

Report to Performance Management Working Group

2 November 2011

Complaints & Information Officer

INFORMATION REPORT

Not exempt



Analysis of Freedom of Information Requests 1 April – 30 September 2011

Executive Summary

The Freedom of Information Act 2000 (the Act) came into force on 1 January 2005. The Act makes provision for the disclosure of information held by public authorities and aims to promote greater transparency, accountability and understanding of the way public authorities work and how they make decisions. Since 2005, the Act has provided unprecedented access to information held by local government and a diverse array of information not previously disclosed has entered the public domain.

This report is to provide Members with a general overview of the Freedom of Information Act and the number of Freedom of Information (FOI) requests that have been received by Horsham District Council from 1 April to 30 September 2011. This report also gives Members an opportunity to comment on the current system of monitoring and responding to requests made to the Council under the Freedom of Information Act.

For the year 1 April to 30 September 2011 the Council received 258 (excluding contaminated land information requests) requests for information, compared to 185 requests made during the period 1 April to 30 September 2010.

Of those requests; where the identity of the requestor is known 33% of requests have been made by companies or organisations, 27% by the media (including local/national newspapers, Channel 4, the BBC and ITN), 21% by private individuals, 15% by groups with particular interests both local and national (including political organisations and charities) and 4% by individuals via the 'What do they know' website.

The Council received five requests for internal reviews of decisions made to withhold information during this period. Three reviews upheld the initial decision not to release information and one of these has been the subject of a complaint to the ICO. In two cases the requestor amended their request and the case reviewer decided to release some of the information previously requested. One internal review remains ongoing at the time of writing this report.

Recommendations

The Council/Committee is recommended:

- i) It is recommended that Members note the contents of this report and comment as appropriate.

Reasons for Recommendations

- i) To ensure that Members are kept up to date with developments in the freedom of information framework; and
- ii) to ensure that Members have the necessary information to enable requests for information to be easily made to the Council and properly responded to; and
- iii) to assist with learning lessons and improving performance following requests for information made to the Council.

Background Papers: Code of Recommended Practice for Local Authorities on Data transparency, ICO Revising publication schemes under sections 19 and 20 of the Freedom of Information Act

Consultation: Monitoring Officer & CMT

Wards affected: All

Contact: Sarah Gill Complaints & Information Officer, ext 5470

Background Information

1 Introduction

The purpose of this report

- 1.1 This report documents the Freedom of Information Act activities at Horsham District Council from 1 April to 30 September 2011.

2 Statutory and Policy Background

Statutory background

- 2.1 The statutory background is found in the Freedom of Information Act 2000, The Data Protection Act 1998 and the Environmental Information Regulations 2004.

Relevant Government policy

- 2.2 The relevant Government policy is contained within Codes of Practice issued under the Freedom of Information Act 2000. In addition, guidance has been given by Government departments and principally by the Information Commissioner. The Information Commissioner's website can be accessed at: www.ico.gov.uk. Freedom of information (Fol) has significant links to and overlaps with data protection under the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000, the Human Rights Act 1998 and the Environmental Information Regulations 2004 in respect of which there are a number of Codes of Practice.

Relevant Council policy

- 2.3 The Council's Constitution contains provisions regarding Access to Information.

3 Details

Background

- 3.1 The Freedom of Information Act 2000 ('the Act') was given Royal Assent on 30th November 2000 and introduced a new right to obtain information from local authorities.

The Act introduced a new culture of openness throughout the public sector and formed part of a wider group of policies to modernise government and ensure that decision making is transparent and accountable. The key elements are:

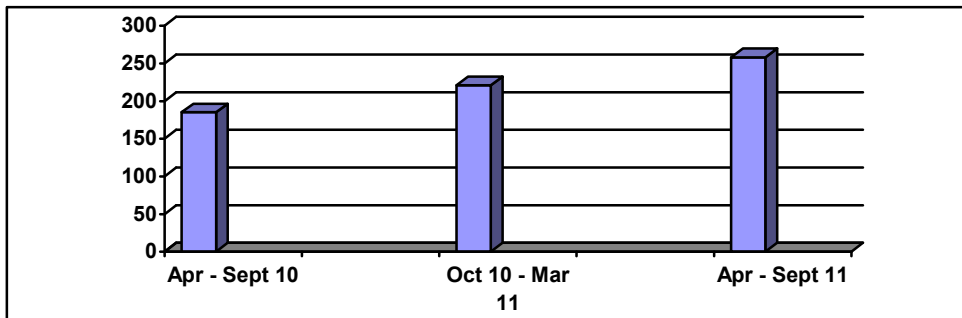
- a general right of access to information held by public authorities;
- a requirement to adopt a publication scheme specifying the classes of information the authority intends to publish, the manner of that publication and whether the information will be made available free of charge; and
- the establishment of the Office of the Information Commissioner to ensure compliance.

