

<b>29 September 2016</b>		<b>ITEM: 5</b>
<b>Standards and Audit Committee</b>		
<b>2015/16 Access to Records Report</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Non key	
<b>Report of:</b> Lee Henley – Information Manager		
<b>Accountable Head of Service:</b> Jackie Hinchliffe – Director of HR,OD & Transformation		
<b>Accountable Director:</b> Jackie Hinchliffe – Director of HR,OD & Transformation		
<b>This report is:</b> Public		

### **Executive Summary**

- During 2015/16, the council processed 98% of Freedom of Information (FOI) requests within the legal timeframe. This is based on 980 FOI requests that were processed.
- The reporting period shows a significant increase in FOI requests received compared with 2014/15. The reason for this increase is that during 2014/15 a number of requests were not recorded as FOI requests and were processed as routine enquiries by service areas. However all requests were recorded as FOI for 2015/16, as the 2014/15 approach resulted in a number of requests not being responded to by services which could have exposed the council to enforcement action by the Information Commissioners Office.
- Based on data captured within the FOI database, it has been estimated that the average FOI request takes 2 hours 45 minutes 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 refuse requests where it is estimated that the time taken to process the request exceeds 18 hours. During 2015/16, 41 requests were refused in full due to the 18 hour threshold (and 13 were part refused).
- During 2015/16 the council received 43 Subject Access Requests under the Data Protection legislation. 93% of these requests were processed within timeframe. This is a performance improvement compared with 2014/15.
- 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. Recommendation(s)

### 1.1 To note the performance and statistics for 2015/16 for both FOI and Data Protection.

## 2. Introduction and 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.

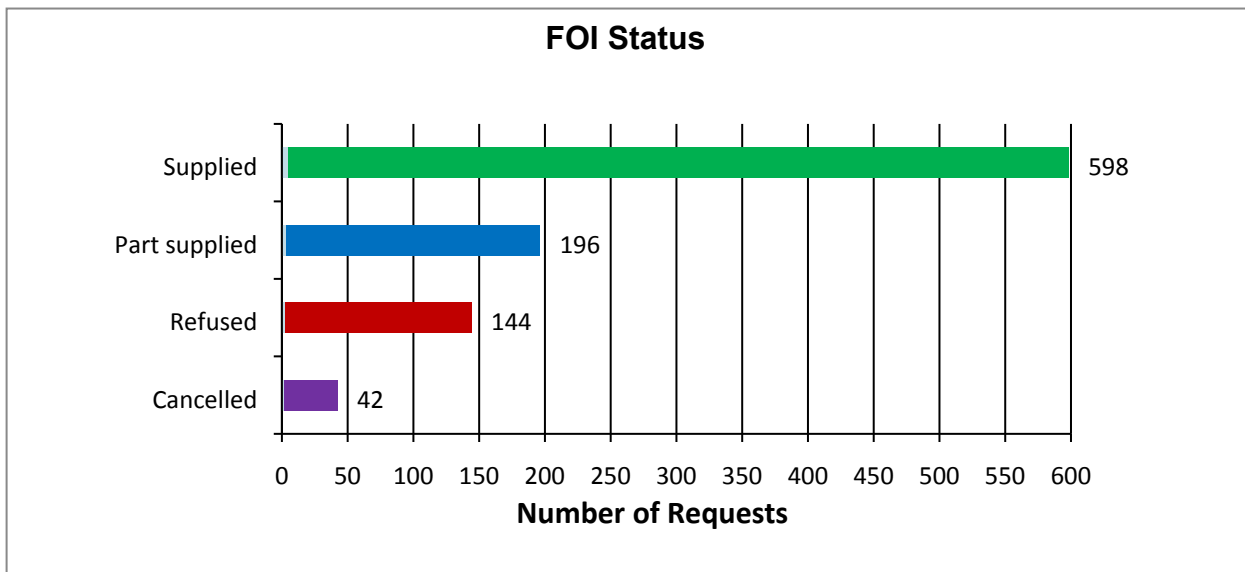
2.1.2 From 1 January 2005 the Freedom of Information (FOI) Act 2000 was fully implemented. This resulted in access to recorded information held by the council being made available, allowing anyone to submit a written request to see information about almost anything that is recorded.

