



## **POLICY AND RESOURCES (PERFORMANCE MANAGEMENT) SCRUTINY COMMITTEE – 24TH NOVEMBER 2011**

**SUBJECT: FREEDOM OF INFORMATION / ENVIRONMENTAL INFORMATION /  
DATA PROTECTION REQUESTS 1 JAN – 30 JUNE 2011**

**REPORT BY: DEPUTY CHIEF EXECUTIVE**

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### **1. PURPOSE OF REPORT**

- 1.1 To inform members of the demands placed on the Authority through requests for information received under the Freedom of Information Act 2000 (FOI), Environmental Information Regulations 2004 (EIR) and Subject Access Request (SARs) made under the Data Protection Act 1998 (DPA), to provide high-level analysis of trends and performance in dealing with the requests, and identify current issues which may impact on the authority.

### **2. SUMMARY**

- 2.1 The Authority's compliance rate for dealing with requests within the legal timescales, during the first 6 months of 2011, has risen to 84%, despite a 34% increase in the number of request received during this period. This compares to the 21% increase in requests received in 2010 which resulted in a 74% compliance rate. The compliance rate for the number of SARs completed within the legal timescale has also risen to an average of 97% for the same period, compared to an overall compliance rate of 79% in 2010.

### **3. LINKS TO STRATEGY**

- 3.1 We have identified a number of values that guide the operation of the authority. One of the sets of values covers openness, integrity and accountability. The Council's work in relation to FOI and EIR contributes to this area by making otherwise unpublished information available to residents of the county borough and beyond. The DPA contributes to this area by protecting the personal data that the public entrusts to the Council and by giving individuals the right to access their own personal information, known as a Subject Access Request (SAR).

### **4. THE REPORT**

- 4.1 The Authority continues to see an increase in the number of requests for information being made under this legislation. During the period covered in this report i.e. 1st January – 30th June 2011 we received 436 requests under FOI/EIR compared to 345 during the same period in 2009, representing a 26% increase.

During the period, this Authority processed 30 SARs made under the DPA, which is double the number received during the same period in 2010. The Corporate Information Unit also dealt with a further 16 applicants who did not go on to submit the paperwork required to make a formal SAR.

A further 4 requests were considered but refused on the basis that they did not fulfil the requirements of the definition of a valid request as outlined in the FOI/EIR legislation.

4.2 The total number of information requests received since January 2005 are detailed in the table below. The table compares a count of all requests that the Corporate Information Unit has been involved in since 2005, including activities covered by the DPA.

Year	No. of FOI/EIR/DPA requests (inc. advice given re: data sharing, etc.)	Percentage increase on previous year
2005	394	N/a
2006	486	23%
2007	500	3%
2008	634	27%
2009	715	13%
2010	864	21%
2011	562 (up to 30 <sup>th</sup> June)	ongoing

In the first half of the year, we have seen a 34% increase in the number of requests received, compared to the same period in 2010 (NB this includes FOI/EIR/DPA/Data sharing advice, etc).

The receipt of requests is a relatively constant demand, with little seasonal variation evident, however, as can be seen from the table above, the number we are receiving is rising year on year. At any one time the Corporate Information Unit can be dealing with in excess of 100 active requests, although this can vary day to day. This has risen from an average of 70 active requests in the previous year.

Information commonly requested under FOI is now being considered for inclusion on the Council's website, which enables the Authority to comply with its legal duty to proactively make information available, the intention being to provide potential FOI applicants with the information they need without having to make a specific request to the Council.

4.3 Compliance – see Appendices 3 and 4:

- 84% of FOI/EIR requests received during the first 6 months of 2011 were answered within the legal compliance time of 20 working days, compared to 74% during 2010. This means that we have managed to achieve our corporate target of 80% compliance rate.
- 97% of SARs received during the first 6 months of 2011 were answered within the legal compliance time of 40 calendar days, compared to 73% during the same period in 2010, which is a significant improvement on our performance in the previous year, and well above our corporate target of 80% compliance rate.

The improvement in performance has been achieved despite the continuing increase in the number of requests received and the complex nature of many of the requests requiring cross directorate support and/or extensive third party consultation, but falling under the fees threshold.

The principal reasons for the improvement in achieving the compliance deadlines for dealing with requests can be attributed to changes that have been made to the corporate process for dealing with FOI requests. These changes include:

- the introduction of a new 15 working day internal target for draft responses to be completed;
- increased involvement of Heads of Service in authorising responses;
- circulation of weekly monitoring reports by Corporate Information Unit;
- staff awareness sessions to explain the new process;
- continuing support provided by the Corporate Information Unit.

Also more staff are able to identify requests that should be processed under the FOI/EIR/DP legislation at an earlier stage, as a result of the legislative training provided throughout the year, which has reduced delays in processing requests.

It was previously reported that the Information Commissioner's Office (ICO) was intending to target timeliness as they considered this to be an area of compliance which is regularly problematic, and they will target an authority if:

- they receive more than six complaints concerning delay about an authority within a six month period;
- it appears to the ICO that an authority has exceeded the time for compliance by a significant margin on one or more occasions;
- it appears that less than 85% of requests are receiving a response within the appropriate timescales.

While our performance has improved since last year, we are still falling short of the level set by the ICO and it is hoped that the 85% target will be achieved by the end of the year as a result of the changes made to the FOI process and increasing staff awareness.

