

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: Annual report on the Freedom of Information (FOI) Act, Environmental Information Regulations (EIR) and Data Protection Act (DPA)

Meeting/Date: Corporate Governance Panel (27th Nov 2013)

Executive Portfolio: Executive Councillor for Strategic Economic Development & Legal
Executive Councillor for Customer Services

Report by: Report by IMD Service Manager and Head of Legal & Democratic Services

Ward(s) affected: All

Executive Summary:

This annual report is intended to update the Corporate Governance Panel on the performance of the Council against its duties in respect of the Freedom of Information (FOI) Act, Environmental Information Regulations (EIR) and Data Protection Act (DPA).

Recommendation(s):

The Corporate Governance Panel is asked to note the findings of this report.

1. WHAT IS THIS REPORT ABOUT/PURPOSE?

1.1 The purpose of this report is to:

- Analyse the requests for information/personal data received by the Council under FOI, EIR and DPA.
- Report these findings to the Corporate Governance Panel

2. BACKGROUND

2.1 The public has had the right to access information held by the Council under the Freedom of Information Act. The Freedom of Information Act (FOI) works alongside the Environmental Information Regulations (EIR) which came into force in 2004. EIR applies to any environmental information which is held by the Council. DPA applies to personal data held. FOI applies to all other information. IMD is responsible for managing the process for dealing with FOI and EIR requests.

2.2 Under the Data Protection Act 1998 (DPA), living individuals have a right to access their own personal data (broadly information about them). The DPA also controls how Data Controllers, such as Councils, are allowed to process data, including personal data. Legal and Democratic Services are responsible for dealing with SAR (Subject Access Requests) under the Data Protection Act.

3. ANALYSIS

FOI and EIR Requests received

3.1 The table below shows a comparison of the number of requests received by the different Cambridgeshire Councils.

Council	Total number of requests since 1/1/2005	Requests in 2012	Requests in 2011
Cambridgeshire County	4550	871	957
Huntingdonshire District	2487	456	519
Cambridge City	2374	495	533
Fenland District	1972	403	408
South Cambridgeshire District	1919	428	425
East Cambridgeshire District	2423 (excluding figures from 2005)	584	872

3.2 A breakdown of the 456 FOI/EIR requests received by HDC in 2012 is shown in Appendix 1.

3.3 95% of requests were completed within the regulatory 20 working day period. The target was 90%. There was a 12% decrease in the number of requests received in 2012 compared with 2011. However, this year the upward trend of previous years has been restored and in 2013 we have seen requests rise to the highest level yet. See Appendix 1 for more information.

3.4 Processing FOI/EIR requests begins with IMD logging the request. IMD filter requests that are clearly not relevant for District Councils and replies direct to the applicant (e.g. requests relating to social services or education). If it is

appropriate, IMD will ask relevant departments for information to answer the request within 15 working days. Most HDC services are generally achieving the 15 working day timescale. IMD meets with any service which is consistently failing to achieve the 15 working day timescale to consider how they could meet this requirement.

3.5 The most frequent requests were for:

- Land Charges information
- Contracts
- NNDR information
- Planning Preliminary Enquiry files

3.6 The majority of people requesting information continue to be members of the public but there have been a number of requests from companies and the media.

3.7 During 2012 there were 3 complaints, asking the Council to review the response to a FOI/EIR request, as well as 1 complaint made to the Information Commissioner's Office (ICO). All of these have been addressed and the ICO upheld our original response to the complainant. This is in line with numbers of complaints from previous years and we always expect some FOI applicants to seek to challenge the Council's position.

Data Protection

3.8 As a Data Controller, the Council is obliged to notify the Information Commissioner annually of the nature and purposes for which they process data and ensure they operate within the 8 principles governing such processing. Broadly these are that personal information must be:

- Fairly and lawfully processed
- Processed for limited purposes
- Adequate, relevant and not excessive
- Adequate and up to date
- Kept for no longer than necessary
- Processed in line with the data subjects rights
- Secure
- Not transferred to other countries without adequate protection.

3.9 The Information Commissioner is appointed as Regulator to ensure compliance. The current purposes are published by the Information Commissioner and accessible to the public via the internet. The Council makes policies available to members, officers and the public which set out how it will process information.

3.10 The Information Commissioners have various sanctions open to them for breach of the DPA and can now issue monetary penalty notices up to £500,000 for serious contravention of data protection principles of a kind likely to cause substantial damage or substantial distress. These must have been by deliberate act of the Data Controller where it ought to have known of the risk and failed to take reasonable steps to prevent it. The Council need to be vigilant and maintain robust processes and ensure staff are properly trained to comply with legal requirements.

