

Committee: Standards Committee

Date: 23 October 2014

Wards: ALL

Subject: Freedom of Information 2013/14

Lead officer: Karin Lane, Head of Information Governance

Lead member: Cllr Mark Allison

Contact officer: Karin Lane, Head of Information Governance

Recommendations:

A. This report is for information only.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To give the Standards Committee an overview of council performance on Freedom of Information (FOI) requests in 2013/14. This report also gives a breakdown of requester type and exemptions used in responses.

2 DETAILS

- 2.1. Data for the annual report has been extracted from the FOI spread-sheet put in place by the Information Governance team.
- 2.2. FOI requests must be responded to within 20 working days as set out in the Freedom of Information Act 2000.
- 2.3. All FOI requests are logged by the Information Governance team, reviewed and then sent on to the responsible team with instructions for responding to the request.
- 2.4. Requests for information from one team are responded to by that team. Requests split over two or more teams are co-ordinated and responded to by the Information Governance team.
- 2.5. If all the information requested is obviously exempt the Information Governance team will deal with the request, and not forward it on to teams.
- 2.6. The Information Governance team will refuse the request or offer assistance to teams about applying exemptions when part of the information requested is exempt.
- 2.7. The Information Governance team also send reminders to teams about outstanding requests.
- 2.8. If a requester is not satisfied with the response to their FOI request, they can ask for an internal review or make a complaint to the Information Commissioner's Office (ICO).

3 FREEDOM OF INFORMATION REQUESTS

- 3.1. There was an increase in the number of FOIs received in 2013/14 and a subsequent drop in performance for response time and average days to respond.

	2013/14			2012/13			2011/12		
	No.	% of total	% on time	No.	% of total	% on time	No.	% of total	% on time
CS	506	32.8%	91.3%	449	35.6%	92.0%	418	33.2%	66.5%
CSF	248	16.1%	77.4%	188	14.9%	95.7%	169	13.4%	81.7%
CH	183	11.9%	94.0%	126	10.0%	96.8%	112	8.9%	74.1%
ER	427	27.7%	89.9%	392	31.0%	95.2%	436	34.6%	81.4%
Split	179	11.6%	86.0%	108	8.6%	97.2%	124	9.8%	80.6%
Total	1,543	100%	88.4%	1263	100%	94.5%	1,259	100%	75.8%

Please note split FOI requests are those which need responses from more than one team, division or directorate.

	2013/14 Average days	2012/13 Average days	2011/12 Average days
CS	10.1	13.0	20.6
CSF	15.9	11.8	15.4
CH	10.2	10.4	14.4
ER	12.4	9.8	15.8
Split	16.2	13.8	16.8
Total	12.4	11.6	17.3

Please note split FOI requests are those which need responses from more than one team, division or directorate.

4 REQUESTORS

- 4.1. There has been little change in the numbers of FOI requests received from the different requestor categories.

	2013/14		2012/13		2011/12	
	No. FOIs	% All FOIs	No. FOIs	% All FOIs	No. FOIs	% All FOIs
Business	277	18.0%	203	16.1%	231	18.3%
Member of the Public	929	60.2%	770	61.0%	606	48.1%
Press	205	13.3%	154	12.2%	227	18.0%
Legal Professional	15	1.0%	13	1.0%	30	2.4%
Politician	53	3.4%	33	2.6%	23	1.8%
Student	15	1.0%	3	0.2%	5	0.4%
Other	49	3.2%	87	6.9%	137	10.9%
Total	1,543	100%	1,263	100%	1,259	100%

Please note the "other" category of requestor stopped being used during 2013/14, and a new category of "Charity" will be used from 2014/15.

- 4.2. Children School and Families requests have a higher than overall average percentage of press requests, while Environment and Regeneration have a higher percentage of requests from members of the public than the overall average.

2013/14	Business	Public	Press	Legal professional	Politician	Student	Other
CS	21.7%	59.1%	12.8%	1.0%	1.8%	1.4%	2.2%
CSF	17.3%	50.0%	21.8%	1.2%	6.9%	0.0%	2.8%
CH	18.0%	50.8%	13.1%	0.5%	7.7%	1.1%	8.7%
ER	13.6%	73.5%	7.7%	0.7%	1.4%	0.9%	2.1%
Split	18.4%	55.3%	16.2%	1.7%	3.9%	1.1%	3.4%
Total	18.0%	60.2%	13.3%	1.0%	3.4%	1.0%	3.2%

Please note the "other" category of requestor stopped being used during 2013/14, and a new category of "Charity" will be used from 2014/15.

- 4.3. In 2013/14 a lower percentage of FOI requests were for Merton only (rather than a request sent to all councils) compared to 2012/13.

