

DECISION-MAKER:	GOVERNANCE COMMITTEE		
SUBJECT:	FREEDOM OF INFORMATION, DATA PROTECTION AND REGULATION OF INVESTIGATORY POWERS ACTS: ANNUAL REVIEW 2012-13		
DATE OF DECISION:	15 JULY 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

A report detailing statistical information for the financial year 2012-13, the eighth 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 2012 – 31st March 2013 relating to:
 - (a) Freedom of Information Act 2000 and associated legislation;
 - (b) Data Protection Act 1998; and
 - (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 2012-13, the eighth 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; it provides an audit trail to demonstrate to the Information Commissioner that the Council has robust structures in place to comply with the legislation and to maintain the profile of information law requirements and resource implications within the organisation.

DETAIL (Including consultation carried out)

5. As soon as possible after the meeting of the 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 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 eighth full year of the FOIA and the number of requests received has slightly decreased from 978 for the year ending March 2012 to 935 for the year ending March 2013. Please see appendix 1 for the directorate breakdown of the requests.
13. To summarise, the Council has received a total of 935 'non' routine' requests between 1st April 2012 and 31st March 2013. This comprises 930 dealt with as FOIA requests and 5 as EIR requests.
14. The average number of requests received per month was 78, compared with 81 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 11.42 days on average. As per the reported figures, the Environment and Economy Directorate and Corporate Services received the most requests.
16. The complexity and detail of requests has remained static 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 2012/13, the Council issued 57 Refusal Notices on fees grounds compared with 58 last year.
17. Of all requests received during the year, 72% of information requested was disclosed in full. Of the remaining 28% of requests, 6% of information was not held by the Council, 19% of information was withheld either because a fees notice was issued or it was exempt (e.g. requests for personal information such as individual/contact details or confidential/commercially sensitive contract or financial information). The remainder of the requests (3%) were withdrawn.
18. Of the 919 requests responded to, 179 were deemed to be covered by absolute exemptions and accordingly some or all of the requested information was withheld.
19. Of the 919 requests responded to, 32 requests were considered by the Public Interest Test Panel as they were deemed to be covered by one or more qualified exemptions.
20. Eight individuals sought a review of decisions made to withhold or partially withhold information requested. Of these two were requesting new information and were responded to as new requests. Two appeals were partly upheld and further information was disclosed. Four appeals were dismissed.
21. To our knowledge, there have been no FOI appeals made to the Information Commissioner's Office (ICO) this year.
22. As with all years, types of requests have been varied and covered every service area of the Council. Requesters have sought information relating to Council finances, HR matters, council tax data, highways maintenance and the provision of social services.
23. For the period covered in this report, 69% of requests came from private citizens, 13% came from the media, 11% from companies/businesses. The remaining 7% came from a combination of charities, students, lobby groups and political parties etc.
24. In previous years, members have requested information as to how much time and resources each directorate spends on dealing with requests. Last year we reported that on average it takes over two hours to process an FOI request for the Council. This year we have not been able to specifically

capture this information; however, we estimate that the time spent by Council officers in dealing each request has remained the same as of the previous year.

25. On 1 April 2012, the Council appointed a SIRO (Senior Information Risk Officer) for each directorate. This replaced 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 obligations 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. This new structure is working well in terms of improving accountability for requests and also from a practice point of view.

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 2012/13, the Council received 141 subject access requests compared with 73 last year; 64 of these were dealt under the corporate procedures and 77 were relating to social services and were dealt by the Customer Care and Complaints Team of Children Services and Learning ('CSL') directorate.
29. 95% of the Subject Access Requests were responded to within the statutory timescales of 40 calendar days. Three of the corporate and five of the CSL relating requests were not responded to within the statutory timescales of 40 calendar days.
30. Four DPA appeals were made to the Council's Internal Corporate Complaints department, regarding decisions made to withhold or partially withhold information requested. Three of these were dismissed and following review of one appeal, additional information was located and released to the requester. All of these four cases were social care records requests.
31. In 2012/13, the Information Commissioner investigated no incidents of loss of personal data by the Council. However, it should be noted that in 2012/13, the ICO served a decision notice on the Council in relation to audio recordings in taxis which was appealed at the Information Tribunal. As a result of the decision of the Tribunal, the Council has now ceased audio recordings in taxis.
32. In 2011, the Council reported a former employee who unlawfully obtained sensitive medical information relating to over 2,000 people. The former employee, who previously worked as a Community Health Promotions Manager for the Council and was responsible for managing the Council's Active Options GP referral service, sent the information to his personal email account after being told he was being made redundant. He was hoping to use the data for a new fitness company he was setting up. He was prosecuted

under s55 of the DPA, fined £3,000, ordered to pay a £15 victim surcharge and £1376.00 costs.

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. In 2012/13, the Council received 539 requests for data from such third party organisations compared to 433 in the previous year.

RIPA

35. There have been 11 authorisations under RIPA in 2012/13, compared to 13 in 2011/12.
36. Examples of activity authorised in the main include covert surveillance of individuals suspected of anti-social behaviour and/or harassment 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 to obtain communications data if it is both necessary for the purpose of preventing or detecting crime and/or disorder and if 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' responsible for RIPA within the Council. 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 reporting of errors to the Surveillance Commissioner; engagement with Inspectors from the Office of Surveillance Commissioners and implementation of any subsequent action plan.
39. The Protection of Freedom Act 2012 gained Royal Assent on 1st May 2012 and changed, amongst other things, the manner in which RIPA authorisations may be obtained and the process for doing so. In particular the Act requires judicial approval for surveillance activities through application to the Magistrate Court. This has provided a degree of independent oversight over the Council's RIPA activities.
40. The Council was subject to its biennial RIPA inspection in May 2013 by an Inspector from the Office of Surveillance Commissioners. The Council received an extremely positive report and the Inspector concluded that "as found on previous inspections of Southampton City Council, there is much to commend: the regularly updated training on RIPA; the engaged and conscientious approach of all staff to use of the powers and their input to the inspection process; the very good policy documentation; the internal oversight regime and the good overall compliance standards." (*Office of Surveillance Commissioners Inspection Report, Southampton City Council, 14th May 2013*)

RESOURCE IMPLICATIONS

Capital/Revenue

41. None directly related to this report. The administration of information law within the Authority is managed within corporate overheads.

Property/Other

42. None directly related to this report.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

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

Other Legal Implications:

44. None directly related to this report.

POLICY FRAMEWORK IMPLICATIONS

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

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	N/A
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SUPPORTING DOCUMENTATION

Appendices

1.	FOI, EIR and DP requests received in the year 2012-13 (directorate breakdown)
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Documents In Members’ Rooms

1.	None
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Equality Impact Assessment

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

Equality 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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1.	None	
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