

28 November 2013		ITEM 5
Standard and Audit Committee		
Access to Records Report – 2012/13		
Portfolio Holder: Councillor Phil Smith – Central Services		
Wards and communities affected: All	Key Decision: None	
Accountable Head of Service: Director Accountability (see below)		
Accountable Director: Jackie Hinchliffe – Head of HR, OD & Customer Strategy		
This report is This is a public report		
Purpose of Report: To provide a summary of Freedom of Information (FOI) and Data Protection requests received and processed during 2012/13		

EXECUTIVE SUMMARY

- During 2012/13 the Council processed 93% of FOI requests within the legal timeframe. Performance would have been 98% however an error took place resulting in a number of requests being sent to a mailbox that was not in use.
- There has been a significant reduction in the number of FOI requests logged during the reporting year. During 2012/13, 104 fewer requests (compared to 2011/12) have been logged.
- Thurrock have implemented processes in order to reduce the volume of requests that are logged and processed as FOI requests. This has seen a significant reduction in requests (180) being diverted away from FOI during 2012/13. 120 requests were diverted away and processed as routine enquiries by services areas, and 60 requests for information were sign posted to our website where information requested is already publically available (either via a previous FOI request that is published on-line, or general information available on the web).
- Based on data captured within the FOI database, it has been estimated that the average FOI request takes 4.25 hours to process.

- The Council challenge and/or refuse requests when it is believed that the requestor has used a false name, where we have reasonable grounds to believe the applicant is acting as part of a campaign or in consort with others, or where their questions do not meet the other validity requirements for FOI.
- The council now refuse requests where it is estimated that the time taken to process the request exceeds 18 hours. This was a policy change during 2012.
- If the Council receives two or more related requests within a period of 60 consecutive working days (on the same/similar topic), from a person or different persons who appear to be acting in concert or in pursuance of a campaign, the costs of complying with the individual requests will be aggregated (for the purpose of refusing).
- During 2012/2013 the Council received 25 Subject Access Requests under the data protection legislation. 80% of these requests were processed within timeframe.
- The Information Governance Team has reduced the time spent on processing Subject Access Requests. This is due to competing priorities within the unit. Performance in meeting these deadlines will be monitored.
- The Information Governance Team is continuing to ensure an increased amount of data is identified for routine publication online. This work forms part of the Transparency Agenda and aims to increase openness and accountability; whilst reducing unnecessary processing of FOI requests.

1. RECOMMENDATIONS:

1.1 To note the performance and statistics for 2012/13 for both FOI and Data Protection.

2. INTRODUCTION/BACKGROUND

2.1 Freedom of Information

2.1.1 FOI affects up to 100,000 public sector bodies and organisations in England, Wales and Northern Ireland, including central and local government, the police, NHS, schools, dentists, opticians and pharmacists. Anyone, from anywhere in the world, may make a request for information that is held by the Council (they can be a person, business, or organisation). FOI requestors do not have to give reasons for seeking the information, and the Council cannot make enquiries as to why information is being sought.

2.1.2 From 1 January 2005 the Freedom of Information (FOI) Act 2000 was fully implemented. This resulted in access to recorded information held by the Council being made available, allowing anyone to submit a written request to see information about almost anything that is recorded.

2.1.3 On receipt of an FOI Request the Council have 20 working days to process the request.

2.2 Data Protection

2.2.1 Principle 6 of the Data Protection Act states that personal information must be processed in accordance with the rights of data subjects. This can result in anybody making a request to the Council about any information we hold on them and these are referred as Subject Access Requests (SAR). Requests range from very specific records (such as Council Tax, Benefits claim history or complex social care records) to a wide range of records (such as all information held by the Council).

2.2.2 When the SAR process is utilised, the Council have 40 calendar days in which to complete the request. The timeframe is met at the point at which we have prepared all files for disclosure and have invited the applicant in to collect their records from the Council.