	2013/14		2012/13		2011/12	
	No. FOIs	% All FOIs	No. FOIs	% All FOIs	No. FOIs	% All FOIs
Sent to other councils	140	9.1%	99	7.8%	250	19.9%
Merton only	946	61.3%	1060	83.9%	484	38.4%
Not sure if sent elsewhere	457	29.6%	104	8.2%	525	41.7%
Total	1,543	100%	1,263	100%	1,259	100%

5 EXEMPTIONS

- 5.1. Exemptions can be applied where information is withheld. A response in full means that either all information requested was provided or not held by the council.

	2013/14			2012/13			2011/12		
	No. FOIs	% All FOIs	% On time	No. FOIs	% All FOIs	% On time	No. FOIs	% All FOIs	% On time
Provided in full	1317	85.4%	87.4%	1055	83.5%	95.3%	204	65.4%	81.9%
Partially withheld	60	3.9%	88.3%	104	8.2%	87.5%	48	15.4%	66.7%
Withheld	166	10.8%	96.4%	104	8.2%	94.2%	60	19.2%	86.7%
Total	1,543	100%	88.4%	1,263	100%	94.5%	312	100%	80.4%

Please note provision of information statistics were only collected for part of 2011/12, so totals will not meet the overall total for the year.

- 5.2. Corporate Services have the highest percentage of FOI responses with withheld information, including a significant number of common requests that are always withheld and responded to directly by the Information Governance team (e.g. empty home information or business rates data)
- 5.3. When information is withheld, an exemption must be quoted in the FOI response. In 2013/14 the most used exemptions for withholding information were S21 already accessible by other means, S41 information provided in confidence, and S40 personal data. In 2012/13 and 2011/12 the three most used exemptions were S40, S41 and S12 exceeding the appropriate limit, see Appendix one.

6 INTERNAL REVIEWS AND THE INFORMATION COMMISSIONER'S OFFICE

- 6.1. There were 21 FOI internal reviews in 2013/14, compared to 25 in 2012/13 and 30 in 2011/12. The percentage of internal reviews on time decreased in 2013/14 to 85.7% from 92.0%, but the average number of days to respond to an internal review fell to 13.2 days from 17.2 days.
- 6.2. A higher percentage of internal reviews of FOI requests were upheld and partially upheld in 2013/14 compared to 2012/13.
- 6.3. There was only one appeal to the ICO about FOI requests in 2013/14, compared to five in 2012/13 and six in 2011/12 and this was responded to in nine days, an improvement from 16.4 days.
- 6.4. The appeal was regarding the council applying an exemption as the FOI requests were considered vexatious. The ICO's decision was that the council had correctly applied the relevant exemption and no further steps were to be taken. The requestor escalated their complaint to the First Tier Tribunal, who dismissed their appeal.

7 PUBLICATION SCHEME

- 7.1. The council maintains a Publication Scheme as required by the ICO under the FOI Act and this appears on our website as the 'Guide to Information'.
- 7.2. The introduction of the DCLGs Transparency Agenda has provided an overlap with the scheme and this has resulted in more data appearing under the heading of 'Open Data'. The publishing of the majority of this information is expected to become mandatory in June 2014.
- 7.3. There is scope to review how we present the increasing amount of council data to make it easier for service users to find. The Information Governance team will work with departments to drive this forward as well as looking to publish information.

8 BENCHMARKING

- 8.1. The Head of Information Governance is an active member of the London Information Rights Group. This group shares best practice on responding to Freedom of Information requests, and discuss changes to legislation and recent decisions by the ICO. A representative of the ICO attends these meetings.
- 8.2. In first quarter of 2014, FOI performance for 2012/13 was requested from other London boroughs. From those who responded, we ranked 6th in terms

of the volume of requests received and 6th in terms of responding to requests on time, see Appendix two.

9 ISSUES

9.1. There have been a number of issues with the FOI processes, including:

- staff not sending FOI requests through to the Information Governance team for logging and tracking on time, or not copying in their final responses to the team;
- identifying responsibility for each part of the process;
- officers not using the correct template, therefore not giving the requester the right of appeal, or explaining any exemption used;
- using the 18 hour exemption with no evidence;
- not getting responses signed off by Communications or the Head of Information Governance, when this has been explicitly requested in the notification to the team; and
- staff sitting on requests and either not letting the Information Governance team know that they cannot answer it or not approving a request and therefore delaying it.

9.2. These issues have been, and will continue to be, resolved through on-going improvements to the FOI process and clearer guidance for staff, including:

- improvements to the email notification to teams;
- regular reminders of outstanding requests on days 10, 15 and 18, by email and telephone call;
- weekly emails of all due and outstanding FOIs sent to DMTs;
- Head of Information Governance attends DMTs on a quarterly basis;
- a checklist developed to evidence when a request is likely to take longer than 18 hours;
- training for staff who deal with FOI requests across the council; and
- revising the FOI web page so requesters see the Publication Scheme contents before seeing how to make an FOI request.

