

DECISION-MAKER:	GOVERNANCE COMMITTEE		
SUBJECT:	FREEDOM OF INFORMATION, DATA PROTECTION & REGULATION OF INVESTIGATORY POWERS ACTS: ANNUAL REVIEW 2020-21		
DATE OF DECISION:	4 th October 2021		
REPORT OF:	Service Director: Legal and Business Operations		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	CHRIS THORNTON, Data Protection Officer	Tel: 023 8083 2627
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STATEMENT OF CONFIDENTIALITY			
None			
BRIEF SUMMARY			
A report detailing the statistical information for the financial year 2020-21 with regard to information governance. This report details statistical information on requests received under the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR), the UK General Data Protection Regulation (GDPR), and the Council's activity under the Regulation of Investigatory Powers Act 2000 (RIPA).			
RECOMMENDATIONS:			
	(i)	To note and comment on the update of the statistical information for the year 1 st April 2020 – 31 st March 2021 relating to: <ul style="list-style-type: none"> • FOIA and associated legislation • GDPR • RIPA 2000 	
REASONS FOR REPORT RECOMMENDATIONS			
1.	To keep Members informed as to the impact of the legislation on the Council and to detail the form and type of information requests received in 2020-21.		
2.	To ensure that Members continue to be aware of the Council's statutory obligations and compliance performance.		
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED			
3.	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 a 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)

4. This report will be published on the Council’s website

FOIA

5. FOIA and EIR gives separate rights to request information and environmental information from public authorities. Responses must be issued within 20 working days.

6. 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

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

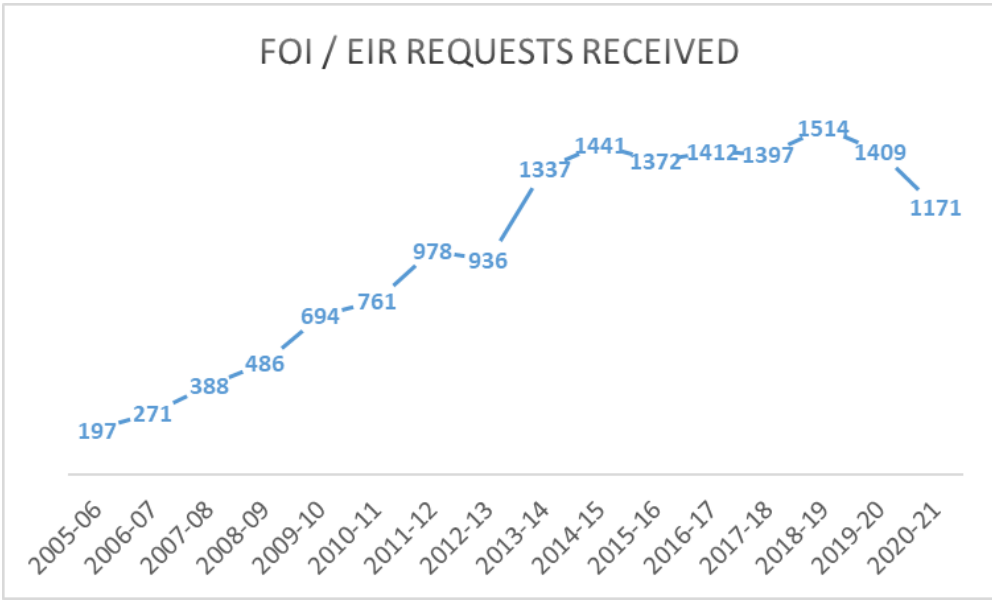
8. Information that falls into a particular exemption category, for example information relating to commercial interests, will have to be disclosed unless it can be successfully argued that the public interest in withholding it is greater than the public interest in releasing it. Such exemptions are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

9. 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.

10. For 2020-21, the Council received 1171 requests, broken down as follows:

Total Requests	FOI Requests	EIR Requests
1171	974	197

11. This represents a drop in previous years, which can be attributed to the ongoing COVID-19 pandemic. With less projects and activities occurring at a local level, and the public interest focusing on national measures, the Council received a lower number of requests.



