

20 September 2012		ITEM 6
Audit Committee		
ACCESS TO RECORDS REPORT – 2011/12		
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: Martin Hone – Corporate Director of Finance and Corporate Governance		
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 2011/12		

EXECUTIVE SUMMARY

- During 2011/12 the Council processed 97% of FOI requests within the legal timeframe.
- There has been a 10% increase in the volume of FOI requests received compared to 2010/11.
- Based on data captured within the FOI database, it has been estimated that the average FOI request takes departments 3.5 hours to gather the information requested. This has been based on a sample of 172 requests.
- FOI awareness across the Council continues to be high and the procedures in place for managing requests are working well.
- During 2011/2012 the Council received 51 Subject Access Requests under the data protection legislation. 55% of these requests were processed within timeframe.
- The Information Management Team have continued to drive forward processes to reduce FOI requests. This includes routinely populating a number of completed FOI requests onto the Council's website, so that requestors asking for the same or similar information can be directed to the website (as opposed to being logged as another FOI request). A project is also underway to allow a greater percentage of responses to be added to our website.
- 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.

1. RECOMMENDATIONS:

- 1.1 To note the performance and statistics for 2011/12 for both FOI and Data Protection.

2. INTRODUCTION/BACKGROUND

- 2.1 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.
- 2.2 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.
- 2.3 On receipt of an FOI Request the Council have 20 working days to process the request. The Council cannot charge for processing FOI requests unless the time taken to process the request is considered to be in excess of 18 hours.
- 2.4 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 and Benefits claim history) to a wide range of records (such as **all** information held by the Council).
- 2.5 When the formal 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:

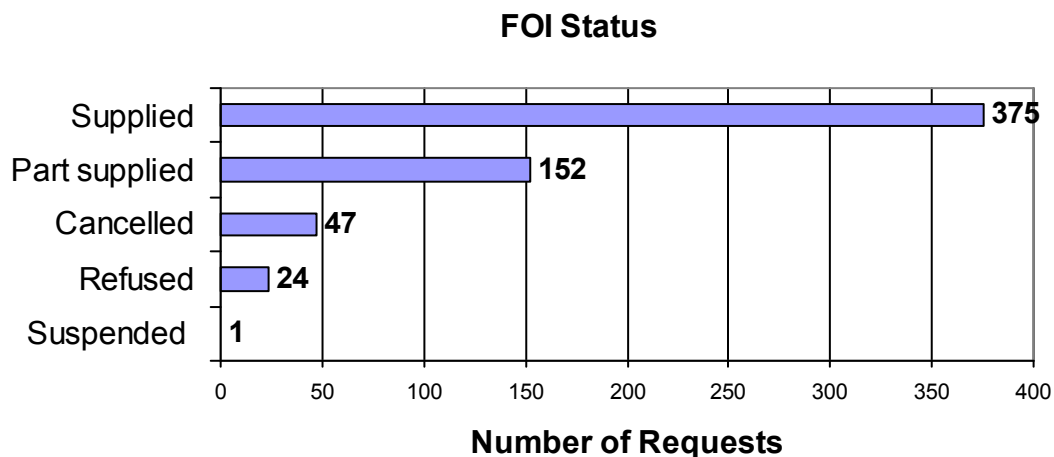
3.1 Freedom of Information Performance

- 3.1.1 During 2011/12, 599 FOI requests were recorded on the Council's FOI tracking system. This equates to a 10% increase from last years figures. The FOI tracking system is maintained and managed by the Information Management Team. During 2011/12, 97% of requests were responded to within timeframe. Below is a table showing year-on-year volume and performance data since the Act came into force on 1st January 2005.

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%

3.1.2 Out of the 599 received, 17 were not answered within 20 working days. The most common reasons for requests not meeting the deadline relates to problems with achieving escalation (approval) from senior officers due to availability.

