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| <b>DECISION-MAKER:</b>              | GOVERNANCE COMMITTEE   |
| <b>SUBJECT:</b>                     | FREEDOM OF INFORMATION, DATA PROTECTION AND REGULATION OF INVESTIGATORY POWERS ACTS: ANNUAL REVIEW 2014-15 |
| <b>DATE OF DECISION:</b>            | 15 JUNE 2015   |
| <b>REPORT OF:</b>                   | HEAD OF LEGAL AND DEMOCRATIC SERVICES  |
| <b>STATEMENT OF CONFIDENTIALITY</b> |  |
| None                                |  |

### **BRIEF SUMMARY**

A report detailing statistical information for the financial year 2014-15, the tenth 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 2014 – 31<sup>st</sup> March 2015 relating to:
  - a. FOIA and associated legislation;
  - b. DPA 1998;
  - c. RIPA 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 2014-15, the tenth 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**

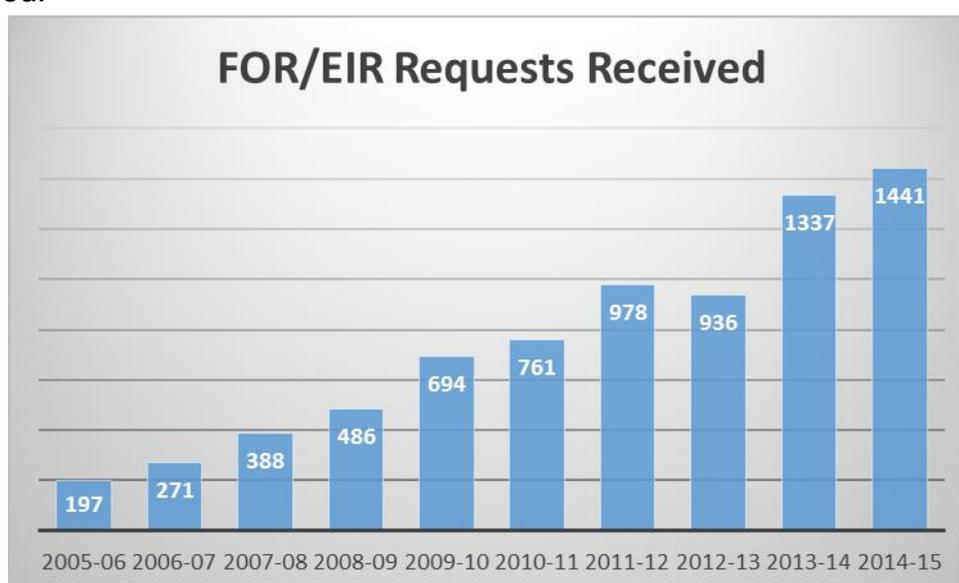
4. The alternative to bringing this report before members is to not report the yearly analysis. This was rejected because it is considered to be good governance to report such matters to members, provides an audit trail to demonstrate to the Information Commissioner that the Council has robust structure in place to comply 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 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 tenth full year of the FOIA and statistics show a continued increase in the number of information (FOI/EIR) requests received.