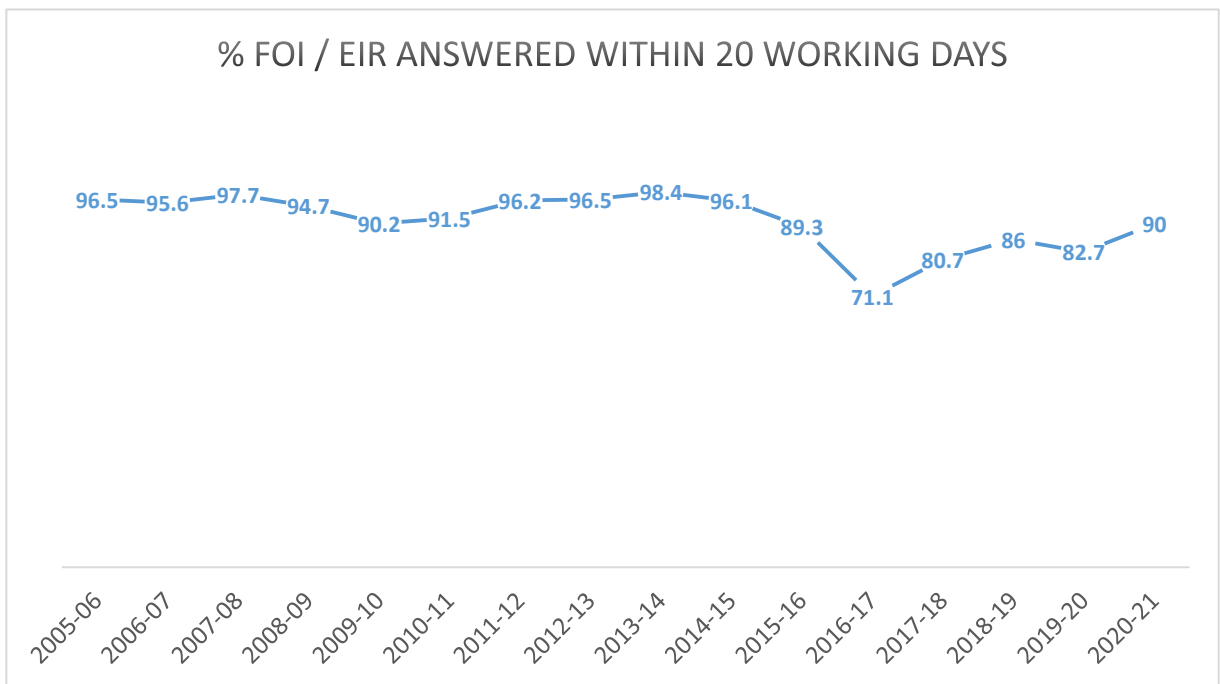
12. The Directorate breakdown of the requests is as follows:

Directorate	No. Rec'd	Responded on time	Av. Days Taken
Communities, Culture, and Homes	302	93%	12
Place	283	88%	14
Finance	160	91%	11
Business Services	156	93%	12
Wellbeing (Children and Learn)	154	86%	15
Wellbeing (Health and Adults)	113	89%	14
Not allocated to a Directorate	3	N/A	N/A
Grand Total	1171	90%	13

