

Audit & Governance Committee

Date of Meeting: 31 May 2018

Report Title: Compliance with Freedom of Information Act (2000), Environmental Information Regulations (2004) and the Data Protection Act 1998.

Portfolio Holder: Councillor Paul Findlow

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1. Introduction and Policy Context

- 1.1. This report provides an update on the performance of Cheshire East Council in responding to requests for information under the Freedom of Information Act, Environmental Information Regulations (EIRs) and Data Protection Act.

2. Decision Requested

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

3. Background

- 3.1. The Freedom of Information Act (FOIA) became law in 2000. The Environmental Information Regulations (EIR) are EU legislation and became law in 2004. 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 these regulations. Both pieces of legislation came into force on 1st January 2005. The Data Protection Act came into force in 1998.
- 3.2. A report is submitted annually to brief Audit & Governance Committee on the volumes and trends in the number of requests received under the above legislation.
- 3.3. The legislation applies to all public authorities and obliges them to advise requesters whether information falling within the scope of a request is held, and, if it is held, to communicate that information to the requester in a format of their choice.
- 3.4. The Council receives a significant number of formal requests each year and has a statutory duty to respond correctly under the relevant legislation.

4. Briefing Information

- 4.1. The table below outlines the number of requests (subject access and disclosure) received under the current Data Protection legislation during the financial year 2017/18 compared with 2016/17. It also shows the percentage of requests which were responded to within the statutory timescale (40 calendar days).

Table 1 – Requests Received under the Data Protection Act

	2017/18	2016/17
Requests under the Data Protection Act 1998	1219 ¹	1287
Percentage responded to within 40 calendar days.	86%	95%

- 4.2. Requests into the Compliance and Customer Relations 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 requesting CCTV footage, and solicitors).
- 4.3. Information gathered in response to subject access requests and requests for disclosure can be complex, voluminous and sometimes very difficult to locate and access if the data is very old. Every page in every document must be carefully reviewed and redacted of third party data before it is released to the requestor. This can be extremely time consuming and so it is not always possible to fulfil the request within 40 days. If this is the case, then the requester is kept informed at every stage. There was an increase in complex subject access requests during 2017/18 which resulted in a decrease in the percentage responded to within 40 days.
- 4.4. Data Protection Legislation is being reformed with the implementation of the new EU General Data Protection Regulation (GDPR) on 25th May, 2018. The key changes required under the new Regulation are as follows:
- Higher fines for non-compliance with the legislation.
 - 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 new technology is being deployed

¹ 533 (44%) of the requests were requests directly to Council Tax from various other public authorities (658 (51%) in 2016/17).

- 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 individual rights for data subjects, e.g.
 - right to erasure of information (subject to certain conditions)
 - right to data portability, i.e. the right to have any information submitted through an automated process returned or transferred to another organisation.
- Removal of £10 fee for subject access requests, although reasonable charges can be made in certain circumstances.
- Changes to statutory time limits for responding to requests. Reduced from 40 calendar days to 1 month.
- 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.

The implications of the new legislation for the Council are significant, as they are for any UK organisation, both public and private. Cheshire East Council has a well established project in place within the Information Assurance and Data Management Programme, with every part of the organisation, and its partners, engaged in ensuring that the Council is fully prepared for the changes to come.

The status of the Council’s GDPR project will be reported separately at this meeting, and at subsequent Audit & Governance meetings, by the GDPR Project Leads.

The forthcoming Data Protection Bill will bring the GDPR and the EU Law Enforcement Directive into UK law. The Bill is currently passing through Parliament and is expected to come into force on 25th May, 2018 at the same time as GDPR.

- 4.5 The tables below outline the number of requests received under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. They also detail the type, source and number of requests made to Cheshire East Council under the two sets of legislation, the response times for individual services and the request outcomes.

Table 2 – Requests Received under FOIA and EIRs.

Type of Request	2017/18	2016/17
FOIA/EIR Requests	1643	1658
² EIR Requests to Land Charges	1846	1523
Total FOIA/EIR Requests	3489	3181

Table 3 – Source of FOI/EIR Request to Compliance & Customer Relations Team

Source	2017/18	2016/17
Individual	44%	37%
Commercial	24%	24%
Press or media	14%	18%
³ What do they know?	9%	8%
Pressure Groups	3%	0%
Researchers	2%	3%
Councillor	1%	2%
MP	1%	1%
Other	1%	1%
Public Sector	1%	0%

Table 4 – Percentage of requests handled within 20 working days per Directorate (excluding requests directly made to Land Charges)

Directorate	2017/18	2016/17
Corporate Directorate	87%	87%
People Directorate	83%	86%
Place Directorate	80%	86%
Total	83%	86%

Table 5 – FOI/EIR Outcomes – 2017/18

The Council provides full information to the requester in the majority of cases (1129 in 2017/18.). The table below details the numbers of cases where the information has not been released or has not been released in full.

It is not possible to provide comparative information for 2016/2017 as this was not recorded on the legacy database.