3 ISSUES AND/OR OPTIONS:

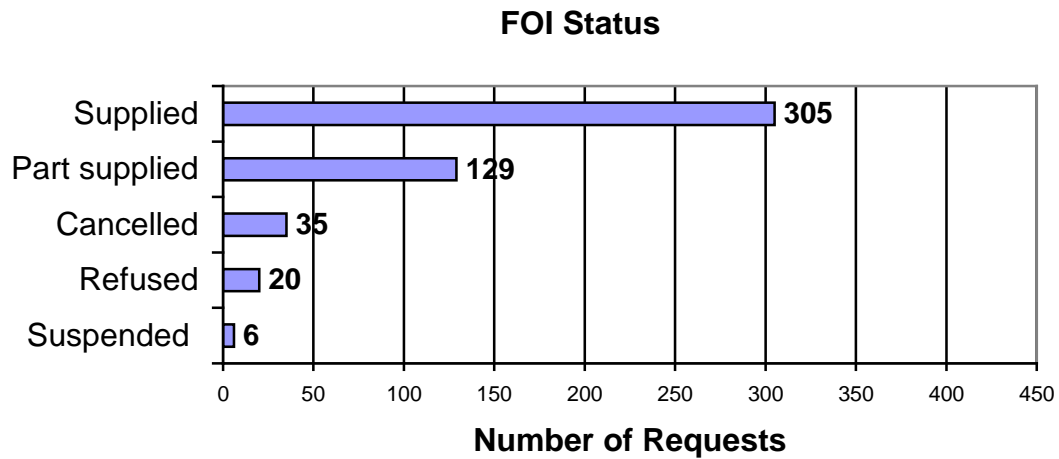
3.1 Freedom of Information Performance

3.1.1 During 2012/13, 495 FOI requests were recorded on the Council's FOI tracking system. This is a significant reduction compared to requests recorded during the previous year and is due to processes set up by the Information Governance Team (see 3.6.3 below). The table below details year-on-year volume and performance data since the introduction of the FOI legislation:

Year	Number of Requests	% responded to in time
2004/2005	53	98%
2005/2006	275	99%
2006/2007	252	98%
2007/2008	225	97%
2008/2009	366	96%
2009/2010	512	99%
2010/2011	547	99%
2011/2012	599	97%
2012/2013	495	93% (would have been 98% if we exclude mailbox error)

3.1.2 Of the 495 received, 33 were not answered within 20 working days. 22 of the 33 missed deadlines were due to requests sent internally to an incorrect active mailbox that was not being managed/checked within the Council. If this mailbox had been closed by the service area, then the error would not have occurred (as a bounce back/delivery failure message would have been generated).

3.1.3 The chart below shows that of the 495 FOI requests received in 2012/13, 305 (62%) were supplied with all information requested, 20 (4%) were refused, 129 (26%) were part supplied, 35 (7%) were cancelled and 6 requests are currently suspended awaiting clarification (1%).



3.1.4 The average number of days taken to answer a Freedom of Information request for 2012/2013 was 17 working days. During 2011/12 the average time taken was 14.7 working days.

3.1.5 Based on 489 requests processed within 2012/13, it has been estimated that the average FOI request takes 4.25 hours to process.