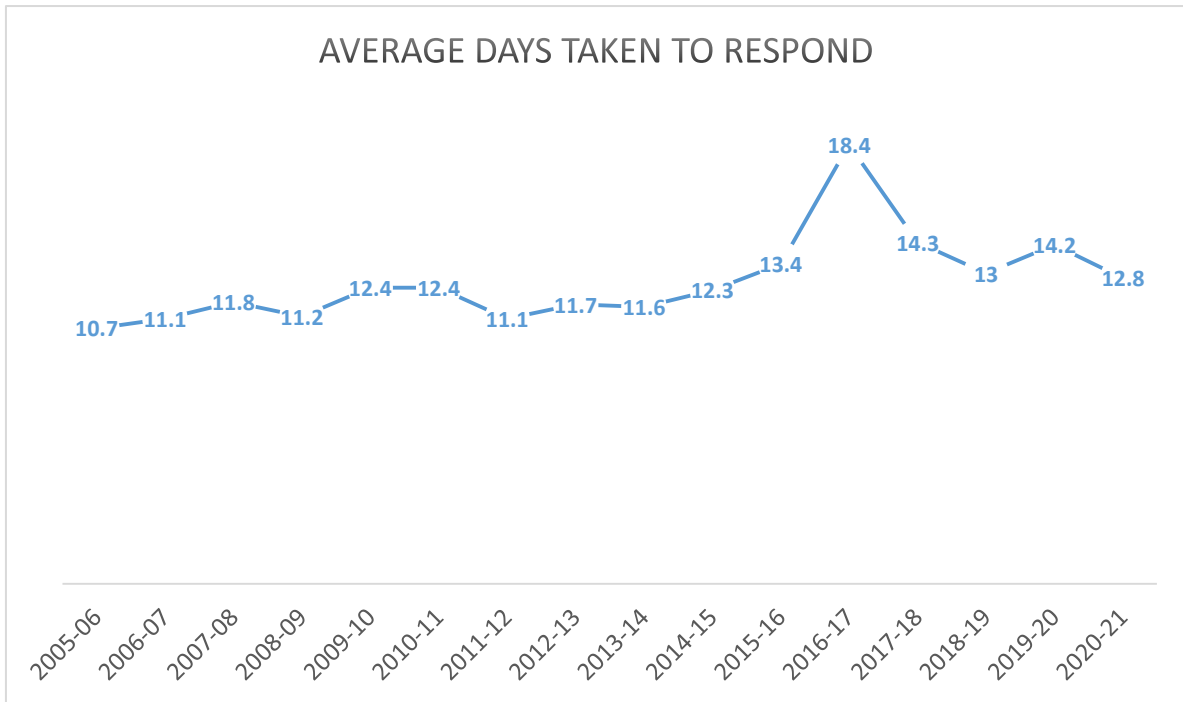
Requests are not allocated to a directorate when it is unclear what information is sought from the request. Clarification is requested, and if this is not received within 3 months, the request is deemed to be lapsed.

13. During the year, 90% of all monitored FOI and EIR requests were responded to within the statutory deadline of 20 working days. This is an increase on the previous year, most likely due to the reduction in requests received.

The Council's target rate for responses is 90%.



14. The reduction in requests has also had an impact on the time taken to respond to requests, with the overall response time decreasing to 13 days on average.



15. 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 2020-21, the Council issued 58 Refusal Notices on fees grounds, which represents a decrease, with 71 being issued last year.

16. The breakdown of the request outcomes is as follows:

Outcome	No. of Requests
Fully Answered	948
Refused or Part Refused	111
Lapsed or Withdrawn	112

Fully answered requests include those where information is not held, or an exemption has been applied. This would still be classed as being fully answered.
 Refused or part-refused requests are where the request has been refused in its entirety, or only certain elements have been refused (e.g. on cost grounds)
 Lapsed or withdrawn requests are where the requester has actively withdrawn their request, or has not come back with clarification when asked within 3 months.

17. 8 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.

18. This year, there have been no occasions where an appeal was made to the ICO as a result of the Council's decision in respect of their internal review.