² Personal Search Companies make EIR requests directly to the Land Charges Team, who respond directly to the requester. The requests are all completed within the statutory deadline of 20 working days.

³ Website dedicated to FOI/EIR requests

Outcome	Total
All information sent	1129
Information not held	159
Ongoing Request at 31 st March 2018 (outcome not known)	90
Some information sent but not all held	84
No information sent - all held but exempt	64
Some information sent but part exempt	44
⁴ Exceeds appropriate limit (18 hours) - refused	28
Request lapsed - requested information not provided	27
Some information sent and exceeds appropriate limit	11
Neither confirm or deny information held	3
Vexatious request	2
Repeated request	1
Some information sent, part exempt and exceeds limit	1
Total	1643

Table 6 – FOI/EIR Refusal Notice Reasons

151 FOIA Exemptions/EIRs Exceptions were applied to refusal notices issued during 2017/18 compared with 102 during 2016/17.

Refusal Notices issued	2017/18	2016/17
FOIA Section 12(1) Compliance Exceeds 18 Hours	28	15
FOIA Section 40 Personal Information	22	24
FOIA Section 43 Commercial Interests	16	10
FOIA Section 21 Publicly Accessible to applicant	14	19
FOIA Section 30 Investigations & Proceedings	9	3
EIRs Regulation 12(5)(b) Course of Justice	8	3
EIRs Regulation (12)(5)(f) Information in Confidence	8	1
EIRs Regulation 6(1)(b) Publicly Accessible	8	5
FOIA Section 31 Law Enforcement	7	3
FOIA Section 41 Information Provided in Confidence	6	7
EIRs Regulation 12(4)(b) Manifestly Unreasonable	5	0
EIRs Regulation 12(3) Personal Information	3	2
EIRs Regulation 12(5) (e) Commercial Interests	3	0
FOIA Section 22 Intended for Future	2	3

⁴ The 'appropriate limit' is 18 hours, i.e. if it will take more than 18 hours to fulfil the request, then it can be refused. If a requester wishes to pursue the request and the response, then a fees notice can be issued. In the majority of cases the requester will issue a new revised and reduced request.

Publication		
FOIA Section 36 Prejudicial to conduct of public affairs	2	1
FOIA Section 42 Legal Professional Privilege	2	2
EIRs Regulation 12(5)(d) Confidentiality of Proceedings	2	1
FOIA Section 33 Audit Functions	1	0
EIRs Regulation 12(4)(a) Information Not Held	1	0
EIRs Regulation 12(4)(d) Draft Information	1	1
EIRs Regulation 12(4) (e) Internal Communications	1	0
EIRs Regulation 12(5)(c) Intellectual Property Rights	1	0
EIRs Regulation 12(5)(g) Protection of Environment	1	1
FOIA Section 38 Health & Safety	0	1
TOTAL	151	102

The number of exemptions/exceptions does not correlate with the number of requests refused in Table 4. This is because more than one exemption/exception can be used in a refusal notice.

Table 7 – Internal Reviews

Should a requester be unhappy with the initial response to their request, they have the right to request an internal review. This is conducted by someone independent of the initial response and usually by a Senior Officer within the Compliance and Customer Relations Team. During 2017/18 there was a 36% increase in the number of internal reviews carried out.

Year	2017/18	2016/17
Number of Internal Reviews	64	47

Table 8 – Complaints to the Information Commissioner's Office (ICO)

Should a requester remain unhappy following the internal review, they may appeal to the Information Commissioner's Office for a decision. The table below outlines the outcomes for those requests which were referred to the ICO.

Year	2017/18	2016/17
Late Notification	3	2
Ongoing at year end	3	3
Withdrawn	2	1
Complaint Upheld	2	0
Complaint Not Upheld	1	2
TOTAL	11	8

5. Implications

5.1. Legal Implications

Please refer to Section 4.4. in respect of the Legal Implications for the Data Protection Act and the forthcoming General Data Protection Regulation (GDPR).

Compliance with Freedom of Information legislation and the Environmental Information Regulations is integral to effective management of information within the Council. This legislation makes public bodies open and transparent. It is essential, therefore, that all relevant policies and procedures take account of these regulations.

5.2. Financial implications

Failure to comply with the Data Protection and GDPR 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. Under the new legislation, there are two tiers of penalties available to the Information Commissioner dependent upon the nature of the breach. The two tiers are a maximum of 10,000,000 EUR or 20,000,000 EUR. A higher penalty may be imposed for breaches which affect individual rights. Non-compliance with Freedom of Information can lead to enforcement action by the Information Commissioner or possibly costly court proceedings and reputational damage.

5.3 HR implications

All officers, Members and partners are required to be fully aware of their obligations under the Freedom of Information Act (2000), Environmental Information Regulations (2004) and the Data Protection Act (1998) in addition to the forthcoming GDPR. To this end, a comprehensive online training module is currently being rolled out to all staff and Members.