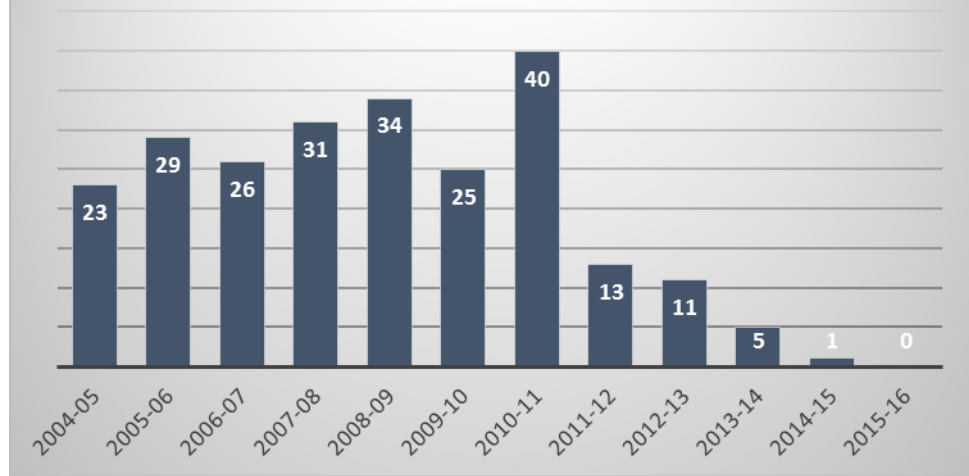
A ‘limited assurance’ rating was given for both Governance and Records Management and a ‘reasonable assurance’ rating given for Data Sharing. Overall, this means a rating of limited assurance. A straw poll of local authorities audited by the ICO in the last year indicates that this is the most common form of assurance rating. A significant amount of work was carried out pre-audit by the teams supporting the IG framework, to move the council to this rating from a standing position of ‘no assurance’. However, this level of work is unsustainable. Over 621 hours in Corporate Legal (equating to a cost of £37,083.84) was expended in preparing for and supporting the Audit including a complete review of many of the Council’s policies, practices and training. These resources were diverted from other essential services and planned priorities that must now be prioritised alongside the ICO audit report and action plan.

40

The report does not identify anything of any great surprise to us. The ICO made recommendations in the form of an Action Plan. The Council has 6 months in which to

	implement those recommendations. The ICO will test the Council's compliance at the 6 month deadline.
41	IG weaknesses in the Council's structure and compliance have been reported to CMT. Although the audit recommendations themselves are in the main, relatively minor, they do have significant resource implications for areas already stretched. In short, the report recommends that we need designated officers performing IG roles and we need to commit permanent resources to this. We also need to improve training rate compliance; make sure staff know, understand and comply with the council's IG policies; have senior oversight for records management, information assets and information sharing and embed effective records management and risk management within our everyday practices.
42	Previous reports to CMT have already identified the need to strengthen the Council's information governance structure. CMT approved the adoption of the Information Asset Owner (IAO) and Administrator (IAA) structure in the Q2 IG report. This structure of accountability and compliance will form the basis of the Council's new IG framework and is recommended by the ICO. The auditors also endorse the proposal to separate out the role of Corporate SIRO and Data Protection Officer (both currently performed by the Service Director: Legal & Governance) and to embed the DPO (an IG link officer) within the structure to provide an operational link between the strategic and operation divisions and to ensure that strategy and policy is replicated in actual compliance on the operational side of the organisation. At this time the Senior Legal Assistant (Information), as the only staff member within the Council wholly dedicated to information compliance matters, has been designated as the operational Data Protection Officer in the absence of new resources to support the function.
43	RIPA Under RIPA, the Council as a public authority is permitted to carry out directed surveillance, the use of covert human intelligence sources and obtain communications data if it is both necessary for the purpose of preventing or detecting crime and/or disorder and the proposed form and manner of the activity is proportionate to the alleged offence.
44	There were no authorisations made under RIPA in 2015/16, a decrease on last year's 1 authorisation.

RIPA Authorisations



As previously reported, the Protection of Freedoms Act 2012 is now in force, and this makes it a requirement for judicial approval for surveillance activities through application to the Magistrate Courts, therefore imposing a higher threshold for use. As such, there has been a significant decrease in applications made by the Council.

45

Examples of activity authorised in previous years include covert surveillance of a victim's home to detect acts of criminality, directed surveillance of individuals who were involved in fraudulent activities and a Covert Human Intelligence Source ("CHIS") was used to form an online relationship with a suspect to make a test purchase of suspected counterfeit goods.

46

The Council is required to formally appoint a 'Senior Responsible Officer' for RIPA. The Service Director; Legal & Governance is the officer who undertakes this role. The Senior Responsible Officer has responsibility for maintaining the central record of authorisations; the integrity of the RIPA process within his authority; compliance with the Act and Codes of Practice; oversight of the reporting of errors to the Surveillance Commissioner; engagement with Inspectors from the Office of Surveillance Inspectors and implementation of any subsequent action plan.

47

Training for Council officers involved in RIPA processes is undertaken by annually and is delivered by the Corporate Legal Team. Our documentation, procedures and training are also used as 'best practice' by a number of other Local Authorities and we regularly conduct training activities for partner authorities on request.

48

The Office of Surveillance Commissioners carried out a review of Southampton City Council's management of covert activities in 2013. In his report, Chief Surveillance Inspector, Sir Christopher Rose noted:

"Your regularly updated RIPA training, the engaged and conscientious approach of your staff, your very good policy documentation, your internal oversight regime and your good overall compliance standards are commendable".

The Council was visited again in May 2016 and we are currently awaiting the inspection report.

RESOURCE IMPLICATIONS**Capital/Revenue**

49	None directly related to this report. The administration of information law within the authority is managed within corporate overheads, but the continuing upward trend in the number of requests received is increasing pressure on finite resources for maintaining compliance with these statutory processes which is starting to be reflected in compliance rates.
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Property/Other

50	None directly related to this report..
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LEGAL IMPLICATIONS**Statutory power to undertake proposals in the report:**

51	The statutory obligations relating to information law are detailed in the body of this report.
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Other Legal Implications:

52	None directly related to this report.
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POLICY FRAMEWORK IMPLICATIONS

53	The information contained in this report is consistent with and not contrary to the Council's Policy Framework.
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KEY DECISION?

No

WARDS/COMMUNITIES AFFECTED:

n/a

SUPPORTING DOCUMENTATION**Appendices**

1.	None
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Documents In Members' Rooms

1.	None
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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Privacy Impact Assessment

Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.	No
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None