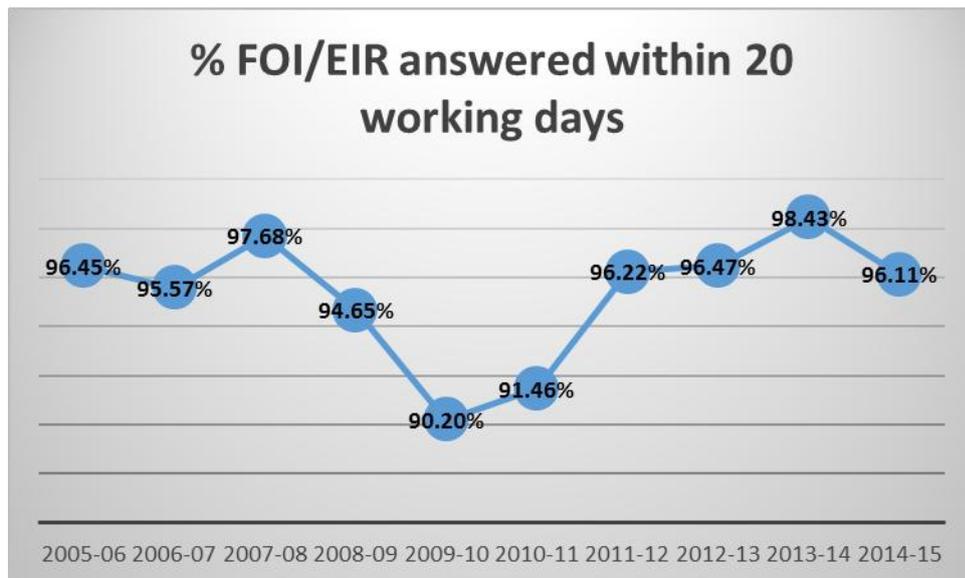


The number has increased from 1337 for the year ending March 2014 to 1441 for the year ending March 2015.

The directorate breakdown of the requests is as follows:

| 2014-15      | FOI         |              |              | EIR       |            |              |
|--------------|-------------|--------------|--------------|-----------|------------|--------------|
|              | Rec'd       | Resp %       | Days         | Rec'd     | %          | Days         |
| Corporate    | 502         | 98.41        | 8.05         | 0         | n/a        | n/a          |
| People       | 452         | 94.91        | 14.48        | 0         | n/a        | n/a          |
| Place/Trans  | 467         | 94.65        | 12.49        | 20        | 100        | 10.94        |
| <b>Total</b> | <b>1421</b> | <b>96.18</b> | <b>11.56</b> | <b>20</b> | <b>100</b> | <b>10.94</b> |

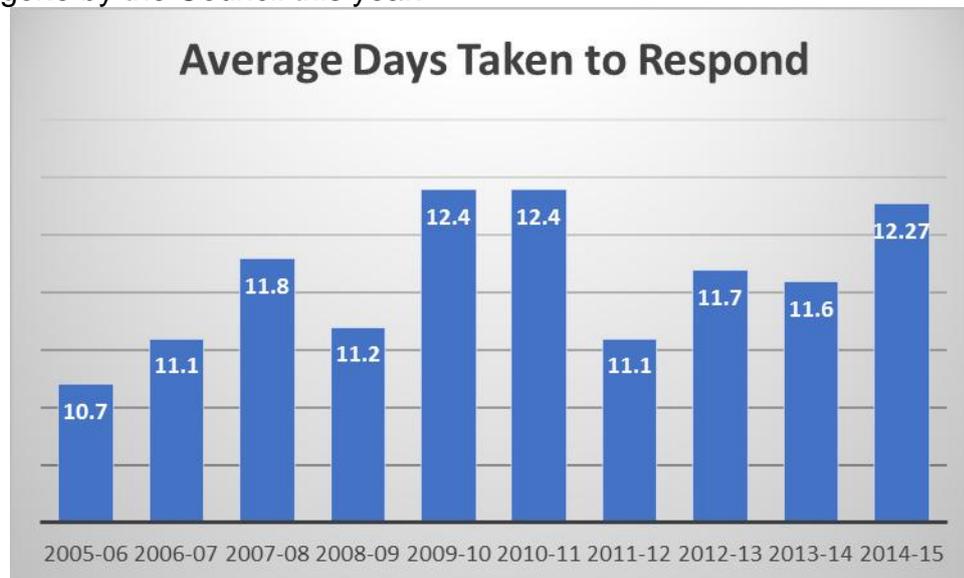
13. To summarise, the Council has received a total of 1441 requests in 2014/15. This comprises 1421 dealt with as FOI requests and 20 EIR requests.
14. 2014/15 has seen an overall increase in the volume of requests received in comparison to previous years. The average number of requests received per month was 120, compared with 111 last year.
15. During the year, 96.11% of all monitored FOI and EIR requests (excluding those 'on hold' or lapsed) were dealt with within the statutory deadline of 20 working days. This is a 2.32% decrease on last year, which brings to an end a period of improvement for the Council.



