

Standards Committee – 23 January 2012

Access to Information – Annual Report 2011

Service Area: Business Change: Programme Delivery and Governance

Summary of report:

The purpose of this report is

1. To present a detailed report informing Committee of the impact that requests under the Freedom of Information (FOI) Act, Environmental Information Regulation and Data Protection Act have had on the council in the calendar year 2011
2. To outline actions currently being taken to ensure that the authority remains compliant with the legislation and meets public expectations of the FOI regime.

Recommendations:

1. To note the contents of this report.
2. To continue to receive reports on access to information on an annual basis

Background

The attached annual report, examines the impact upon the council of the Freedom of Information Act 2000 ('the Act'), and the Environmental Information Regulations 2004, and Subject Access request under the Data Protection Act 1998.

These Acts gives anyone the right to ask a public authority for information and, if that authority holds it, to have that information released to them or to be told why they cannot have it.

The Committee is advised that the council has adopted a centralised model for the receipt and processing of FOI, EIR and DPA requests. The main roles of the central team are to:

- Coordinate the council's response to requests made under FOI, EIR and DPA legislation
- Act as a corporate source of training, expertise and advice on the legislation, its developing use and interpretation, and on-going guidance from the Information Commissioner
- Consider the application of any exemptions/ exceptions in conjunction with the service concerned, involving Legal Services as required
- Provide advice and assistance to members of the public and others wishing to use the legislation
- Implement corporate FOI/EIR complaints procedures including the internal appeals panel and liaison with the Office of The Information Commissioner.

- Develop policies relating to the Code of Practice on records management contained in Section 46 of the Act.

The report highlights a continuing upward trend in the number of requests received and also significant in year improvements in the Council's handling of those requests. It also looks at the potential impact of emerging government policy and the Council's readiness for this.

Legal considerations:

Local authorities such as Walsall Council are 'public bodies' subject to the Freedom of Information Act 2000 (FOI). The Act sits alongside other related legislation, including the Data Protection Act 1998 (DPA), covering access to personal data, and the Environmental Information Regulations 2004 (EIR) which govern requests for information about a broad range of environmental subjects and issues.

Resource considerations

Whilst the increasing numbers of requests do have resource implications for the Council, the efficiencies and improvements being made alongside this increase in demand is helping to meet this. This has partly been achieved through the application of systems thinking theories and practice.

Citizen impact:

The council's response to information requests that are received, and the authority's commitment to making as much information that is of interest to residents routinely available, are two key aspects of customers' experience of the council. Members will note that the majority of requests received by the council are made by people external to the borough; however, the legislation requires all public bodies to respond to all valid requests for information regardless of the applicant.

Environmental impact:

A significant proportion of requests for information relate to environmental matters, and, as such, are considered under the Environmental Information Regulations – legislation which sits alongside Freedom of Information and which broadly reflects the framework provided by FOI.

Performance and risk management issues:

The council's policy and procedures for dealing with Freedom of Information and related legislation have been developed to minimise risk to the council. Central coordination ensures a consistent approach, which is mindful of the statutory framework including the use of exemptions and requirement to provide a prompt response. The annual report indicates that the number of requests received by the council continues to increase in both quantity and complexity, making increased demands upon staff time and skills, both within the central team and at a service level.

Equality implications:

Precise equality monitoring of the take up of the FOI framework cannot be undertaken as people making requests may use an abbreviated or false name, or provide only an e-mail address. However, the Committee is asked to note that a key feature of the legislation is that it is “requestor blind” and information is disclosed or refused objectively within the framework of legal exemptions. Unless impossible not to do so, the central team does not share information about the requester with the service to ensure that objectivity is maintained

Consultation:

The service works closely with the whole range of council services, and with partners. Awareness of the Act is critical to the council’s ability to comply with it.

Background papers: None

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Signed:A handwritten signature in blue ink, appearing to read 'P. Gordon', with a long horizontal flourish extending to the right.