- 3.11 Living individuals are entitled to know in advance, what their personal data is to be used for by any data controller and that it will be processed lawfully. The Council is required, as a data controller, to notify the Information Commissioner annually of their name, address and contact details. They must give a general description of the purposes for which they process personal data including, the types of people and information affected and with whom this might be shared. This information is then recorded and published by the Information Commissioner in a register available over the Internet to the general public. It provides a primary start point for anyone wanting to check what personal data the Council may process. In addition the Council, when they collect personal data, normally have to inform the individual concerned what it may be used for. To do this, Council forms should include a fair processing notice or privacy statement describing those purposes. All departments are **recommended** to review their standard forms involving personal data collection to ensure they refer to the Council's Internet fair processing notice / privacy statement. This has the advantage of making it easier to keep forms up to date and is a logical place for the public to look for reference. It allows more detailed and layered information particularly on specific topics e.g. anti fraud measures for which the Council might use data. There is also the bonus that the privacy statement in the forms should be shorter because diligent readers can be referred to a fuller notice on the Council's website. If an electronic form is involved, it can be hyperlinked on a phrase like 'data protection' or 'privacy'.
- 3.12 The Council has also received a number of Subject Access Requests during the year, all of which were met within the statutory time limit. 14 requests were received for access to personal data. 8 of these were from individuals requesting their own personal data; 3 from a third party requesting lawful authority for disclosure and 3 were from police forces conducting missing persons/murder enquiries. Individuals usually want to see their housing, housing benefit or council tax files.
- 3.13 One complaint was made to the ICO during the year but their findings concluded there was no breach of the DPA by the Authority.
- 3.14 It should be noted that, unlike requests received under FOI and EIR, under a DPA Subject Access Request, unlimited amounts of personal data can be required for a maximum fee of £10.00 once the individual concerned has satisfactorily proved their identity. Unlike FOI/EIR there is no provision in the DPA to treat someone as vexatious with respect to accessing their personal data.

4. IMPACT ON THE COUNCIL

- 4.1 All FOI and EIR requests are managed by IMD. In 2012, IMD alone spent over 850 hours (c.0.5FTE) dealing with FOI/EIR requests, with other services also spending significant amounts of time compiling responses. Demand continues to rise.
- 4.2 Demand for services related to Data Protection including fair processing notices, training and requests for disclosure of personal data also continues to increase, and the law can be expected to develop much further.
- 4.3 At present, the current level of service is being maintained, but if an increased demand from the public is stimulated by the Government's transparency agenda, or resources are reduced, the risk of performance dropping can only increase.

5. WHAT ACTIONS WILL BE TAKEN?

- 5.1 There is a continuing need to make Officers and Members aware of the FOI/EIR/DPA legislation.
- 5.2 FOI/EIR/DPA training has been included in the essential training for all Officers as part of their Personal Development Plan. Training is a standing item on the Information Governance Liaison Group.
- 5.3 Interactive online training has been setup to give self-service training for Officers and Members, although it appears the take up of online training has continued to be slow, it is part of the essential training for all staff. The online DPA training package should improve monitoring capacity. A FOI/EIR course is available on the [e-learning zone](#).
- 5.4 There is an Information Governance Liaison Group which regularly meets to talk about all topics associated with Information Governance including, 'Freedom of Information Act' and 'Data Protection'. The terms of reference have been revised for this Liaison Group and these are attached in Appendix 2.

6. RESOURCE IMPLICATIONS

- 6.1 In August 2012, the Corporate Systems and Information Manager left the Council, taking up a new role at Cambridgeshire County Council. This role leads FOI & EIR at HDC. IMD assessed the options for this post, and presented a paper to COMT.
- 6.2 The paper proposed leaving the post vacant whilst the current investigations regarding shared service in IMD continued. Some of the savings created by this decision would be used to pay CCC to provide a limited 'expert' service to HDC to aid HDC's processing of FOI. This amounts to c.4days per month, the bulk of effort of processing FOI remains at HDC.
- 6.3 COMT approved this paper, and an agreement is now in place with CCC for this limited support. The net saving to HDC of this decision is c£25k over a 12 month period. Once the position with shared service in IMD is clear, this decision will be revisited, and the post may be filled (note the post does much more than FOI and these duties are currently being shared amongst existing resources - and some tasks have been placed on hold).

The impact of this decision is being kept under review, and at present is working successfully.

7 RECOMMENDATIONS

- 7.1 The Corporate Governance Panel are asked to note the findings of this report.

