

<b>DECISION-MAKER:</b>	GOVERNANCE COMMITTEE
<b>SUBJECT:</b>	FREEDOM OF INFORMATION, DATA PROTECTION & REGULATION OF INVESTIGATORY POWERS ACTS: ANNUAL REVIEW 2017-18
<b>DATE OF DECISION:</b>	30 <sup>th</sup> JULY 2018
<b>REPORT OF:</b>	Service Director: Legal and Governance

#### CONTACT DETAILS

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#### **STATEMENT OF CONFIDENTIALITY**

None

#### **BRIEF SUMMARY**

A report detailing the statistical information for the financial year 2017-18, the thirteenth year of implementation of the Freedom of Information Act (FOIA) and associated legislation. This report also details statistical information on requests received under the Data Protection Act 1998 (DPA98) and the Council's activity under the Regulation of Investigatory Powers Act 2000 (RIPA). Members are also made aware of the implementation of new Data Protection legislation in May 2018, the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA18), and the impact on the Council.

#### **RECOMMENDATIONS:**

	(i)	To note and comment on the update of the statistical information for the year 1 <sup>st</sup> April 2017 – 31 <sup>st</sup> March 2018 relating to: <ul style="list-style-type: none"> <li>• FOIA and associated legislation</li> <li>• DPA 1998</li> <li>• RIPA 2000</li> </ul>
	(ii)	To note the impact of the now in force GDPR and DPA18 on the Council

#### **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 2017-18, the thirteenth full year of FOIA implementation.
2.	To keep Members informed as to the type of DPA 98 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
4.	To ensure that Members are kept informed as to new legislation in the field of information law, preparations that are being made and the likely impact on the Council.

#### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

5.	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 a robust structure in place to comply with the
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legislation, and to maintain the profile of information law requirements and resource implication within the organisation.

**DETAIL (Including consultation carried out)**

6. This report will be published on the Council's website

**FOIA**

7. 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.

8. Running parallel to the FOI regime is the Environmental Information Regulations (EIRs) that give a separate right to request environmental information from public authorities, the DPA98, which gives the 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.

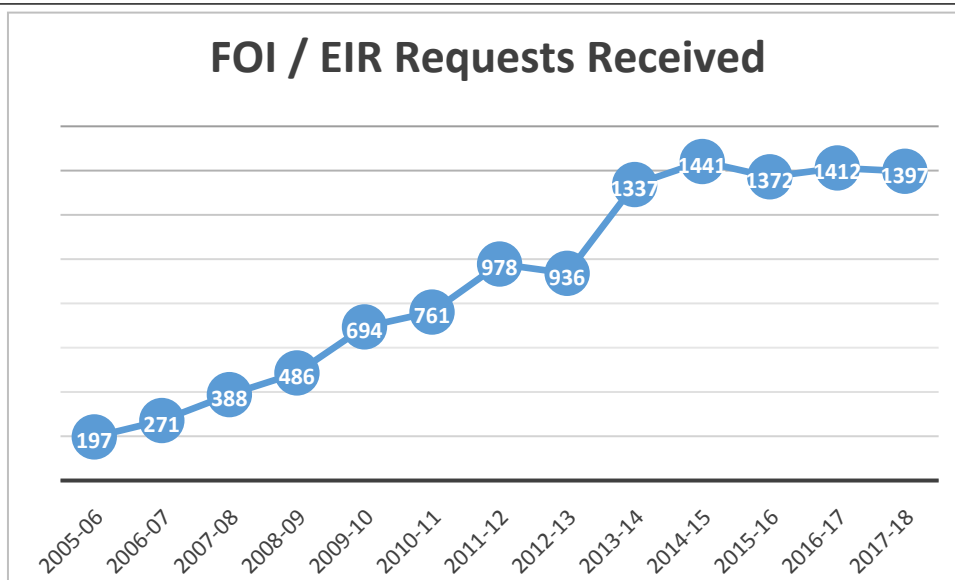
9. Under the FOIA and associated legislation, anybody may request information from a public authority with functions in England, Wales and/or Northern Ireland. Subject to exemptions, the FOIA confers two statutory rights on applicants:  
 (i) The right to be told whether or not the public authority holds that information; and  
 (ii) The right to have that information communicated to them

10. There are two types of exemptions that may apply to requests for information – absolute and qualified.

11. Information that falls into a particular exemption category, for example information relating to commercial interests, will have to be disclosed unless it can be successfully argued that the public interest in withholding it is greater than the public interest in releasing it. Such exemptions are known as qualified exemptions.