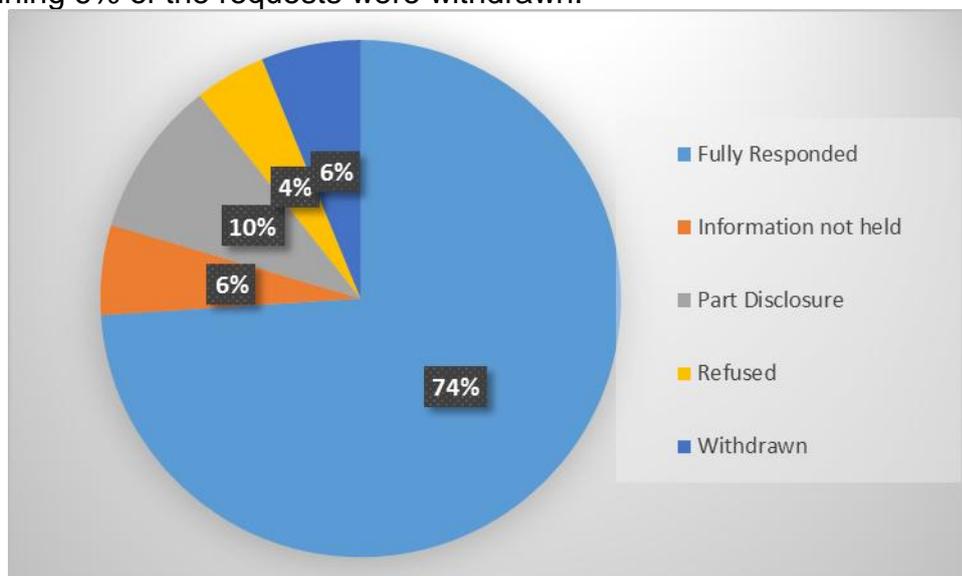
The exact reason for this decrease is unknown, but can be attributed to a number of factors. The Business Support Review has had an impact of the processing of information requests, certainly in the months leading to its full implementation. The Council's Transformation project has also seen a number of key individuals seconded from their IG roles. It should also be noted that the complexity of requests have increased, as members of the public and organisation are becoming more aware of the FOIA, and its potential.

The average number of pieces of information sought per request has nearly doubled, from 3.83 in 2013-14 to 7.5 in 2014-15. Whilst the response rate has dropped, the 96.11% average is still far above the desired response rate of 85%, as recently suggested by the Information Commissioner's Office (ICO).

16. The overall response time remains good, with the Council responding to requests within 12.27 days on average. Whilst this is again a slight increase on last year, it still represents an excellent turnaround, in light of the changes undergone by the Council this year.



