



COUNCIL EXECUTIVE

FREEDOM OF INFORMATION – ANNUAL REPORT

REPORT BY CHIEF LEGAL OFFICER

A. PURPOSE OF REPORT

To submit the outcome of the annual review of the council's compliance with the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIRs).

B. RECOMMENDATIONS

1. To note the information in the report.
2. Heads of Service to continue to monitor their services' performance in meeting the 20 day deadline for processing FOI requests, in order to continue to achieve the corporate management target of 85%.
3. Relevant officers to take appropriate action to complete the outstanding recommendations in OSIC's Assessment Action Plan.

C. SUMMARY OF IMPLICATIONS

I Council Values	Being honest, open and accountable
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	The council must provide on request any information, which it holds in a recorded form, subject to certain limited exemptions. The council must also comply with OSIC's Good Practice Assessment Report dated 22 October 2010.
III Resources - (Financial, Staffing and Property)	The number of FOI requests continues to rise resulting in increased pressure on resources which have been reduced due to the financial cutbacks. The same applies to internal reviews which have shown a significant increase in number. Outstanding recommendations in OSIC's Assessment Action Plan require to be implemented.
IV Consultations	Information Management Working Group

(IMWG) and Corporate Management Team. The P&R PDSP considered this report on 17 June 2011 and agreed that it be submitted to the Council Executive for consideration.

D. TERMS OF REPORT

Background

1. FOISA and the EIRs came fully into effect on 1 January 2005. From that date, anyone has the right to receive information which the council holds in a recorded form, subject to certain limited exemptions. The council's Code of Corporate Governance requires that an annual review of the council's compliance with FOISA be undertaken. In addition, the Corporate Management Team receives a quarterly report on the FOI requests received and the council's performance in handling them.

Numbers of Requests

2. The table below shows the total number of requests received for each calendar year FOISA and the EIRs have been in force, and also shows the average number of requests per month.

Table 1: No. of Requests received in calendar years

	2005	2006	2007	2008	2009	2010	2011**
Total Requests	404	412	365	604	764	852	290
Average Requests Per Month	29*	33	30	50	64	71	96
% change on previous year	N/a	+14%	-9%	+66%	+26%	+11%	+35%

*excluding March 05 which saw 98 requests

** up to 31 March 2011

The number of requests being received has continued to grow in 2010/11. 2010 saw an increase in requests of 11% compared to the previous year. The average number of requests per month in 2010 was 71, but for the first quarter of 2011, the average increased significantly by 35% to 96 per month, the highest monthly average since FOISA and the EIRs began in 2005. This is placing ever increasing demands on services at a time of diminishing resources.

The table below provides a breakdown of information requests received by each **service area. [Note – the services shown reflect the council’s previous management structure.]

Table 2: Breakdown of no. of requests by service

Service	2005	2006	2007	2008	2009	2010	2011*
Support Services	26	18	67	84	131	143	53
Finance	55	32	24	82	76	125	47
Education & Cultural Services	52	78	68	104	131	121	27
Development & Regulatory Services	64	62	43	76	104	120	63
Operational Services	42	66	48	100	77	111	53
Housing & Building Services	82*	43	20	36	59	86	12
Chief Executive’s Office	26	49	49	61	89	58	9
Social Policy	33	42	34	41	54	55	14
Property Services	24	10	8	17	21	12	1
Customer Services/Corp. Comms.	n/a	12	4	3	11	11	6
Community Planning & Regeneration	-	-	-	0	11	10	5
TOTAL	404	412	365	604	764	852	290

* up to 31 March 2011

Comparing 2010 with the previous year, the biggest increases in numbers of requests received were in Finance (64%), Housing & Building Services (45%) and Operational Services (44%), while Education & Cultural Services, Chief Executive’s Office, Property Services and Community Planning & Regeneration showed decreases to varying degrees.

The first quarter of 2011 compared with 2010 showed significantly increased average numbers of requests per month for Support Services, Finance, Development & Regulatory Services and Operational Services.

** From April 2011, the reporting structure of Frontline will reflect the revised management structure of the council and will also reflect information requests under FOISA and the EIRs separately. Accordingly, management reports will be based in future on financial years.

