

## **Standards Committee – 30 October 2008**

### **Freedom of Information Act 2000 - Annual Review, April 2007 to March 2008**

**Service Area:** Corporate Performance Management

#### **Summary of report:**

The purpose of this report is

1. To present a detailed report informing Committee of the impact that the Freedom of Information (FOI) Act has had on the council in the period 1 April 2007 to 31 March 2008 (attached).
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 annual reports on FOI matters on an on-going basis.

#### **Resource and 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. The central Customer Focus and Intelligence Unit, part of Corporate Performance Management, co-ordinates responses for information made under all this related legislation.

#### **Citizen impact:**

The annual report stresses that FOI, and in particular the council's response to requests received and its commitment to making as much information that is of interest to residents routinely available, are two key aspects of the customer experience of the council. We are judged on how well we respond to requests for information.

#### **Financial Implications:**

There are no specific financial implications arising from this report. The council's corporate resource for coordinating and managing matters relating to FOI matters sit within the Corporate Performance Management service, alongside responsibility for the Local Government Ombudsman, local complaints handling, and consultation.

### **Environmental impact:**

An increasing proportion of requests for information relate to environmental matters, and, as such, are considered under the Environmental Information Regulations – legislation with 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, mindful of statutory timescales and of the legal framework including the use of exemptions, and the need to consult with third parties. The annual report indicates that the number of requests received continues to increase in both quantity and complexity, making increased demands upon staff time and skills.

### **Equality implications:**

It is difficult to make a precise assessment of the take up of the FOI framework, in terms of equality monitoring, as people making requests may use an abbreviated or false name, or provide only an e-mail address. 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.

### **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. The service also recognises the need to consult with users of the Act on their experience

### **Background papers: None**

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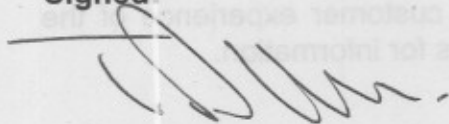
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### **Signed**



**Executive Director: Tim Johnson**

**Date: 21 October 2008**



# Walsall Council



## Freedom of Information: Annual Report

1 April 2007 to 31 March 2008

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## 1. Introduction and overview of the legislation

The Freedom of Information (FOI) Act came into force in January 2005. In January 2008 a report was presented to Standards Committee describing the impact of the legislation on the council during the period 1 January 2006 to 31 March 2007 and examining the effectiveness of the internal procedures established to ensure compliance as well as outlining learning and action points.

This report examines the continuing impact of the Freedom of Information Act upon the Council during the 12 month period 1 April 2007 to 31 March 2008 and the continuing need to re-assess the systems and practices set up to meet the challenges it presents.

### 1.1 Summary of the Act

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 within 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
- Must offer a complaint or appeal procedure prior to the requestor taking a complaint to the Information Commissioner.

Also attached to the Act is a requirement to adopt:

- A programme of proactive publication of information held by the public authority (as listed in a Publication Scheme)
- Best practice in records management

### 1.2 Related legislation

The Act is closely related to both the Environmental Information Regulations (EIR) 2004, which give enhanced access to environmental information, and the Data Protection Act 1998 which gives access to personal data. In addition, in July 2005, the Re-use of Public Sector Regulations required public authorities to establish a register of information that they would be prepared to license for re-use.

## 2. Procedures for ensuring compliance with the legislation

The Council has opted for a centralised model for the receipt and processing of FOI requests. The function sits alongside those dealing with corporate complaints and public consultation in Corporate Performance Management. Since the last report to Standards Committee, responsibility for developing policies and procedures relating to the council's duties under The Data Protection Act 1998 has also been placed with this unit.

The main roles of the FOI unit are to:

- Coordinate the Council's response to requests made under FOI and EIR legislation
- Act as a corporate source of training, expertise and advice on the developing implications of the legislation
- Consider the application of any exemptions in conjunction with the service concerned and Legal Services if required
- Provide advice and assistance to members of the public wishing to use the legislation
- Implement the corporate FOI 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.

