

DECISION-MAKER:	STANDARDS AND GOVERNANCE COMMITTEE
SUBJECT:	FREEDOM OF INFORMATION, DATA PROTECTION AND REGULATION OF INVESTIGATORY POWERS ACTS: ANNUAL REVIEW 2010-11
DATE OF DECISION:	27 JUNE 2011
REPORT OF:	HEAD OF LEGAL AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

A report detailing statistical information for the financial year 2010-11, the sixth 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:

- (i) To note and comment on the update of the statistical information for the year 1st April 2010 – 31st March 2011 relating to:
 - a. Freedom of Information Act 2000 and associated legislation;
 - b. Data Protection Act 1998;
 - c. 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 2010-11, the sixth 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 and to maintain the profile of information law within the organisation.

DETAIL (Including consultation carried out)

5. 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.

Freedom of Information Act

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 sixth full year of the FOIA and statistics show a continued increase in the number of requests received. The number has increased from 694 for the year ending April 2010, to 761 for the year ending March 2011.
13. To summarise, the Council has received a total of 1197 ‘non’ routine’ requests between 1st April 2010 and 31st March 2011. This comprises:-
 - 761 dealt with as FOIA requests,
 - 57 subject access requests and
 - 379 requests for third party data made by regulatory authorities such as the police, under the DPA.
14. 2010/11 has seen another increase in the volume of requests received. The average number of requests received per month was 66.1 compared with 57.8 last year.
15. During the year, 91.5% 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 12.3 days on average. As per the reported figures, the Environment Directorate and Resources Directorate received the most

- requests, each dealing with 202 and 200 requests respectively in the year.
16. 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 2010/11, the Council issued 40 Refusal Notices on fees grounds.
 17. Of all requests received during the year, 74.2% of information requested was disclosed in full. Of the remaining 25.8% of requests, 5.9% of information was not held by the Council, 4.3% of information was withheld either because it was exempt or a fees notice was issued and 13.9% involved a partial disclosure. The remainder of the requests were withdrawn.
 18. Of the 761 requests made, 21 were deemed to be covered by an absolute exemption.
 19. Of the 761 requests made, 12 requests were considered by the Public Interest Test Panel as they were deemed to be covered by one or more qualified exemptions.
 20. Eight appeals were made to the Council's Internal Corporate Complaints department regarding decisions made to withhold or partially withhold information requested. Following review, three appeals were partly upheld and further information was disclosed.
 21. To our knowledge, there have been five appeals made to the Information Commissioner's Office (ICO). Three of these were about Freedom of Information and one each for the Data Protection and Environmental Information Regulations (EIR). For the appeal concerning Data Protection issues, the ICO concluded that the Council did not fully comply with the Data Protection Act but decided not to take any regulatory action against the Council. In relation to the complaint involving EIR, the ICO concluded that the Council had not fully complied with the EIRs and issued a decision notice ordering the Council to release the information for inspection as requested by the requester. Two of the FOI appeals were sent to the Council for processing as the appellants did not exhaust Council's procedures before approaching to the ICO. These requests have been dealt with by the Council. One of the FOI appeals is still being considered by the ICO.
 22. As with all years, types of requests have been varied and covered every service area of the Council, including waste, council tax data, highways maintenance and social services.
 23. For the period covered in this report, 41% of requests came from private citizens, 26% came from the media, 19% from companies. The remaining 14% came from a combination of charities, lobby groups and political parties.
 24. Last year, members requested information as to how much time and resources each directorate spends on dealing with requests. It is not possible to capture all the time spent by the Council officers in dealing with the FOI enquiries. However, on the basis of information supplied by the FOI champions, on average we estimate that each request takes, over two hours to process. For details, please see the attached Appendix which shows a breakdown by Directorate of time spent dealing with their requests.

25. In the last quarter of the year, the Council received a number of requests from councillors relating to high profile and sensitive issues. These took a disproportionate amount of Council resources and put additional pressure on the FOI champions in dealing with them. As a conservative estimate, officers across the Council spent approximately 60 hours dealing with just five requests.

Data Protection Act

26. 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.
27. 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.
28. For the year 2010/11, the Council received 57 subject access requests.
29. 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.
30. For the year 2010/11, the Council received 379 requests for data from such third party organisations.

Regulation of Investigatory Powers Act

31. There have been 40 authorisations under RIPA.
32. 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.
33. 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.
34. 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.
35. The new Codes recommend that the Council formally appoints a 'senior responsible officer' for RIPA in each authority. The Head of Legal and

Democratic Services 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.

RESOURCE IMPLICATIONS

Capital

36. None directly related to this report.

Revenue

37. 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/Other

38. None directly related to this report.

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

40. None directly related to this report.

POLICY FRAMEWORK IMPLICATIONS

41. The information contained in this report is consistent with and not contrary to the Council’s Policy Framework.

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KEY DECISION? Yes/No No

WARDS/COMMUNITIES AFFECTED:	None
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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Quarterly breakdown of FOI and EIR requests received by each Directorate 2010/11
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Documents In Members' Rooms

1.	None
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Integrated Impact Assessment

Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out.	No
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Other Background Documents

Integrated 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	
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