

# **CHESTER EAST COUNCIL**

## **REPORT TO: AUDIT & GOVERNANCE COMMITTEE**

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**Date of Meeting:** 22<sup>nd</sup> January 2015  
**Report of:** Customer Relations and Compliance Manager  
**Subject/TITLE:** Compliance with Data Protection Act (1998),  
Freedom of Information Act (2000) and Environmental  
Information Regulations (2004)  
**Portfolio Holder:** Councillor Paul Findlow

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### **1.0 Report Summary**

- 1.1 This report provides an update on how Cheshire East Council fulfils its obligations under the Data Protection Act (1998) and the Freedom of Information Act (2000) (including the Environmental Information Regulations (EIR)). It also highlights volumes of requests, trends and current and future issues.

### **2.0 Recommendation**

- 2.1 That the Committee notes the arrangements in place to ensure compliance with the legislation.

### **3.0 Reason for recommendation**

- 3.1 The Audit and Governance Committee has a key role in assessing the adequacy and effectiveness of these arrangements.

### **4.0 Wards Affected**

- 4.1 All wards.

### **5.0 Local Ward Members**

- 5.1 Not applicable.

### **6.0 Policy Implications**

- 6.1 Compliance with Freedom of Information (FOI) and Data Protection (DP) legislation is integral to effective management of information within the Authority. FOI legislation and Environmental Information Regulations make public bodies open and transparent, whilst DP 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**

- 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 Freedom of Information can lead to enforcement action by the Information Commissioner or possibly costly court proceedings and reputational damage.

## **8.0 Legal Implications (authorised by the Borough Solicitor)**

- 8.1 The legislation covered by this report forms the core of information law within England and contains detailed provisions with which public bodies, including the Council, must comply. The Information Commissioner (ICO) is the regulator for these matters and there are regulatory powers, including criminal sanctions, which can be used in cases of non-compliance.

An authority may be breaching the Freedom of Information Act if any of the following takes place:

- i) failure to respond adequately to a request for information;
- ii) failure to adopt the model publication scheme, or to publish the correct information; or
- iii) deliberate destruction, concealment or alteration of requested information to prevent it being released.

Depending on the nature of the incident, this last point is the only criminal offence in the Act (Section 77) with which an authority or its individual members of staff could be charged. The penalty is a fine. Other breaches of the Act are unlawful but not criminal.

The ICO cannot fine an authority for failure to comply with the Act, nor can they require the authority to pay compensation to anyone for breaches of the Act. However any mistakes should be rectified as soon as the authority is made aware of them. If a complaint is not resolved informally the ICO may issue a Decision Notice.

The ICO issues Decision Notices on complaints about specific requests for information. However, if a breach of the Act does not fall within the scope of a decision notice, the ICO may decide to issue an Enforcement notice. The Commissioner may also use an Enforcement notice if an authority repeatedly fails to comply with its obligations. An authority can be found in contempt of court for failing to comply with a Decision Notice, Enforcement Notice or Information Notice. This could lead to a fine or, in theory, a custodial sentence for a senior officer of the authority.

## **9.0 Risk Management**

- 9.1 The impact on the Council of not complying with the legislation would be significant, as identified above in 7.1 and 8.1.

## 10.0 Background

- 10.1 The tables below show the number and sources of requests received in 2014 (Jan-Dec) and the Services to which they relate. Figures are provided for previous years also, although direct comparisons cannot be made on an area by area basis because of the significant amount of organisational change during the past twelve months. Any company wholly owned by one or more public authorities is subject to FOI legislation. Therefore, most of the new companies (ASDV's – Alternative Service Delivery Vehicles) established by the Council in recent years are also subject to FOI.