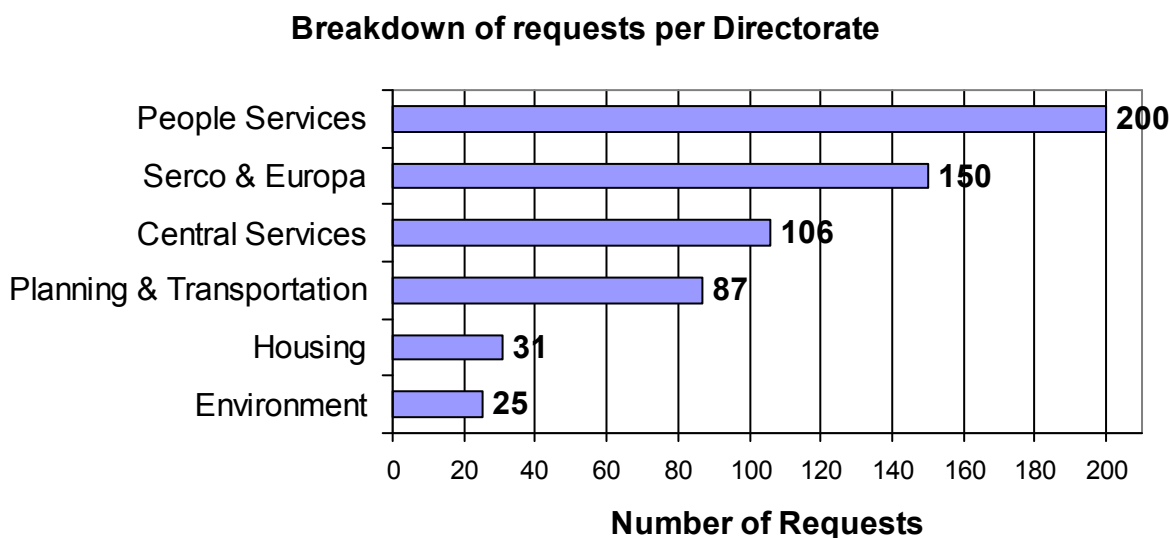
3.1.3 The chart below shows that of the 599 FOI requests received in 2011/12, 375 (63%) were supplied with all of the information requested, 24 (4%) were refused, 152 (25%) were part supplied, 47 (8%) were cancelled and 1 request was suspended due to non-payment of fee.



3.1.4 The average number of days taken to answer a Freedom of Information request for 2011/2012 was 14.7 working days. This figure was 13.6 working days for 2010/11. The statutory timeframe is 20 working days.

3.2 Type of Information requested

3.2.1 The chart below shows requests received per Directorate out of the 599 requests in total. For the purpose of this report Transformation, Finance and Corporate Governance (F&CG) & Chief Executive Delivery Unit (CEDU) have been grouped together, and named as Central Services.



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

- Serco and Europa received a high volume of requests relating to highways maintenance, ICT and procurement.
- The Planning & Transportation Directorate received a number of requests in relation to planning and parking issues.
- The Environment Directorate received a high volume of requests for the Waste Department, which included the waste contract. This Directorate also received 12 requests that were processed under the Environment Information Regulations.
- Within the People Services Directorate a high volume of requests were received for the Commissioning department regarding provision of Adults Social Services. Topics were often related to arrangements with our provider partners such as health and older people services. There was often a strong focus on costs to residents, the move towards Direct Payments and funding issues. A number of requests were also received in relation to taxi licensing.
- The Housing Directorate's requests mainly focused on new homes and housing availability issues across the borough.
- Central Services received a number of requests that focused on expenditure on events, employment and HR matters affecting the whole Council.