12. 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.

13. The Council has now experienced the thirteenth full year of the FOIA and statistics continue to show a slight decrease in the number of information (FOI/EIR) requests received



14. The number has decreased from 1412 for the year to 1397, which follows a trend that suggest the Council has reached a plateau for request received.

The service area breakdown of the requests is as follows:

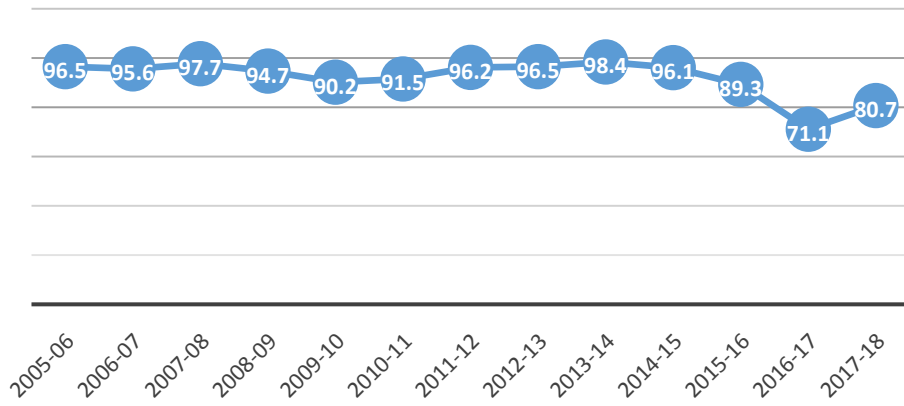
Directorate	No. Rec'd	%	Days
<b>Svc Director Transactions &amp; Universal Services</b>	<b>261</b>	<b>83.9</b>	<b>12.7</b>
<b>Svc Director Growth</b>	<b>241</b>	<b>88.4</b>	<b>9.6</b>
<b>Svc Director Children &amp; Families</b>	<b>214</b>	<b>66.8</b>	<b>19.9</b>
<b>Svc Director Housing, Adults &amp; Communities</b>	<b>210</b>	<b>82.9</b>	<b>14.2</b>
<b>Svc Director Strategic Finance &amp; Commercialisation</b>	<b>147</b>	<b>88.4</b>	<b>10.9</b>
<b>Svc Director Digital &amp; Business Operations</b>	<b>119</b>	<b>74.8</b>	<b>18.1</b>
<b>Svc Director HR and Organisational Development</b>	<b>71</b>	<b>64.8</b>	<b>21.8</b>
<b>Svc Director Legal &amp; Governance</b>	<b>66</b>	<b>90.9</b>	<b>9.8</b>
<b>Svc Director Public Health</b>	<b>32</b>	<b>68.8</b>	<b>18.6</b>
<b>Svc Director Intelligence, Insight &amp; Communications</b>	<b>26</b>	<b>92.3</b>	<b>8.3</b>
<b>Director of Quality &amp; Integration</b>	<b>10</b>	<b>80.0</b>	<b>12.2</b>
<b>Grand Total</b>	<b>1397</b>	<b>80.7</b>	<b>14.3</b>

To summarise, the Council has received a total of 1397 requests between 1<sup>st</sup> April 2017 and 31<sup>st</sup> March 2018. This comprises 1384 dealt with as FOI requests and 13 EIR requests.

15. 2017/18 has seen an overall decrease in the volume of requests received in comparison to previous years. The average number of requests received per month was 116, compared with 117 last year.

16. During the year, 80.7% 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 an increase on the previous year, and is due to measures put in place to address the low compliance rate last year.