### 3. Analysis of requests received

#### 3.1 Number of requests received

The number and complexity of the requests received in the 12 month period covered by this report show a continuing upward trend. A similar tendency is reported by neighbouring councils, and also noted in The Information Commissioner's annual report for 2007/8 as a national increase in the public take up of the rights conferred in the FOI legislation.

In the fifteen month period from 1 January 2006 to March 31 2007, the Unit coordinated responses to 375 FOI/EIR requests. The same number of requests has been received in the twelve month period from April 1 2007 to 31 March 2008 representing an increase of 25% on the monthly average number of requests received by the authority.

#### 3.2 How and where requests were received

During the period covered by this report the majority of registered FOI requests received in this twelve-month period were received by email via the council's web-site or directly to [foi@walsall.gov.uk](mailto:foi@walsall.gov.uk).

The Freedom of Information legislation states that a requestor has to provide a name and address for correspondence. The "address" can be an email address and no proof of name is required. Of the 375 requests received in this period some provided both email and postal addresses. Less than half (46%) provided a postal address for correspondence whilst 68% provided an email address.

This indicates a high level of awareness of FOI legislation amongst those making the requests. However, given that a requestor does not have to specifically mention FOI, the low number of requests received in individual service areas, may possibly indicate that staff have not identified other requests as FOI requests. Ongoing training and awareness-raising is required to ensure that all staff remain aware of FOI, the timescale for replying and the Council's procedures.

### 3.3 Who has made the requests?

The Freedom of Information Act does not require the person asking for the information to say why the information is required. Although the Act requires a name and address, as noted above, with the increasing use of email the identity and motivation of requestors becomes increasingly difficult to define. The following table is therefore based on surmised motivation.

Category	% of total			Trend
	2005	2006/7	2007/8	
Local residents concerned with a specific issue	28.9	34.1	24.2	↓
Researchers	22.9	10.1	17.1	↑
Campaigning groups	10.1	10.2	8.5	↓
Potential litigants (against the council or others)	9.6	2.4	4.5	↓
Media – national and local	7.5	12.4	18.2	↑
Individuals or organisations currently doing business or interested in doing business with the council	5.3	9.3	5.1	↓
Employees or ex-employees	5.3	8.2	6.3	↓
Students	3.5	3.3	2.1	↓
Councillors/MPs	1.7	7.1	9.5	↑
Unknown	3.5	3.0	4.5	↑

The table shows increases in:

- Media use of the legislation - although the local press has made comparatively few direct FOI requests it appears some national journalists are regularly using FOI as a tool to assess the impact of national trends at a local level. On these occasions the same request may be made to a large number of local authorities.
- MPs or their researchers collecting information for use in parliamentary questions or committees. In addition a significant number of requests have been received from political researchers assessing the impact of new legislation or government initiatives at a local level. Again many of these requests have been sent widely to other local authorities.

The table shows an apparent decrease in:

- Requests received from local residents or their representatives, concerned with issues which affected them personally.

### 3.4 Time taken to respond to requests

The Act requires the council to reply to an information request within 20 working days either providing the information or saying why it cannot be provided.

77% of the requests processed during this period received a response within 20 working days. This reflects a 1% drop in performance from the previous report. This has to be seen in the context of a 25% increase in the number of requests which has stretched staffing resources. The view has been taken that a well considered and complete response is preferable to a timely but incomplete one. The Information Commissioner has recognised that, whilst public authorities should strive to provide a



response within 20 working days, generally he will not criticise an authority where the response has been delayed, provided that one has been provided in a reasonable time. Where it becomes apparent that the timescale may be breached, requestors are kept informed of the progress of their request and the reasons for delay.

### 3.5 Subject of requests

The table below illustrates the subject distribution of the requests received, using the top-level headings from the E-Gov Local Government Classification Scheme and compares them with the subject of FOI requests received in previous years.