Paul Gordon, Head of Business Change, on behalf of
Rory Borealis, Executive Director (Resources)
Date:



Walsall Council



Access to Information Annual Report
2011

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1. Introduction

The Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Data Protection Act 1998 all make requirements of the Council in respect of responding to requests for information. Furthermore the Government has made a clear commitment to promoting transparency and increasing accountability across the public sector. This report examines the continuing impact of this legislation on the Council during the 2011 calendar year, including the increase in volume of requests received and the performance of the Council in responding to them.

2. Summary of Legislation

2.1 Freedom of Information Act 2000

The Act gives anyone the right to ask a public authority for information and, if that authority holds it, to have that information released to them or to be told why they cannot have it. The authority:

- Must reply promptly and no later than 20 working days either providing the information or saying why not, using the stated exemptions within the Act
- Should provide advice and assistance to the applicant in making the request
- Cannot charge for providing the information, other than photocopying, postage and related disbursements, unless the time that would be required to provide the information would exceed the 'appropriate time limit'.
- Must offer a complaint or appeal procedure prior to the requestor taking a complaint to the Information Commissioner.

There are a number of exemptions that allow the Council to withhold certain pieces of information however the presumption is in favour of release and many of these exemptions are 'qualified' meaning the Council is required to carry out a public interest test. Only if, in all the circumstances the public interest in withholding the information outweighs the public interest in disclosing it can the Council refuse to release.

2.2 Environmental Information Regulations

The Environmental Information Regulations (EIR) 2004 give enhanced access to environmental information, by giving members of the public the right to access environmental information held by public authorities. The request can be made by letter, email, telephone or in person.

The regulations apply to most public authorities and any organisation or person under the control of a public authority who has environmental responsibilities. This can include some private companies or public private partnerships, for example companies involved in energy, water, waste and transport.

Environmental information is divided into the following six main areas:

- The state of the elements of the environment, such as air, water, soil, land, fauna (including human beings)
- Emissions and discharges, noise, energy, radiation, waste and other such substances
- Measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment
- Reports, cost-benefit and economic analyses
- The state of human health and safety, contamination of the food chain
- Cultural sites and built structures (to the extent they may be affected by the state of the elements of the environment)

EIR contains some categories under which information can be withheld, similar to the exemptions under FOI. Unlike FOI there are no 'absolute' exemptions and so all decisions to withhold are subject to the public interest test.

2.3 Data Protection Act 1998

The Data Protection Act gives individuals certain rights of access to personal information (which is exempt under FOI and EIR.) An individual has the right to the following:

- To find out what information is held about them.
- To be informed what information is held, what it is used for and to whom it may be disclosed.
- To be given a copy of the information in an accessible format
- To be given an explanation of any codes used or the logic involved any automatic decision making processes.
- To have inaccurate information corrected or destroyed.
- To prevent further use of personal information if it causes, or is likely to cause, substantial damage or distress.
- To seek compensation for any damage and distress caused by the use of inaccurate information.
- To prevent use of their personal data for direct marketing.

Requests for personal information can also come from a third party in certain circumstances. For example the Police or Crown Prosecution Service may request information as part of an investigation.

Subject Access requests under DPA have to be responded to within 40 calendar days rather than the 20 working days prescribed within FOI and EIR however these the legislation requires the Council to respond promptly to all requests and the 20 and 40 days limits are viewed by the ICO as the maximum time and simple requests should be handled more quickly.

3. Volume of Requests

3.1 Overall

Since implementation of the Freedom of Information Act in 2005, the number of requests has continued to rise year on year. This is a pattern that is replicated across the public sector and appears to be a result of people becoming more aware of their rights and more used to how to use the legislation to their benefit. Since the 2010 General Election, the Governments renewed rhetoric on transparency has also raised the profile of information rights.

The number of DPA subject access requests has been steadier, possibly reflecting the longer time this legislation has been around for and also it's more limited application. Prior to 2009, responsibility for DPA lay elsewhere within the Council and accurate figures on the number of requests are not available.