3.3 Exemptions Used

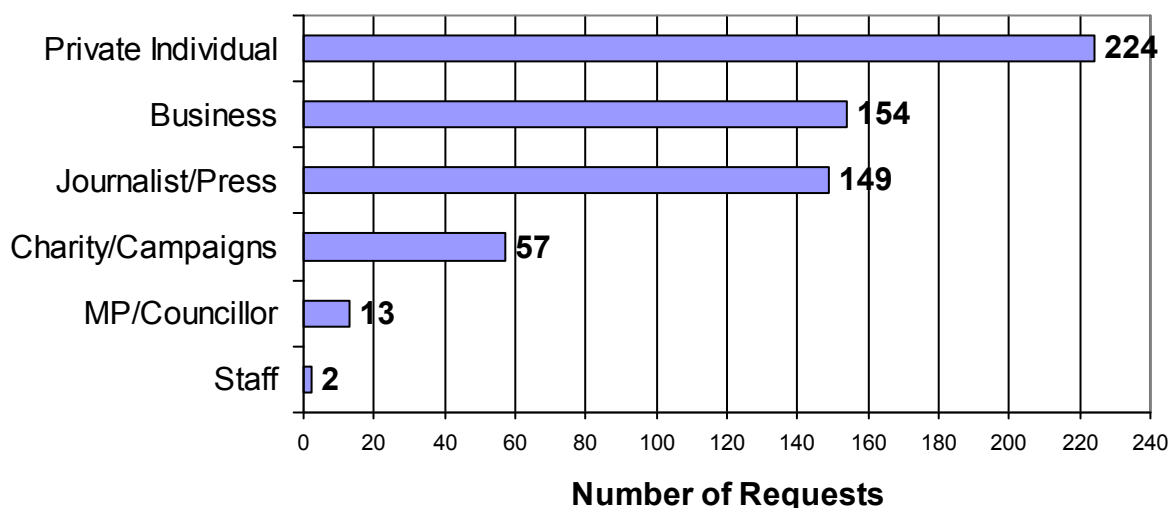
3.3.1 The chart below shows the type of exemptions and refusals that were relied upon (based on a total of 176 requests that were part supplied or refused). The exemptions allow the Council to withhold information where disclosure would cause significant prejudice to the Council's business at a particular time, and which is therefore not in the public interest to release. Please note the chart below does not add up to 176, 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.

3.4 Request shown by Group

3.4.1 The chart below identifies where FOI requests to the Council originated from.

Who FOI requests were made by



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 for 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.

3.6 Reducing Requests

3.6.1 Learning from FOI can be evidenced by ensuring that as a Council we routinely make information available within the public domain. To achieve this, the Information Management Team routinely populate 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 which is in the public interest. This includes the routine publication of NNDR data, salary data for senior officers (available online) as well as the routine publication of all expenditure where a single transaction costs £500 or more (available online). Requests on these subject matters are not logged as FOI requests.

3.6.3 In addition, since September 2011 the Information Management Team have diverted a total of 48 requests for information away from FOI and these have been managed as routine business by relevant departments. These decisions are based on the data being readily available – to help ensure that FOI is only utilised in the proper circumstances for which the legislation is intended. Work is also on-going to ensure each Directorate publishes 3 datasets per quarter.

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. During 2011/12 the Council received 51 requests where the fee was paid and therefore the full SAR process was implemented. Of the 51 requests, 55% of requests were processed within the statutory timeframe (40 calendar days from the date that all necessary information and payment are received). During recent months the council received 3 complaints from the ICO regarding non-compliance with timeframes.

3.7.3 The table below shows volumes of requests and performance over a 5 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%

3.7.4 Historically performance at Thurrock in responding to SAR’s has been strong, however performance has dipped during 2011/12 due to a combination of factors including:

- Many “closed and open case” social care requests have been 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 Measures taken to improve performance for data protection requests

3.8.1 The Information Management Team are undertaking the following actions due the dip in performance:

- A shared post has been created working across the team.
- The team have continued to advise applicants during the early stages of their request that the deadline may not be met, however the Information Commissioners Office (ICO) have since recommended that we should not adopt this approach.
- The team are prioritising requests based on date order. A deviation from this may apply if the applicant has threatened to complain to the ICO or due to threat of legal action.

- The team have followed up with a second update letter during the timeframe, before their SAR closes explaining that there will be a delay (if relevant).
- The team agree wherever possible to make a staged disclosure to the applicant – so that they are not waiting months to get *anything* and can at least start reading some of their files. This is dependant on the circumstances of a request and whether or not the person consents to this.
- The processing of SAR's is being monitored.