19.	<p>As with all years, types of requests have been varied and covered every service area of the Council, including budget, HR, council tax and business rates data, schools, highways maintenance, and social services.</p> <p>The top ten request subjects ranked in order of popularity are as follows:</p> <table border="1" data-bbox="231 398 1445 974"> <thead> <tr> <th data-bbox="231 398 1337 454">Service Area</th> <th data-bbox="1337 398 1445 454">No.</th> </tr> </thead> <tbody> <tr> <td data-bbox="231 454 1337 510">Education and learning – Schools</td> <td data-bbox="1337 454 1445 510">57</td> </tr> <tr> <td data-bbox="231 510 1337 566">Housing - Council and community housing</td> <td data-bbox="1337 510 1445 566">49</td> </tr> <tr> <td data-bbox="231 566 1337 622">Business and employment - Business rates</td> <td data-bbox="1337 566 1445 622">45</td> </tr> <tr> <td data-bbox="231 622 1337 678">Housing - Multiple occupancy homes</td> <td data-bbox="1337 622 1445 678">44</td> </tr> <tr> <td data-bbox="231 678 1337 734">Administration and Government - Information communication technology</td> <td data-bbox="1337 678 1445 734">41</td> </tr> <tr> <td data-bbox="231 734 1337 790">Transport and highways – Parking</td> <td data-bbox="1337 734 1445 790">41</td> </tr> <tr> <td data-bbox="231 790 1337 846">Transport and highways – Highways</td> <td data-bbox="1337 790 1445 846">38</td> </tr> <tr> <td data-bbox="231 846 1337 902">Transport and highways – Cycling</td> <td data-bbox="1337 846 1445 902">31</td> </tr> <tr> <td data-bbox="231 902 1337 958">Administration and Government - Finance - Accounting</td> <td data-bbox="1337 902 1445 958">30</td> </tr> <tr> <td data-bbox="231 958 1337 974">Housing - Homelessness and prevention</td> <td data-bbox="1337 958 1445 974">28</td> </tr> </tbody> </table>	Service Area	No.	Education and learning – Schools	57	Housing - Council and community housing	49	Business and employment - Business rates	45	Housing - Multiple occupancy homes	44	Administration and Government - Information communication technology	41	Transport and highways – Parking	41	Transport and highways – Highways	38	Transport and highways – Cycling	31	Administration and Government - Finance - Accounting	30	Housing - Homelessness and prevention	28
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20.	<p>The breakdown of requester type is as follows:</p> <table border="1" data-bbox="244 1070 1457 1301"> <thead> <tr> <th data-bbox="244 1070 850 1126">Requester Category</th> <th data-bbox="850 1070 1457 1126">% of Requests</th> </tr> </thead> <tbody> <tr> <td data-bbox="244 1126 850 1171">Private Citizens</td> <td data-bbox="850 1126 1457 1171">56%</td> </tr> <tr> <td data-bbox="244 1171 850 1216">Companies / Businesses</td> <td data-bbox="850 1171 1457 1216">23%</td> </tr> <tr> <td data-bbox="244 1216 850 1261">Media</td> <td data-bbox="850 1216 1457 1261">9%</td> </tr> <tr> <td data-bbox="244 1261 850 1301">Remainder</td> <td data-bbox="850 1261 1457 1301">12%</td> </tr> </tbody> </table> <p>The remaining requests came from a combination of charities, students, researchers, lobby groups, MPs / Members and other Councils etc.</p>	Requester Category	% of Requests	Private Citizens	56%	Companies / Businesses	23%	Media	9%	Remainder	12%												
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21.	<p>Previously, Members requested information as to how much time and resources each Service spends on dealing with requests. 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>																						
22.	<p>As Corporate Legal accurately time record we are able to detail how much time it takes to log, monitor, and give advice on requests. For 2020-21, the average time taken per request was just over 1 hour. Most requests (around 77%) take around half an hour to action within the Corporate Legal Team but, where detailed exemptions and redactions are needed, this can increase time taken on a single request for very complex cases. For example, the Corporate Legal time spent just over 26 hours on one single request in 2020-21. The average therefore predominantly represents the time taken for detailed application of legal tests to requests where the Council seeks to withhold certain information from release.</p>																						

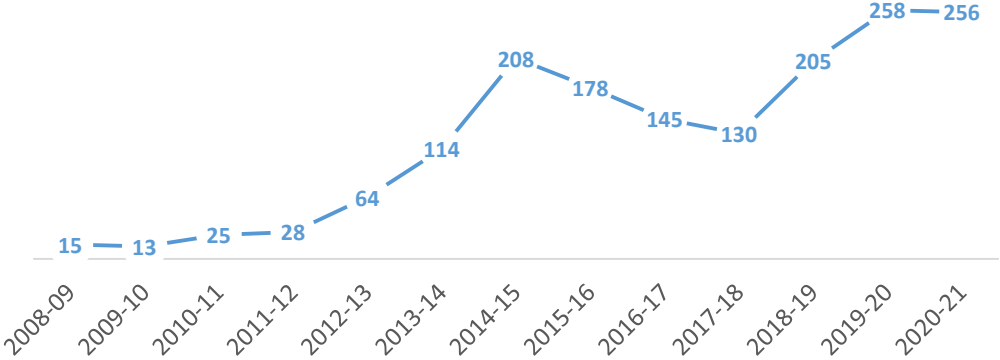
23. It should be stressed that this figure does not include the time taken for Business Support or the service areas to locate, collate, and send out the information requested and the Council does not have a mechanism for capturing that resource cost (which comprises the bulk of any cost to the Council).
24. In the Corporate Legal team there are now 3 FTE member of staff dedicated to providing advice and ensuring compliance with information law. Other members of Legal Services and an innovative intern scheme with local and regional universities support this function when their capacity allows it.