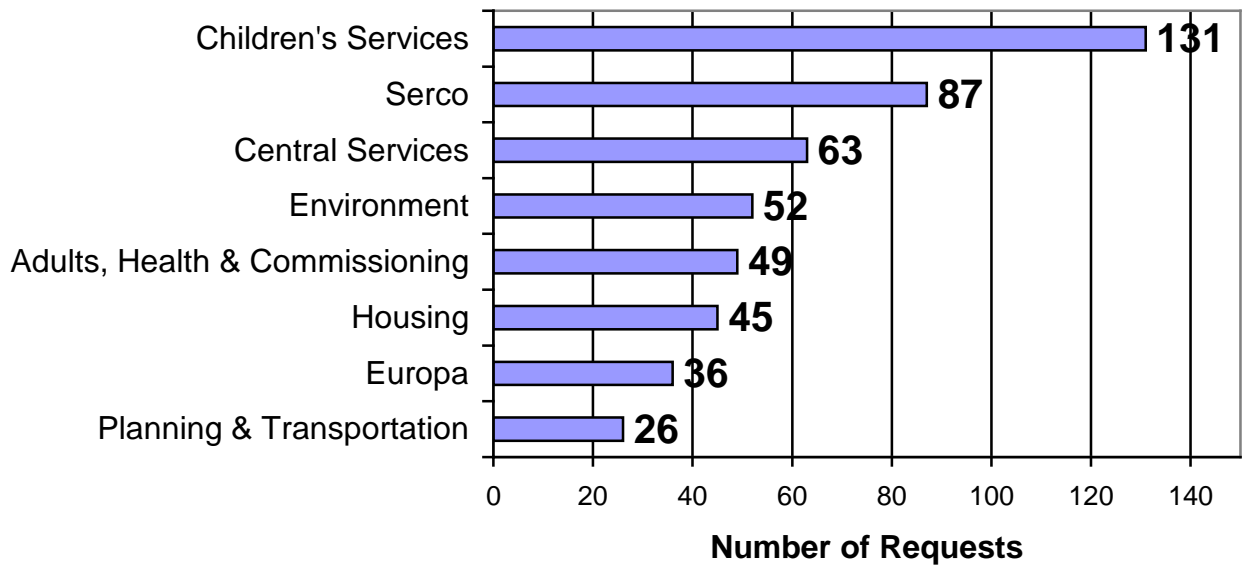
3.1.6 A benchmarking exercise has been undertaken to compare performance and data on FOI with other Councils. The results of this are shown in appendix 1 and a summary is provided below:

- Replies were received from 11 Councils (the request was sent to approximately 90 Councils/organisations in scope for FOI).
- Performance is strong for the majority of Councils who responded.
- The most frequent FOI subject matters were Business Rates and Public Health Funerals. At Thurrock, questions on these matters are not processed as FOI requests.

3.2 Type of Information requested

3.2.1 The chart below shows requests received per Directorate (excludes suspended requests). For the purpose of this report Finance and Corporate Governance (F&CG), The Chief Executive Office & Chief Executive Delivery Unit (CEDU) have been grouped together, and named as Central Services.

Breakdown of requests per Directorate



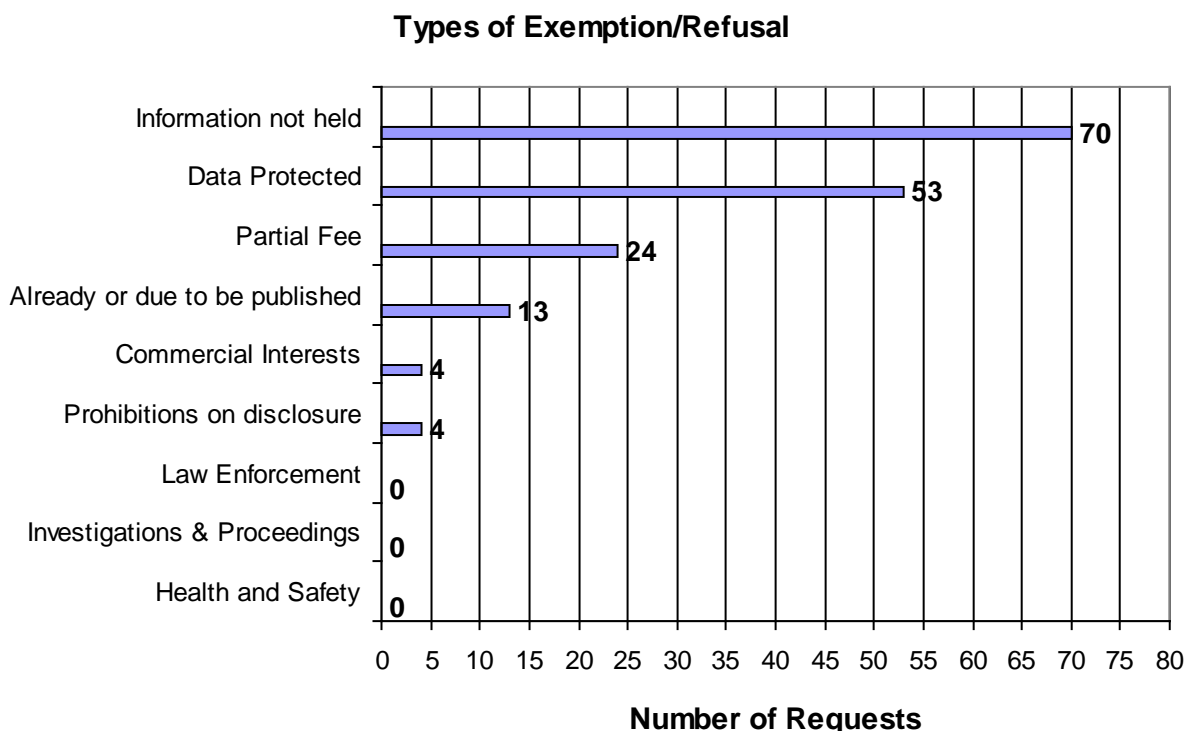
3.2.2 With regards to the Directorate split of requests shown in 3.2.1 above, it should be noted that:

- Serco received a high volume of requests relating to ICT, HR and changes to Housing Benefit/ Council Tax Benefit.
- Europa's most frequent requests related to carriageway inspections and potholes.
- The Planning & Transportation Directorate received a number of requests regarding parking fine data.
- The Environment Directorate received a number of requests regarding Taxi's/Hackney Carriages.
- Adults, Health & Commissioning received a high volume of requests regarding care packages and associated costs.
- Children's Services requests focused on Agency Social Workers and School Admissions.
- Housing's requests mainly focused on new homes and housing availability issues across Thurrock, including average rent prices.
- Central Services received a number of requests that focused on private investigators, use of credit cards, overseas travel, and compromise agreements.

3.3 Exemptions Used

3.3.1 The chart below shows the type of exemptions and refusals that were relied upon (based on a total of 149 requests that were part supplied or refused). Some of the exemptions allow the Council to withhold information where disclosure would cause significant prejudice to the Council's business at a particular time, and which is therefore not in the public interest to release.

Please note the chart below does not add up to 149, as more than one exemption can be relied upon per request.

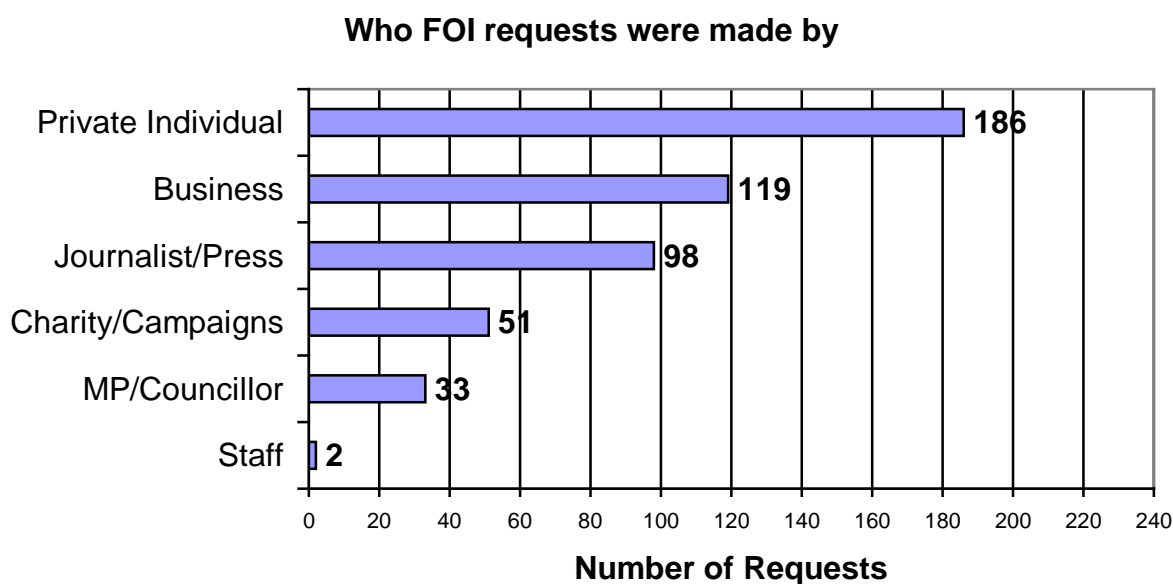


3.3.2 The Information Management Team maintains responsibility for making decisions on the application of Exemptions (to withhold information) under the Act. These are recorded and evidenced to support the approach taken, and to demonstrate how the Public Interest Test has been applied for Qualified Exemptions. This part of the process is vital to prevent and respond to complaints about FOI responses where data has been withheld, either partially or in full.

3.3.3 The Information Management Team monitor complaints received about FOI responses. During 2012-2013 there have been two complaints about FOI that were escalated to the Information Commissioner's Office. The outcome of one of these decisions is outstanding, and the council reviewed its decision to withhold data for the other complaint (and then released information to the requestor).

3.4 Request shown by Group

3.4.1 The chart below identifies where FOI requests to the Council originated from. (Excludes suspended requests)



3.5 Misuse of FOI

- 3.5.1 A national frustration across all Public Sector bodies affected by FOI is that the legislation is being used for what these bodies consider to be the wrong purposes (such as requests received by businesses and companies for company research purposes). However under the current legislation, FOI requests remain purpose blind, which prevents the Council from asking why any information is being requested.
- 3.5.2 The Council have previously sent a letter to the Secretary of State for Communities and Local Government, raising concerns that the legislation is being misused and proposing that the current 18 hour charging threshold is reduced (that would allow us to charge or refuse requests that take less than 18 hours to process). The Council challenge and refuse requests when it is believed that the requestor has used a false name.