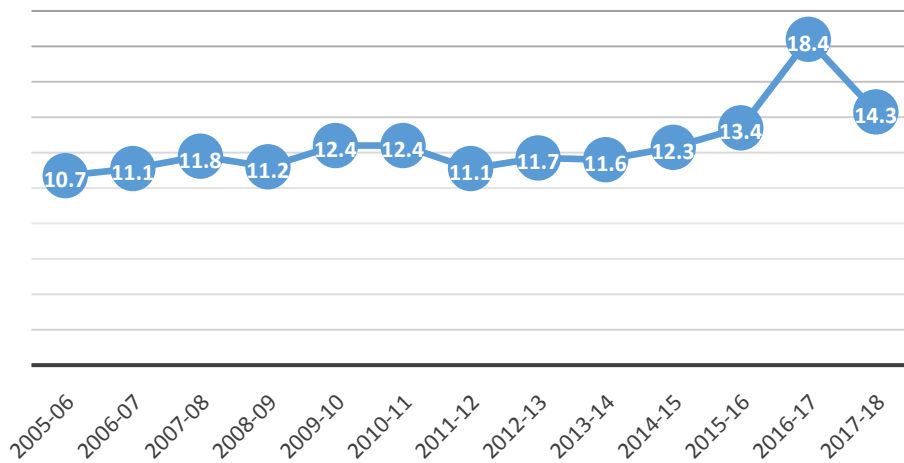
### % FOI / EIR answered within 20 working days



17. Business Support employed a dedicated member of staff to co-ordinate FOI responses. This saw compliance rates improve over the year, ending with 86.1% for Q4.

18. The overall response time has also been improved, with the Council responding to requests within 9.2 days on average.

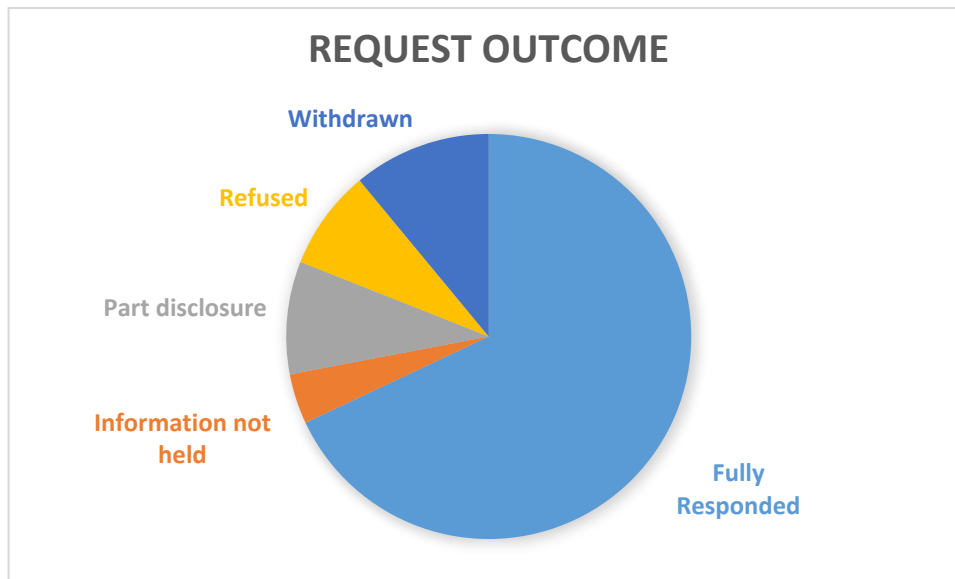
### Average Days Taken to Respond



19. 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 2017/18, the Council issued 74 Refusal Notices on fees grounds, which represents an increase, with 61 being issued last year.

20. Of all requests received during the year, 68% of information requested was disclosed in full. Of the remaining requests, 4% of information was not held by the Council, 9% were partly responded to by the Council (i.e. some parts of the request were subject to an exemption), and 8% 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 11% of the requests were withdrawn or lapsed (the requester did not respond to a request for

clarification after 3 months had passed).



21. 21 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. This year, there has 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.