GENERAL DATA PROTECTION REGULATION

25. The GDPR gives individuals the right to know what information is held about them, along with other rights, and provides a framework to ensure that personal information is handled properly.
26. Under the GDPR, 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. Other requests available under the GDPR are:
- Rectification
 - Erasure
 - Restriction
 - Object
- The Council has to respond to such requests within one calendar month.

27. For the year 2020-21, the Council received 256 rights requests, broken down as follows:
- | Request Type | No. Received |
|----------------|--------------|
| Subject Access | 243 |
| Erasure | 9 |
| Rectification | 3 |
| Objection | 1 |

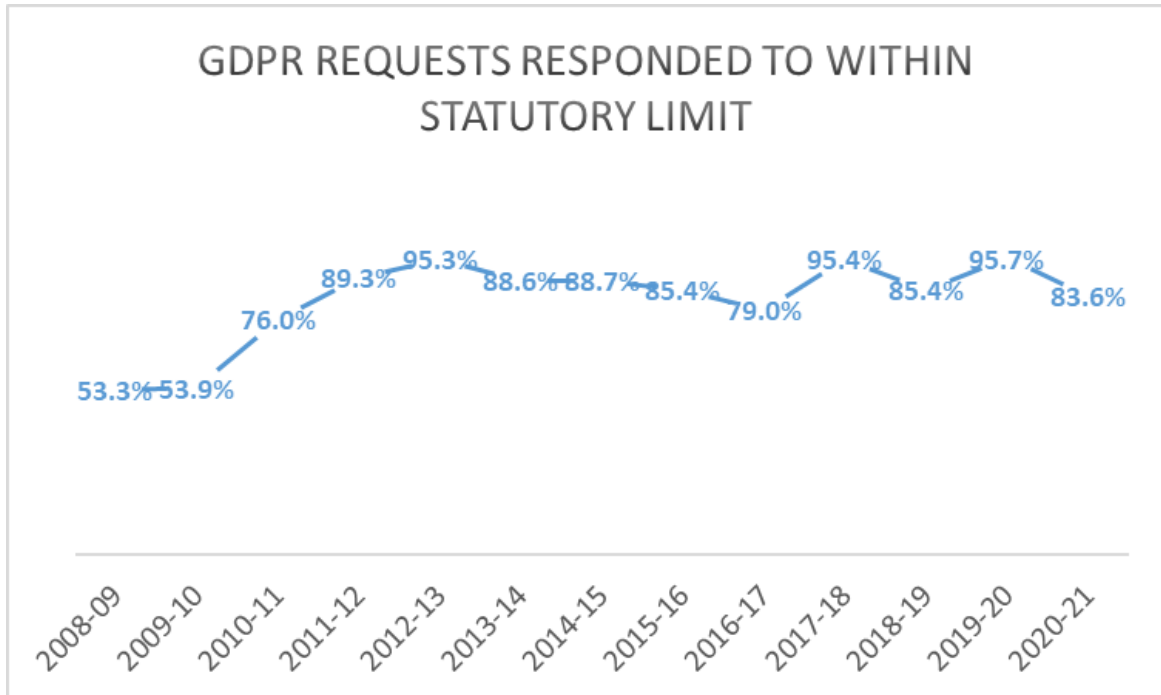
28. This stops a trend of increasing numbers of requests since the introduction of GDPR, however this decrease can be attributed to the COVID-19 pandemic.
- NO. OF SUBJECT RIGHTS REQUESTS**



Year	No. of Requests
2008-09	15
2009-10	13
2010-11	25
2011-12	28
2012-13	64
2013-14	114
2014-15	208
2015-16	178
2016-17	145
2017-18	130
2018-19	205
2019-20	258
2020-21	256

29.

84% of the requests were responded within the statutory timescales compared with 96% last year. The Council’s target is 90% compliance.



This reduction can be attributed to the COVID-19 pandemic, and whilst FOI saw a reduction in requests, the volume of GDPR requests has largely remained the same.