Performance in Handling Requests

3. The council's performance in processing requests within the required timescales is shown below.

Table 3: Performance in meeting 20 working days time limit

Month	2009	2009	2010	2010	2011*	2011
	No	Standard	No	Standard	No	Standard
January	66	68%	76	76%	132	90%
February	69	68%	70	56%	94	85%
March	63	78%	84	58%	64	77%
April	91	71%	47	79%		
May	43	72%	50	84%		
June	61	77%	74	82%		
July	67	82%	69	83%		
August	77	77%	111	86%		
September	67	76%	76	76%		
October	52	85%	58	88%		
November	72	71%	78	83%		
December	36	64%	59	71%		
Total no. & average standard	764	72%	852	76%	290	85%

* to 31 March 2011

Performance over 2010 was 76%, compared with 72% for 2009. Performance over the first quarter of 2011 was 85%, reaching the target of 85% set by the CMT. The overall performance for the financial year 2010/11 was 83% out of a total of 910 requests received. This improvement in performance has been achieved despite a significant increase in the number of requests received. The challenge now is to maintain the average monthly performance of 85% and seek ways to improve it where possible.

Attached as Appendix 1 are the performance reports by service for 2010/11. The IMWG asked ILOs and Heads of Service to identify the reasons for dips in performance, particularly in December 2010 when 17 out of the 59 cases were shown as out of time. The reasons identified were -

- resource pressures and conflicting service priorities, eg supporting the council's response to the adverse weather conditions in December (Operational Services, Area Services), early processing of payroll information for Christmas (HR);
- absence of staff due to school holidays and difficulties in obtaining information from all 90 or so schools where information sought on a service wide basis (Education Services); and

- cases completed within the 20 day deadline, but owing to the reporting system on CRM, they were shown as late. This is because the system date fields within CRM are date and time specific, ie a case opened at 9.10am must be closed by 9.10am 20 working days later. If closed on the 20th day at any time after 9.10am, CRM records it as late although within the FOISA deadline. Once a case is created, the system does not allow any amendment to the closure date.

The reporting system within CRM for FOI and EIR purposes has been reconfigured to record EIR, DPA and FOI requests separately. As part of this work, the system has been changed for the start of 2011/12 to allow ILOs to correct closure dates, thus improving the accuracy of performance reports. The changes to the reporting system will also deal correctly with cases reopened and closed in error and invalid requests recorded as such and not as remaining open late.

Refusals

4. Refusals and the reasons for refusal have been recorded on CRM since April 2009.

The numbers of refusals are shown in the table below.

Table 4: No. of refusals

Year	Part Refusals		Refusals	
	Total	Average per month	Total	Average per month
2009/10	61	5	60	5
2010/11*	56	5	35	3

* up to 31 March 2011

Whilst there has been a continuing significant increase in the number of information requests over the last two financial years, there has been a decrease in the number of partial and complete refusals.

Information on the reasons for refusal is shown in the table below. The total number of times exemptions are used is greater than the number of refusals because more than one exemption can be used for each refusal or part refusal.

Table 5: Reasons for refusals

Section	2009/10		2010/11	
	Part Refusal	Refusal	Part Refusal	Refusal
S. 12 – excessive cost	8	11	10	1
S. 17 – information not held	29	29	27	9
S. 18 – contrary to public interest	1			1
S. 25 – information otherwise accessible	3	7	7	9
S. 26 – disclosure prohibited	1			
S. 27 – information for future publication	2			1
S. 30 – prejudice effective conduct of public affairs	3	1	3	5
S. 33 – prejudice commercial interests	2	1	2	1
S. 35 – prejudice law enforcement		5		7
S. 36 – confidentiality	1			2
S. 37 – court records				
S. 38 – personal information	11	6	11	9
TOTAL	61	60	60	45

Section 17 continues to be the reason for the largest number of refusals –this is because the council does not hold the information requested. Many of these are in response to fishing type requests from journalists and researchers, or are from applicants who think the council should hold the information which they seek.

Again, this information will be broken down into FOI and EIR requests in future reporting.

Internal Reviews

- The number of internal views is shown in the table below.