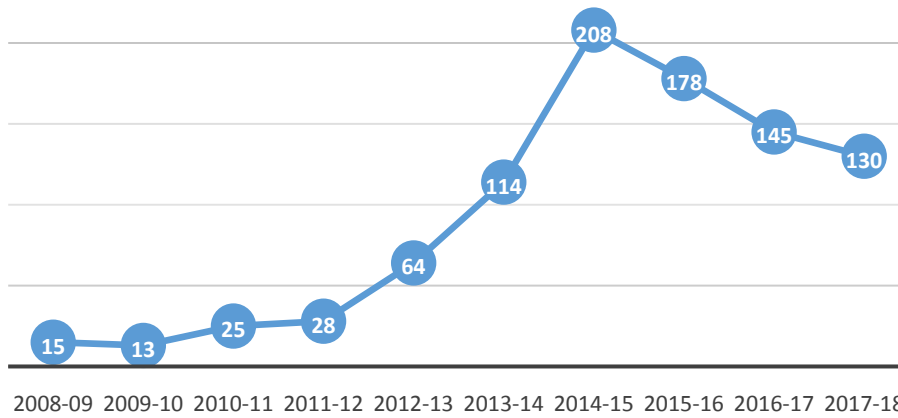
23. As with all years, types of requests have been varied and covered every service area of the Council, including budget, HR, council tax and business rates data, schools, highways maintenance, and social services.  
The top ten request subjects ranked in order of popularity are as follows:

Service Area	Requests
<b>Corporate Planning and Commercialisation - Business rates</b>	<b>94</b>
<b>Education and Early Help - Schools</b>	<b>55</b>
<b>HR Operations - Human resources</b>	<b>49</b>
<b>Council Housing and Neighbourhoods - Housing</b>	<b>46</b>
<b>Strategic IT &amp; Digital Client - Information communication technology</b>	<b>37</b>
<b>Assessment, support Planning Options - Homelessness and prevention</b>	<b>32</b>
<b>Planning, Infrastructure and Development - Planning services</b>	<b>30</b>
<b>Legal Partnership Services - Data protection and freedom of information</b>	<b>27</b>
<b>Planning, Infrastructure and Development - Highway maintenance</b>	<b>27</b>
<b>Children's Social Care - Children and young people social care</b>	<b>27</b>

24. For the period covered in this report, 62% of requests came from private citizens, 14% came from companies/businesses, 12% from the media. The remaining 12% came from a combination of charities, students, researchers, lobby groups, MPs /

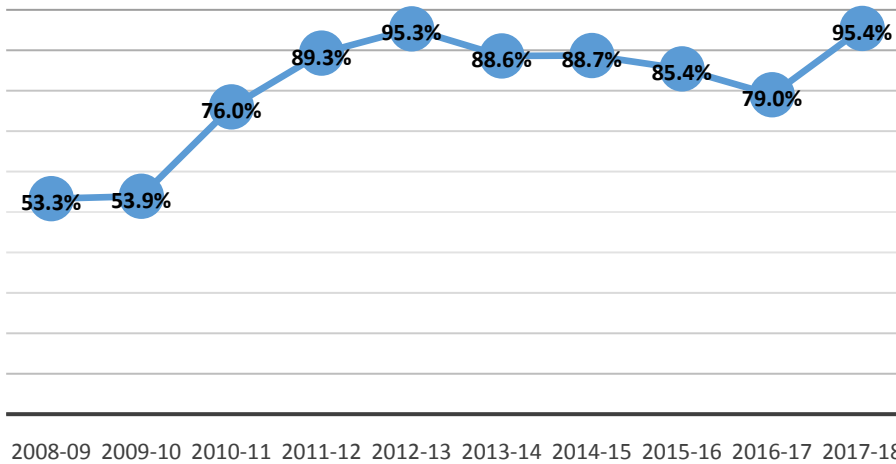
	Members and other Councils etc.
25.	Previously, Members requested information as to how much time and resources each Service spends on dealing with requests. We do not record this information. Previous years (2011/12) have shown that it took Corporate Legal approximately 2 hours to respond to each request. 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.	As Corporate Legal accurately time record we are able to detail how much time it takes to log, monitor, and give advice on requests. For 2017/18, the average time taken per request was 1.2 hours. Most requests take around half an hour to action within the Corporate Legal Team but, where detailed exemptions and redactions are needed, this can increase time taken on a single request for very complex cases. For example, the Corporate Legal time spent over 43 hours on one single request in 2017-18. The average therefore predominantly represents the time taken for detailed application of legal tests to requests where the Council seeks to withhold certain information from release.
27.	It should be stressed that this figure does not include the time taken for Business Support or the service areas to locate, collate, and send out the information requested and the Council does not have a mechanism for capturing that resource cost (which comprises the bulk of any cost to the Council).
28.	In the Corporate Legal team there are now 2 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 and is supported by day release to college during term time. Other members of Legal Services and an innovative intern scheme with local and regional universities support this function when their capacity allows it.
	<b>DATA PROTECTION ACT 1998</b>
29.	The Data Protection Act 1998 (DPA98) gave individuals the right to know what information is held about them and provides a framework to ensure that personal information is handled properly
30.	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. Whilst the DPA98 was replaced by the GDPR and DPA2018 in May 2018, such requests were dealt with under the DPA1998 for 2017-18.
31.	For the year 2017/18, the Council received 130 subject access requests compared with 145 last year. A proportion of these were dealt under the corporate procedures, but requests relating to closed social services (Adult Services and Children and Families requests) were processed by the Customer Relations Team, with support from the Corporate Legal Team where appropriate