- 3.5.3 The Council now refuse requests where it is estimated that the time taken to process the request exceeds 18 hours. The first task our FOI co-ordinators undertake when requests are formally logged is to work with service areas to assess how long a request is likely to take. Any requests estimated to take in excess of 18 hours will be refused. Estimates must be justified and records kept to support our decisions.
- 3.5.4 If the Council receives two or more related requests within a period of 60 consecutive working days (on the same/similar topic), from a person or different persons who appear to be acting in concert or in pursuance of a campaign, the costs of complying with the individual requests will be aggregated (for the purpose of refusing).

3.6 Reducing the volume of FOI requests processed

- 3.6.1 The Information Management Team routinely populates completed FOI requests onto the Council's website, so that requestors asking for the same

information can be directed to the website to obtain the information (as opposed to being logged as another FOI request).

- 3.6.2 Since last year, the Council has continued to address our responsibilities to increase availability of information as part of our transparency programme of work. This includes the routine publication of NNDR data, salary data for senior officers, and the publication of all expenditure. Requests on these subject matters are not logged as FOI requests.

New Open Data pages are planned for development, as part of the wider re-vamp of the overall website. The Information Governance Team continues to identify topics and data sets that are suitable for regular publication and encourage data owners to look at ways of enabling this. The following data sets have been sent to our website for publication:

Adults social care (from 2009- 2013)

- Total number of service users in each reporting year
- Number of new service user assessments completed within 28 days
- Client categories of service users (numbers) broken down by type of disability
- Types of service received (numbers) broken down by category
- Number of service users paying full care costs

Children services

The information below is published on the web pages at GOV.UK (Inside Government). The plan is to add a link to the current Children's pages to alert the public to the fact that we now publish this data, some of which is new and some has previously been available by another website.

- Outcomes for Looked After Children – Local Authority tables
- Percentage of schools providing access to extended services – Local Authority tables
- Permanent and fixed-period exclusions from schools in England - Local Authority tables

Housing

- Thurrock housing stock by area, property type and number of bedrooms, as at October 2012
- Number of housing applications on both the housing register and the transfer list by band, as at October 2012
- Number of housing applications on both the housing register and the transfer list by number of bedrooms needed, as at October 2012

Human Resources

- Table showing monthly figures for number of employees – Headcount and Full Time Equivalent, from April 2012 to date.