Table 6: No. of internal reviews

	2005/08	2008/09	2009/10	2010/11
Total	35	17	17	22
Yearly average	12	17	17	22

The table above shows an increasing number of internal reviews in 2010/11 – up 29% over the previous financial year.

The table below shows the breakdown of requests for internal review by service from 2008/09 to date.

Table 7: Breakdown of internal reviews by service

Service	2008/09	2009/10	2010/11	Total
Education	3	2	7	12
Housing & Building	3	4	4	11
Chief Exec. Office	2	2	3	7
Dev. & Reg.	1	4	1	6
Support	3		4	7
Operational	1	2	1	4
Cultural	1		1	2
Property	1	1		2
Social Policy (Housing Strategy)	2			2
Corporate Comms.		1		1
Finance		1	1	2
Total	17	17	22	56

The outcome of the 22 internal reviews in 2010/11 is shown in the table below.

Table 8: Outcome of Internal Reviews in 2010/11

Initial Response Upheld	Information Released	Request Withdrawn	Outstanding	Total
5	14	1	2	22

Details of the 22 internal reviews in 2010/11 are shown in the table below.

Table 9: Internal reviews 2010/11 - breakdown

NO.	Subject Matter	Date of Request	Date Closed	Outcome of Review
1.	No response from Housing and Building Services re copy of information held by council re escapes of water at 38-44 Main Street, Linlithgow Bridge	06.04.10	18.05.10	Information released
2.	No response from Education Services re various information on council schools in Livingston (no of classrooms, class sizes, OS maps etc)	17.05.10	03.06.10	Response issued by Education Services
3.	Two issues- re information sought from the Chief Executive regarding the council's Contingency Strategy and background information on service areas of the council.	28.05.10	27.07.10	Explanation provided and further response issued by the Chief Executive
4.	Unhappy with response from Education Services re junkets	09.06.10	31.08.10	Original FOI decision upheld
5.	Unhappy with response from Housing & Building Services re request for all information regarding remedial work carried out at home	13.06.10	22.07.10	Original FOI decision not upheld – additional information released following further search of archives and information contained in WLDC Committee Minutes
6.	No response from Chief Executive Office re service charges across council	29.06.10	24.08.10	Explanation for no response to original FOI provided and information released
7.	Unhappy with response from Education Services re	30.06.10	25.08.10	Original FOI decision not upheld – information

	request for all information regards catchments areas in Linlithgow			released
8.	No response from Education Services re request for information on funding for pre-school education	11.08.10	11.08.10	Applicant withdrew request – Education Services responded to applicant who is happy with the information provided
9.	Unhappy with response from Education Services re ICT information at East Calder Primary School	09.07.10 (rec'd by GRB on 16.08.10)	21.09.10	Original FOI decision not upheld – additional information released
10.	Unhappy with response from Legal Services re request for a copy of all information held by the council relating to applicant as an individual and as a councillor from May 2007 to date	23.09.10	22.11.10	Original FOI decision partially upheld – refused under Section 1(3)(b) and not Sections 38 and 12
11.	Unhappy with response from Chief Executive office re request for copy of all correspondence between officers, councillors and any third parties in relation to motions tabled at full council meetings	15.10.10	23.11.10	Original FOI decision upheld
12.	Unhappy with response from Area Services re request for list of officers on Records Management (or Information Management) Working Group, together with their qualifications	22.10.10	19.11.10	Original FOI decision partially upheld – applicant clarified request and further information released
13.	No response from Housing, Construction & Building Services re request for copy of PQQ, first and second bid submissions by Lovell for WLC phase 2 housing projects	04.11.10	27.01.11	Explanation for no response to original FOI provided and information released – some info redacted under sections 30(c) and 33(1)(b)
14.	No response from Legal Services re request for information relating to legal fees	11.11.10	10.01.11	Explanation for no response to original FOI provided and information released
15.	Unhappy with response from Housing, Construction & Building Services re request for information on lock-up garages	18.11.10	30.11.10	Original FOI decision not upheld – additional information released (case dealt with by Julie Whitelaw)
16.	Unhappy with response from Education Services re request for information on the performance of Secondary Schools in WL for academic years 2007-08, 2008-09 and 2009-10	18.11.10	25.05.11	Original FOI decision upheld, but for different reason for majority of information withheld [s. 17(information not held) instead of s.12 (excessive cost)]
17.	No response from HR Services re request for information on	13.12.10	04.02.11	Information released by service