- 3.2 Whilst the Act creates a general right of access to information held by public bodies, it also sets out 23 exemptions where the right is either removed or qualified. Apart from repeated or vexatious requests to which an authority need not respond, the exemptions fall into two broad categories:
- a) 'qualified' exemptions where the authority has a duty to consider whether disclosure is required in the public interest; and
 - b) 'absolute' exemptions where there is no duty to consider the public interest.
- 3.3 The Council's publication scheme was reviewed and a new scheme based on the Information Commissioner's model publication scheme was adopted on 1 January 2009
- 3.4 The Environmental Information Regulations 2004 (EIR) derive from Directive 2003/4/EC on public access to environmental information. The EIR apply to not only the public authorities listed in Schedule 1 of the FOIA but also any other person carrying out functions of public administration or any other person who is under the control of any of the foregoing who has public responsibilities relating to the environment, exercises functions of a public nature relating to the environment or provides a public service relating to the environment.
- 3.5 Environmental Information is defined as any information in written, visual, aural, electronic or any other material form on:
- The state of the elements e.g. air, water, land, landscape, nature sites and biological diversity
 - Factors affecting or likely to affect the elements such as substances, noise, emissions etc
 - Measure such as policies, plans, programmes, land planning regimes
 - Reports on the implementation of environmental information
 - State of human health and safety including contamination of the food chain, conditions of human life, cultural sites, built structures inasmuch as they are or may be affected by the state of the elements or by any of the factors, measure or activities.
- 3.6 In view of the above, a large part of the Council's functions is caught by the Environmental Information Regulations such as development control and enforcement, strategic planning, waste management and environmental health, rather than the Freedom of Information Act.
- 3.7 The key differences between the EIRs and FOIA are requests for environmental information:
- do not have to be made in writing
 - Information held by the Council includes information held on behalf of another person or organisation
 - There are no absolute exceptions- every exception is subject to the public interest test
 - There is an express presumption in favour of disclosure
 - There is no cost limit on disclosure

3.8 Volume of non routine FOI requests received

The chart below shows the number of non routine requests for information under the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004 received by Horsham District Council for the last three monitoring periods.

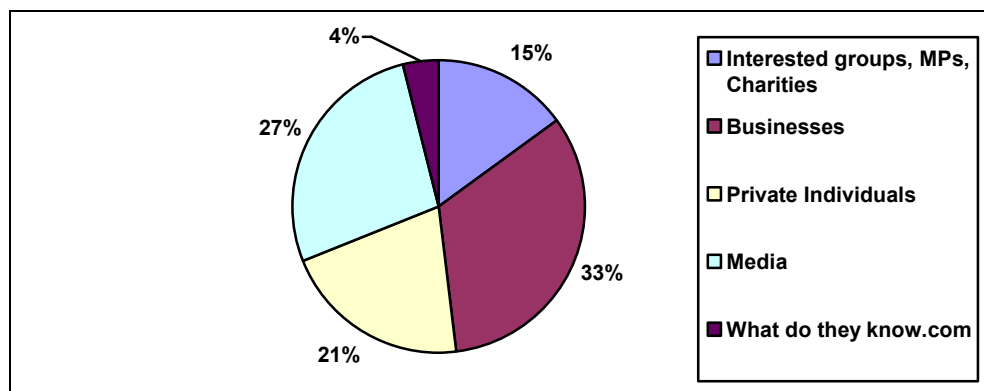
Number of requests received and recorded by Horsham District Council 1 April to 30 September 2011



Most frequent requestors

3.9 The majority of Freedom of Information Act requests to the Council, where the origin is known (33%), have come from organisations looking for information that may aid them in carrying out their businesses. Those that have come from private individuals (21%) tend to be about personal concerns e.g. planning applications they have made or that affect them, access to information they believe may further a complaint, or details of their housing files. The majority of press enquiries received by the Council are dealt with as media enquiries by the Council's Communications Manager. However, those which have made specific requests under the Freedom of Information Act (27%) have requested information such as; officer remuneration and member allowances, the numbers and cost of redundancies and the creation of new posts. A further 15 % of requests came from MPs, political parties, unions or organisations such as the Taxpayers Alliance, charities and local groups with specific interests. 4% of requests were made through the What do they know.com website.