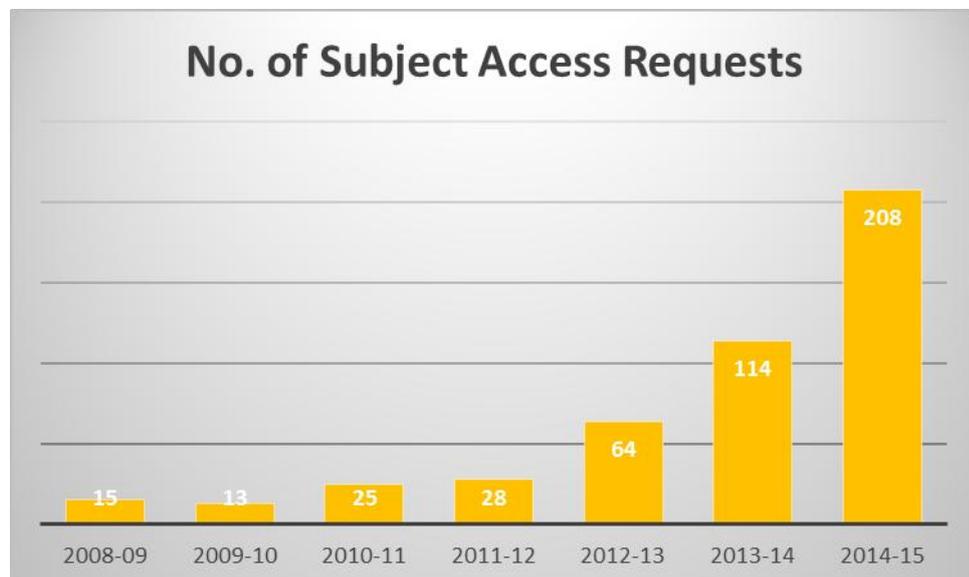
17. The complexity and detail of requests has increased again this year. Under FOIA, where the cost of responding to the request will exceed the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (which is currently set at £450 for local authorities), the Council may refuse to comply with it. For 2014/15, the Council issued 54 Refusal Notices on fees grounds, which remains consistent with 60 being issued last year.
18. Of all requests received during the year, 74% of information requested was disclosed in full. Of the remaining requests, 6% of information was not held by the Council, 10% were partly responded to by the Council (i.e. some parts of the request were subject to an exemption), and 4% were completely refused as information was withheld 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 remaining 6% of the requests were withdrawn.



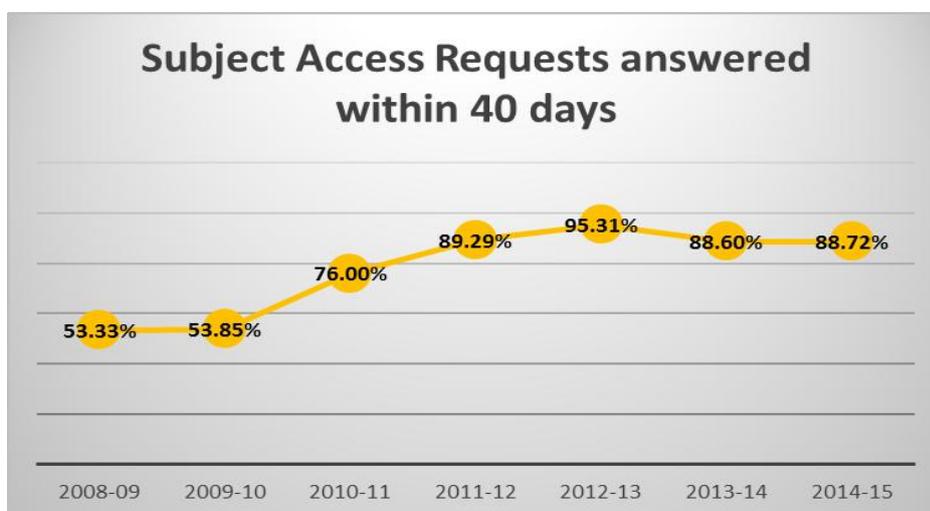
19. Of the 1392 requests responded to (49 were withdrawn, or are still on hold), 149 were deemed to be covered by absolute exemptions and accordingly some or all of the requested information was withheld.
20. Of the 1392 requests responded to, 27 requests (18 of which were 'virtual' – so were considered without a physical meeting) were considered by the Public Interest Test Panel as they were deemed to be covered by one or more qualified exemptions.
21. 14 individuals requested internal reviews regarding decisions made to withhold, partially withhold information requested, or where they were generally unhappy with how their request was handled.
22. There has only been one occasion where an appeal was made to the ICO as a result of the Council's decision in respect of their internal review.
23. As with all years, types of requests have been varied and covered every service area of the Council, including budget, HR, council tax data, highways maintenance and social services.
24. For the period covered in this report, 49% of requests came from private citizens, 13% came from the media, 20% from companies/businesses. The remaining 18% came from a combination of charities, students, researchers, lobby groups, MP's/ Councillors and other Councils etc.
25. Previously, members requested information as to how much time and resources each directorate spends on dealing with requests. We do not record this information. Previous years (2011/12) have shown that it took us approximately 2 hours to respond to each request. However, current research from Parliamentary post-legislative scrutiny of the Act indicates "the best-performing local authorities took between one and six hours for each request". We can estimate that our time spend on requests is comparable to this, and using the £25 per hour rate that the Act allows us to charge for staff time when refusing requests, we can estimate that each request costs the Council between £25 and £150 to respond on average.
26. In the Corporate Legal team there is only 1 FTE member of staff dedicated to providing advice and monitoring compliance with information law. We have added a Modern Apprentice post to the Corporate Legal Team, to assist in the administration of information law matters, but this is a "trainee" post, and requires considerable support and training alongside their contribution to workloads. Other members of staff support this function when their capacity allows it.
27. Other members of staff who are involved in the FOI process are the Senior Information Risk Officers (also known as SIROs). They are responsible for managing information compliance within their respective Directorates, as well as being a single point of contact for providing advice and guidance at a "local" level. However, they are not wholly dedicated to information compliance as their roles within the Council are to support business generally. In the new Business Support structure, the four Team Leaders have now assumed these SIRO roles.