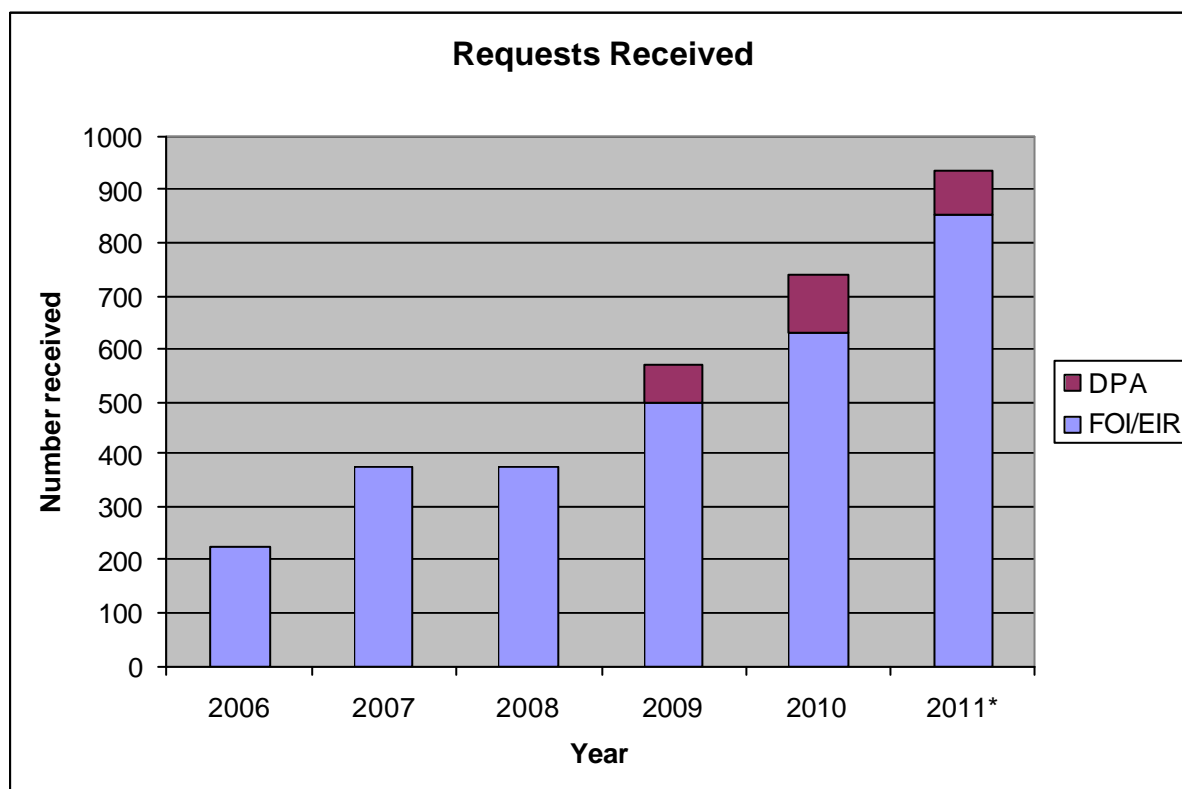


Figure 1- Requests Received 2006-2011

The total of 852 FOI and EIR requests in 2011 represents a 26% increase compared to 2010 and this is 73% increase since the first full year of FOI monitoring in 2006.

Whilst the national trend has increased at a similar rate over previous years, 2010 saw a drop in the average number of requests received by metropolitan and unitary councils (with the overall increase resulting from increases to London and County Councils.) Walsall, unlike other Mets has seen a year on year increase and is well above average for metropolitan councils in terms of requests received.