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

2.1.4 During 2015/16, 980 FOI requests were recorded on the council's FOI tracking system. 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)
2013/2014	662	98%
2014/2015	548	98%
2015/2016	980	98%

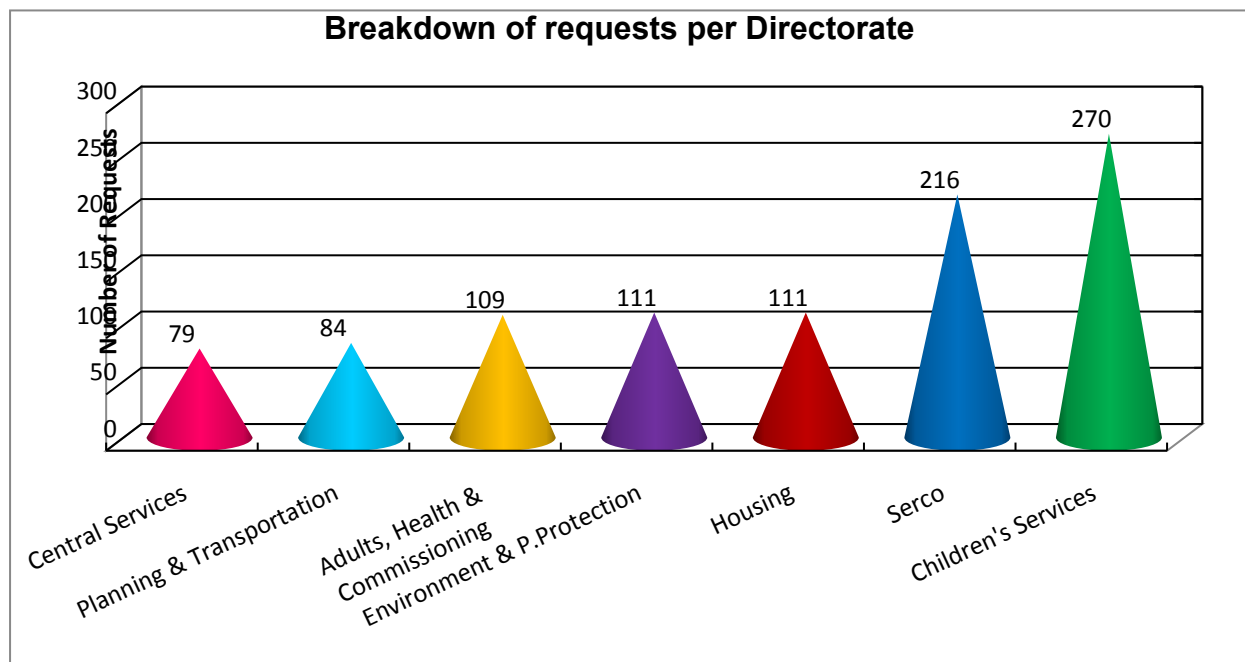
2.1.5 The chart below shows that of the 980 requests received in 2015/16, 598 (61%) were supplied with all information requested, 144 (15%) were refused, 196 (20%) were part supplied, 42 (4%) were cancelled.



2.1.6 The average number of days taken to answer a Freedom of Information request for 2015/2016 was 15 working days. During 2014/15 the average time taken was 14.5 working days.

2.1.7 Based on 980 requests processed within 2015/16 it has been estimated that the average FOI request takes 2 hours 45 minutes to process.

2.1.8 The chart below shows requests received per Directorate. This is based on the previous organisational structure as this structure was in place for the most part of 2015/16.



2.1.9 The chart below shows the type of exemptions and refusals that were applied (based on a total of 340 requests that were part supplied or refused). Some of

