

CHESHIRE EAST COUNCIL

REPORT TO: AUDIT & GOVERNANCE COMMITTEE

Date of Meeting: 16th March 2017
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

1.0 Report Summary

1.1 This report provides an update on the performance of Cheshire East Council in responding to requests for information under the Data Protection Act (1998) and the Freedom of Information Act (2000) (including the Environmental Information Regulations (EIR)), highlighting volumes, trends and current and future issues.

2.0 Decision Requested

2.1 That the Committee notes the performance of the Council in responding to requests for information and notes ongoing and future developments.

3.0 Wards Affected

3.1 All wards.

4.0 Local Ward Members

4.1 Not applicable.

5.0 Policy Implications

5.1 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 relevant policies and procedures take account of these regulations.

6.0 Financial Implications

6.1 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.

7.0 Legal Implications (authorised by the Borough Solicitor)

7.1 These are set out in the report.

8.0 Risk Management

8.1 The risks of non-compliance are significant (as outlined in 6.1). Additionally, the penalties which may be imposed under the forthcoming General Data Protection Regulation are significantly greater than the current maximum penalty for non-compliance (see 14.1).

9.0 Background

9.1 The tables below show the number and sources of requests received in 2016 (January – December) and the services to which they relate. Figures are provided for the four previous years for comparison. Any company wholly owned by one or more public authorities is subject to FOI legislation. Therefore, most of the new ASDVs (Alternative Service Delivery Vehicles) established by the Council in recent years are also subject to FOI. If a Freedom of Information request relates in any way to the environment, then it is classed as an Environmental Information Request, and is subject to the Environmental Information Regulations 2004 (EIR), rather than the Freedom of Information Act.

Table 1

TYPE OF REQUEST	2016	2015	2014	2013	2012
FOI/EIR requests	1667	1625	1598	1614	1487
DP Subject Access requests	1074 ¹	820	554	619	467
TOTAL	2741	2445	2152	2233	1954

Table 2

SOURCE	2016	2015	2014	2013	2012
Individuals	34%	45%	46%	50%	37%
Commercial	18%	18%	20%	18%	18%
Press/Media	12%	15%	14%	10%	13%
Public Sector	26%	9%	8%	9%	20%
What do they know ²	5%	6%	6%	6%	5%
Pressure Groups	3%	5%	4%	5%	5%
MP's/Councillors	2%	2%	2%	2%	2%

¹ 478 requests made directly to Council Tax

² Website which facilitates the submission of FOI requests

Table 3

SERVICE/ DEPARTMENT	2016	2015	2014
Children's and Adults Services	24%	29%	27%
Communities	13%	23%	26%
Chief Operating Officer Services	40% ³	17%	17%
Economic Growth & Prosperity	14%	15%	15%
Highways	6%	8%	8%
ASDV'S	3%	8%	7%

10.0 Freedom of Information/Environmental Information Requests

10.1 In 2016 Freedom of Information and Environmental Information requests increased marginally up to 1667 requests. 85% of the requests were responded to within 20 working days. The internal authorisation process introduced during 2015 is continuing to lead to longer processing times.

10.2 Ninety of the 1667 cases resulted in the issuing of refusal notices, refusing the request either fully or in part. This equates to 5% of cases. The main exemptions used were as follows:

- Data Protection – Releasing of this information would be a breach of the Data Protection Act 1990. In the majority of cases this led to the minimal redaction of third party names, address and other personal information.
- Exceeding the Appropriate Limit of 18 hours – Responding to the request would take over 18 hours. The requesters are asked to resubmit a new reduced request which is then considered accordingly.
- Information Available by other Means – The information being requested is already publicly available and therefore there is no need to make a request under FOIA or the EIR's for the information.

10.3 Forty-two requests were escalated to the Internal Review stage as the requester was unhappy with the initial response. Of the 42 cases investigated at Internal Review Stage, only 4 have been taken to the Information Commissioner for further investigation during 2016.

10.4 A new system – i-Casework – for processing FOI and DP requests was procured in 2015 and has been operational since 1st October 2016. This is currently being rolled out throughout the authority.