3.2 2011 Breakdown

Within the year, a breakdown of the number of requests per month is shown in figure 2 below, this shows a sharp peak in the number of requests for November

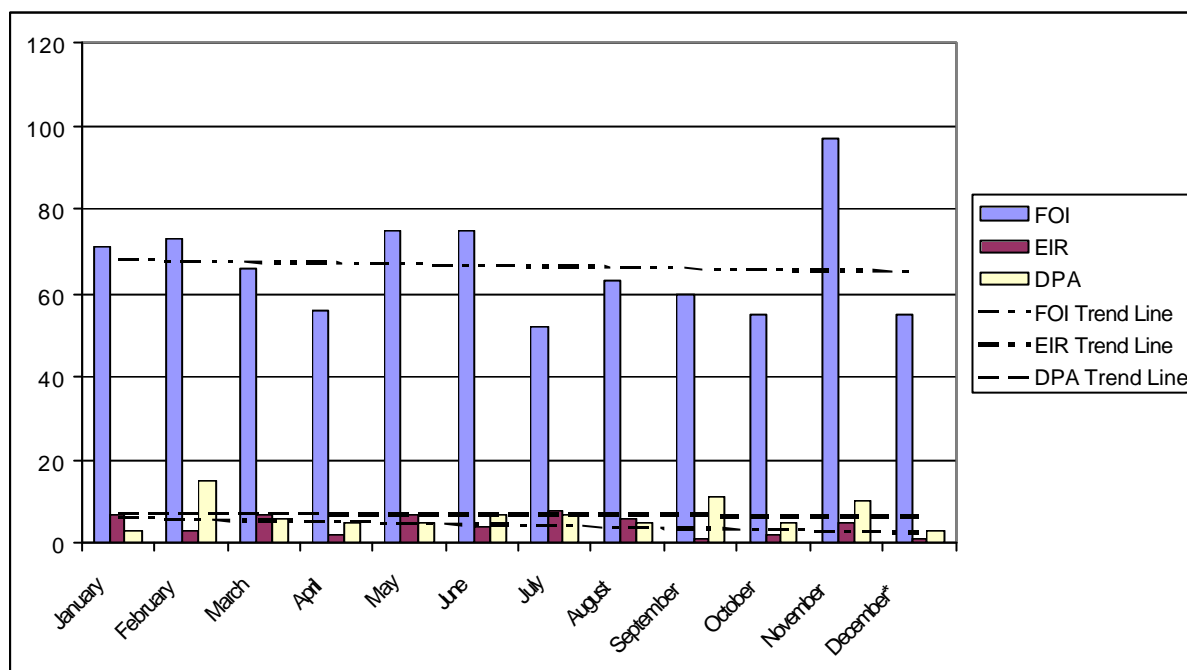


Figure 2- Requests Received 2011

3.3 Breakdown by Directorate

The highest number of requests related to multiple services areas, which also tend to be the more complex to respond to. After that the Resources Directorate responded to the highest number, reflecting a greater interest in topics such as Council spend.