### No. of Subject Access Requests



32. 95.4.0% of the Subject Access Requests were responded within the statutory timescales of 40 calendar days compared with 79.0% last year.

### SARs responded to within 40 calendar days



33. The Directorate breakdown is as follows:

	No. Rec'd	%	Days
<b>Svc Director Children &amp; Families</b>	<b>47</b>	<b>97.9%</b>	<b>28.1</b>
<b>Svc Director Legal &amp; Governance</b>	<b>29</b>	<b>93.1%</b>	<b>25.9</b>
<b>Svc Director Housing, Adults &amp; Communities</b>	<b>27</b>	<b>92.6%</b>	<b>33.9</b>
<b>On hold - awaiting allocation</b>	<b>12</b>	<b>100.0%</b>	<b>N/A</b>
<b>Svc Director HR and Organisational Development</b>	<b>6</b>	<b>100.0%</b>	<b>30.3</b>
<b>Svc Director Transactions &amp; Universal Services</b>	<b>5</b>	<b>100.0%</b>	<b>4.5</b>





41.	In addition to these requests, the CCTV control room (City Watch) and Licensing Team received 1032 and 173 third party requests respectively (the majority of the Licensing requests were for footage from the vehicle Taxi Cameras). These requests are regulated by information sharing agreements, which removes the requirement to have each one authorised by Corporate Legal.												
42.	The Corporate Legal team also monitor and authorise requests from internal Services 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.												
43.	<p>In 2017/18, 73 requests were processed, with CCTV footage being the most common source of information (38% of requests), and Council Tax being the next (16%).</p> <div data-bbox="293 792 1259 1368" data-label="Figure"> <table border="1"> <caption>Re-Use of Council Information Requests</caption> <thead> <tr> <th>Year</th> <th>Number of Requests</th> </tr> </thead> <tbody> <tr> <td>2013-14</td> <td>18</td> </tr> <tr> <td>2014-15</td> <td>97</td> </tr> <tr> <td>2015-16</td> <td>67</td> </tr> <tr> <td>2016-17</td> <td>74</td> </tr> <tr> <td>2017-18</td> <td>73</td> </tr> </tbody> </table> </div>	Year	Number of Requests	2013-14	18	2014-15	97	2015-16	67	2016-17	74	2017-18	73
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<b>DATA SECURITY INCIDENTS</b>													
44.	During 2017-18, 90 data security incidents were reported to the Corporate Legal team. 69% of these were determined to be data breaches upon investigation, with the most common cause being data sent electronically to incorrect recipients.												
45.	<p>3 of the data breaches were considered sufficiently serious to be reported to the Information Commissioner's Office. The details are these are as follows:</p> <ul style="list-style-type: none"> <li>• An employee accessed information held by the Council without a legitimate reason to do so</li> <li>• A spreadsheet containing sensitive personal data was disclosed in error as part of an FOI response.</li> </ul> <p>A spreadsheet containing sensitive personal data was published on the Council's website as part of its transparency obligations.</p>												
46.	In all cases, the ICO considered that no further action was necessary as the Council has put into action adequate and robust remediation plans to ensure that such errors do not reoccur.												
<b>NHS TOOLKIT</b>													
47.	In order to share information with our health partners, the Council has to provide annual assurance as to the standard of its information governance compliance. In												