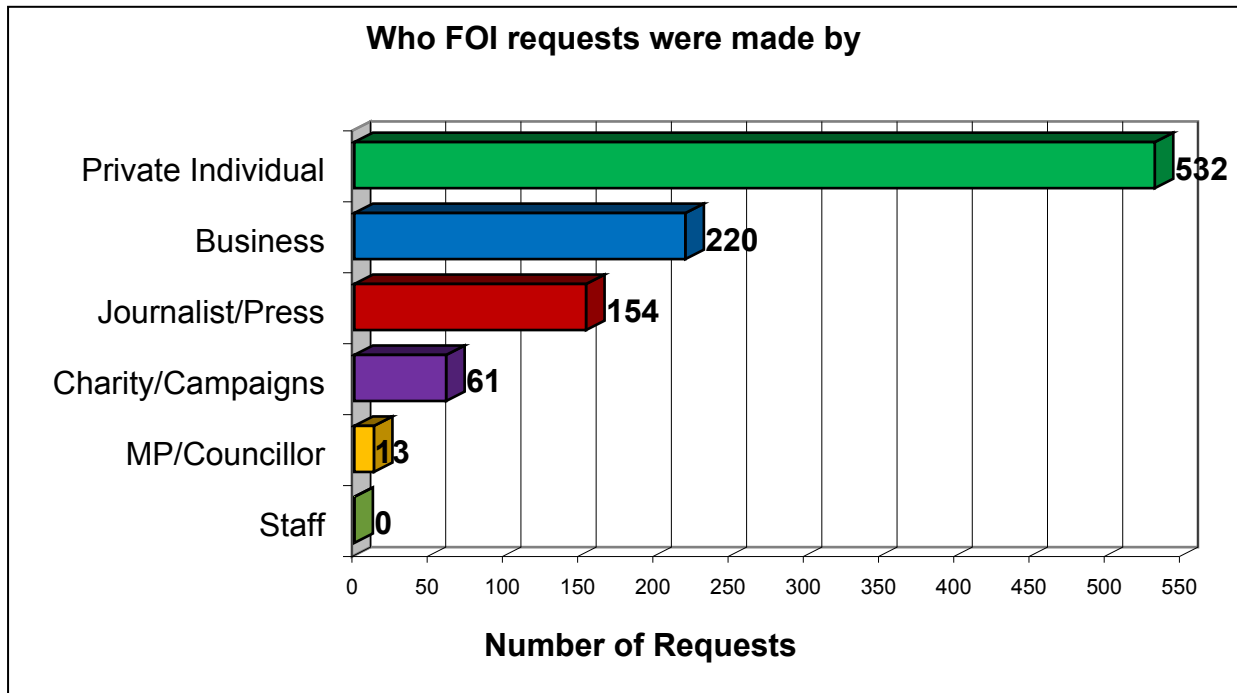
the exemptions allow the council to withhold information where disclosure would cause significant prejudice to the council's business at a particular time, and which is therefore not in the public interest to release. Please note the chart below does not balance back to 340, as more than one exemption can be relied upon per request.

2.1.10 The Information Governance 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.

2.1.11 The Information Governance Team respond to complaints received regarding FOI and Environmental Information Regulations (EIR) requests. During 2015/16 there was 1 FOI complaint that was escalated to the Information Commissioner's Office (ICO). A summary of this complaint is detailed below:

- The council answered the FOI request in time but not to the requester's satisfaction. The requester requested an internal review which was rejected at the time as no exemptions were used. The requester went to the ICO who asked the council to be more specific in its response. The ICO were then of the view that the council had supplied a satisfactory reply. This request related to Civil Enforcement Officers.

2.1.12 The chart below identifies where FOI requests to the council originated from.



- 2.1.13 The council 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 supporting our decisions. During 2015/16, 41 requests were refused (in full) due to the 18 hour threshold.
- 2.1.14 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).
- 2.1.15 The Information Governance Team routinely populates completed FOI requests onto the council's website with the aim of reducing FOI requests received by the council.
- 2.1.16 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 15 councils' (the request was sent to approximately 90 Councils/organisations in scope for FOI).
  - Performance is strong for the majority of Councils' who responded.