Most Frequent requestors 2010/11 (at a glance)



Response timeliness

- 3.10 The Freedom of Information Act requires public authorities to reply to FOI requests within 20 working days, because this is a legal requirement our target is to respond to 100% of requests on time.
- 3.11 Between April and September 2011 the Council received 258 requests. Of those requests completed at the time of writing this report the Council has responded to 84% of those requests within 20 days. For those which exceeded the prescribed limit of 20 working days for a response, some delays were as a result of complex multi department requests and difficulty in producing the information requested, other delays were put down to workload. It should be noted that under some exemptions in the FOI Act and all of the exceptions in the EIRs the Council is required to consider the public interest test. When the Council is considering whether or not the public interest in disclosing the information outweighs the public interest in withholding it the Council is permitted to extend the 20 day time limit for responding in order to make their public interest test considerations.

Exemptions/exceptions used.

- 3.12 Under the terms of the both the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, an authority is entitled to withhold information if it feels an exemption applies. In this monitoring period 55 Freedom of Information and Environmental Information Regulation requests were refused or partly refused for the following reasons:

Exemption/Exception Applied	No. of Requests
Do not hold the information	27
Personal information	5
Vexatious request	4
Request exceeds appropriate limit	2
Information accessible elsewhere/ Published in the publication scheme	2
Legal Professional Privilege	2
Commercial Confidentiality	3
Unfinished Data (EIR only)	1
Information intended for future publication	1

- 3.13 In addition a further 8 requests resulted in partial disclosure of information; with some of the information requested withheld under the following exemptions/exceptions: personal information, legal professional privilege, commercial interests and information provided in confidence.

Internal reviews

- 3.14 If a requestor is unhappy with the Council's decision not to release information they are entitled to complain. This is done by way of an internal review of the initial decision. The Codes of Practice issued under the FOI Act and EIRs state that internal review procedures should "encourage a prompt determination of

the complaint". Reviews under the FOIA should be completed within 20 working days. However reviews under the EIRs often relate to complex and difficult issues and up to 40 days may be taken to complete the internal review.

- 3.15 The Council received five requests for internal reviews of decisions made to withhold information during this period. Three reviews upheld the initial decision not to release information and one of these has been the subject of a complaint to the ICO. In two cases the requestor amended their request and the case reviewer decided to release some of the information previously requested. One internal review remains ongoing at the time of writing this report.

Appeals to the Information Commissioner and Information Tribunal

- 3.16 The request which became the subject of a complaint to the ICO was for a copy of legal advice obtained by the Council in respect of planning applications DC/10/1314 and DC/10/1316 - Abingworth Nursery, Thakeham. The request was refused by the Complaints and Information Officer as the information was considered to be legally privileged. This position was upheld by the Senior Solicitor (Monitoring & Standards) who carried out the internal review. The requestor then complained to the Information Commissioner's Officer who conducted an investigation. In September the ICO published a formal Decision Notice in which it upheld the Council's position not to release the requested information.
- 3.17 A previous internal review which remained outstanding at the time of the last report concerned information relating to a trading condition contained within the contract for Horsham Town Hall which has since lapsed. The information had originally been withheld as it had been requested whilst the contract was live, however, once the contract lapsed, the information was considered to be no longer commercially sensitive and the Senior Solicitor (Monitoring & Standards), decided to release this information. The ICO did not issue any formal Decision Notice in this case.

Council website

- 3.18 The web pages on the Council's website (www.horsham.gov.uk) regarding Freedom of Information, Environmental Information Regulations and Data Protection are regularly updated to ensure compliance with current guidance.

Guidance and Education

- 3.19 The Complaints & Information Officer holds regular meetings with the staff FoI representatives that are in all departments throughout the Council. The purpose of this is to ensure that staff involved are accurately recording and responding to the requests that are received and that they are up to date with current available guidance. A refresher training session on matters regarding the Freedom of Information Act, the Environmental Information Regulations and the Data Protection Act was held for all departmental FoI representatives on 9 September 2011.

