

REPORT TO AUDIT AND GOVERNANCE COMMITTEE

Date of Meeting: 8th March 2023

Report of: Corporate Manager (Executive Support)

Title: Freedom of Information and Data Protection

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1. The report explains the options for accessing information held by the Council, including the use of the Freedom of Information Act 2000, Environmental Information Regulations 2004, and Data Protection Act 2018.
- 1.2. It summarises the number of requests that have been received in the last year, how they were handled and the number of referrals to the Information Commissioner's Office, including data breaches.

2. Recommendations:

- 2.1. That members note the report.

3. Reasons for the recommendation:

- 3.1. To ensure members are aware of the volume of requests for information and the outcome of these requests.

4. What are the resource implications including non financial resources?

- 4.1. There are no additional resource implications identified.

5. Section 151 Officer comments:

- 5.1 There are no financial implications contained within this report.

6. What are the legal aspects?

- 6.1. The relevant legislation is covered in paragraph 8 of this report.

7. Monitoring Officer's comments:

- 7.1 As stated above, this report examines the statutory provisions for accessing information held by the Council and provides a summary of the requests submitted to the Council. The Deputy Monitoring Officer has no additional comments.

Simon Copper – Deputy Monitoring Officer.

8. Report details:

8.1. Options for accessing information

- 8.1.1. The Freedom of Information Act 2000 provides public access to information held by public authorities. The Act covers any recorded information that is held which includes emails, photographs and sound or video recordings.
- 8.1.2. The Environmental Information Regulations 2004 provides public access to environmental information held by public authorities. The Regulations cover all recorded information as outlined above.
- 8.1.3. The Data Protection Act 2018 gives individuals access to their own personal information. Individuals requesting information about themselves should make a data protection subject access request.
- 8.1.4. In addition, the Local Audit and Accountability Act 2014 provides for the public right to inspect the accounts of a local authority.

8.2. Numbers of requests

- 8.2.1. The access to information legislation is widely publicised and quoted in the media, which has meant individuals are becoming more aware and increasingly using their rights to access information.
- 8.2.2. The table at Annex A details the number of Freedom of Information (FOI) / Environmental Information Regulations (EIR) requests received in 2022 and whether the information was disclosed.
- 8.2.3. In 2022 a total of 782 FOI/EIR requests were processed. This compares to 696 requests in 2021, 738 in 2020, 792 in 2019, 825 (approx) in 2018 and 736 (approx) in 2017.
- 8.2.3. If an applicant is dissatisfied with their response to their request, they can request an internal review is carried out. The internal review is carried out by the Corporate Manager, Executive Support and a response is issued within 20 working days.
- 8.2.4. 17 internal reviews were carried out in 2022. This compares to 19 in 2021, 7 in 2020 and 7 in 2019. The table at Annex B details the outcomes of the internal reviews.
- 8.2.5. If the applicant is dissatisfied with the response to their internal review, they can refer the matter to the Information Commissioner for determination. The Information Commissioner's Officer (ICO) is the UK's independent body set up to uphold information rights in the public interest. They deal with concerns raised by members of the public. In cases where a clear and serious breach of the legislation has taken place, they will take direct action on the specific concern raised. If they decide that there has been a serious failure to comply with the law, they will provide advice and instruction to help ensure the organisation gets it right in future. If an organisation isn't taking its responsibilities seriously, they may also take enforcement action. In the most serious cases, they can serve a monetary penalty.
- 8.2.6. There were 2 referrals to the Information Commissioner's Office in 2022. This compares to 1 in 2021, 2 in 2020 and 3 in 2019. The table at Annex C details the outcomes of the Information Commissioner's investigations.

- 8.2.7. Since 2019, of the 8 cases referred to the Information Commissioner's Office, 4 were closed and 4 Decision Notices were issued. Of the 4 Decision Notices issued by the Information Commissioner, 2 were in favour of the Council withholding the information, 1 required the Council to disclose the information and 1 required the Council to disclose part of the information.
- 8.2.8. Individuals have a right to access their personal information held by services. For example, their housing file, council tax information, repairs information and complaint file. In 2022 a total of 26 Subject access requests were recorded by Executive Support and processed by services across the Council. This compares to 29 in 2021, 13 in 2020 and 9 in 2019.
- 8.2.9. The Council also receives requests for CCTV footage from individuals, the Police and insurance companies. The majority of CCTV requests relate to incidents involving vehicles. 47 CCTV requests were recorded by Executive Support in 2022 compared to 29 in 2021, 26 in 2020 and 30 in 2019.
- 8.2.10. The General Data Protection Regulation (GDPR) introduced a duty on all organisations to report certain personal data breaches to the Information Commissioner's Office. A personal data breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data. This includes breaches that are the result of both accidental and deliberate causes. Personal data breaches include:
- Access to an unauthorised third party;
 - Sending personal data to an incorrect recipient;
 - Computing devices containing personal data being lost or stolen;
 - Alteration of personal data without permission; and
 - Loss of availability of personal data.
- 8.2.11. The Council has not reported any data breaches to the Information Commissioner since the GDPR was introduced in May 2018. In one case the ICO agreed that the council had not contravened the Data Protection Act.
- 8.2.12. If an individual is dissatisfied with the Council's handling of their personal information they can refer the matter to the Information Commissioner. The Council received 3 complaints from the Information Commissioner's Office since the GDPR was introduced in May 2018. 1 complaint related to the accidental disclosure of their information to an unintended recipient, 1 complaint related to a late response and 1 complaint related to an intentional disclosure to a third party. The first two complaints were upheld by the Information Commissioner.

9. How does the decision contribute to the Council's Corporate Plan?

- 9.1. Effective and efficient compliance with access to information regulations is essential for a Well-Run and open and transparent Council.

10. What risks are there and how can they be reduced?

- 10.1. No risks identified.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact has been identified on people with protected characteristics as determined by the Act because the report covers the council's processes for handling information, which has no direct impact on people.

12. Carbon Footprint (Environmental) Implications:

12.1. No direct carbon/environmental impacts arising from the recommendations.

13. Are there any other options?

13.1. Not applicable.

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

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