



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).

B. RECOMMENDATION

To note the report.

C. SUMMARY OF IMPLICATIONS

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|---|---|
| I Council Values | Being honest, open and accountable. |
| II Policy and Legal | The council must provide on request any information which it holds in a recorded form, subject to certain limited exemptions. |
| III Resources - (Financial, Staffing and Property) | Demand on existing resources has increased significantly with a 66% increase in the number of FOI requests in 2008 compared with 2007. Significant workload is experienced in those services receiving the most requests and where individual requests require information from a range of council services or ask for copies of all relevant emails, memos, hand-written notes, etc. Also, Legal Services in providing advice and assistance to services particularly on the application of exemptions in refusals and also internal reviews and appeals to the Scottish Information Commissioner. |
| IV Consultations | Working Group of Officers on Information Management, Corporate Management Team.
The Partnership and Resources Policy Development and Scrutiny Panel agreed at its meeting on 5 June 2009 that this report |

be submitted to the Council Executive for information.

D. TERMS OF REPORT

1. Background –

FOISA 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.

2. Numbers of Requests –

Table 1: Number of requests received:

Year	Total Requests	Average Per Month	+/- on previous years monthly average
2005	404	29*	Not applicable
2006	412	33	+14%
2007	365	30	-9%
2008	604	50	+66%
2009 (to 31/03)	198	66	+32%

*excluding March 05 which saw 98 requests

The table shows that there was a significant increase in the number of requests received in 2008 compared to previous years. The growth has continued in the first three months of 2009.

Table 2: Number of requests received each year by Service Area:

Service	2009 (to 31/03)	2008	2007	2006	2005
Education & Cultural Services	28	104	68	78	52
Operational Services	29	100	48	66	42
Support Services	38	84	67	18	26
Finance	17	82	24	32	55
Development & Regulatory Services	35	76	43	62	64
Chief Executive's Office	12	61	49	49	26
Social Policy	11	41	34	42	33
Housing & Building Services	18	36	20	43	82*
Property Services	7	17	8	10	24
Customer Services	3	3	4	12	n/a
Community Planning And Regeneration	3	0	-	-	-
TOTAL	198	604	365	412	404

* formerly Housing & Customer Services

Apart from in 2005, Education and Cultural Services have consistently received the highest number of requests. Educational & Cultural, Finance, Operational and Development & Regulatory Services show significant increases in numbers of requests in 2008/09. Support Services show a significant increase for 2009.

3. Performance in Handling Requests –

Table 3: The council's performance in responding to requests within 20 days:

	2009		2008		2007		2006	
	No	Std Met	No	Std Met	No	Std Met	No	Std Met
January	66	68%	34	82%	28	86%	38	68%
February	69	68%	49	86%	41	93%	36	72%
March	63	78%	57	86%	36	78%	45	80%
April			47	67%	17	88%	29	79%
May			56	Not available	24	92%	28	75%
June			49	59%	39	90%	27	93%
July			48	83%	34	91%	34	65%
August			38	82%	35	74%	38	79%
September			63	63%	22	82%	30	87%
October			52	58%	19	58%	38	87%
November			53	60%	44	75%	38	68%
December			57	70%	27	63%	27	74%

Performance for May 08 is not available. This is because of the move to using Frontline instead of ETS. Many of the requests initially logged in ETS were then migrated to Frontline, but the reporting function on Frontline does not identify them as FOI requests. Excluding May 08, the average monthly performance for 2008 was 72%. Performance for the first three months of 2009 is also at 72%

The Information Management Working Group has considered the reasons for the drop in performance in 2008/09 and has identified the following -

- difficulties in ensuring the correct processes are followed in using Frontline to deal with FOI requests, eg, in particular, the reallocation of ownership of requests and closing off requests reflecting the actual date of sending the council's response to the applicant.
- a significant increase in the volume of FOI requests received in 2008 and 2009, with consequent impact on existing resources.
- an increase in the number of complex and resource intensive requests.

4. Analysis of Applicants –

There is no requirement for any person making a FOI request to disclose whether they are making the request as a private individual or on behalf of an organisation. Therefore, the accuracy of the breakdown provided cannot be guaranteed and the Information Management Working Group considers that the incidence of organisations is likely to be under-reported.

Throughout 2008 and the first three months of 2009, 54% of requests could be identified as having come from commercial, statutory or voluntary organisations. Media organisations continue to be the largest single source of requests from organisations, followed by solicitors.

The last two months for 2007 contributed to an increase of 7%, for the year, of requests coming from organisations rather than private individuals.

5. Subject Matter of Requests –

The subject matters covered by FOI requests continue to be diverse and range over all council services. In 2008/09, they include -

- Solicitors' pre-claim information.

- Current issues in the media. Examples are:
 - data loss
 - breaches of the council's internet and email policies;
 - use of surveillance powers under THE Regulation of Investigatory Powers legislation (RIPSA)
 - number of teachers investigated for misconduct, suspended or disciplined;
 - number of school pupils reprimanded for drinking alcohol, violence or taking drugs at school;
 - number of cases of abuse cited as contributory factor in death of child on record with council;
 - number of mixed-sex and same-sex adoptive couples;
 - number of potential adopters and foster carers refused approval because of their obesity or smoking habit.

- Expenditure incurred by the council on various heads.. Examples are:
 - Foreign trips taken by councillors and officers;
 - Twinning and hospitality arrangements
 - Use of blackberries
 - Fuel and energy costs
 - Diversity initiatives
 - Equality impact assessments
 - Multi function devices (photocopiers/printers)
 - Statutory advertising
 - Care and support to asylum seekers
 - Taking children to school by taxi
 - Subsidised bus services
 - Legal costs charged by outside firms
 - Translation and interpretation services
 - Clothing allowances for councillors
 - Away days and team building events
 - Day care for the elderly
 - Early retirement and early severance lump sums
 - Hiring of consultants
 - Managing asbestos in schools

- Information to support pupil placement requests and appeals

- Tendering processes and letting of contracts.