Procurement

The plan is to add a link to the current Procurement pages to alert the public to the fact that we now publish data on an Improvement East Website. It will provide detailed information regarding all our live contracts and what they cover. **ALL** of which is newly available since October 2012.

Public Protection

The following information will be available (containing data from 2010):

- Number of fly-tipping incidents broken down by size and type
- Number of fixed penalty notices broken down by type
- Number of prosecutions or simple cautions completed/accepted broken down by type

3.6.3 The Information Governance Team continues to implement processes to reduce the volume of FOI requests that are recorded and processed. This includes processing (where possible) requests as routine enquiries and/or diverting requestors to our website where information may be generally available or available as part of a previous FOI response. During 2012/13, 180 requests were diverted away from FOI.

3.7 Data Protection Subject Access Request (SAR) Performance

- 3.7.1 The Data Protection Act gives individuals the right to be told what 'personal data' an organisation is processing about them and, unless an exemption applies, to receive a copy of that information. They do this by making a data Subject Access Request, which must be in writing. The request can be broad such as, "give me a copy of all the information the council hold on me", or it can be precise "give me a copy of my social care files".
- 3.7.2 A current risk for the Council is the ability to comply with SAR's within the timeframes of the Data Protection Act; as if a high volume of requests are received (as in 2011/12) then our ability to respond to these within statutory timeframe becomes a concern. To process a SAR can be a resource intensive piece of work for the Council, as many requests involve searching for and checking through a high volume of files for a single individual.
- 3.7.3 During 2012/13 the Council received 25 requests where the fee was paid and the full SAR process implemented. Of the 25 requests, 80% of requests were processed within the statutory timeframe (40 calendar days from the date that all necessary information and payment are received).
- 3.7.4 During 2012/13 the council received 1 complaint from the ICO regarding non-compliance with timeframes and alleged unfair withholding of personal data. The ICO found in our favour and agreed with our original decisions regarding the data we withheld and exemptions we applied. However, we were criticised for the lateness of the reply.

3.7.5 The table below shows volumes of requests and performance over a 7 year period:

Year	Number of Requests	% responded to in time
2006/2007	20	95%
2007/2008	39	74%
2008/2009	52	69%
2009/2010	60	93%
2010/2011	32	97%
2011/2012	51	55%
2012/2013	25	80%

3.7.6 Historically performance at Thurrock in responding to SAR's has been strong, however performance dipped during 2011/12 due to a combination of the following factors:

- A number of "closed and open case" social care requests were received, which take significantly longer to process, due to complexity and high volume of records in scope. It should be noted that processing SAR's is a meticulous time consuming process, as thorough checks need to be applied before releasing information. Errors made could result in privacy breaches.
- An increase of general work pressures within the Information Management Team.
- The IMT team have in the past suffered a cut/reduction in resources.

3.8 Risks to the Council if data protection performance is poor

3.8.1 The risk and impact to the council due to the performance dip in processing SAR's is summarised below:

- The ICO have confirmed that failure to process someone's SAR within timeframe is not a criminal offence, but can in theory result in a financial penalty notice. However this is unlikely if it's the only principle of the Act that the council are in breach of.
- The process the ICO have to go through before they can issue a monetary fine is stringent and they have to show the organisation has acted recklessly in failing to meet the requirements; and that this has had serious consequences for the individual concerned.
- In practice, the ICO would only become involved in cases where they receive repeat complaints about the same Council failing to meet the deadline. They would then go through the following stages:
 - Informal Investigation, however this could turn into a formal investigation.

- Signed Undertaking (e.g. promise to take steps to improve, signed by the CEO).
- Enforcement Notice issued looking for an assurance that the Council improve performance up to a certain level, as stipulated by the ICO
- Monetary Penalty Notice if all of the above has still failed.
- Irrespective of any ICO intervention, individuals have a right to make a financial claim for damages/distress caused and these can and do get taken to court (privately) and result in compensation payments.

