

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of Meeting:	31 st January 2012
Report of:	Head of Performance, Customer Services and Capacity
Subject/Title:	Compliance with Data Protection Act 1998, Freedom of Information Act 2000 and Environmental Regulations 2004
Portfolio Holder:	Councillor Michael Jones (Resources)

1.0 Report Summary

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

2.0 Recommendation

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

3.0 Reasons for Recommendation

- 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 are effective arrangements in place to fulfil FOI and DP requests and that future issues are being anticipated and effectively managed.

4.0 Wards Affected

- 4.1 All wards.

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications including carbon reduction and health

- 6.1 Compliance with FOI, DP and other information legislation is integral to effective management of information within the Authority. FOI legislation and Environmental Information Regulations were enacted with the intention of making public bodies open and transparent, whilst DP legislation protects personal data from improper use. Given the sanctions for non-compliance, it is essential that all relative policies and procedures take account of these regulations.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 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 legal implications arising from the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004 are outlined within this report, as are the measures in place to ensure compliance with them and the importance of ensuring compliance.

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.

10.0 Background and Options

- 10.1 The number and complexity of requests continues to increase. The Council has received 1764 requests in the past 12 months – 1343 for FOI and 421 for DP. The sources of these were as follows:

Individuals	36%
Public Sector	26%
Commercial	17%
Press/Media	15%
Pressure Groups	4%
MP's/Councillors	2%

These requests related to the following Services/Directorates:

Finance	34%
Places	27%
People	23%
Performance, Capacity and Customer Services	8%
HR	5%
Legal and Democratic Services	3%

10.2 Freedom of Information Requests

FOI requests need to be responded to within the statutory timescale of 20 working days, and any recorded information held by the Council can be requested. Information may include electronic and paper records, handwritten notes, videos, photographs, e-mails and even diaries. This is very popular

legislation, and, if we fail to comply, there would be significant reputational damage. With the transparency agenda, the public have high expectations of the 'right to know', and a further reason for the implementation of the legislation was to provide information to stimulate the economy.

The Information Commissioner is responsible for upholding the right of access to official information held by public bodies, and there are various sanctions which he has the power to impose against public bodies for failure to comply. These include prosecution, both against public bodies and individuals, and service of enforcement notices, requiring specified steps to be taken or ceased. Failure to comply with a notice may be classed as a contempt of court, and enforced through the court system, and ultimately the Supreme Court.

Where a decision is made by the Council that information is exempt from release, a refusal notice is issued; in some cases the decision involves consideration of whether release or refusal best serves the public interest. Requestors have a right of internal appeal against the decision, followed by external appeal to the Information Commissioner if they remain unhappy with the outcome.

We cannot charge a fee for FOI requests, but can charge for the cost of photocopying and postage. We cannot charge for electronic information. However, if the request is a large and/or complex one and would result in 18 hours of officer time being spent to locate, collate and extract the information, then we can charge £450.00 + £25 per additional hour. Additionally, under the Re-use of Public Sector Information Regulations (2005), we are able to charge for information which is intended for re-use for commercial purposes, and on which we own the copyright.

The release of commercially sensitive information is an area which causes services some concern. The guidance from the Information Commissioner is that information about contracts (including price) should be released, as there is a strong public interest in how public money is spent. However, if to release information would cause commercial damage, and companies are able to present sound arguments outlining the damage which would be likely to ensue, we would consider withholding information.

.Environmental Information Regulations

The Environmental Information Regulations are a separate set of regulations, akin to the Freedom of Information Act, and apply instead of the Freedom of Information Act to all information related to land or the environment, e.g. Planning and Land Charges. There is a presumption in favour of release of such information, and decisions not to release are difficult to uphold. Grounds for exemption of information from the requirement to disclose are slightly different to those under the Freedom of Information Act.

Protection of Freedoms Bill

Under Part 6 of the Protection of Freedoms Bill, which is currently progressing through Parliament, the Freedom of Information Act is expected to be extended to make councils provide datasets in a reusable format; this is to allow

businesses to more easily manipulate council data for commercial purposes. This is something the Council already does wherever possible.

Review of Freedom of Information Act

In the first quarter of 2012 the Parliamentary Justice Select Committee is embarking on the first post legislative scrutiny review of the Freedom of Information Act. This may result in amendments to the legislation.

10.3 Data Protection Subject Access Requests

Any request for personal information is classed as a Subject Access Request and we are able to charge the requestor £10. We have 40 calendar days in which to respond. These requests are frequently complex and time intensive. Many of these requests are for access to Social Care records.

A comprehensive Data Protection Training programme has recently been launched to ensure that all staff understand their responsibilities for the protection of data and are aware of the facilities available to support them.

In addition to the sanctions outlined in 10.2 above, monetary penalty notices up to £500,000 can be issued for a serious breach of the Data Protection Act, e.g. loss or inappropriate disclosure of personal data; these are effectively fines.

Secure transfer of electronic information

Secure methods of transmitting sensitive information are available to staff if needed. Government Connect (GCSx) allows local authorities to send secure e-mails to other local authorities and public body networks, e.g. Police and NHS. Voltage SecureMail can be used to send sensitive information to any third party or individual who is not connected to the GCSx network.

Information Sharing

Increasing numbers of areas within the Council share data with partner agencies, and advice is frequently sought from the Data Protection Officer. CEntranet pages are currently being developed to contain guidance for staff, based on the Data Sharing Code of Practice issues by the Information Commissioner. A register of agreements/protocols already in use within the Council is also being developed. Information Sharing will be of particular importance when Health Service colleagues are transferred to the Local Authority, and the Data Protection Officer will be involved in this initiative

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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