

WELWYN HATFIELD BOROUGH COUNCIL

CABINET – 2ND OCTOBER 2018

REPORT OF THE CORPORATE DIRECTOR (PUBLIC PROTECTION, PLANNING
AND GOVERNANCE)

FREEDOM OF INFORMATION / ENVIRONMENTAL INFORMATION REGULATIONS

1 Executive Summary

- 1.1 Progress reports on the implementation and administration of the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004 (EIR) have regularly been taken to the Corporate Management Team (CMT). In addition, performance information has been published on the Council website and discussed at performance clinics.
- 1.2 This report provides the Cabinet with an overview of the process together with an explanation of the statistical information provided.

2 Recommendation(s)

- 2.1 Members are asked to note the report, the volume and nature of the requests and the general upward trend in demand for information.

3 Background

- 3.1 Since 1st January 2005 all requests for information received by a public authority have had to be answered in accordance with the Freedom of Information (FOI) Act 2000 or the Environmental Information Regulations 2004 (EIR). The only exception to this is an individual's request for their own personal data (known as a Subject Access Request (SAR)) which must be handled under the terms of the Data Protection Act 1998 and latterly the General Data Protection Regulations GDPR, introduced in 2018.
- 3.2 All recorded information held by, or on behalf of, a local authority is within the scope of FOI or EIR. There is a requirement to respond to requests promptly and in any event within 20 working days. There is some scope to extend this timescale but this must be reasonable and only used in the case of complex and voluminous requests.
- 3.3 A working group led by the Director of Legal Services and including representatives from legal, communications and audit was set up to progress the implementation of the Act in 2004. Responsibility for the administration of the scheme was allocated to the Principal Governance Officer (formerly the Principal Auditor), Ian Colyer, who has held the role of Freedom of Information Officer since the Act was introduced in 2005 and has built up a good working knowledge of the Acts, regulations and requirements.

3.4 His key responsibilities are:

- To acknowledge all requests received with the customer.
- To liaise with service teams to source the requested information, decide if it should be released and if not, what exemptions may apply.
- To respond to the customer, either providing the information or citing the reasons why relevant exemptions apply
- In the event of the customer not being satisfied with the response and asking for the decision to be reviewed, setting up and attending the Internal Review Panel to re-consider if the original response was appropriate.
- Monitoring all requests received and recording relevant information required for statistical information, reports and the Information Commissioners Office.(ICO)
- Dealing with the ICO on requests that are referred to them by the customer.
- Maintaining a publication scheme as required by the legislation
- Updating the Freedom of Information pages on the website as required

4 Outline of the Process

- 4.1 Requests for information are received by email, post or telephone. These are acknowledged with the customer using a standard template which outlines what the customer can expect from the Council.
- 4.2 All the relevant information about a request is entered onto a central data base. This will include basic contact information, details of the request, which service team the request was sent to, the latest date for a response and if the requested information was provided and if not, which exemption was used.
- 4.3 The request is then sent to the relevant service team. The service team will then search for the information and send this to the Freedom of Information Officer by the 20 day deadline at the latest. If the request is for information not held by the Council, the customer is informed that the Council does not hold the information and provided with contact details so that they can progress their request.
- 4.4 The majority of requests are completed and processed within the statutory timescales with the bulk of information requested being provided. Statistical information is attached at Appendices A & B.

5 Internal Review

- 5.1 When information is refused, the customer must be informed of their right to appeal, initially via the internal review process and then to the ICO.
- 5.2 If the customer chooses to appeal, an internal review panel consisting of the Corporate Director (Public Protection, Planning and Governance) and the

Monitoring Officer will be convened. They will conduct an independent review of the way the request was handled and provide an opportunity to decide if the original decision was appropriate.

- 5.3 Once the panel has made their decision this will be sent to the customer. If the customer is still dissatisfied they may complain to the ICO. Statistical information on the number of appeals and their conclusions is attached at Appendix C.

6 The Information Commissioner's Office

- 6.1 The customer can complain to the ICO who has the power to issue a Decision notice. The Decision Notice can either order the public authority to disclose some or all of the information, or decide that information was correctly withheld.

- 6.2 The ICO is responsible for promoting good practice by public authorities and in particular to promote compliance with the requirements of the Act. They have significant enforcement powers and take a robust approach towards those authorities that repeatedly fail to meet their responsibilities under the legislation.

7 The Information Tribunal

- 7.1 If the customer or the public authority is dissatisfied with the ICO's decision notice, they have the right to appeal to the Information Tribunal (IT). The IT is responsible for hearing appeals under the FOI and EIR legislation. The IT's decision is final but a further appeal may be made to the Upper Tribunal on a point of law.

8 The Welwyn Hatfield Experience

- 8.1 The Freedom of Information Act has now been in place for over thirteen years. The statistical information attached to this report highlights a number of observations as follows.