8. LIST OF APPENDICES INCLUDED

Appendix 1 – Relevant data and charts

Appendix 2– Information Governance Liaison Group Terms of Reference

CONTACT OFFICER

Contact Officers: **John Taylor – IMD Development Manager**
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Figure 1 - Breakdown of FOI Requests

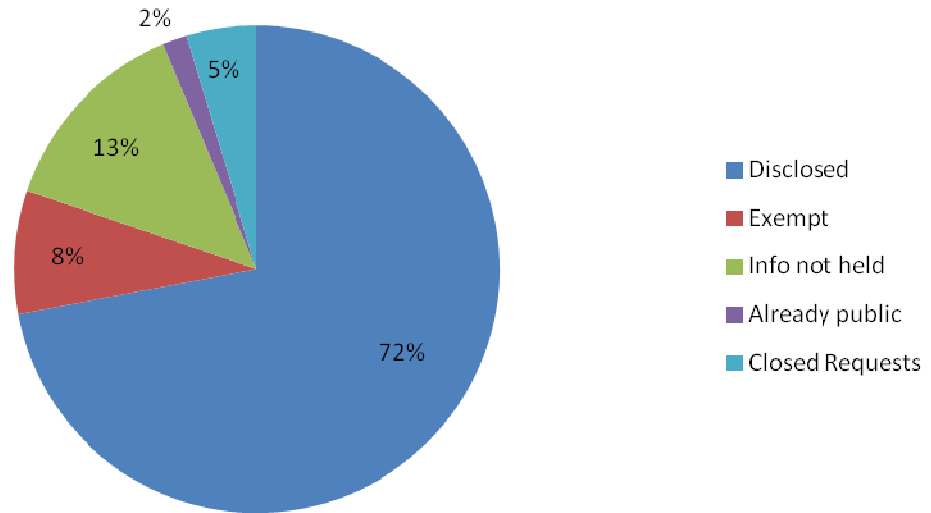


Fig 2 Cumulative Total Number of FOI & EIR Requests received each Month

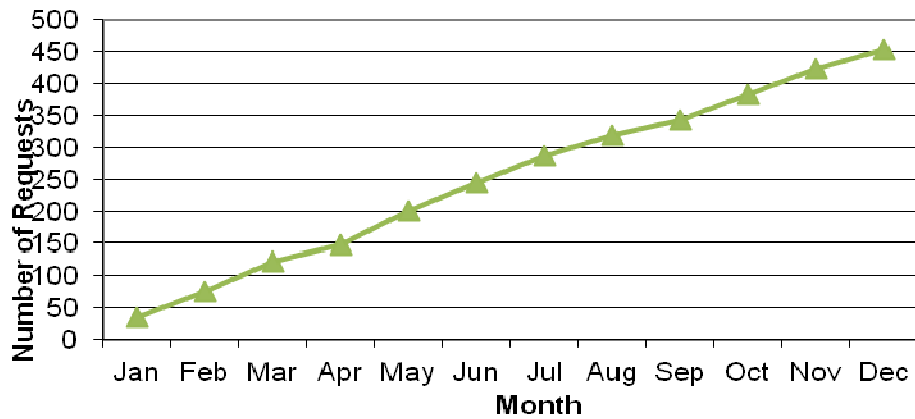


Figure 3 Number of FOI/EIR requests per department (if more than 20 requests)

Dept	Total requests	Late Responses
Democratic/ Administration	10	0
CCTV	1	0
Corporate Team (was Policy/ Chief Execs Office)	5	0
Customer Services	5	1
Env & Community Health	59	2
Environmental Management	8	2
Finance	12	2
Housing	19	2
HR & Payroll	24	0
IMD	23	4
Legal & Estates	20	2
Leisure	3	0
Licensing	16	0
Operations	25	1
Planning	46	2
Planning - S106	2	0
Revenues & Benefits	65	2
FOI Team	55	4
Multiple Depts	48	0
Other (Non HDC)	10	1
Total	456	25

**INFORMATION GOVERNANCE LIAISON GROUP
TERMS OF REFERENCE**

1. The Group's remit is to cover the areas of Governance dealing with data protection, Freedom of Information and Environmental Information Regulations and RIPA, Records Management, Information Security and any other information governance topic. This Group does not cover wider corporate governance issues.
2. The Group will help the organisation comply with its legal obligations within the remit of the Group.
3. The Group believe that information is a key business asset and they will endeavour to ensure that it is handled in a way which will help the organisation to achieve its corporate aims, priorities and objectives.
4. Definition of Information Governance – information governance is the specification of decision rights and an accountability framework to encourage desirable behaviour in the valuation, creation, storage, use, archival and deletion of information. It includes the process, roles, standards and measures that ensure the effective and efficient use of information in enabling an organisation to achieve its goals.
5. The Group will include a cross section of Officers nominated by Heads of Service covering all areas of service within the Council who will act as conduits providing updates on the Groups work to their teams and ensuring a cohesive approach to information governance within HDC.
6. The Group will identify and recommend training and development to the senior management team to ensure HDC complies with its information duties.
7. The Group will build up good relations and trust with all people that it deals with.
8. The Group will ensure that everyone in the organisation understands the importance of information rights and their own responsibility for delivering them.
9. The Group will review processes and procedures relating to data security, records management and compliance with legislation within its remit and will make recommendations to Senior Management Team via the Head of Democratic & Legal Services on any issues identified.
10. The Group will circulate relevant and succinct updates to HDC staff when relevant and necessary.
11. The Group will meet four times annually in order to deal with business.
12. Minutes of meetings of the Group will be kept and will be open to inspection.