## Data Protection Act

28. The Data Protection Act 1998 (DPA) gives individuals the right to know what information is held about them and provides a framework to ensure that personal information is handled properly.
29. Under the DPA, 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.
30. For the year 2014/15, the Council received 208 subject access requests compared with 114 last year. A proportion of these were dealt under the corporate procedures, but requests relating to social services (Adult Services and Children Services and Learning requests) were processed by the Customer Relations Team, with support from the Corporate Legal Team where appropriate.



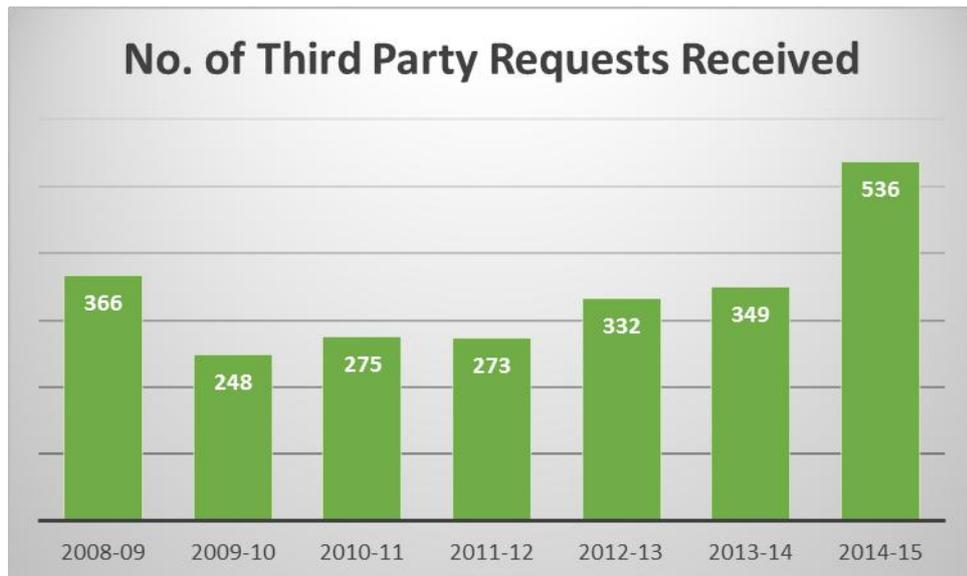
31. 88.72% of the Subject Access Requests were responded within the statutory timescales of 40 calendar days compared with 88.6% last year.



