
Audit and Procurement Committee

19 December 2016

Name of Cabinet Member:

Cabinet Member for Policy and Leadership – Councillor Duggins

Director Approving Submission of the report:

Executive Director Resources

Ward(s) affected:

None

Title:

2015/16 Annual Freedom of Information / Data Protection Act Report

Is this a key decision?

No

Executive Summary:

Under the Freedom of Information Act 2000 (FOIA) the Council is required to respond to requests for information it holds from members of the public subject to any exemptions that may apply.

Section 39 of FOIA requires the Council to process requests for environmental information under the Environmental Information Regulations (2004) (EIR). The EIR process, whilst similar to FOIA, promotes 'proactive dissemination' of information and provides fewer grounds for the Council to withhold information. Both FOIA and EIR permit personal data, as defined by the DPA, to be withheld where the applicant is not the subject of the data.

The Data Protection Act 1998 (DPA) requires the authority to process personal data in accordance with the principles of the Act, which includes providing access to information the Council processes about them, subject to any exemptions.

The Information Commissioner's Office (ICO) oversees compliance with FOIA, EIR and DPA, promotes good practice and deals with complaints from members of the public who are not satisfied with the response they receive.

This report provides an overview of the number of requests for information received under the FOIA, EIR and DPA; the proportion completed within the legislative timescales and number and outcome of internal reviews and complaints made to the ICO during 2015/16. It is good practice to prepare this report regularly and provide these details on the Council's compliance with relevant legislation.

Increasingly the Council, through its Information Management Strategy work, is seeking to make as much of its data open to the public to reduce the need for the FOIA to be utilised. This is important as the Council significantly reduces the resources it has available and seeks new solutions to the City's needs which can arise from sharing data appropriately.

Recommendations:

The Audit & Procurement Committee are requested to consider and note:

1. Note the Council's performance for responding to access to information requests report, the number and outcome of internal reviews and the number and outcome of complaints made to the ICO.

List of Appendices included:

None.

Other useful background papers:

None.

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

1. Context (or background)

1.1 Requests for Information under FOIA/EIR/DPA

- 1.1.1. The Council is obliged to respond to information requests under FOIA/EIR within 20 working days, subject to any relevant exemptions.
- 1.1.2. The Code of Practice, issued by the Secretary of State for Constitutional Affairs under S45 of FOIA, requires public authorities to have a procedure in place to deal with complaints in regard to how their requests have been handled. This process is handled by the Information Governance Team as an FOI/EIR review.
- 1.1.3. After a review has been completed an applicant has a right to complain to the Information Commissioner's Office (ICO) for an independent ruling on the outcome of the review. Based on the findings of their investigations, the ICO may issue a Decision Notice. The ICO also monitors public authorities who do not respond to at least 85% of FOI/EIR requests they receive within 20 working days.
- 1.1.4. The DPA provides individuals with the right to ask for information that the Council holds about them. These are also known as Subject Access Requests (SARs). The Council should be satisfied about the individual's identity, have sufficient information about the request and receive the statutory £10 fee before it can respond. SARs have to be completed within 40 calendar days.
- 1.1.5. There is no requirement for the Council to have an internal review process for SARs. However, it is considered good practice to do so. Therefore, like with FOIA/EIR requests, the Council informs applicants of the Council's internal review process. However, individuals may complain directly to the ICO if they feel their rights have not been upheld.
- 1.1.6. This report relates to the Council's handling of requests for information under FOIA, EIR and DPA. It outlines the number of requests received, proportion of responses completed within the set timescales and outcomes of both internal reviews and complaints made to the ICO during 2015/16.

1.2 2015/16 FOIA/EIR Requests

- 1.2.1 The Council has continued to manage FOI requests within the SharePoint system, since May 2015. The Council received 1328 FOI/EIR requests for the period 2015/16. This is an increase from the 1307 received during the previous year. The Council responded to 60% of FOIA/EIR requests within 20 working days in 2015/16 compared to 79% for the previous year.
- 1.2.2 It takes on average 3 hours to respond to most FOI/EIR requests but can take up to 20 hours to respond to complex requests. Requests can often require input from various Council teams and require sign off from different tiers of management. The complexity of the information requested will determine who needs to provide input and who approves the final response before it is published. As a general rule, the Council is unable to charge for responding to information requests. However, the legislation does enable the Council to charge for requests which are likely to take in excess of 18 hours to locate, retrieve and collate information. In reality, the Council handles very few requests, which fall into this category.

- 1.2.3 The Council does not record the reasons why requests exceeded the statutory timescales. This can be due to delays in locating information held/and or internal deliberations around the application of any valid exemptions.
- 1.2.4 The Council has a small (4.67 FTE) Information Governance team responsible for coordinating requests. Throughout 2015/16 there were a number of vacancies within the Information Governance Team, which will have had an impact on the Council's ability to respond within the required timescales. The Team was fully recruited to with effect from 29 March 2016. Now that the Team is complete, this will have a positive impact on the performance rate for 2016/17 assuming demand does not increase. This is supported by the fact that the number of requests responded to within the statutory timescale for the year to date is 60% but the Team have dealt with more requests than at the same time last year. Currently, there is no requirement for local authorities to report on their performance in relation to the handling of information requests. Therefore, it is difficult to compare the Council's performance with other similar local authorities. However, it is understood that some of the local authorities within the West Midlands are responding to less than 85% of requests within the statutory timescales.
- 1.2.5 There have been very large cuts across the public sector since 2010 and local government has suffered disproportionately badly within the Government's overall resource allocation framework. The City Council has received reductions in its core Government revenue funding equivalent to £95m (44%) between 2010/11 and 2016/17 with the prospect of further cuts of £25m over the next 3 years. The Council has reduced its workforce by circa 28% - much of that in its support services. Whilst the Council is clearly still responsible for meeting its statutory obligations, the Council's financial position is important context. It is likely to have had an impact on the ability to respond within the timescales and means that we need to look critically at how we can do things differently in the future.
- 1.2.6 The Council's Information Management Strategy Group (IMSG) monitors the number of requests and the number of days it takes to respond. The Group is mindful of the need to maintain transparency despite the reduction in resources to handle information requests. It has set up a working group to consider how different ways of working can be used to manage information requests. This work includes proactively publishing more datasets so that information is more readily available to the public to reduce the need for FOI requests to be made.
- 1.2.7 Members of the IMSG are working with the Strategic Management Board and the wider Corporate Leadership Team to understand the number and type of requests by Directorate and to identify delays in the processes and how to address them. As well as publishing more information, this will include additional guidance/training on the use of SharePoint and handling information requests.