3.9 Risks to the Council if data protection performance is poor

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

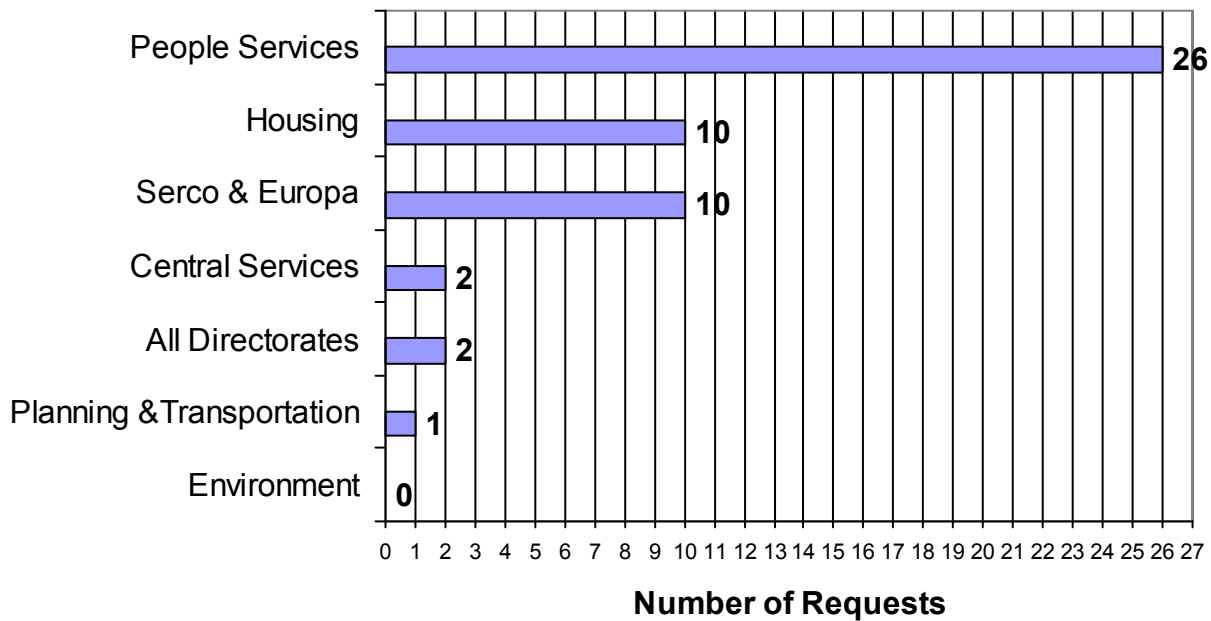
- The ICO have confirmed that failure to process someone's SAR within timeframe is not a criminal offence, but can in theory result in a financial penalty notice. However this is unlikely if it's the only principle the council are in breach of.
- The process the ICO have to go through before they can 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.

3.9.2 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).

3.10 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 51 requests. This shows that People Services received the most requests for 2011/12.

Subject Access Requests – Data Owners



4 CONSULTATION (including Overview and Scrutiny, if applicable)

4.1 This report has been agreed by the Corporate Information and Systems Development Board (CISD). The report was also presented to Directors Board on the 28th August 2012

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.

6. IMPLICATIONS

6.1 Financial

Implications verified by: Sean Clark
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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.
- Income could be received for FOI requests where the cost of locating, retrieving and extracting the information together with the cost of determining whether it holds the information, exceeds £450. However no payments for this work have been received.

- 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
 Telephone and email: 01375 652087
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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Sdealyn@thurrock.gov.uk

- 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**

- 7.1 Performance for 2011/12 is strong for FOI, however performance for processing data protection requests will be monitored. The Information Management Team will continue to

drive forward mechanisms allowing the Council to reduce the volume of FOI requests where appropriate.

BACKGROUND PAPERS USED IN PREPARING THIS REPORT:

- None

APPENDICES TO THIS REPORT:

None

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