- 8.2 The number of requests has increased steadily since the Act was introduced. 77 requests were received in 2005 and 688 in 2017 (an increase of 793%). This year to date (1st July) there has been 388 requests. There is no sign of this slowing down.

- 8.3 Coupled with this, requests have become more complicated and customers are now more aware of their rights. Some customers are now quoting the legislation and reminding us of our obligations under the Act. The result has been that the amount of time spent on handling requests has risen from 4 hours per week in 2005 to 20 hours per week in 2018. This is only the time recorded by the Freedom of Information Officer. It does not include time spent by the service teams in locating and providing information.

- 8.4 The statutory requirement for responses is 20 working days. Our performance has generally been close to 90% but has slipped recently. The main reasons for this have been cover arrangements for the FOI officer have not been robust enough, late responses from service teams and dealing with requests that involve more than one service team or involve consultation with third parties.

- 8.5 However, average response times have slowly reduced since 2005 with 10 days being the current average. This confirms that we do respond to a lot of requests

very quickly. These tend to be the more straight forward requests where information is easily found and provided.

- 8.6 80% of requested information has been provided either in part or full. Our stance has always been that we will provide information unless there is a good reason not to. This sits well with the ICO who believe that release of information should be the default position. We only refuse information in 10% of cases and although this has increased in the last few years this is still relatively low. Our record when dealing with the ICO suggests that we usually get these right.
- 8.7 It should also be noted that 15% of all requests are not meant for us. Customers do not fully understand the responsibilities of the Council and continue to send in requests that are meant for other bodies. We have an obligation to assist these customers and therefore have to direct them to the appropriate body who may be able to provide the information they are seeking. This all takes time and resources.
- 8.8 Analysis has shown that there is range of different customer profiles from the press, the public and businesses. What is clear is that all sections of the community now use the FOI legislation to hold the Council to account.
- 8.9 We have had 35 internal appeals since 2005, an average of 3 per year. The bulk of these have been dismissed by the internal appeals panel. This confirms that we get the majority of decisions correct. A few decisions have been overturned but this is the exception rather than the rule.
- 8.10 On 7 occasions, customers have not been satisfied with the response following an internal appeal decision and have complained to the ICO. The ICO investigations are quite detailed and involve supplying them with copies of all the information that has been withheld. Some cases have involved a substantial number of documents which have to be individually justified according to the exemptions in the Act. Although there are only a small number of these they involve substantial work.
- 8.11 The results of the ICO investigations are published as decision notices on the ICO website. In 4 cases the complaints against the Council were not upheld, 2 cases were partly upheld and 1 upheld.
- 8.12 The upheld decision concerned information that was supplied late. The Council apologised to the customer and the ICO required no further action to be taken. The two partly upheld complaints were resolved by the Council supplying some of the information that the customer requested as directed by the ICO decision notice. The Council's stance has always been that they will implement the decisions that the ICO make at appeals. Experience has shown that the ICO are reasonable in their judgements and will normally back the Council if they are happy that we have abided by the legislation.
- 8.13 One of the cases investigated by the ICO and which agreed with the Council's decision not to release some information, was appealed to the Information Tribunal by the customer. This incurred substantial time and cost in defending this case. After much deliberation and negotiation, some further information was provided to the customer. The customer then made the decision to withdraw their appeal.

9 Summary

- 9.1 It is evident from the statistical information and the commentary in section 8 that the Council adhere to the legislation although we do not get everything completely right. Administration of the Act is taking up more time and resources and this will probably escalate further.

10 Legal Implication(s)

- 10.1 It is a legal requirement that the Council abide by the requirements in the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

11 Financial Implication(s)

- 11.1 The cost to the Council for compliance with the Act and the associated reporting requirements is estimated to be in the region of £25,000 per annum. This cost does not include the time of service teams in searching for and providing information to the Freedom of Information Officer.

12 Risk Management Implication(s)

- 12.1 The ICO has enforcement powers and a significant risk to the Council is that of reputation, which may suffer if the ICO decides that the Council has not met its obligations under the Act and issues a decision notice against the Council.

13 Security & Terrorism Implication(s)

- 13.1 There are none.

14. Procurement Implication(s)

- 14.1 There are none.

15 Climate Change Implication(s)

- 15.1 There are none.

16 Human Resources Implications

- 16.1 There are none.

17 Health & Wellbeing Implications

- 17.1 There are none.

18 Communications & Engagement Implications

- 18.1 The Council has a dedicated email inbox for the receipt of information requests. The Freedom of Information Officer is always available to discuss information requests with all stakeholders. Information is generally supplied to stakeholders in the format that they have requested.

19 Links to Corporate Priorities

19.1 This report is linked to all the Councils Corporate priorities and is linked to a statutory requirement to comply with the FOI and EIR.

20 Equality & Diversity

20.1 An equality impact assessment was not completed as this report does not propose changes to existing service related policies or the development of new service related policies.

Name of author
Title
Date

Ian Colyer
Principal Governance Officer
5th September 2018