



POLICY AND RESOURCES SCRUTINY COMMITTEE - 2ND OCTOBER 2012

**SUBJECT: FREEDOM OF INFORMATION / ENVIRONMENTAL INFORMATION /
DATA PROTECTION REQUESTS 1ST JANUARY 2012 – 30TH JUNE
2012**

REPORT BY: DEPUTY CHIEF EXECUTIVE

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 half of 2012 was 82% (total received - 449), compared to the overall compliance rate of 84% (total received - 828) in the previous year. The compliance rate for the number of SARs completed within the legal timescale for the same period in 2012 was 67% (total received - 24) compared to an overall compliance rate of 87% (total received - 63) in 2011.

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 The Council's work in relation to FOI and EIR contributes to this area by making otherwise unpublished information available to residents of the county borough and beyond.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 number of FOI/EIR requests received during this period continues to evidence an increase in demand. Projecting levels at the current rate for the rest of the year will show an annual increase of nearly 9%.

During this period, this Authority received 24 SARs made under the DPA, compared to 30 received during the same period in 2011. The Corporate Information Unit also dealt with a further 13 applicants who have not yet submitted the paperwork/payment required to make a formal SAR.

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, and highlights how they have increased year on year.

| 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 | 1084 | 25% |
| 2012 | 601 (up to 30th June) | ongoing |

If we continue to receive requests at the same rate throughout the rest of the year, it is estimated that the Corporate Information Unit will again see an increase in the number of requests received compared to the previous year of around 11%.

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. The number of requests being dealt with by the Corporate Information Unit at any one time has risen from around 100 active requests, to in excess of 130, although this can vary day to day. These figures include FOI/EIR/DPA/Data sharing advice, etc.

Information frequently requested under FOI is now posted 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 formal request to the Council.

4.3 Compliance – see Appendices 3 and 4:

- 82% of FOI/EIR requests received during the first 6 months of 2012 were answered within the legal compliance time of 20 working days, compared to 84% during the whole of 2011. Although our compliance rate has fallen slightly, we have managed to maintain our corporate target of 80% compliance rate. It should also be noted that we are receiving more complex requests requiring cross directorate support and/or extensive third party consultation, but still falling under the fees threshold. These more complex requests usually take longer to process.

Last year, new procedures were introduced to improve our compliance with meeting the 20 working day deadline for dealing with FOI requests, and since then, our performance has improved from 73% in 2010 prior to the changes being implemented.

The changes included:

- 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.

It has been 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 that they would target authorities receiving more than 6 complaints concerning delays within a 6 month period, if they feel that an authority has

exceeded the time for compliance by a significant margin on one or more occasions or it appears that less than 85% of requests received are not responded to within the appropriate timescale.

To date no complaints have been made to the ICO by any of our FOI/EIR applicants and efforts continue to improve performance against target notwithstanding the increasing demands for service and resource constraints currently experienced within the team due to one officer currently being away on maternity leave.

- 67% of SARs received during the first 6 months of 2012 were answered within the legal compliance time of 40 calendar days, compared to 87% during the whole of 2011, which is well below our corporate target of 80% compliance rate. The fall in compliance can partly be attributed to the increase in the number of complex SARs submitted by employees which can be more difficult to process in terms of the volume of the information involved, and the sensitive nature of the information contained on the file.

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 | 2012 Jan – June |
| MP/AM | 67 (11%) | 41 (6%) | 30 (3.5%) | 25 (5.5%) |
| Councillors | 9 (1.5%) | 5 (0.5%) | 12 (1%) | 7 (1.5%) |
| Researcher | 21 (3.5%) | 21 (3%) | 49 (6%) | 23 (5%) |
| Campaign Group | 32 (5%) | 48 (7%) | 37 (4%) | 15 (3%) |
| Commercial | 77 (13%) | 92 (13%) | 166 (20%) | 154 (33.5%) |
| Press | 100 (17%) | 152 (21.5%) | 224 (26.5%) | 89 (19%) |
| Private/unknown | 287 (49%) | 340 (48%) | 320 (38%) | 146 (32%) |
| Trade Union | Not recorded | 7 (1%) | 8(1%) | 2 (0.5%) |

During the first 6 months of 2012, there was a noticeable increase in the number of requests received from commercial organisations, whereas the number of requests received from the press dropped by 7.5%.