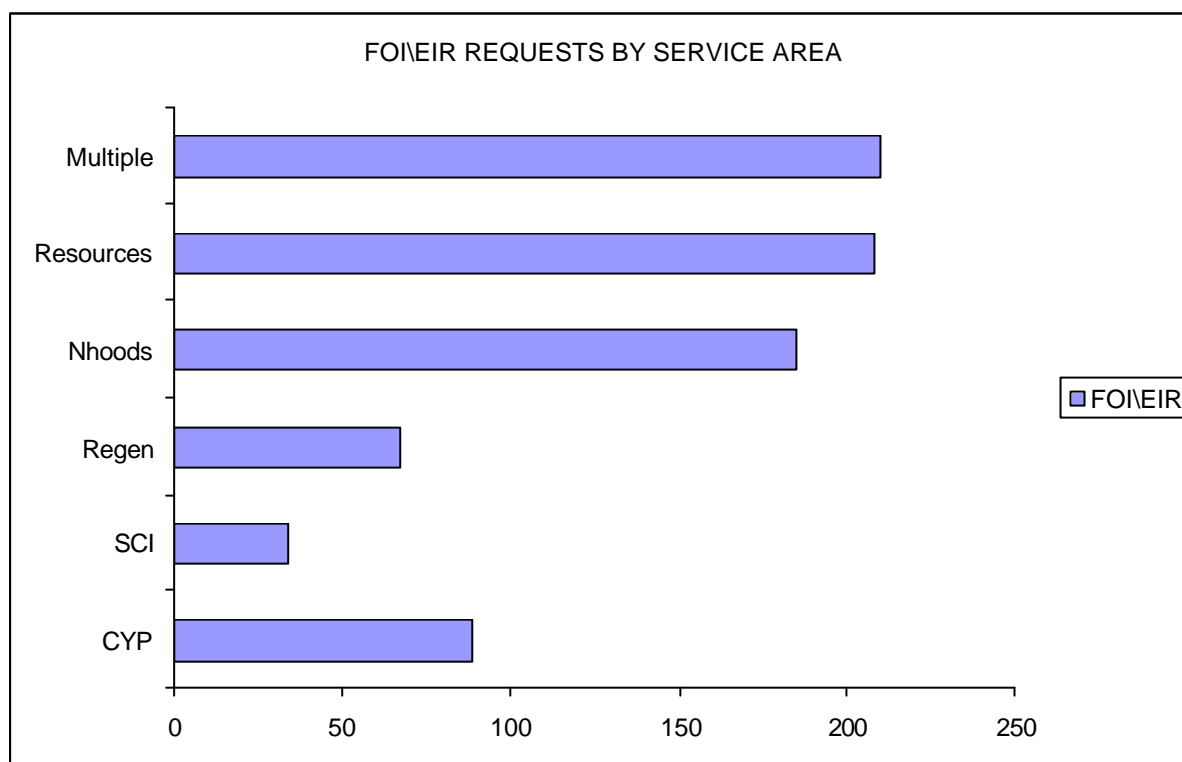


Figure 3- Requests Received by service area

It should also be noted that each individual request is often asking for several different pieces of information. The Council does not collect accurate figures on how much time is spent on responding to requests but a national study by the University College of London estimated an average of 6.4 hours per request which in Walsall would translate to 5452.8 hours of officer time on FOI in 2011, the equivalent of 3.4 full time equivalent staff. This does not include the time spent by officers within the service responding to queries from the FOI team or collating information on their behalf, just the time of staff dedicated to FOI.

The team is structured with 2 FTE responsible for handling FOI requests, but under interim arrangements this has been increased to 3 FTE, their duties however involve activities other than just responding to FOI requests including training and guidance provision and proactive work relating to open data and records management.

4. Time to respond

As stated above, legislation imposes a 20 working day limit for responding to FOMEIR requests (and 40 calendar days for DPA subject access requests.) Percentage compliance with this has previously formed the basis of performance reporting for the Access to Information Team. However as the law requires requests to be responded to promptly, and no later than 20 working days, it is possible to respond within these timescales and still not be compliant with the Act. In March 2011 an ICO decision notice found against Walsall Council for failing to respond to a request as soon as possible even though it was within 20 working days and that the Council had consequently breached Regulation 5(2) of EIR. This was because they found an administrative error had led to a delay that could have been avoided. Moreover, from a customer perspective it is not unreasonable to expect an answer to simple requests for information without having to wait 20-40 days.

A review of procedures in August 2011, where some systems thinking principles were applied, found that structuring processes around this 20 day target was hampering the handling of requests. In effect this 20 day target had become the *de facto* purpose for team and the method was arranged around this with efforts put into requests that were 15-20 days old. By reestablishing the purpose from a customer perspective and developing a measure for this based on end to end time for the customer (from asking for the information to actually receiving it) the method has been liberated to allow greater focus at the start of the process to responding quickly to simple requests. This also then allows the team to provide more support to services to respond to complex requests. In this way the 20 working days defined in legislation becomes an operational constraint or 'system condition' rather than the purpose of the team. The process is now much more customer focussed with early conversations taking place with the requester and the service to ensure the request is clear and that any potential delays are clearly communicated.