	<p>the absence of any service information governance lead, the Corporate Legal Team assumed short term responsibility for collation of the Toolkit evidence this year and, with input from the Caldicott Guardians and relevant service areas, the annual submission was made before the 31<sup>st</sup> March deadline. The Council is assessed at being 84% compliant and has achieved level 2 status as previously. Last year's score was 82%. Level 3 status is the highest assessment level and remains an aspiration.</p>																														
	<p><b>RIPA</b></p>																														
48.	<p>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 the proposed form and manner of the activity is proportionate to the alleged offence.</p>																														
49.	<p>There were no authorisations made under RIPA in 2017-18. This mirrors the position last year.</p> <div data-bbox="293 786 1259 1361" data-label="Figure"> <table border="1"> <caption>RIPA Authorisations</caption> <thead> <tr> <th>Year</th> <th>Number of Authorisations</th> </tr> </thead> <tbody> <tr><td>2004-05</td><td>23</td></tr> <tr><td>2005-06</td><td>29</td></tr> <tr><td>2006-07</td><td>26</td></tr> <tr><td>2007-08</td><td>31</td></tr> <tr><td>2008-09</td><td>34</td></tr> <tr><td>2009-10</td><td>25</td></tr> <tr><td>2010-11</td><td>40</td></tr> <tr><td>2011-12</td><td>13</td></tr> <tr><td>2012-13</td><td>11</td></tr> <tr><td>2013-14</td><td>5</td></tr> <tr><td>2014-15</td><td>1</td></tr> <tr><td>2015-16</td><td>0</td></tr> <tr><td>2016-17</td><td>0</td></tr> <tr><td>2017-18</td><td>0</td></tr> </tbody> </table> </div>	Year	Number of Authorisations	2004-05	23	2005-06	29	2006-07	26	2007-08	31	2008-09	34	2009-10	25	2010-11	40	2011-12	13	2012-13	11	2013-14	5	2014-15	1	2015-16	0	2016-17	0	2017-18	0
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50.	<p>As previously reported, the Protection of Freedoms 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 (and indeed all Councils).</p>																														
51.	<p>Examples of activity authorised in previous years 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.</p>																														
52.	<p>The Council is required to formally appoint a 'Senior Responsible Officer' for RIPA. The Service Director; Legal &amp; Governance 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 errors to the Surveillance Commissioner; engagement with inspectors from the Office of Surveillance Commissioners and implementation of any subsequent action plan.</p>																														

53.	Training for Council officers involved in RIPA processes is regularly undertaken and is delivered by the Corporate Legal Team. Our documentation, procedures and training are also used as 'best practice' by a number of other local authorities and we regularly provide training for partner authorities on request.
54.	The Office of Surveillance Commissioners carried out an inspection of the Council's management of covert activities in 2016. In his report, the Chief Surveillance Inspector, the Rt Hon. Lord Judge noted: <i>"It is clear that the City Council takes care to address its statutory responsibilities, and that the arrangements for compliance are in experienced, capable hands. From the discussions after the inspection, Sir David [Sir David Clarke, Assistant Surveillance Commissioner] was impressed with the positive approach to their responsibilities taken by Mr Ivory and Miss Horspool"</i>
	<b>GDPR</b>
55.	The last annual governance report highlighted the additional pressures that the Council will face with the implementation of the General Data Protection Regulation in May 2018. The GDPR came into force on 25 <sup>th</sup> May 2018, and is supplemented by the Data Protection Act 2018 (DPA18).
56.	The headline changes for the Council introduced by the GDPR and DPA18 are as follows: <ul style="list-style-type: none"> <li>• The appointment of a Data Protection Officer (DPO) is mandatory</li> <li>• Establishment of an IG framework of senior management accountability and evidence of compliance</li> <li>• The introduction of a tiered approach to penalties for breaches and increased fine levels. Tier 2 fines to be up to 4% of annual turnover or 20,000,000 euros (whichever is the higher)</li> <li>• As well as administrative fines, data subjects now have a right to compensation</li> <li>• More onerous data breach notification requirements with a lower self-reporting threshold</li> <li>• The definition of personal data is wider, bringing more data (and consequently more areas of Council work) into the regulated perimeter</li> <li>• The introduction of mandatory privacy impact assessments</li> </ul>
57.	The Information Governance Board approved a rolling 18 month IG action plan which incorporated all the necessary actions arising from the GDPR. The corporate actions were picked up by the Corporate Legal Team, and the Information Asset Owners (IAOs) were responsible for any service specific actions.
58.	Whilst the Corporate Legal team attended Leadership Groups in May 2017, October 2017 and April 2018 to make IAOs aware of the service specific requirements, and the Data Protection Officer attended a number of team meetings briefing managers on GDPR, it was clear that the service areas were struggling to find the resources to fully prepare for implementation.
59.	As such, 5 full time "GDPR Champions" were deployed into service areas in April 2018 to assist them with the more practical elements of the GDPR preparations. Adults, Housing, and Children each had their own dedicated champion, with the remaining 2 champions providing support for the remaining services
60.	During their time with the Council, the champions reviewed nearly 700 forms to