1.3 **2015/16 FOIA/EIR Internal Reviews and Complaints to the ICO**

- 1.3.1 The Council received 18 requests for FOIA/EIR internal reviews with the following outcomes.
- 10 were not upheld - exemptions applied were maintained and no further information provided
 - 4 partially upheld - further information provided
 - 4-upheld - information provided.
- 1.3.2 Three complaints were referred to the ICO. The reasons for these were:

- 1- not received a response to their request for an internal review; internal review processed
- 1 - not received an initial response to their request- response provided
- 1 stated they had not received a response to their internal review. The response was re-issued.

1.3.3 Depending on the complexity, it can take up to 4 hours to deal with an internal review or ICO complaint.

1.4 **2015/16 DPA Requests**

1.4.1 The Council received 268 DPA requests during the course of 2015/16, of which 93 were valid requests. Of these 49 (53%) were completed within 40 calendar days. The Council does not record the reasons why requests exceeded the statutory timescale.

1.4.2 The majority of the requests that exceed the statutory timescale of 40 calendar days are social care requests. The reason for this (though not recorded) is considered to be mainly due to the complexity and volume of information held coupled with the staffing issues referred to in paragraph 1.2.3. Again, recruitment to the Information Governance Team is expected to have a positive impact on the hit rate for SARs. This is supported by the fact that for 2016/17 to date, the Council has received 94 valid requests and the completion rate within the timescales is 75%. The Information Governance Team are currently reviewing the way in which the Council responds to SARs to see if the timescales for responding can be improved.

1.4.3 It takes on average 4 hours to respond to simple SARs however, it can take up to 60 hours to respond to complex requests. This covers time taken for an officer to verify the requester's identity, receive payment, log the request, retrieve information and redact third party personal data. It is not possible to charge for SARs over and above the £10 fee provided for by the legislation.

1.5 **2015/16 DPA Internal Reviews and Complaints referred to the ICO**

1.5.1 The Council received two requests for internal reviews for SARs in the course of the year. Both were partially upheld and additional information was disclosed.

1.5.2 There were two complaints referred to the ICO regarding SARs during the course of the year. One of these was a complaint regarding the Council's failure to provide a response within the required timescale. The ICO instructed the Council to provide the information by a particular date. The Council provided the information in accordance with the ICO's requirements and also apologised to the requester for the delay.

1.5.3 The other complaint related to information that the Council had withheld under an exemption. The ICO determined that further information needed to be disclosed, which the Council provided.

1.6 **Independent review of the FOI**

1.6.1 In July 2015, an Independent Commission was set out to report on the effectiveness of the FOIA ten years since it came into force. The Commission consulted a wide range of public bodies on the operation of FOIA. A joint response was submitted on behalf of all West Midlands Authorities which recognised the importance of transparency but highlighted the increasing challenges of dealing with requests for information in the current climate.

- 1.6.2 The Commission concluded that FOIA is generally working well but that they would like to see a reduction in delays in responding to requests. They made a series of recommendations which include changes to how extensions of time are dealt with, imposition of statutory time limits for dealing with internal reviews and the publication of performance statistics. The Commission were not persuaded that there were any convincing arguments to impose fees for some/all requests for information. The full report published in March 2016 is available at this [link](#).

2. Options considered and recommended proposal

- 2.1 It is important that the Council continues to monitor and report on its performance in relation to access to information requests, reviews and ICO complaints. This, together with the oversight of elected Members helps to promote high standards of information governance and continuous improvement. It is therefore proposed that the Officers continue to prepare an annual report that goes to the Council's Audit & Procurement Committee to provide assurance that the Council is complying with its responsibilities under FOIA and DPA.

3. Results of consultation undertaken

- 3.1 None.

4. Timetable for implementing this decision

- 4.1 None.

5. Comments from Executive Director, Resources

- 5.1 Financial implications
There are no financial implications in relation to the recommendations in this report.
- 5.2 Legal implications
There are no specific legal implications arising out of the recommendations. However, the Council's performance is subject to external scrutiny by the ICO. The monitoring and reporting on the outcomes of ICO complaints represents good practice and promotes good governance and service improvement.

6. Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

The monitoring and reporting of the Council's performance for responding and handling access to information requests under FOIA and DPA together with all ICO complaints will promote high standards of information governance and contribute to the openness and transparency of the Council's decision making and commitment to continuous service improvement and equality.

6.2 How is risk being managed?

The reporting and monitoring on the Council's performance and outcomes of ICO complaints will help reduce the risk of the ICO upholding complaints and taking

enforcement action against the Council.

6.3 What is the impact on the organisation?

As set out in 6.1

6.4 Equalities / EIA

As set out in 6.1

6.5 Implications for (or impact on) the environment

None.

6.6 Implications for partner organisations?

None

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