As most of the requests involve social care data, and the service areas holding this information were most affected by the pandemic.

30.

The Directorate breakdown is as follows:

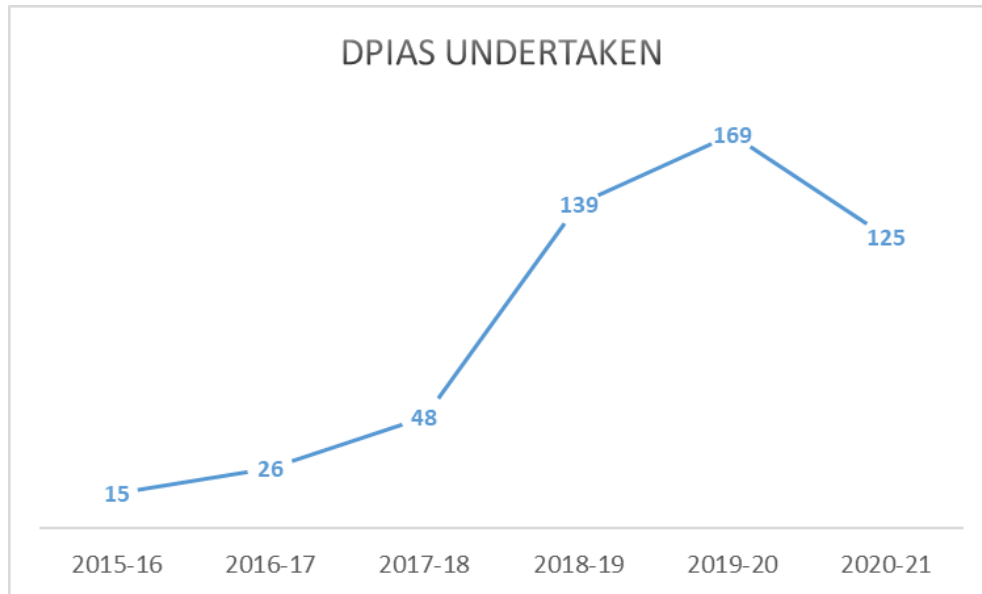
	No. Rec'd	Responded on time	Av. Days Taken
Wellbeing (Children and Learn)	154	85%	46
Communities, Culture, and Homes	32	83%	31
Wellbeing (Health and Adults)	29	80%	33
Business Services	19	84%	31
Finance	13	81%	39
Place	3	100%	26
*On hold - Awaiting Allocation	6	N/A	N/A
Grand Total	256	84%	40

Requests are not allocated to a directorate when it is not clear what information is sought from the request. Clarification is requested, and if this is not received within 3 months, the request is deemed to be lapsed.

	It should be noted that the GDPR allows for an extension of the statutory timeframe for compliance in certain circumstances, as such, not all requests over one calendar month will be deemed to be late.								
31.	Whilst there has been a drop in compliance levels relating to Subject Access Requests, the Data Protection Officer is satisfied that this is not a cause for concern. Indeed, due to the fact that that majority of the information under these requests relates to social care, which is the service area most affected by the pandemic, the Council's ability to maintain a high level of compliance during this period should be commended.								
32.	11 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 1 occasion where the ICO contacted the Council in light of concerns they had about how a request was handled.								
34.	Sometimes there is a requirement to disclose personal data which might otherwise be in breach of the GDPR. Where an exemption from the non-disclosure provisions applies, such disclosure is not in breach of the GDPR. Examples of exemptions include crime and taxation and 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.								
35.	For the year 2020-21 the Council received 331 requests for data from such third party organisations compared to 291 in the previous year. The top three requester types are as follows: <table border="1" data-bbox="231 1176 753 1339"> <thead> <tr> <th>Type</th> <th>Requests</th> </tr> </thead> <tbody> <tr> <td>Police</td> <td>211</td> </tr> <tr> <td>Local Authority</td> <td>65</td> </tr> <tr> <td>Government Agency</td> <td>33</td> </tr> </tbody> </table>	Type	Requests	Police	211	Local Authority	65	Government Agency	33
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Local Authority	65								
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36.	In addition to these requests, the CCTV control room (City Watch) and Licensing Team received 613 and 158 third party requests respectively (the majority of the Licensing requests were for footage from the vehicle Taxi Cameras). These requests are regulated by information sharing agreements, which removes the requirement to have each one authorised by Corporate Legal.								
	DATA SECURITY INCIDENTS								
37.	During 2020-21, 209 data security incidents were reported to the Corporate Legal team. 72% of these were determined to be actual data breaches upon investigation, with the most common cause (45% of incidents) being data sent electronically to incorrect recipients.								
38.	The Council records the "severity" of the incidents reported, determined by a number of factors, including the nature of the information involved, the volume of data, and the possible harm the breach might cause to individuals involved. Any incident receiving a severity rating over 1 was considered to require a full investigation and remediation report. For 2020-21, the average severity of incidents determined to be actual breaches remains at 0.7.								