	costs/numbers of early retirements			
18.	Unhappy with response from Countryside re request for information on a view indicator on the summit of Dechmont Law	02.02.11	05.05.11	Original FOI decision upheld
19.	Unhappy with response from Education Services re request for all correspondence on the council's decision to commit to a new school at Breich	08.02.11	05.05.11	Original FOI decision upheld
20.	Late response from Legal Services re request to view all documents held by the Council relating to the lease of property at 28 Park Place, Livingston	21.02.11	03.05.11	Response issued by service
21.	Unhappy with response from Finance Services re request for a list of all individual invoices by company/organisation name, date and amount over the sum of £500.00 received & paid the council	03.03.11	26.05.11	Original FOI decision upheld, but for different reason for information withheld [s. 17(information not held) instead of s.12 (excessive cost)]
22.	Dealt with under EIR. Unhappy with response from Planning Services re request for copy of section 75 notice being negotiated with developer and copies of notes, minutes, emails etc.	30.03.11	14.04.11	Original EIR decision upheld – information withheld under Regulations 10(4)(d) (material which is still in the course of completion) and 10(4)(e) (he request involves making available internal communications)

Appeals

6. The table below shows the number and outcome of appeals in the last three years.

Table 10: Number and Outcome of Appeals

Outcome	2008/09	2009/10	2010/11
Upheld	1		
Rejected	2	1	3
Withdrawn		4	
Total	3	5	3

There have been no new appeals lodged since August 2010. This maintains the comparatively low level of number of appeals to the Scottish Information Commissioner annually.

The table below gives the details of the three appeals in 2010/11. Although the appeals were rejected on their merits, the Commissioner highlighted the late responses from the council to the initial requests and internal reviews.

Table 11: Appeals to Scottish Information Commissioner 2010/11

No.	Subject Matter	Date of Request	Date Closed	Outcome of Appeal
1.	Late response and unhappy with response from Chief Executive re request for information on money spent on 'junkets'	20.05.10	14.07.10	Council 'generally' complied with FOISA. However, the Commissioner has made reference to the late response to original FOI and internal review.
2.	No response from Housing & Building Services to original FOI or internal review re damage to flat from escape of water from council flat above	02.07.10	07.09.10	Council 'generally' complied with FOISA. However, the Commissioner has made reference to the late response to original FOI and internal review and a failure to comply fully with duty to provide advice and assistance
3.	Not happy with response from the Chief Executive office re request for information on Chief Executive's expense claims for foreign trips	17.08.10	03.09.10	Council 'generally' complied with FOISA. However, the Commissioner has made reference to the late response to original FOI and internal review.

OSIC Assessment of Compliance with Good Practice

7. A Good Practice Assessment was conducted by the Office of the Scottish Information Commissioner (OSIC) last July, producing a list of recommendations and agreed Action Plan for improvement – available at –

<http://www.itspublicknowledge.info/uploadedfiles/WestLothianCouncilAssessment.pdf>

An update of the Action Plan was submitted to OSIC in April 2011 (see Appendix 2). The key issues for improvement identified were –

- improving performance in meeting the 20 working days deadline (**recommendation 1**);
- using Frontline as the corporate system for logging and processing information requests and producing a complete audit trail (**recommendation 5**); and
- refresher training on FOISA, to include information requests under the Environmental Information Regulations (**recommendations 11 & 14**).

Recommendation 1: Significant improvement has been made in performance in 2010/11, reaching an average performance of 83% across the council. The Corporate Management Team's target of 85% was reached over the first quarter of 2011. Dips in monthly performance need to be avoided if this target is to be met in 2011/12. However, as reported above, changes in the reporting system in CRM for information requests will assist in meeting this target.

Recommendation 5: The required changes to CRM went operational on 1 April 2011. Training sessions were organised in March by the CRM team for services to get up to speed. An additional session for Operational Services was organised since they were using CRM for recording information requests for the first time, instead of using Confirm. The next step is the creation of the necessary linkages to Meridio to complete the electronic audit trail required by OSIC. A corporate level file plan has been agreed by the IMWG to show how services should structure information requests within Meridio. Meanwhile, documents associated with information requests are being stored on Frontline until the linkages to Meridio can be made.

