

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of Meeting:	31 st January, 2013
Report of:	Head of Performance, Customer Services and Capacity
Subject/Title:	Compliance with Data Protection Act (1998), Freedom of Information Act (2000) and Environmental Information Regulations (2004)
Portfolio Holder:	Councillor David Brown

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 (EIR)). It also highlights volumes of requests, trends and current and future issues.

2.0 Decision Requested

- 2.1 That the Committee notes the arrangements in place to ensure compliance with 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 are effective arrangements in place to fulfil FOI, EIR 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 and 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 (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 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 is the regulator for these matters and there are regulatory powers, including criminal sanctions, which can be used in cases of non-compliance. Some details of the implications of the legislation are contained in this report.

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 tables below show the number and sources of requests received in 2012 (Jan-Dec), and the Services/Directorates to which they related. Figures are provided for 2011 for comparison.

Table 1

TYPE OF REQUEST	2012	2011	%age increase
FOI/EIR requests	1487 ¹	1343	10.7%
DP requests	467 ²	421	10.9%
TOTAL	1954	1764	10.8%

¹ In addition to these requests, the Council received 863 property search requests, which are treated as requests under EIR.

² 269 of the requests were requests to Council Tax from various public authorities requesting confirmation of address details.

Table 2

SOURCE	2012	2011
Individuals	37%	36%
Public Sector	20%	26%
Commercial	18%	17%
Press/Media	13%	15%
Pressure Groups	5%	4%
'What do they know' ³	5%	-
MP's/Councillors	2%	2%

Table 3

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

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. One of the reasons for the implementation of the legislation was to provide information to stimulate the economy, and, also, with the transparency agenda, the public have high expectations of the 'right to know'.

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, or refuse the request. However, if a request is refused, we are obliged to offer 'advice and assistance' to the requestor on how they might reformulate the request.

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

³ Website dedicated to Freedom of Information requests

the damage which would be likely to ensue, we would consider withholding information.

Where information is not to be released, a refusal notice is issued by the Compliance Team, citing the appropriate exemption under the Act, which permits the information to be withheld. In most cases, it must be further considered whether 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.

The Information Commissioner is responsible for upholding the right of access to official information held by public bodies, and there are various sanctions he can impose for failure to comply, with ultimately an enforcement notice submitted to the Supreme Court. Failure to comply is classed as contempt.

10.3 Environmental Information Regulations

The Environmental Information Regulations are a separate set of regulations, made under the European Communities Act 1972, but being similar in effect to the Freedom of Information Act, in terms of imposing a fundamental obligation to disclose information which does not fall into any exemption category; they apply to all information related to the environment, e.g. Planning, Land Charges, Highways. There is a presumption in favour of release of such information, and decisions not to release are difficult to uphold.

10.4 Referrals to Information Commissioner during 2012

Four cases were referred to the Information Commissioner during 2012. Two of these progressed to full investigations. In one case, our decision to withhold information was upheld, but the second case was decided in favour of the requestor.

10.5 Protection of Freedoms Act 2012

The Protection of Freedoms Act 2012 has extended rights under the Freedom of Information Act 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.

10.6 Review of Freedom of Information Act

In 2012 the Parliamentary Justice Select Committee conducted the first post legislative scrutiny review of the Freedom of Information Act. The outcome of the review was summarised by the Committee Chair:

“Freedom of Information has enhanced the UK’s democratic system and made our public bodies more open, accountable and transparent. It has been a success and we do not wish to diminish its intended scope or effectiveness.”

Consequently, there will be only minor changes in the legislation (it is anticipated that legislation will be brought forward in 2013 to make it marginally easier to refuse repeated time-consuming requests).

10.7 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.

10.8 Data Protection Breach

In January 2012 the Council was issued with a monetary penalty notice by the Information Commissioner's Office for a breach of the Data Protection Act. The Council reported the breach following an incident reported in May 2011, where an e-mail containing sensitive personal information was sent to a wider audience than intended. Following the penalty notice, the Chief Executive signed an undertaking with the Information Commissioner, the requirements of which included updating policies, introducing various organisational and technical measures and giving training to members and officers.

During 2012, a significant amount of training was delivered and a large number of improvements were made to policies and processes, to minimise the likelihood of such breaches in the future. Details of the actions already taken, together with ongoing and future actions, are included in the updated Annual Governance Statement 2011/12 Action Plan Progress Report

10.9 Information Assurance

An Information Assurance Framework has been produced and published on the intranet. This includes policies, processes, governance arrangements, guidance materials and training, with a view to:

- ensuring that information is dealt with legally, securely and efficiently
- assuring the quality, confidentiality, integrity and availability of all information

The policy sets out Cheshire East Council's commitment to ensuring transparency, whilst minimising the risk of information being compromised, and providing people with confidence that their personal information is being properly handled.

11.0 Access to Information

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

Name: Sandra Smith
Designation: Customer Relations and Compliance Manager
Tel No: 01270 685865
E-mail: sandra.smith@cheshireeast.gov.uk