

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of Meeting: 25 January 2011
Report of: Head of Policy & Performance
Subject/Title: Compliance with Data Protection Act (1998), Freedom of Information Act (2000) and Environmental Information Regulations (2004)

1.0 Report Summary

- 1.1 The Compliance Team within Internal Audit manages and coordinates the corporate response to requests for information, in accordance with the Data Protection Act 1998 (DPA), Freedom of Information Act (2000) (FOI), and the Environmental Information Regulations (2004) (EIR). This report aims to provide an update on how Cheshire East Council fulfils its obligations under this legislation, as well as to highlight volumes of requests, trends and current and future issues.

2.0 Recommendation

- 2.1 That the Committee note the processes in place to ensure that the Council complies with the relevant legislation and is sufficiently well-informed and well-positioned to effectively handle any future demands, changes and/or developments to the legislation.

3.0 Reasons for Recommendations

- 3.1 In order to form an opinion on the Council's compliance with this legislation, the Audit and Governance Committee needs to gain assurance that there is an established and effective process in place, together with adequate and trained resource to fulfil all FOI and DP requests in a timely and appropriate manner.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All Ward Members

6.0 Policy Implications including - Climate change - Health

- 6.1 Compliance with Freedom of Information and Data Protection legislation is integral to effective management of information within the Authority. Effective records management is essential to satisfy regulatory requirements, facilitate good business administration and allow us to be accountable for our actions. Freedom of Information legislation and Environmental Information regulations make public bodies open and transparent, whilst Data Protection legislation protects personal data from improper use. It is essential, therefore, that all relative policies and procedures take account of these regulations.

7.0 Financial Implications (Authorised by the Borough Treasurer)

- 7.1 Failure to comply with the legislation can lead to large fines being imposed on the Council. The current maximum penalty for breach of Data Protection or non-compliance is £500,000. Non-compliance with FOI can lead to enforcement action by the Information Commission or possibly costly court proceedings and reputational damage.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Council has an obligation to comply with the legislation set out in 1.0 above. The Information Commissioner, who is responsible for enforcing compliance, issues guidance on how compliance is to be achieved.

9.0 Risk Management

- 9.1 The impact on the Council of not complying with the legislation would be significant, as identified above, and may prevent achievement of the corporate objective of "Being an excellent Council and working with others to deliver for Cheshire East".

10.0 Background

- 10.1 The Compliance Team (consisting of 2 fte) manages and coordinates the corporate response to requests for information, in accordance with the above legislation. They act as a source of training, expertise and advice on the legislation, its developing use and interpretation, and ongoing guidance from the Information Commissioner. Requests must be responded to within the statutory timescales of 20 working days for FOI requests and 40 calendar days for DP Subject Access requests. With regard to FOI, any recorded information held by the Council can be requested, even if it has been created by another organisation, and the Council does not 'own' it, e.g. contractors, suppliers and partner organisations. Information may include electronic and paper records, handwritten notes, videos, photographs, e-mails and even diaries.

- 10.2 Since the inception of the Council, over 2000 requests for information have been received, with almost all of these being responded to within the statutory timescales. Many requests are 'round robin' requests which are also sent to other Local Authorities, and a number of requests are received via the "What Do They Know" website, with the Council's response being published directly onto this website.
- 10.3 The number and complexity of requests being received is increasing. From April 2010 to date (nine months) 1018 requests have been received, compared with just under 1000 in 2009/2010. Of these 1018 requests, 738 were for FOI, 175 for DP and 105 for EIR. A similar tendency is reported by neighbouring councils and has also been noted in the Information Commissioner's Annual Report for 2009/10 as a national increase in the public take up of the rights conferred under FOI/DP legislation. Both the increase in the number of requests and the increased use of email reflect an increasing level of awareness of access to information legislation. However, it is worthy of note that this year has also seen an increase in the number of requests that require specific consideration under the Environmental Information Regulations.
- 10.4 The legislation does not require the requestor to state the reason for the request and, with the increasing use of e-mail, the identity and motivation of requestors becomes difficult to define. However, basic analysis of the requests received to date suggests that the requestors may be categorised as follows:

Individuals	40%
Commercial organisations	33%
Press/Media	13%
Public Sector (Police, HMRC, CSA, Other LA's)	10%
MP's/Councillors	2%
Campaign/Pressure Groups	1%
Students	1%

- 10.5 Requests relate to all areas of the Council's operations, but the largest number of requests was received for the following areas:

Children and Families	16%
Land Search Charges	10%
Council Tax	9%
Finance	7%
HR	6%
Planning	6%
Adult Services	4%

As can be seen from the above figures, a significant number of requests this year have related to Land Searches. Local authorities have been particularly targeted by Property Search companies in their

desire to gain access to local authority data. In previous years, Councils have been able to charge for the provision of information on properties. However, under the Environmental Regulations, Councils are now expected to provide this information free of charge.

- 10.6 Where information is not to be released, a refusal notice is issued and the requestor is able to, firstly, request an internal review, and then to appeal to the Information Commissioner for a decision if they remain unhappy with the Council's decision. Information is only withheld in a small number of cases. There are currently two appeal cases outstanding with the Information Commissioner and, to date, two Decision Notices have been made against the Council (relating to Land Search Charges).

10.7 Fees and Charges

The Council is able to charge £10.00 for all DP subject access requests. With regard to FOI requests, these cannot generally be charged for, other than to cover the costs of photocopying and postage. However, where it is likely to take more than 18 hours of an officer's time to locate, retrieve and extract information, then a charge can be imposed and a Fees Notice is issued.

10.8 Data Protection Issues

A serious breach of the Data Protection Act, e.g. loss or inappropriate disclosure of personal data, could incur a financial penalty of up to £500,000. The Information Commissioner was given the power to impose such penalties in April 2010 and issued his first penalty of £100,000 in November, 2010, to Hertfordshire County Council. The breach involved sending details of a child sex abuse case to a member of the public, instead of a barrister, by fax. The Compliance Team tries to ensure that officers are fully aware of the requirement to ensure that sensitive personal data is handled and communicated in a secure way.

- 10.9 The Compliance Team conducts training sessions with Services to ensure that officers are clear about their responsibilities under the Data Protection Act 1998 to protect personal data from improper use. E-learning packages are also available on Centranet.

- 10.10 Work is also underway on the streamlining of access to social care records. The Data Protection Officer meets on a regular basis with Legal Services and Social Services to tighten procedures and determine an appropriate pathway for requests, which will give a single point of contact for clients and alleviate social worker time in reviewing files before they are disclosed.

- 10.11 A further area of work is in information sharing. A number of areas within the Council share data with partner agencies and work is in progress to establish information sharing protocols where necessary.

11.0 Access to Information

- 11.1 The background papers relating to this report can be inspected by contacting the report writer:

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