4 Next Steps

Transparency

- 4.1 Following a period of consultation earlier this year, the Government published its Code of Recommended Practice for Local Authorities on Data Transparency in September 2011. The Code sets out the 'key principles for local authorities in creating greater transparency through the publication of publication.' It states that the minimum public data that should be released is:
- Expenditure over £500
 - Senior employees salaries, names (with the option for individuals to refuse to consent for their name to be published), job descriptions, responsibilities, budgets and numbers of staff
 - An organisational chart of the staff structure of the council including salary bands and details of currently vacant posts
 - The pay multiple – the ratio between the highest paid salary and the median average salary of the whole of the Council's workforce
 - Councillor allowances and expenses
 - Copies of contracts and tenders to business and to the voluntary community and social enterprise sector
 - Grants to the voluntary community and social enterprise sector should be clearly itemised and listed
 - Policies, performance, external audits and key inspections and key indicators on the authorities' fiscal and financial position
 - The location of public land and build assets and key attribute information that is normally recorded on asset registers
 - Data of democratic running of the authority including the constitution, election results, committee minutes, decision – making processes and records of decisions
- 4.2 The code also states that the provision of public data should become integral to local authority engagement with residents. The authority should build and maintain an inventory of the public data that it holds so that people know what is available to them. The availability of the inventory/data should be promoted and publicised so that residents know how to access it and how it can be used.
- 4.3 Public data should be published in a format and under a licence that allows open re-use, including for commercial and research activities in order to maximise value to the public. Publication should be in machine-readable format such as Excel spreadsheets which allows manipulation of the data.
- 4.4 The code stresses that authorities should apply strong internal control arrangements to reduce the risk of any payment fraud as a result in publishing data. Authorities must also comply with the legal requirements of the Data Protection Act 1998, the Freedom of Information Act 2000, the Environmental Information Regulations 2000 and to give appropriate consideration to Schedule 12A of the Local Government Act 1972.

The Information Commissioner

4.5 The ICO has recently launched a consultation on revising publication schemes under sections 19 and 20 of the Freedom of Information Act. The scope of this consultation is not limited to datasets; it covers any information in structured and unstructured form, if suitable for general publication on a regular basis. The ICO has decided to launch this consultation due to the following reasons

- Publication schemes were last revised 3 years ago
- Some sectors have now made significant advances with their own transparency initiatives, which have pushed beyond some of the minimum standards in the current publication scheme guidance
- New web 2.0 technologies are creating new opportunities to analyse and use public information. There are many innovative examples emerging from across the public sector
- The Protection of Freedoms Bill proposes to amend section 19 of the FOIA, adding a definition of dataset, requiring requested datasets to be added to publication schemes and to be made available in reusable formats.

5 Outcome of Consultations

5.1 Not applicable

6 Other Courses of Action Considered but Rejected

6.1 Not applicable

7 Staffing Consequences

7.1 There are no staffing consequences as a result of this report.

8 Financial Consequences

8.1 There are no financial consequences as a result of this report

Appendix 1

Consequences of the Proposed Action

<p>What are the risks associated with the proposal?</p> <p>Risk Assessment attached No</p>	<p>There are no risks associated with the publication of this report.</p>
<p>How will the proposal help to reduce Crime and Disorder?</p>	<p>The promotion of openness and transparency will have the effect of reducing opportunities for crime and disorder, particularly viewed against the Council's approach to access to information.</p>
<p>How will the proposal help to promote Human Rights?</p>	<p>The Freedom of Information Act 2000 is part of a continuum which also involves the Human Rights Act 1998. The Act is intended to change organisational culture and to promote transparency and openness. It is also intended to enhance, thereby, citizens' rights, particularly under Article 6 (The Proper Determination of Civil Rights) and Article 8 (Respect for a Family Life) of the Convention</p>
<p>What is the impact of the proposal on Equality and Diversity?</p> <p>Equalities Impact Assessment attached Not relevant</p>	<p>While not specifically aimed at advancing the Council's duty to promote better race relations, the drive towards more accountability, effectiveness and transparency will conduce to the discharge of this duty.</p>
<p>How will the proposal help to promote Sustainability?</p>	<p>While not specifically aimed at advancing the Council's duty to promote sustainability, the drive towards more accountability, effectiveness and transparency will conduce to the discharge of this duty.</p>