The directorate breakdown is as follows:

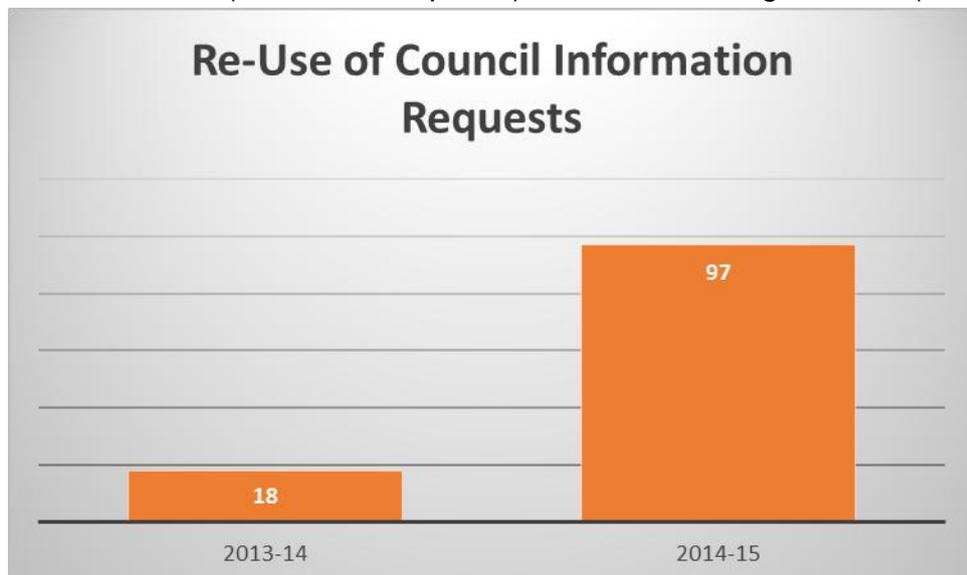
| 2014-15      |             | SAR        |              |                |
|--------------|-------------|------------|--------------|----------------|
|              |             | Rec'd      | %            | Av. Days Taken |
|              | Corporate   | 42         | 95.24        | 6.47           |
|              | People      | 133        | 82.71        | 24.35          |
|              | Place/Trans | 33         | 100          | 7.83           |
| <b>Total</b> |             | <b>208</b> | <b>88.72</b> | <b>18.43</b>   |

32. Four individuals requested internal reviews regarding decisions made to withhold, partially withhold information requested, or where they were generally unhappy with how their request was handled.
33. There were four occasions where the ICO contacted the Council in light of data protection concerns they had about how personal information was handled.
34. In the year 2014/15, the Council did not self-report any instances of loss of personal data by the Council to the Information Commissioner.
35. Sometimes there is a requirement to disclose 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.
36. For the year 2014/15 the Council received 536 requests for data from such third party organisations compared to 349 in the previous year. This is a steep increase from last year, but this can be attributed to increased staff awareness of the need to submit such requests to Corporate Legal for logging and approval before disclosing the information requested.



In addition to these requests, the CCTV control room (City Watch) and Licensing Team received 1101 and 188 third party requests respectively (179 of the Licensing requests were for footage from the internal taxi cameras). These requests are regulated by information sharing agreements, which removes the requirement to have each one authorised by Corporate Legal.