39.	<p>3 of the data breaches were considered sufficiently serious to be reported to the Information Commissioner’s Office. These involved:</p> <ul style="list-style-type: none"> • The disclosure of a third party’s information in a Subject Access Request • The sending of invoices as part of a fraudulent payment incident • Failure to redact an address during court proceedings.
40.	<p>In all of these, the ICO considered that no further action was necessary as the Council had put into action adequate and robust remediation plans to address the risks to the individual, and ensure that such errors do not reoccur.</p>
	<p>NHS TOOLKIT</p>
41.	<p>In order to share information with our health partners, the Council has to provide annual assurance as to the standard of its information governance compliance. In the absence of any service information governance lead, the Corporate Legal Team again assumed short-term responsibility for collation of the Toolkit evidence this year, but due to COVID-19, the annual submission deadline of 31st March was extended to 30th June 2021. The Council was self-assessed at being 100% compliant with the mandatory evidence requirements.</p>
	<p>RIPA</p>
42.	<p>Under RIPA, the Council as a public authority is permitted to carry out directed surveillance, the use of covert human intelligence sources and to 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.</p>
43.	<p>There were no authorisations made under RIPA in 2020-21.</p>
44.	<p>The Investigatory Powers Commissioner’s Office (formerly the Office of Surveillance Commissioners) carried out its most recent inspection of the Council’s management of covert activities in 2019.</p> <p>In his report of December 2019, The Rt. Hon. Sir Brian Leveson, the Investigatory Powers Commissioner, noted:</p> <p>“(My) observations highlight good practice within (your) organisation and this has clearly resulted largely from a conscientious approach and internal oversight and the provision of regular training by Mr Ivory and Mrs Horspool. Both have been inspected in this regard for many years and are not found wanting”</p>
	<p>DATA PROTECTION IMPACT ASSESSMENTS</p>
45.	<p>Under Council policy, a Data Protection Impact Assessment (or DPIA) must be carried out for new projects.</p> <p>Carrying out a DPIA enables the Council to identify and address any privacy risks at an early stage, ensure a “privacy by design” approach, and adhere to the accountability principle of the GDPR.</p>

46. In 2020-21, the Council conducted 125 DPIAs, which is a decrease on the previous year.



This decrease can be attributed to the COVID-19 pandemic, which saw less projects being undertaken by the Council.

RESOURCE IMPLICATIONS

Capital/Revenue

47. None directly related to this report. The administration of information law within the authority is managed within corporate overheads, but ensuring that the Council performs to an acceptable information governance standard and complies with the new statutory standards imposed by the GDPR and DPA18 places increased pressure on finite and already stretched resources.

Property/Other

48. None directly related to the report.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

49. The statutory obligations relating to information law are detailed in the body of this report.

Other Legal Implications:

50. None directly related to this report.

RISK MANAGEMENT IMPLICATIONS

51. The potential impact of the decision in terms of finance, service delivery and reputation is considered to be low. Although the report does highlight potential future pressures on service delivery with the advent of the GDPR, the decision of members in this report is to note the performance of the Council in terms of information governance for 2020-21.

POLICY FRAMEWORK IMPLICATIONS	
52.	The information contained in this report is consistent with and not contrary to the Council's policy framework.

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	none
<u>SUPPORTING DOCUMENTATION</u>	
Appendices None	
1.	None

Documents In Members' Rooms None

1.	None
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	No
Data Protection Impact Assessment	
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	No
Other Background Documents None	
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