This review of procedures came with a recognition that more resources were needed to correct an imbalance from other staff changes. This was achieved through a reprioritisation exercise that recycled resources within the wider Corporate Performance Management team, temporary arrangements were established to get the team to full strength. This, combined with changes to working practices described above mean that there is a clear division in response times for the first and second half of the year with dramatic improvement from August onwards. The average for the year is 25 days, but this was 31 days for the first 6 months and 15 days for the second 6 months. This is shown in figure 4 below. A small rise in December is accounted for by the large peak in new requests received during November.

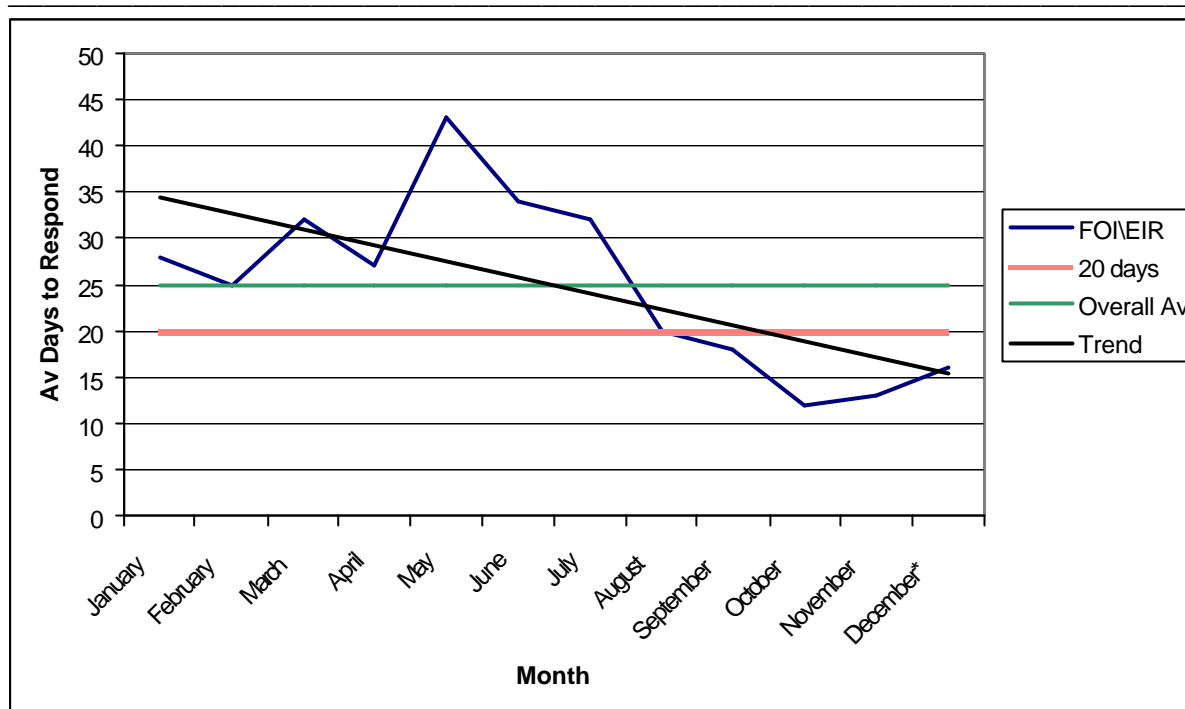


Figure 4- Timescale to respond

5. Application of exemptions

The starting point for all requests for information is a presumption that it should be released; however there are times when information should legitimately be withheld. During 2011 60 requests were exempted, or partially exempted for release, the table below shows which exemptions were applied and the total for each.

s1	Information Not Held	15
s12	Cost of compliance would exceed appropriate limit	13
s21	Information is reasonably accessible elsewhere	11
s22	Information is intended for future publication	4
s30	Information held for criminal investigations, criminal proceedings and confidential sources	3
s31	Prejudicial to the prevention or detection of crime	5
s36	Prejudicial to the effective conduct of public affairs	1
s40	Personal information	5
s42	Legal Professional Privilege	1
s43	Commercially sensitive information	2

The first two of these are absolute exemptions, meaning that the public interest does not have to be considered. The others are all qualified exemptions so, in withholding this information, the Council had to show that the public interest in maintaining the exemption outweighed the public interest in disclosing it.