## **2.2 Data Protection**

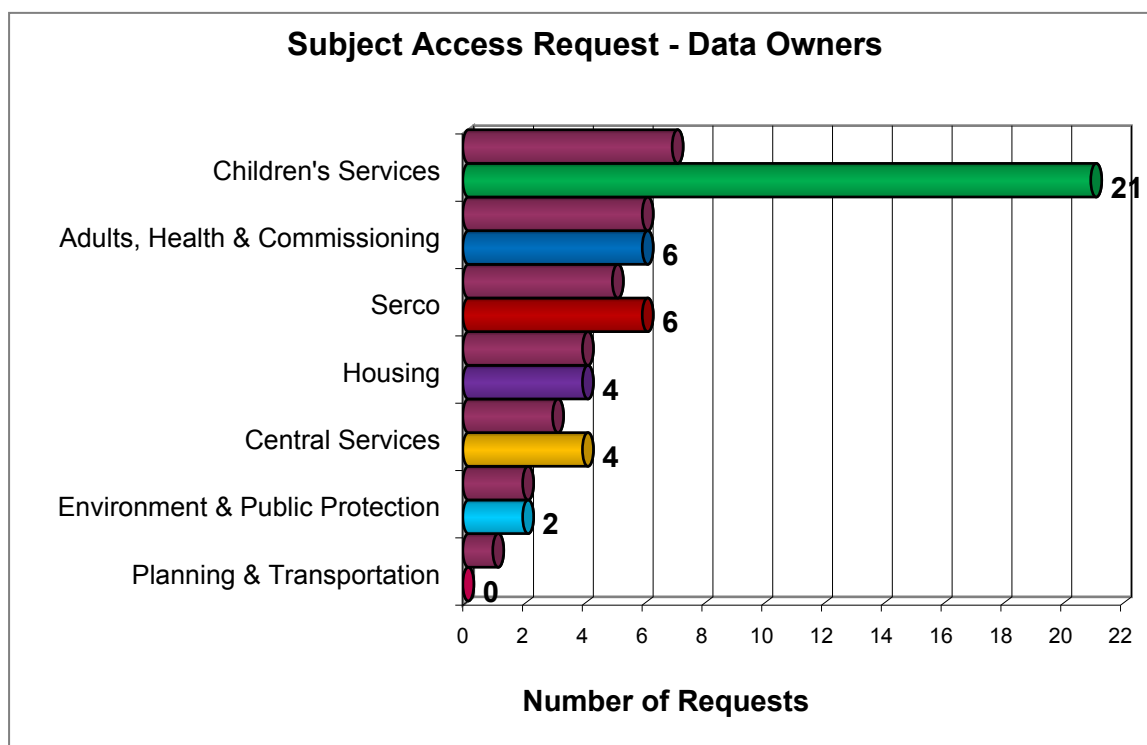
- 2.2.1 Principle 6 of the Data Protection Act states that personal information must be processed in accordance with the rights of data subjects. This can result in anybody making a request to the council about any information we hold on them and these are referred as Subject Access Requests (SAR). Requests 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 to collect their records from the council.
- 2.2.3 During 2015/16, the council received 43 requests where the fee was paid and the full SAR process implemented. Of the 43 requests, 93% of requests were processed within the statutory timeframe.
- 2.2.4 During 2015/16 the council received 1 Data Protection complaint from the ICO. This related to a concern raised that the council had not processed a request for a SAR from an individual. When looking into the complaint, it was

clear that the council had sent the SAR forms to the individual, however these forms were not returned to the council along with the required fee.

2.2.5 The table below shows volumes of requests and performance over a 5 year period. 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).

Year	Number of Requests	% responded to in time
2010/2011	32	97%
2011/2012	51	55%
2012/2013	25	80%
2013/2014	29	90%
2014/2015	21	71%
2015/2016	43	93%

2.2.6 The chart below shows where the data was owned (i.e. those departments holding data on the applicant) for the 43 requests. This is based on the previous organisational structure as this structure was in place for the most part of 2015/16 and it highlights that Children's Services received the most requests for 2015/16.



### 3. Issues, Options and Analysis of Options

3.1 There are no options associated with this paper.

#### **4. Reasons for Recommendation**

4.1 This report is for noting purposes. There are no recommendations requiring approval.

#### **5. Consultation (including Overview and Scrutiny, if applicable)**

5.1 This report was sent to Performance Board and Directors Board.

#### **6. Impact on corporate policies, priorities, performance and community impact**

6.1.1 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.

6.1.2 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.

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

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

#### **7. Implications**

##### **7.1 Financial**

Implications verified by: **Laura Last**  
**Senior Finance Officer**

- The council can charge £10 to process a SAR under the Data Protection Act, however there is no charge under the Freedom of Information Act as the council refuse requests that exceed the cost threshold.
- 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.

##### **7.2 Legal**

Implications verified by: **David Lawson**

## **Deputy Head of Legal & Deputy Monitoring Officer**

- 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.
- 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.

### **7.3 Diversity and Equality**

Implications verified by: **Natalie Warren**

**Community Development and Equalities Manager**

- 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.

### **7.4 Other implications**

None

## **8. Background papers used in preparing the report**

- None – Information has been obtained from the FOI and Data Protection databases/systems.

## **9. Appendices to the report**

Appendix 1 - Benchmarking



**Report Author:**

Lee Henley

Information Manager