

<b>DECISION-MAKER:</b>	STANDARDS AND GOVERNANCE COMMITTEE
<b>SUBJECT:</b>	FREEDOM OF INFORMATION, DATA PROTECTION AND REGULATION OF INVESTIGATORY POWERS ACTS: ANNUAL REVIEW 2011-12
<b>DATE OF DECISION:</b>	25 JUNE 2012
<b>REPORT OF:</b>	HEAD OF LEGAL, HR & DEMOCRATIC SERVICES
<b>STATEMENT OF CONFIDENTIALITY</b>	
None	

### **BRIEF SUMMARY**

A report detailing statistical information for the financial year 2011-12, the seventh 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 1<sup>st</sup> April 2011 – 31<sup>st</sup> March 2012 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 2011-12, the seventh 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 provides an audit trail to demonstrate to the Information Commissioner that the Council has robust structure in place to compliance with the legislation and to maintain the profile of information law requirements and resource implication 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.

## FOIA

6. The FOIA came fully into force on 1<sup>st</sup> 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 seventh full year of the FOIA and statistics show a continued increase in the number of requests received. The number has increased from 761 for the year ending March 2011 to 978 for the year ending March 2012. Please see appendix 1 for the directorate breakdown of the requests.
13. To summarise, the Council has received a total of 978 ‘non’ routine’ requests between 1<sup>st</sup> April 2011 and 31<sup>st</sup> March 2012. This comprises 968 dealt with as FOIA requests and 10 EIR requests.
14. 2011/12 has seen another overall increase in the volume of requests received. The average number of requests received per month was 81.5, compared with 63.5 last year.
15. During the year, 97% of all monitored FOI and EIR 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. The overall response time remains good, with the Council responding to requests within 11.06 days on average. As per the reported figures, the Environment Directorate and Resources Directorate

(now Corporate Services) received the most requests, each dealing with 241 and 243 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 2011/12, the Council issued 58 Refusal Notices on fees grounds compared with 40 last year.
17. Of all requests received during the year, 75% of information requested was disclosed in full. Of the remaining 25% of requests, 5% of information was not held by the Council, 5% of information was withheld either because it was exempt or a fees notice was issued and 14% involved a partial disclosure, usually the redaction of personal information such as individual/contact details or confidential/commercially sensitive contract or financial information. The remainder of the requests were withdrawn.
18. Of the 959 requests responded to, 100 were deemed to be covered by an absolute exemption.
19. Of the 959 requests responded to, 15 requests were considered by the Public Interest Test Panel as they were deemed to be covered by one or more qualified exemptions.
20. Six FOI 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 has been one FOI appeal made to the Information Commissioner's Office (ICO). The request was initially refused on cost grounds. To resolve the issue and assist the requester, the Council waived its right to charge and provided the full information to the requester.
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, 50% of requests came from private citizens, 19% came from the media, 18% from companies. The remaining 13% came from a combination of charities, students, lobby groups and political parties etc.
24. Previously, 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 2 which shows a breakdown by Directorate of time spent dealing with their requests.
25. From 1 April 2012, the Council has appointed a SIRO (Senior Information Risk Officer) for each directorate which replaces the previous FOI Champion structure. The introduction of the SIRO role is intended to improve information governance and compliance with Data Protection and Freedom of Information

legislation across the Council and to ensure directorates have clear 'ownership' of requests made to them and a better understanding of the impact of information law requirements on the Council and directorate resources .

## DPA

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 2011/12, the Council received 73 subject access requests compared with 57 last year. 28 of these were dealt under the corporate procedures and 45 were relating to social services and were dealt by the Customer Care & Complaints Team of Children Services and Learning ('CSL') directorate.
29. Only 60% of the Subject Access Requests were responded within the statutory timescales of 40 calendar days, the majority of the defaults occurring in CSL. One of the corporate and 28 of the CSL relating requests were not responded within the statutory timescales of 40 calendar day.
30. As a result of this significant default being brought to the attention of the Corporate Legal team and concerns in relation to the level of compliance being achieved in this area the Council's Data Protection Officer instructed the Customer Care and Complaints team to commence logging all requests with the Corporate team (on receipt and closure of requests) in order that this situation can be monitored and appropriate instruction, advice and guidance offered to CSL to improve the Council's performance in this area. Logging was due to commence from 1<sup>st</sup> April 2012 but nothing has been received from CSL. The Council's ICO has been instructed to remind them of the requirement to log requests with him and to ensure compliance with immediate effect.
31. One DP appeal was made to the Council's Internal Corporate Complaints department, regarding decisions made to withhold or partially withhold information requested. Following review, additional information was located and released to the requester. This was relating to a social care file.
32. In the year 2011/12 the Information Commissioner investigated four incidents of loss of personal data by the Council. The ICO is also investigating a further complaint in relation to the Audio recordings in taxis.
33. Sometimes there is a requirement to disclose 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 of exemptions 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.

34. For the year 2011/12 the Council received 433 requests for data from such third party organisations.

### RIPA

35. There have been 42 authorisations under RIPA in 2011/12.
36. 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.
37. 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.
38. The Council is required to formally appoint a 'senior responsible officer' for RIPA. The Head of Legal, HR 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.
39. The Protection of Freedom Act 2012 gained Royal Assent on 1<sup>st</sup> May 2012 and will subsequently change, among other things, the matter to which RIPA authorisations may be obtained and the process for doing so. In particular the Act will require judicial approval for surveillance activities in future through application to the Magistrate Courts. Training and guidance for Council officer involved in RIPA processes is currently being arranged by Corporate Legal Team and will take place in July 2012.

## **RESOURCE IMPLICATIONS**

### Capital

39. None directly related to this report.

### Revenue

40. 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

41. None directly related to this report..

## **LEGAL IMPLICATIONS**

### Statutory power to undertake proposals in the report:

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

### **Other Legal Implications**

43. None directly related to this report.

### **POLICY FRAMEWORK IMPLICATIONS**

44. 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

<b>WARDS/COMMUNITIES AFFECTED:</b>	
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### **SUPPORTING DOCUMENTATION**

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

#### **Appendices**

1.	FOI, EIR and DP requests received in the year 2011-12 (directorate breakdown)
2.	Reported estimated time spent on EIR/FOIs in 2011/12

#### **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.	Yes/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)
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2.		