The figures show that in 87% of cases the request resulted in the full release of information. Whilst 2011 figures are not available for other Councils, compared to published 2010 figures this is above the national figure of 79%, highlighting Walsall's transparent approach.

There were 9 appeals during 2011 against Council decisions to withhold information (5 under DPA and 3 under FOI), this equates to less than 1% of the total number of responses sent. Of these only four appeals found that further information had to be disclosed.

6. Who is submitting requests

Information on the requester type and location is limited by what they choose to provide, the Act does not require a person to state where they are from or why they are requesting information. The information in this section is based only on what has been provided and does cover every request but details were provided in a sufficient number of cases to make it statistically significant.

6.1 Requester type

The highest number of requests in 2011, as in previous years, came from individual members of the public but there were also significant numbers from the press, businesses and from special interest groups (charities, NGOs, lobby groups etc.)

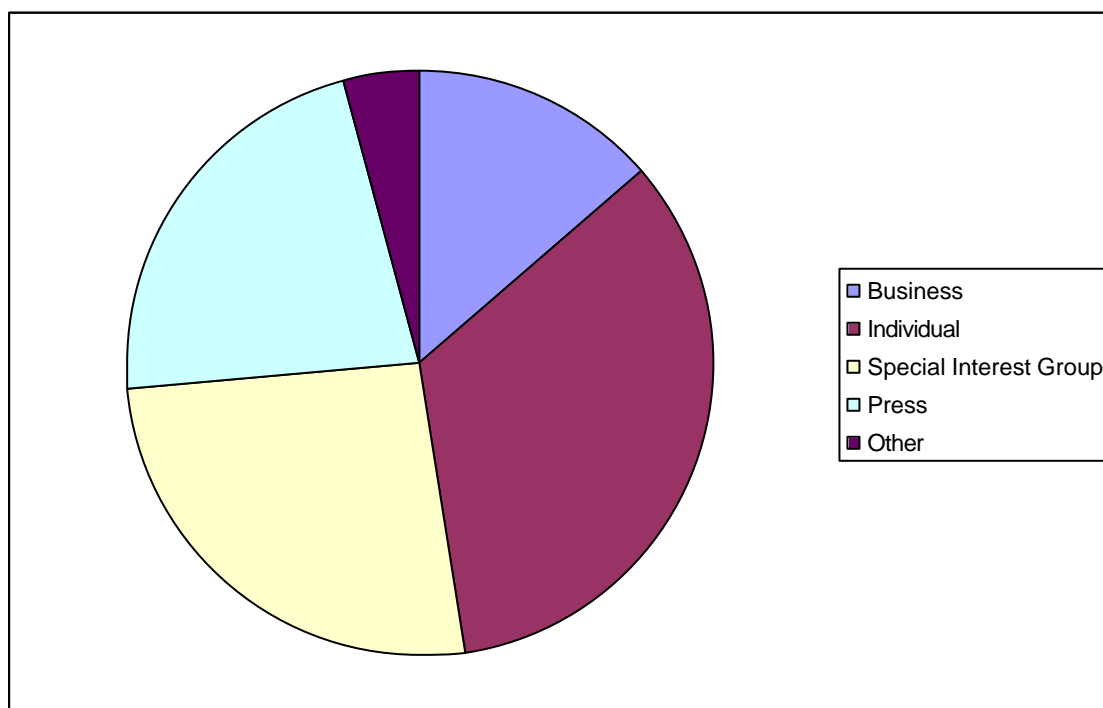


Figure 5- Requester by type

6.2 Requester location

The majority of requests come from outside of the borough, and a number of these are requests that have been sent to a number of different public bodies at the same time. A significant proportion, however, are local requests about specific local issues.