9.3. The ICO can choose to monitor authorities if their performance drops below 85% or if the ICO receive a significant number of complaints regarding an authority. In August 2013, Wirral Borough Council signed a formal undertaking with the ICO, due to their unsatisfactory performance (FOIs response rate was less than 75%). The ICO also confirmed his intention to monitor its handling of requests received during a three month period. .

10 NEXT STEPS

10.1. A monthly FOI meeting with representatives from each department has been set up to improve processes and discuss any issues affecting performance.

11 ALTERNATIVE OPTIONS

11.1. Not applicable.

12 CONSULTATION UNDERTAKEN OR PROPOSED

12.1. None undertaken.

13 TIMETABLE

13.1. By July 2014 all FOI guidance, processes and templates will be combined into one overall guide for staff to improve usability.

13.2. A review will take place of the publication scheme to ensure it meets the requirements set out in a revised definition document for local authorities. This work will be completed by September 2014.

13.3. An FOI case management system is currently being developed as part of the Data Labelling project.

14 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

14.1. University College of London undertook some research on the costings for dealing with FOI requests. They used an average time of 7.5 hours to deal with an FOI and an hourly cost of £25 (this is the amount councils are able to charge over the 18 hour rule). Therefore, in accordance with this formula, the total cost of dealing with FOIs for 2013/14 was £289,312.50, with a cost per FOI of £187.50.

15 LEGAL AND STATUTORY IMPLICATIONS

The Freedom of Information Act 2000 and Environmental Information Regulations 2004.

16 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

16.1. It is important that all those involved in dealing with FOI requests are mindful of ensuring a consistent approach with all requestors in line with equalities principles.

17 CRIME AND DISORDER IMPLICATIONS

17.1. Not applicable.

18 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

18.1. Poor or late responses could lead to the council being referred to the Information Commissioner, which could lead to a decision notice.

18.2. There is also a reputational risk from poor or late responses.

19 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix one – Table of exemption applied to requests by year
- Appendix two – Benchmarking of FOI performance for 2012/13

20 BACKGROUND PAPERS

20.1. None

APPENDIX ONE

TABLE OF EXEMPTION APPLIED TO REQUESTS BY YEAR

Exemption applied	2013/14		2012/13		2011/12	
	No.	% of Total	No.	% of Total	No.	% of Total
S12 Exceed appropriate limit	41	12.0%	45	16.1%	32	26.7%
S21 Already accessible by other means	105	30.7%	34	12.1%	0	0.0%
S22 Intended for later publication	22	6.4%	31	11.1%	2	1.7%
S30 Held for criminal investigation	1	0.3%	0	0.0%	1	0.8%
S31 Detection / prevention of crime	30	8.8%	26	9.3%	9	7.5%
S33 Audit purposes	0	0.0%	0	0.0%	1	0.8%
S38 Health and safety purposes	2	0.6%	2	0.7%	0	0.0%
S40 Personal data	49	14.3%	59	21.1%	27	22.5%
S41 Provided in confidence	83	24.3%	44	15.7%	32	26.7%
S42 Legal privilege	1	0.3%	6	2.1%	8	6.7%
S43 Prejudice commercial interests	4	1.2%	9	3.2%	4	3.3%
S44 Prohibited by any other law	1	0.3%	1	0.4%	1	0.8%
EIR Exception	1	0.3%	15	5.4%	3	2.5%
Vexatious or repeated request	1	0.3%	8	2.9%	0	0.0%
Any other FOI exemption	1	0.3%	0	0.0%	0	0.0%
Total	342	100%	280	100%	120	100%

Please note a FOI request could have a number of exemptions applied to different parts of the information requested, so the total exemptions will not match the total requests withheld or partially withheld.

APPENDIX TWO

BENCHMARKING OF FOI PERFORMANCE FOR 2012/13

London Borough	Number FOIs	% replied on time
Barking and Dagenham	1,205	76.3%
Barnet	1,536	92.1%
Bexley	1,242	80.0%
Brent	1,351	Did not record
Bromley	1,731	78.5%
Camden	No response	No response
City of London	No response	No response
Croydon	1,418	82.4%
Ealing	1,332	91.0%
Enfield	1,182	84.8%
Greenwich	No response	No response
Hackney	1,379	53.2%
Hammersmith and Fulham	1,188	94.0% (projected)
Haringey	1,150	77.0%
Harrow	1,462	45.4%
Havering	No response	No response
Hillingdon	1,108	97.3%
Hounslow	1,462	80.6%
Islington	1,506	72.7%
Kensington and Chelsea	1,155	88.0%
Kingston upon Thames	1,101	65.0%
Lambeth	1,422	45.4%
Lewisham	1,166	88.3%
Merton	1,263	94.5%
Newham	1,676	78.0%
Redbridge	1,142	85.0%
Richmond upon Thames	1,128	95.0%
Southwark	1,800	64.0%
Sutton	1,082	94.0%
Tower Hamlets	875	78.2%
Waltham Forest	1,106	83.0%
Wandsworth	1,666	84.0%
Westminster	1,753	91.0%