- Processing of planning applications.

6. Refusals, Internal Reviews and Appeals –

Following the transfer of the management of FOI requests from the ETS system to the new CRM system, Frontline, in June 2008, it has not been possible to extract information on the number of FOI requests refused or part refused. The experience in 2007/08 was that the most common reasons for refusal were -

- requested information not held
- prejudicial effect on conduct of council's affairs;
- commercial interests of the council or other person; and
- personal data of a third party.

The experience of 2008/09 does not indicate a significantly different picture.

From 1 January 2005 to 31 March 2008, there were 35 internal reviews requested, producing an average of 12 per annum. In 2008/09, there have been 17 internal reviews requested, an increase of 41% over the previous year. The total number of internal reviews since FOISA started is 52.

A breakdown of the 17 internal reviews in 2008/09 is shown in the table below.

Table 4: Requests for Internal Review in 2008/09

No.	Subject Matter	Outcome of Review
1.	Names of members who made up committee approving Fair Treatment at Work Policy	Initial decision confirmed
2.	Pupil Placement at Linlithgow Academy 2008/09	Initial decision confirmed
3.	Names of members who made up committee approving Fair Treatment at Work Policy	Initial decision confirmed
4.	No response to FOI Request	Information released
5.	Housing needs of disabled people	Information released
6.	Copies of all site visits, notes etc relating to applicant's house	Information released
7.	A copy of all files held by Bathgate Academy relating to applicant's son	Initial decision confirmed
8.	Scaffolding at Deans South	Information released
9.	Longridge Community Centre – confirmation of money received from insurance company and copy of building spec for both council and community council proposals to replace village hall	Initial decision confirmed
10.	Fauldhouse Right of Way	Information released
11.	Total cost of Texas Visit and cost of WLC's Hospitality Budget	Information released
12.	Dates of all contact made regarding the reporting of dampness at tenant's house	Information released
13.	Fauldhouse Right of Way	Information released
14.	All complaints, inspections, maintenance reports and repairs carried out to Station Road and St Michael's Wynd, Linlithgow	Information released
15.	Hire car information – unhappy about paying fee of £62 for information	Information released
16.	Unhappy with way FOI response on Housing matter had been presented	outstanding
17.	Lack of response about how many classrooms in Broxburn PS and St. Nicholas PS	outstanding

There have been 3 appeals made to the Scottish Information Commissioner in 2008/09 against decisions of the council following internal review. The table below gives the details.

Table 5: Appeals to Scottish Information Commissioner in 2008/09

No.	Subject Matter	Outcome of Appeal
1.	Job evaluation under Single Status	Appeal upheld
2.	Deans South	Appeal refused
3.	Names of members who made up committee approving Fair Treatment at Work Policy	Appeal refused

7. **Publication Scheme -**

In accordance with the requirements of FOISA, a renewed publication scheme was submitted to the Office of the Scottish Information Commissioner on 1st April 2009. This scheme followed the model approved by the Commissioner for use by local authorities in Scotland. His formal approval is awaited. The new Scheme will come into effect in June 2009.

8. **Information Management –** There has been a number of key developments in the management of information in 2008/09, eg –

- appointment of a Records Manager facilitating the adoption of retention schedules and file plans across council services and, hence, improving the council's level of compliance with the Code on Records Management issued under section 61 of FOISA;
- introduction of an electronic document and records management system (EDRMS) ahead of the move into the Civic Centre;
- revised policies adopted by the council on Data Protection, Information Security and Records Management; and
- raising awareness of council employees to the risks of loss of personal and other data through the work of the Information Management Working Group and the use of training videos.

9. **Scottish Information Commissioner's Enforcement Powers –**

The Commissioner has extensive enforcement powers to require public bodies to comply with the requirements of FOISA and the EIR's. These include issuing notices to public bodies requiring them to provide information (Information Notices), to improve their procedures (Improvement Notices) and to take specific action (Enforcement Notices). Failure to comply with these notices runs the risk of a finding of contempt of court by the Court of Session.

The Commissioner has agreed that around 10 public authorities will be assessed under his enforcement strategy in 2009/10, with at least 3 local authorities included. Three councils have already been notified that they will be assessed, but so far West Lothian has not been included.

10 Issues for the Future –

There are a number of significant challenges facing the council in relation to meeting the requirements of the FOISA and EIR regimes in 2009/10. These include –

- developing the CRM system, Frontline to improve the capturing and reporting of management information regarding FOI requests;
- making best use of existing resources to deal with the increasing number of FOI requests and internal reviews within the 20 working day time limit;
- continuing to improve records management across the council using the new EDRMS;
- raising the focus on EIR requests; and
- maximising information on the council's web site.

E. CONCLUSION

2008 saw a significant increase in the number of FOI requests and internal reviews being received by the council. The first three months of 2009 are also seeing an increase in comparison to 2008. At the same time, there has been a fall in the council's performance in meeting the 20 working day time limit. However, there has not been an increase in the number of appeals to the Scottish Information Commissioner.

The new CRM system, Frontline, requires to be developed further to improve the management information available on the handling of requests.

The Working Group will continue to monitor performance.

Organisations continue to submit a substantial part of the total number of FOI enquiries received.

F. BACKGROUND REFERENCES

1. Data held on Frontline.
2. Minute of meeting of the Council Executive of 3 June 2008.
3. Action Notes of the Information Management Working Group (held on file).
4. The Scottish Information Commissioner's web site at www.itspublicknowledge.info

Appendices/Attachments: none

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