- 4.4 Type of requestor – FOI/EIR applicants have the right to remain anonymous, so any attempt to categorise them by type of requestor will never be completely accurate. However, below is a guide to the breakdown of requests received from each class of applicant, where they have declared if they are a journalist, MP/AM, etc.

Class	Number of Requests		
	2009	2010	2011 (1st Jan – 30th Jun 2011)
MP/AM	67 (11%)	41 (6%)	13 (3%)
Councillors	9 (1.5%)	5 (0.5%)	7 (2%)
Researcher	21 (3.5%)	21 (3%)	26 (6%)
Campaign Group	32 (5%)	48 (7%)	15 (3%)
Commercial	77 (13%)	92 (13%)	80 (18%)
Press	100 (17%)	152 (21.5%)	124 (28%)
Private/unknown	287 (49%)	340 (48%)	172 (39%)
Trade Union	Not recorded	7 (1%)	5 (1%)

It must be noted that the figures for 2011 only relate to the first half of the year, whereas the figures for 2009 and 2010 are for complete years. However, when compared with 2010, there is a noticeable increase in the number of requests received from councillors, researchers, commercial, trade unions, and particularly the press, and a significant drop in requests received from MP/AMs and Campaign Groups. Where we feel it will help the applicant we often contextualise the information provided, to assist their understanding

- 4.5 Recurring themes have not changed since last year and still include:

- Referral to Treasury Solicitor where persons have died with no known next of kin
- Council Budgets/Expenditure
- Housing Benefit
- NNDR/Council Tax
- Staffing information e.g. salaries, expenses, contact details, sickness levels
- Food hygiene inspections/reports

- 4.6 Outcome of requests – during the first 6 months of 2011, the number of FOI/EIR requests for which we provided all information was 333 (76%), we legally refused/part refused 99 requests (23%) for the reasons outlined below and the remaining 4 requests (1%) remain open at the time of collating this information – See Appendix 5.

Information Not Held – 12 requests were refused in full, as the Council did not hold the information requested. Where possible we complied with our legal duty to provide advice and assistance to the applicant by suggesting other organisations that may hold the information required.

Exemptions – In total, 90 exemptions were used to fully or partially refuse 82 of the requests received during the first 6 months of this year. Exemption Panel considered 53 requests for information, which resulted in 50 exemptions being applied to 44 requests, the remaining 9 requests were answered in full as no exemption was applied. In addition to the exemptions applied by Exemption Panel, the Corporate Information Unit applied a further 40 exemptions to 38 requests, with the majority of those being a fees refusal. The exemptions applied are detailed in Appendix 6.

Fees – 17 requests were refused in full because the estimated amount of work to answer the request would take more than 18 hours of staff time, in accordance with the FOI and DPA (Appropriate Limits and Fees) Regulations 2004. In addition to the 17 that were refused in full, a fees refusal was applied to a further 21 requests where we only disclosed part of the information requested.

- 4.7 Appeals – during the first half of 2011, the authority received 1 request for an Internal Appeal. The investigation is ongoing.

During the same period, the Authority received 4 complaints that we had failed to comply with the requirements of the DPA. Three of the complaints were initially dealt with internally, and in the first instance, the investigation found that there had not been a breach of the DPA and the case was closed. In the second case, the investigation found that we had failed to meet the requirements of the DPA and recommendations were made to the relevant Directorate to ensure that the breach was not repeated and the case has been closed.

In the third case, an investigation was carried out and recommendations made to the Service Area involved. However the complainant was not satisfied with the response sent to him by the Authority, and contacted the ICO. The ICO notified the Authority that, based on the information supplied to them, it was unlikely that we had complied with the requirements of the DPA and they requested that we submit an action plan explaining the steps we intend taking to ensure that we meet our obligations under the DPA in the future. The action plan was sent to the ICO and has been approved.

The 4th and final complaint received during this period came via the ICO and our investigation showed that we had failed to comply with the requirements of the DPA. The ICO were advised of the outcome of the investigation and the actions we have taken, and they have confirmed that they are satisfied that appropriate measures have been taken to prevent a recurrence and the case has been closed.

- 4.8 In addition to processing requests for information made under FOI, EIR and SARs under DPA, the Corporate Information Unit also provides training, advice and assistance to Directorates on how to protect personal data, including safe data sharing with internal and external organisations, and effective management of records.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 No direct financial implications.

## **6. PERSONNEL IMPLICATIONS**

- 6.1 No direct personnel implications.

## **7. CONSULTATIONS**

7.1 Consultations have taken place and are reflected in this report.

## **8. RECOMMENDATIONS**

8.1 It is recommended that the contents of the report be noted.

## **9. REASONS FOR THE RECOMMENDATIONS**

9.1 To be advised of the increasing demands being placed on the organisation to meet its obligations under the Freedom of Information Act 2000, Environmental Information Regulations 2004 and Data Protection Act 1998, and the penalties that could be incurred if we fail to meet those obligations.

## **10. STATUTORY POWER**

10.1 Freedom of Information Act 2000  
Environmental Information Regulations 2004  
Data Protection Act 1998

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### Appendices:

Appendix 1 FOI/EIR requests by Directorate/Service Area  
Appendix 2 DPA SAR requests by Directorate/Service Area  
Appendix 3 FOI/EIR - Timeliness  
Appendix 4 DPA SAR - Timeliness  
Appendix 5 FOI/EIR - Outcomes  
Appendix 6 FOI/EIR - Use of Exemptions (FOI) and Exceptions (EIR)