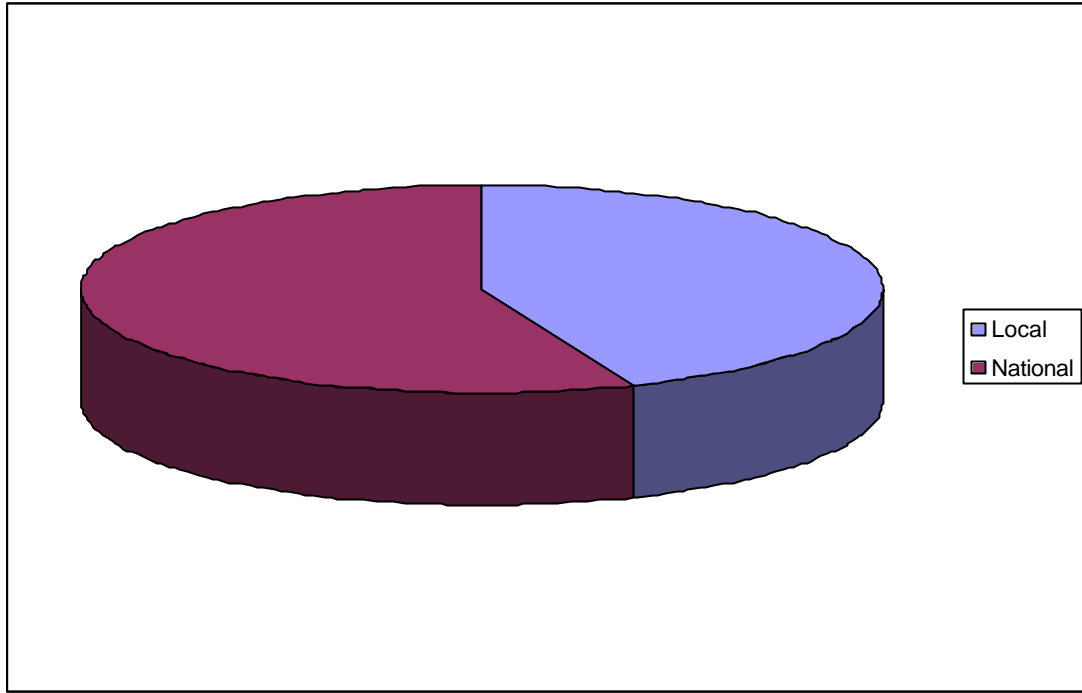


Figure 6- Requester by location

7. National Policy Changes

Current government policy makes a clear commitment to further opening up town halls and making them more locally accountable. The Coalition Government published its Transparency Code for Local Government which was updated in the summer of 2011. This includes a minimum level of data that should be published, including:

- Expenditure over £500
- Senior employees salaries (£58,200+)
- Organisational chart of staff structures
- Members' allowances and expenses
- Copies of contracts and tenders
- Grants
- Policies, performance, external audits and inspections
- Key indicators on the council's fiscal and financial position
- Location of public land and building assets
- Data of democratic running of the Authority

Due to the specific nature of most FOI requests, the proactive publishing of this information is unlikely to result in a drop in the overall number of requests and it may in fact result in an increase as published information prompts further questions.

In addition the Protection of Freedoms Bill includes provisions to amend Section 11 of the Freedom of Information Act 2000 to make all datasets available in a reusable format and to make the copyright available for reuse. This is likely to result in an increase in requests from commercial organisations who will see greater potential in the Act from having the ability to manipulate data to carry out their own analysis.

8. Local Developments

The Council is making more and more information available through its Open Data webpage, but there is still a lot more work to be done to fully get to grips with the government's transparency agenda. There are plans in 2012 to introduce a disclosure log of all FOI requests so that members of the public can see what has been asked before and what the response was.

Through the Working Smarter Programme, an Information Management project is also well underway aimed at improving the Council's records management processes which should make the retrieval of information quicker, easier and cheaper.

Meanwhile, changes within the team seen in the last 6 months will be cemented to ensure sustainability and further improvements. Work will also be carried out to develop a better understanding of customer requirements and how well we are meeting them. All this will help ensure the Council's compliance with legislation but more importantly improve the service offered to our customers.