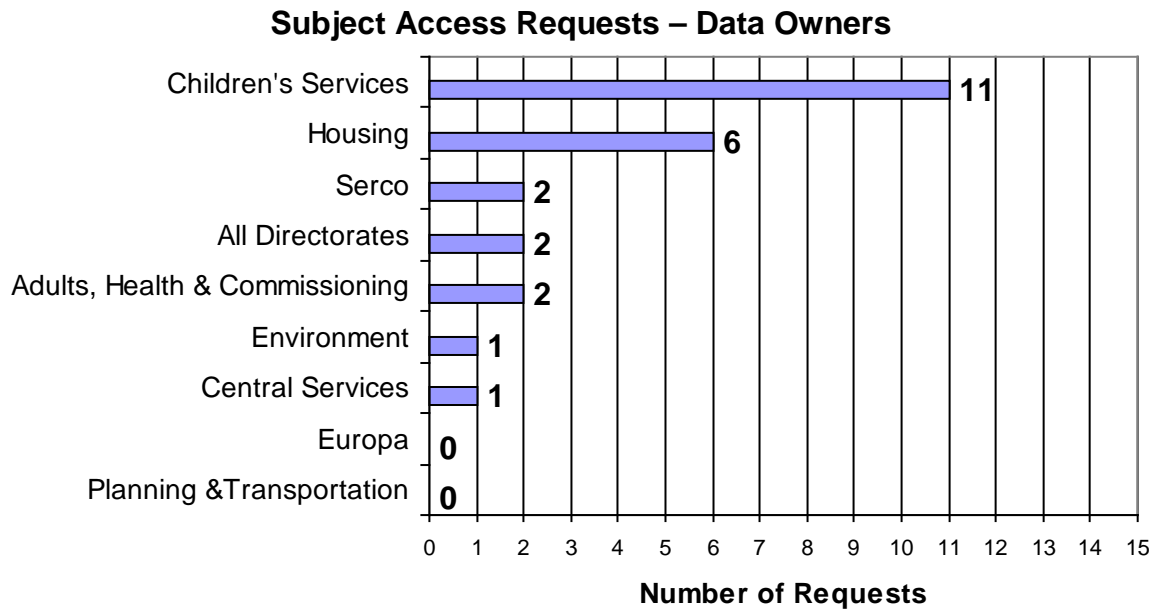
3.8.2 The ICO have also confirmed that in the future they are going to be implementing formal monitoring of Council's response rates on data protection in terms of timeframes (at the moment this is only checked if complaints are made).

3.9 Resources in post to process SAR's and a dedicated fixed hours approach

3.9.1 The Information Governance Team due to other work priorities have recently introduced a different approach to manage the processing of SAR's. This has resulted in the team dedicating a fixed number of hours each week to manage and process SAR's. The time spent per week has been reduced from a total average of 16 hours per week to 9 hours. This incorporates resources from one temporary full time member of staff (an Apprentice one year post). The reduction is fundamental to allow the team to deliver other competing work priorities. This change and the performance impact of this decision will be monitored.

3.10 Data Owners

3.10.1 The chart below shows where the data was owned (i.e. those departments holding data on the applicant) for the 25 requests. This shows that Children's Services received the most requests for 2012/13.



3. 11 Other work undertaken by the Information Governance Team

3.11.1 Over and above processing FOI's and SAR's, the Information Governance Team has also processed:

- 96 out of 99 fair processing/Data Protection advice requests within our 10 working day target (97%)
- 81 out of 96 sharing requests within our 10 working days target (84%)

Fair processing requests involve providing data protection advice to service areas when they collect personal information from our residents, service users and customers. The team also provide Data Protection Advice to service areas on any of the 8 principles of the Act.

Sharing requests involve providing data protection advice to service areas when sharing personal information either internally or externally.