	ensure they were compliant with the requirements under the GDPR, as well as conducting high level information audits of nearly 800 information assets. They also assisted the service areas in ensuring contract amendments were sent to suppliers and contractors, so that the agreements contained the clauses and obligations required under GDPR.
61.	The Corporate Legal team alone spent over 1200 hours in ensuring the corporate measures required for GDPR were in place, and providing advice and guidance to service areas. This time equates to nearly £55,000.
62.	The implementation date of 25 <sup>th</sup> May 2018 is not an end point, however, and it's very much the beginning. There is still a great deal of work still to be done, and two of the GDPR champions have been retained to assist the Council in populating its Record of Processing Activities, which is a legal requirement under the GDPR
63.	<p>The implications of the GDPR have not yet fully been realised, and the Council is still monitoring the following areas:</p> <ul style="list-style-type: none"> <li>• Whether the number of SARs will increase due to the removal of the £10 fee that the DPA98 allowed data controllers to charge for processing such requests.</li> <li>• How compliance is affected by the reduction in the statutory timescale for processing SARs (40 calendar days to one calendar month)</li> <li>• Whether there will be an increase in individuals wanted to exercise their new and improved rights with regard to their personal data</li> </ul> <p>The Council's ability to meet the timescales for reporting serious data breaches to the ICO (72 hours).</p>
64.	Due to the vast number of services the Council provides, and large volume of personal data processed, preparations for GDPR have been challenging. However, the measures put in place as a result of the Information Commissioner's Office audit carried out in 2016 gave the Council a good foundation to build on, and it can give acceptable assurance with regard to complying with the new data protection legislation.
<b>RESOURCE IMPLICATIONS</b>	
<b><u>Capital/Revenue</u></b>	
65.	None directly related to this report. The administration of information law within the authority is managed within corporate overheads, but ensuring that the Council performs to an acceptable information governance standard and complies with the new statutory standards imposed by the GDPR and DPA18 places increased pressure on finite and already stretched resources.
<b><u>Property/Other</u></b>	
66.	None directly related to the report.
<b>LEGAL IMPLICATIONS</b>	
<b><u>Statutory power to undertake proposals in the report:</u></b>	
67.	The statutory obligations relating to information law are detailed in the body of this report.
<b><u>Other Legal Implications:</u></b>	
68.	None directly related to this report.

<b>RISK MANAGEMENT IMPLICATIONS</b>	
69.	The potential impact of the decision in terms of finance, service delivery and reputation is considered to be low. Although the report does highlight potential future pressures on service delivery with the advent of the GDPR, the decision of members in this report is to note the performance of the Council in terms of information governance for 2017-18.
<b>POLICY FRAMEWORK IMPLICATIONS</b>	
70.	The information contained in this report is consistent with and not contrary to the Council's policy framework.

<b>KEY DECISION?</b>	<b>No</b>
<b>WARDS/COMMUNITIES AFFECTED:</b>	none
<u>SUPPORTING DOCUMENTATION</u>	
<b>Appendices None</b>	
1.	None

**Documents In Members' Rooms None**

1.	None
<b>Equality Impact Assessment</b>	
<b>Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.</b>	<b>No</b>
<b>Data Protection Impact Assessment</b>	
<b>Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.</b>	<b>No</b>
<b>Other Background Documents None</b>	
<b>Other Background documents available for inspection at:</b>	
<b>Title of Background Paper(s)</b>	<b>Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)</b>
1.	None