Recommendation 7 – Similar changes have been made to CRM to enable internal reviews to be recorded with effect from 1 April 2011. So far, two requests for internal review have been received since 1 April 2011. Progress has been made in eliminating the backlog of reviews, with no case from 2010/11 remaining outstanding. The standard procedure for conducting reviews has been amended by the IMWG to require escalation to Heads of Service where progress is difficult, eg due to the complexity of the case.

Recommendations 11 & 14 – There has been slippage in the timescales for the production of the required training materials and the delivery of training on EIR requests. This will receive attention during the summer 2011.

Based on the council's response as contained in Appendix 2, OSIC has now intimated that no further action is required by the council and they have closed their practice assessment process .

Future Issues

8. **(1) INSPIRE (Scotland) Regulations 2009** – A lead officer in the council is required to be designated to spearhead the council's compliance with these Regulations which provide the public with access to spatial data held by the council. The process of dealing with applications, reviews and appeals regarding spatial data is the same as for FOI and EIR applications.

(2) Public Records (Scotland) Act 2011 – This Act received Royal Assent on 20 April 2011. It is the first new public records legislation in Scotland for over 70 years. The legislation does not come into force until a Commencement Order is made by the Scottish Ministers. This is likely to be made towards the end of 2011. Certain key steps precede approval of the Order. The Keeper of the Records of Scotland (the Keeper) is obliged to consult all public authorities listed in the schedule to the Act in relation to certain matters such as explaining the timetable and development and implementation process for the new legislation.

The Act applies only to named public authorities but, it will reach into the private and voluntary sectors where a public authority decides to contract out a function to a private or voluntary body. Under these circumstances, records created by private or voluntary organisations when providing this function will be considered public under the provisions of the Act. However, this relates only to functions and not services. Records created by private or voluntary bodies supplying a public authority with goods and services are not subject to the provisions.

The Keeper must develop and publish a model records management plan (RMP) and provide supporting guidance to assist authorities. The model RMP and guidance will be published and submitted to all authorities for formal consultation lasting 12 weeks. The council will take part in this consultation process.

A Commencement Order will be made before the formal consultation process starts. The Order will commence the first tranche of provisions of the Act, and it is anticipated that the Act should be fully effective approximately one year after the first tranche of provisions has commenced.

(3) Data Subject Access Requests – As part of the changes to CRM for processing information requests, a default system is required to be put in place when a subject access request covers all personal data held by the council. At present, such requests are processed by the service receiving the request, not through a central point. This issue will be addressed by senior management.

E. CONCLUSION

The number of information requests continues to increase, up 11% in 2010 over the previous year, and up 35% in the first quarter of 2011 compared with 2010. The number of internal reviews is also increasing significantly – up 29% for 2010/11 compared with the previous year.

There has been a welcome improvement in the council's performance in meeting the 20 day deadline since the first quarter of 2010, now reaching 83% for 2010/11. For the first quarter of 2011, the CMT target of 85% was met. The challenge now is to maintain that standard throughout 2011/12 and to improve it further within available resources.

The backlog of internal reviews has been dealt with, and the challenge now is to meet the corporate management target of 85% of reviews being dealt with within the 20 working day deadline..

Good progress has been made in implementing the other recommendations in OSIC's Good Assessment Report following their audit last July, with outstanding recommendations on training on EIR requests due to be completed by the end of August 2011. OSOC has now closed their practice assessment process.

F. BACKGROUND REFERENCES

1. Data held in CRM
2. Chief Executive Office files.
3. OSIC's Good Practice Assessment Report 22 October 2010.

Appendices/Attachments: Two

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Date 17 June 2011

APPENDIX 1 - Performance Reports by service for 2010/11.



foi enquiries by
service 2010 ...

APPENDIX 2 - Action Plan from OSIC Good Practice Assessment Report dated 22 October 2010, incorporating the council's update in progress as at 22 April 2011.



OSIC Assessment
Action Plan 22...