3.11.2 **Information Security** – The team lead on Information Security across the council, and have delivered the following within the reporting year:

- Design and implemented security and ICT policies.
- Provided specialist advice on a number of IT projects/system implementations e.g. government connect, remote and home working and EDRMS.
- Monitored policy compliance.
- Monitored email and internet misuse.
- Delivered corporate wide training on Information Security.
- Provided detailed policy advice in the investigation of security breaches.
- Improved corporate wide information security arrangements.
- Provided tailored, reliable and accurate written advice to services on a range of topics such as Protective Marking, Government Connect

Assessments and ensuring new arrangements with suppliers are compliant.

3.11.3 Data Protection (DP) - The team leads on DP across the Council and have delivered the following within the reporting year:

- Set and refreshed corporate wide DP Policy and procedures.
- Continued to deliver corporate wide training on DP during induction and other training events.
- Processed and advised on information sharing requests (internal and external sharing of personal information, including Police requests) and protocols.
- Ensured DP issues are considered as part of any service project implementation.
- Advised on DP related complaints including complaints escalated to the Information Commissioner.
- Managed the Essential Information for the Protection of Employees (EIPE) Policy and supporting procedures.

4 CONSULTATION (including Overview and Scrutiny, if applicable)

4.1 This report has been taken to Performance Board, Corporate Information System Development Board and Leadership Group. The report was also sent to all Overview and Scrutiny Committees.

5 IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

5.1 The Council has an effective system and process in place for managing both FOI and Data Protection requests. Procedures are regularly reviewed in order to improve performance.

5.2 The Council's ability to comply and process FOI and Data Protection requests within the requirements of the respective legislation demonstrates our commitment to openness and accountability. This will allow residents and customers to have a confidence in what we do and will help build trusting relationships.

5.3 Access to information can also be closely linked to our Customer Services and ICT Strategies.

5.4 Processing of FOI and Data Protection requests sometimes reveals where service improvements can be made, such as improving records management processes.

6. IMPLICATIONS

6.1 Financial

Implications verified by: **Sean Clark**
Telephone and email: **01375 652010**
sclark@thurrock.gov.uk

- Along with financial penalties FOI failure could result in regulatory intervention as the ICO are now starting to target poor performing councils for FOI which will lead to reputational damage.
- The council can charge £10 to process a SAR under the data protection act.
- Financial penalties for Data Protection breaches have increased to up to £500K and the Information Commissioners Office (ICO) have been given more powers to check for compliance.

6.2 Legal

Implications verified by: **David Lawson**
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dlawson@thurrock.gov.uk

- There are various avenues available to the Information Commissioner's Office to address an organisation's shortcomings in relation to the collection, use and storage of personal information. These avenues can include criminal prosecution, non-criminal enforcement and audit. The Information Commissioner also has the power to serve a monetary penalty notice on a data controller.
- The Council must also comply with the Code of Practice issued under section 46 of the Freedom of Information Act 2000. The Information Commissioner may issue practice recommendations to an authority considered to be non-compliant with the Code specifying the steps that should be taken to ensure conformity. Failure to comply with such a recommendation could lead to an adverse report to Parliament in relation to the authority, by the Information Commissioner.
- The Council must also be mindful of its duties under the Public Records Acts 1958 and 1967, the Local Government (Records) Act 1962, the Local Government Act 1972, the Local Government (Access to Information) Act 1985 and any other record-keeping or archives legislation.

6.3 **Diversity and Equality**

Implications verified by: **Samson DeAlyn**
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- There are significant diversity issues for the whole community regarding FOI and Data Protection. The successful implementation of FOI and Data Protection allows our customers, stakeholders, partners and the public to access and receive information. This supports including people, one of the Council's corporate priorities. The extent to which the Duty to Assist (under the Act) has been met is included in quality checking exercises by the Information Matters Team.

6.4 **Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental.**

None

7 **CONCLUSION**

- Performance for 2012/13 is strong for FOI. The Information Management Team will continue to drive forward mechanisms allowing the Council to reduce the volume of FOI requests where appropriate.
- Performance in the processing of subject access requests will be closely monitored

BACKGROUND PAPERS USED IN PREPARING THIS REPORT:

None

APPENDICES TO THIS REPORT:

Appendix 1 – Benchmarking information

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