³ This includes those Data Protection subject access requests which are handled by Council Tax (in 2015 these were recorded under Communities). Additionally, the number of Subject Access requests received by the Council increased significantly in 2016. Of the 1092 requests into the COO area, 789 were Subject Access requests.

10.5 The implementation of i-Casework will also enable the production and publication of a FOI Disclosure Log on the Council's website, detailing requests received by the Council and the responses issued. This is anticipated to be operational by May 2017.

11.0 Referrals to the Information Commissioner

11.1 The Information Commissioner received 7 complaints about Cheshire East Council during 2016 (4 arising from internal reviews and 3 relating to late responses). This compares with 8 in 2015, 4 in 2014 and 13 in 2013. Of the 4 arising from internal reviews, one is ongoing at the first stage of the Information Tribunal. It is currently being considered and it is expected that the decision will be issued shortly. The remaining 3 are ongoing, awaiting further contact from the Information Commissioner.

12.0 Transparency

12.1 The Council has stated its commitment to being open, honest and accountable regarding all decisions, actions and outcomes. The 'Transparency Project' has continued to make significant progress to achieve this aim, and the Council has achieved compliance with all mandatory requirements of the Local Government Transparency Code 2015 and the Freedom of Information Act 2000, which provides an outline Publication Scheme.

12.2 The Council is now publishing information over and above mandatory requirements. Work is continuing to identify frequently requested datasets with the aim of proactively publishing this data. Some service areas such as Business Rates, Council Tax and Waste Services are already doing this.

12.3 The Council's data portal will continue to facilitate the process of uploading data and make it available in meaningful, easily accessible and re-usable formats for the public. It will also be of use internally and should make access to data easier and faster for employees and Members. A communications plan has been established to promote the online portal both internally and externally over the forthcoming year.

13.0 Data Protection Subject Access Requests

13.1 There was a significant increase in Subject Access Requests from 2015 (820) to 1074 in 2016. 58% of the increase was in requests to Council Tax, which typically come from other public authorities. The Compliance and Customer Relations team received an additional 194 requests in 2016 compared to 2015. Requests into this team typically originate from individuals (including care leavers requesting access to their social care records), public authorities (including the Police) and commercial organisations (including insurance companies and solicitors requesting CCTV footage).

14.0 Forthcoming changes to Data Protection regulations

14.1 The current European Data Protection Directive has been reformed and, following parliamentary approval, the General Data Protection Regulation will come into effect on 25th May 2018. The fact that it is a “regulation” instead of a “directive” means it will be directly applicable to all EU member states without a need for domestic legislation. The main changes are:

- Higher fines – fines of up to 4% of a company’s worldwide turnover or €20,000,000 (£16m) (whichever is higher) can be imposed. The maximum the Information Commissioner can currently impose is £500,000.
- Mandatory notification – it will be mandatory to report all serious data protection breaches to the Information Commissioner within 72 hours of becoming aware of the breach. Currently this procedure is voluntary.
- Mandatory data protection impact assessments - legal requirement for a data protection impact assessment (DPIA) to be carried out in high-risk situations, for example where a new technology is being deployed
- Sensitive personal data – stricter rules will apply to the processing of sensitive personal data such as medical information. ‘Sensitive’ personal data will also include genetic and biometric data.
- Consent – consent must be freely given, specific, informed and unambiguous, provided by clear affirmative statement or action.
- Additional rights for data subjects – new right to transfer data from one service provider to the other. There will also be a wider right to be forgotten than currently exists.
- Mandatory Data Protection Officers - statutory requirement for public authorities to appoint a Data Protection Officer.
- Data Processors – the Data Protection Act currently only regulates data controllers but the new regulation imposes certain direct legal obligations on data processors also.

15.0 Training and Awareness

15.1 Refresher Freedom of Information and Data Protection training have recently been arranged for senior officers and members in order to ensure that all concerned are aware of their obligations under the Data Protection Act (1998), the Freedom of Information Act (2000), the Environmental Information Regulations and the Local Government Transparency Code.

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. In addition, a compulsory online information governance training module (SEEDS) has been rolled out for all staff to complete.

15.3 i-Casework training will be carried out for all service areas which deal with Freedom of Information and Complaints (including ASDV’s), in order to ensure that the full potential of the system is realised. Training commenced in February 2017.

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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