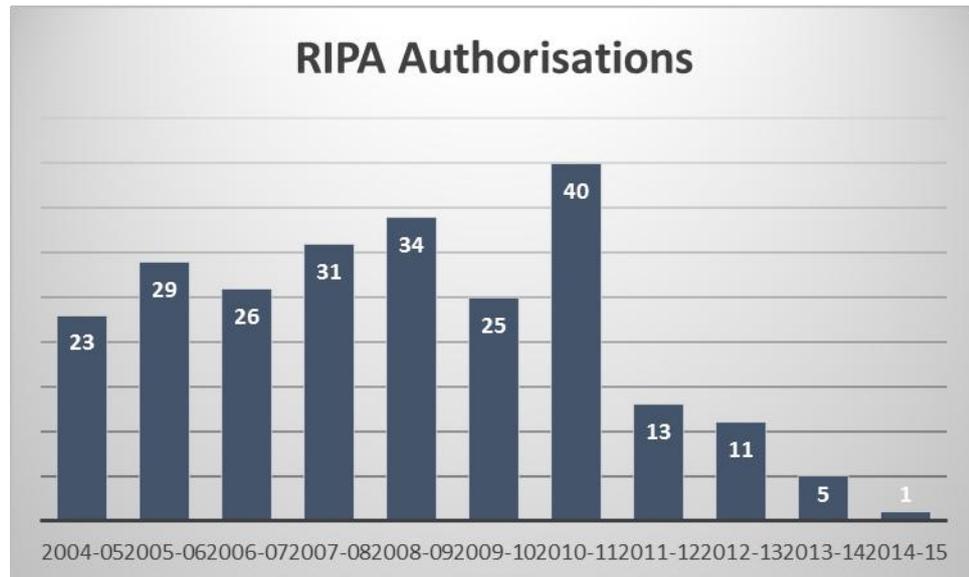
37. In addition to requests for information from external organisations, Corporate Legal also monitor and authorise requests from internal departments to re-use personal information already held by the Council. Such requests are commonly made where personal information is necessary when taking enforcement action, performing a statutory function, or improving the efficiency of Council services. In 2014/15, 97 requests were processed, with Council Tax being the most common source of information (61.86% of requests), and CCTV being the next (21.7%).



This represents an increase on the number of such requests received last year, and this can be attributed to steps taken by Corporate Legal to ensure that, not only are these requests correctly logged and authorised, but that this information can be re-used effectively and efficiently where there is a legal basis for doing so.

## RIPA

38. 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.
39. There has only been one authorisation under RIPA in 2014/15, a decrease on last year's five authorisations.



As previously reported, the Protection of Freedom Act 2012 is now in force, and this makes it a requirement for judicial approval for surveillance activities through application to the Magistrate Courts, therefore imposing a higher threshold for use. As such, there has been a significant decrease in applications made by the Council.

40. Examples of activity authorised include covert surveillance of a victim's home to detect acts of criminality, directed surveillance of individuals who were involved in fraudulent activities and a Covert Human Intelligence Source ("CHIS") was used to form an online relationship with a suspect to make a test purchase of suspected counterfeit goods.
41. The Council is required to formally appoint a 'Senior Responsible Officer' for RIPA. The Head of Legal and Democratic Services is the officer who 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.
42. Training and guidance for Council officers involved in RIPA processes is currently being arranged by the Corporate Legal Team and will take place in Autumn 2015.

43. The Office of Surveillance Commissioners carried out a review of Southampton City Council’s management of covert activities in 2013. In his report, Chief Surveillance Inspector, Sir Christopher Rose noted:

*“Your regularly updated RIPA training, the engaged and conscientious approach of your staff, your very good policy documentation, your internal oversight regime and your good overall compliance standards are commendable”.*

## **RESOURCE IMPLICATIONS**

### **Capital**

40. None directly related to this report.

### **Revenue**

41. 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**

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.

|                |         |                                   |      |               |
|----------------|---------|-----------------------------------|------|---------------|
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|                | E-mail: | Tracy.Horspool@southampton.gov.uk |      |               |

**KEY DECISION?** No

|                                    |      |
|------------------------------------|------|
| <b>WARDS/COMMUNITIES AFFECTED:</b> | None |
|------------------------------------|------|

**SUPPORTING DOCUMENTATION**

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

**Appendices**

|    |      |
|----|------|
| 1. | None |
|----|------|

**Documents In Members' Rooms**

|    |      |
|----|------|
| 1. | None |
|----|------|

**Integrated Impact Assessment**

|  |    |
|--|----|
| Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out. | No |
|--|----|

**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)

|    |      |  |
|----|------|--|
| 1. | None |  |
|----|------|--|