**Table 1**

TYPE OF REQUEST	2014	2013	2012	2011
FOI/EIR requests	1598	1614	1487	1343
DP requests	554 <sup>1</sup>	619	467	421
<b>TOTAL</b>	<b>2152</b>	<b>2233</b>	<b>1954</b>	<b>1764</b>

**Table 2**

SOURCE	2014	2013	2012	2011
Individuals	46%	50%	37%	36%
Commercial	20%	18%	18%	17%
Press/Media	14%	10%	13%	15%
Public Sector	8%	9%	20%	26%
'What do they know' <sup>2</sup>	6%	6%	5%	-
Pressure Groups	4%	5%	5%	4%
MP's/Councillors	2%	2%	2%	2%

**Table 3 (a)**

SERVICE DEPARTMENT	2014
Children's and Adults	27%
Communities	26%
Chief Operating Officer services	17%
Economic Growth & Prosperity	15%
Highways	8%
ASDV'S	7%

**Table 3 (b)**

SERVICE/DEPARTMENT	2013	2012	2011
Places	48%	35%	27%
Finance	18%	29%	34%
People	25%	26%	23%
HR	5%	4%	8%
Legal and Democratic Services	2%	3%	5%
Performance, Capacity and Customer Services	1%	2%	3%
Shared Services	1%	1%	-

<sup>1</sup> 224 of the requests were requests directly to Council Tax from various public authorities. (355 in 2013)

<sup>2</sup> Website dedicated to Freedom of Information requests

## **11.0 Freedom of Information Requests**

- 11.1 Freedom of Information requests have decreased marginally in 2014 for the first time since the inception of the Council. Over 94% of the requests received were responded to within 20 working days. Information is withheld in only a small number of cases (39 out of 1598 requests in 2014). Most of the exemptions available to public authorities to withhold information are subject to a public interest test, i.e. does the public interest in disclosure outweigh the public interest in withholding it? There is a presumption in favour of disclosure, i.e. that it is in the public interest generally to disclose information in order to promote transparency and accountability. The Information Commissioner requires cohesive and comprehensive arguments from the Council for withholding information should requestors submit an appeal.

## **12.0 Referrals to the Information Commissioner**

- 12.1 The Information Commissioner received 4 complaints about Cheshire East Council during 2014, compared with 13 in 2013. One related to a request which had not been responded to within the statutory timescale. The information was subsequently disclosed and the case was closed by the ICO. The remaining 3 referrals from the ICO relate to complaints made to them about information provided in responses. Two are ongoing and the fourth has been closed as the ICO have advised that no further action needs to be taken as the authority had fully complied.

## **13.0 Protection of Freedoms Act 2012 and Transparency**

- 13.1 The Freedom of Information Act requires every public authority to publish information proactively, as well as responding to requests for information. In accordance with the Act, the Council has a Publication Scheme and currently provides a variety of information under this scheme. Services are encouraged to routinely publish information on the website to make it easier for requestors to access the information they require without having to submit an FOI request.
- 13.2 The Protection of Freedoms Act 2012 added new provisions to the Freedom of Information Act regarding datasets. It extended rights under the legislation by requiring that datasets are made available in a reusable format. This is in accordance with Government initiatives to increase transparency within the public sector, to ensure that all data published by public bodies is in an open and standardised format, so that it can be re-used easily and with minimal cost by third parties. These datasets must also be made available in the Publication Scheme.
- 13.3 The Council has stated its commitment to being open, honest and accountable regarding all decisions, actions and outcomes, and the Transparency Project was launched in 2013 in order to review the Council's current Publication Scheme and to highlight areas where more information should be published. In addition, the Department for Communities and Local Government issued The Local Government Transparency Code 2014 on 3<sup>rd</sup> October 2014. The Code regulates the publishing of local government data

and the Project Team is currently working with the relevant services to ensure that the required data is published.

- 13.4 A key output of the Transparency Project will be the publication of a Freedom of Information Disclosure Log, outlining all the FOI requests received by the Council and the responses issued.

#### **14.0 Data Protection Subject Access Requests**

- 14.1 Subject Access Requests increased from 264 in 2013 to 330 in 2014. This figure includes an increase in requests from care leavers for access to their social care records. Responding to these is particularly time and labour intensive because of the volume and sensitivity of the information requested.

#### **15.0 Training and Awareness**

- 15.1 FOI processes around the Council are currently being reviewed and further training delivered to ensure that all teams, as well as the ASDV's, are fully aware of their obligations under both the Freedom of Information Act and the Protection of Freedoms Act.
- 15.2 Data Protection training is a mandatory requirement for all members of staff through the Performance Management process. Training and awareness in Data Protection, including data handling, record keeping and security, is delivered at Induction and across the organisation at regular intervals.

#### **16.0 Access to Information**

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

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