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
- Planning
- Empty properties

Where possible, information which is asked for frequently is now routinely made available on our website and requests are refused using a S21 exemption - information accessible to the applicant by other means e.g. referrals made to the Treasury Solicitor is now available on the CCBC website.

4.6 Outcome of requests – during the first 6 months of 2012, the number of FOI/EIR requests for which we provided all information was 296, we legally refused/part refused 123 requests for the reasons outlined below, and 1 request was refused as it was considered vexatious (See Appendix 5).

Information Not Held – 13 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, 126 exemptions were used to fully or partially refuse requests received during the first 6 months of this year, as opposed to 90 exemptions applied in the same period during 2011. This highlights that requests received by the authority are more complex and take longer to process as exemptions need to be considered/applied. The exemptions applied are detailed in Appendix 6.

Fees Refusals – 32 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 32 that were refused in full, a fees refusal was applied to a further 23 requests where we only disclosed part of the information requested.

- 4.7 Appeals – during the period January to June 2012, the authority received 9 requests for Internal Appeal. The original decision was upheld in 5 cases, and investigations are ongoing for the remaining 4.

During the same period, 1 of the applicants did not agree with the outcome of their internal appeal and contacted the ICO to request an investigation into our refusal to provide the information. The ICO have completed their investigation and decided that the exemption was correctly applied and that the council was correct in its decision not to release the information requested by the applicant.

- 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. Notable achievements in 2011 include:

- A very positive audit report from Price Waterhouse Cooper that identified Caerphilly CBC as being ahead of every other public sector organisation in Wales in terms of information governance. The Council has continued to improve via the work of the Corporate Information Unit and the newly established cross-directorate Information Governance Project Team.
- Training school staff on data protection to ensure that they have appropriate skills to manage their role as Data Controllers for their own school.
- Facilitating the development of WASPI Information Sharing Protocols (ISPs) across a variety of organisations for a number of projects covering Education and Social Services e.g. Team Around the Child. ISPs assist each organisation in understanding clearly when responsible sharing of personal data is appropriate.
- Advising on the establishment of key projects to ensure they are compliant with all aspects of data protection e.g. Interconnect which is a joint database to enable basic information sharing across five local authority's social services teams.
- The submission of a successful bid for circa £210k ESF monies to support personal data sharing across public, private and voluntary sector organisations in the Caerphilly Local Service Board region. The funding spans 30 months of project activity through to December 2014
- Information Governance Project Team has mapped a large proportion of the Authority's information holdings, with a view to identifying information that no longer needs to be retained (saving costly storage space); auditing access to ensure it is appropriate; identifying records vital to the Authority to ensure they are sufficiently protected; establishing a common framework for filing information across service areas, so information can be located efficiently without relying on individual knowledge.
- Compliance of a growing number of service areas with the British Standard on Evidential weight and legal admissibility of information stored electronically (BS10008), enabling

destruction of hard copy records and saving significant costly storage space.

- Advising joint organisations such as Gwent Visual Impairment Service on records management and legal admissibility of scanned images.
- Records moved from Hawtin Park to Ystrad Mynach Records Centre
- The Information Governance Project Team are currently developing a Protecting Information e-learning module which will be rolled out across the Authority.

5. EQUALITIES IMPLICATIONS

- 5.1 There are no potential equalities implications of this Report and its recommendations on groups or individuals who fall under the categories identified in section 6 of the Council's Strategic Equality Plan. There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this Report.

6. FINANCIAL IMPLICATIONS

- 6.1 No direct financial implications.

7. PERSONNEL IMPLICATIONS

- 7.1 No direct personnel implications.

8. CONSULTATIONS

- 8.1 Consultations have taken place and are reflected in this report.

9. RECOMMENDATIONS

- 9.1 It is recommended that the contents of the report be noted.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 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.

11. STATUTORY POWER

- 11.1 Freedom of Information Act 2000
- 11.2 Environmental Information Regulations 2004
- 11.3 Data Protection Act 1998

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Appendices:

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| 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) |