

DECISION-MAKER:	STANDARDS AND GOVERNANCE COMMITTEE		
SUBJECT:	FREEDOM OF INFORMATION, DATA PROTECTION AND REGULATION OF INVESTIGATORY POWER ACTS: ANNUAL REVIEW 2009-10		
DATE OF DECISION:	19 APRIL 2010		
REPORT OF:	SOLICITOR TO THE COUNCIL		
AUTHOR:	Name:	Tracy Horspool	Tel: 023 8083 2027
	E-mail:	tracy.horspool@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY
None

SUMMARY

A report detailing statistical information for the financial year 2009-10, the fifth year of implementation of the freedom of information Act (FOIA) and associated legislation. This report also details statistical information on requests received under the Data Protection Act (DPA) and the Council's activity under the Regulation of Investigatory Powers Act (RIPA).

RECOMMENDATIONS:

To note and comment on the update of the statistical information for the year 1st April 2009 – 31st March 2010 relating to:

- (i) Freedom of Information Act 2000(FOIA) and associated legislation
- (ii) Data Protection Act 1998
- (iii) Regulation of Investigatory Powers Act 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 2009/10, the fifth full year of FOIA implementation.
2. To keep Members informed as to the type of DPA requests received and the Council's activity under RIPA.
3. To ensure that members continue to be aware of the Council's statutory obligations under FOIA and associated legislation, DPA and RIPA.

CONSULTATION

4. As soon as possible after the meeting of the Standards and Governance Committee, the information detailed in this report will be reported in the access to information pages on the Council's website.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. The only 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 and to maintain the profile of information law within the organisation.

DETAIL

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 fifth full year of the FOIA and statistics show a continued increase in the number of requests received. The number has increased from 499 for the year ending April 2009 to 694 for the year ending March 2010.
13. The detail relating to requests received is contained in the attached appendices 1 to 3.
14. To summarise, the Council has received a total of 1030 ‘non’ routine’ requests between 1st April 2009 and 31st March 2010. This comprises 694 dealt with as FOIA requests, 88 subject access requests and 248 requests for third party data made by regulatory authorities, such as the police, under the DPA.
15. 2009/10 has seen a sharp increase in the volume of requests received. The average number of requests received per month was 57.8, compared with 41.5 last year. Appendix 1 shows the number of requests received per month, with a comparison to last year.

16. During the year, 92.1%% of all monitored requests (excluding those 'on hold or lapsed) were dealt with within the statutory deadline of 20 working days. In cases where the deadline was exceeded, this was usually by one or two days and reflects the volume, increasing complexity and quantity of information requested. In a few cases, extensions of time were required in order to hold public interest test panel meetings where particularly complex requests were made. The overall response time remains good, with the Council responding to requests within 11.92 days on average. Appendix 2 shows the number of requests received by each Council directorate, with the Environment directorate receiving the most requests in the year.
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 is able to invoke a charge. For 2009/10, the Council issued 20 fees notices. Of the 20 issued, only one of the requesters paid the fees. For those not paying the fee, the information requested was withheld.
18. Of all requests received during the year, 81.8% of information requested was disclosed in full. Of the remaining 18.2% of requests, 3.1% of information was not held by the Council, 0.2% of information was withheld either because it was exempt or a fees notice was issued, 5.3% involved a partial disclosure and 6.3% are still being dealt with. The remainder of the requests were withdrawn.
19. Of the 694 requests made, 17 were deemed to be covered by an absolute exemption.
20. Of the 694 requests made, 7 were deemed to be covered by one or more qualified exemptions and accordingly referred to the Public Interest Test Panel for consideration of the public interest.
21. Ten appeals were made to the Council's Internal Corporate Complaints department, regarding decisions made to withhold or partially withhold information requested. Following review, four appeals were partly upheld and further information was disclosed.
22. To our knowledge, no appeals have been made to the Information Commissioner's Office.
23. As with all years, types of requests have been varied and, for example, range from requested information about microchips in refuse bins to details of food hygiene inspections. Popular topics for requests include Member remuneration and staff salaries. 2009/10 has seen an increase in the amount of requests received from private citizens. For the period covered in this report, 48.1% of requests came from private citizens, compared to 39% in 2008/09. Appendix 3 shows a breakdown of the category of requesters, with private citizens being far the largest category.
24. Between 2005 when the FOIA came into force and 2009-10, there has been a 350% increase in the number of FOI requests received.

DPA

25. The Data Protection Act 1998 gives individuals the right to know what information is held about them and provides a framework to ensure that personal information is handled properly.
26. Under the Act, 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.
27. For the year 2009/10, the Council received 88 subject access requests.
28. Sometimes there is a public interest requiring disclosure of 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 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.
29. For the year 2009/10 the Council received 248 requests for data from such third party organisations.

RIPA

30. There have been 26 authorisations under RIPA.
31. Examples of activity authorised include covert surveillance of the attempted purchase of alcohol and cigarettes to under 18's in city off-licences and other retailers; surveillance of individuals suspected of benefit fraud and surveillance of individuals suspected of anti-social behaviour towards local residents.
32. 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.
33. Councils' use of RIPA powers have been the subject of much scrutiny in recent months. New regulations and new Codes of Practice came into force on 6th April 2010. The new Codes recommend that Members have a greater awareness of the form and type of activities carried out by officers and reporting to Members in this form is recommended good practice. It is further recommended that in-year internal reports on the Council's use of RIPA are brought before the Leader and relevant Cabinet Members on a quarterly basis, commencing end June 2010, the end of the first quarter.
34. The new Codes recommend that the Council formally appoints a 'senior responsible officer' for RIPA in each authority. The Solicitor to the Council already informally 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.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

35. None directly related to this report.

Revenue

36. 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.

Property

37. None directly related to this report.

Other

38. Not applicable.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

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

Other Legal Implications:

41. None directly related to the report.

POLICY FRAMEWORK IMPLICATIONS

42. The information contained within this report is consistent with and not contrary to the Council's policy framework.

SUPPORTING DOCUMENTATION

Appendices

1.	Breakdown of FOIA requests by month
2.	Breakdown of FOIA requests by directorate
3.	Breakdown of FOIA requests by category of requester

Documents In Members' Rooms

1.	None
----	------

Background Documents

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	N/a
----	------	-----

Background documents available for inspection at: N/a

KEY DECISION? N/a

WARDS/COMMUNITIES AFFECTED:	N/a
------------------------------------	-----