Subject category	% of total			Trend
	2005	2006/7	2007/8	
Adult care services	4.4	8.3	3.8	↓
Children and family services	3.3	5.2	9.7	↑
Community Safety (incl. Licensing)	1.5	2.8	2.2	↔
Consumer Affairs (incl. Trading Standards)	4.1	2.0	1.9	↔
Council Property	4.1	4.6	5.9	↑
Democracy	4.1	2.8	2.2	↔
Economic Development	1.8	1.5	1.6	↔
Education and skills	3.3	6.7	8.8	↑
Environment (incl. conservation)	8.1	7.8	9.1	↑
Finance	6.5	5.2	9.7	↑
Health and Safety	0.7	0.5	0.9	↔
Housing	2.9	2.4	1.9	↔
Human Resources	10.1	13.0	8.4	↓
ICT	3.6	2.8	1.9	↓
Information Management	3.2	3.6	1.9	↓
Legal Services	4.8	1.25	5.3	↑
Leisure and Culture	6.9	5.4	1.3	↓
Management	0.7	2.6	3.8	↑
Planning and building control	7.3	5.9	6.3	↑
Procurement	9.1	5.2	2.2	↓
Risk Management and Insurance	1.4	1.5	1.9	↔
Transport and Infrastructure	6.9	4.1	6.3	↑
Waste Management	0.3	3.3	3.4	↑

Although the subjects of requests for information continue to be wide ranging, these figures reflect significant recent increases in requests relating to Children Services, Education and environmental matters such as planning, transport and pollution. The latter category has been mostly processed in the context of The Environmental Information Regulations.

### 3.6 Fees charged

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, allow charges to be made only for photocopying and postage. Staff time less than 18 hours spent in collecting information is not chargeable.



In July 2005 Cabinet accepted a charging policy of 10 pence per photocopied A4 black and white page over 5 pages and a charge of £25 per hour over 18 hours for EIR requests. Income from this source in this period has been £180. A considerable amount of the requested information comprises less than 5 pages of documentation or has been provided electronically. Some requests have been refused on the grounds that it would take more than 18 hours of officer time to locate the requested information.

It has to be recognised that the time taken to locate information in order to respond to Freedom of Information requests stretches resources both in the central unit and in services areas – and that in some cases there may be no clear benefit to local residents. FOI has placed similar demands on central government departments and a recent government proposal considered introducing increased charges. The proposal was unpopular and was ultimately rejected.

### 3.7 Application of exemptions

The presumption of the Freedom of Information Act is that information will be released unless there is a good reason why it should not be. Of the 375 requests received 315 have provided full disclosure of the information requested. 16 have been refused because they were considered too wide or complex and it was estimated that the time required to provide a response would exceed the fees limit. Of the remainder, 16 were completely refused with partial disclosure of a further 28. Exemption of the information requested has been applied to only 44 requests.

The Act provides 23 exemptions to release - many of which are not applicable to local government. Seven exemptions are absolute which means that they are unconditional. The remaining sixteen are qualified, subject to the balance of public interest in release. When considering possible exemptions, the council has predominantly employed 4 categories of absolute exemption and 7 categories of qualified exemption. These are broken down as follows:

Section of Act	Description of Exemption	Absolute(A)/ Qualified (Q)	% times used			Trend
			2005	06/07	07/08	
21	Information accessible to applicant by other means	A	12.9	13.5	15.9	↑
22	Information intended for future publication	Q	4.7	2.5	0	↓
30	Investigations and proceedings conducted by public authorities	Q	4.7	1.6	6.8	↑
31	Law enforcement	Q	5.8	5.0	4.5	↔
36	Prejudice to effective conduct of public affairs	Q	2.3	0	0	↓
38	Health and Safety	Q	4.7	2.5	2.3	↔
40	Personal Information (Where disclosure may contravene the DPA)	A	32.0	44.1	45.5	↑
41	Information provided in confidence	A	2.3	7.6	4.5	↓
43	Commercial interests	Q	11.7	13.0	11.4	↓
44	Prohibition on disclosure under other legislation	A	10.5	2.5	9.1	↑

The increasing number of exemptions applied under Section 40 of the Act reflects the close relationship between FOI and DPA. The raised profile and publicity given to FOI has mistakenly led a number of people to assume that this legislation gave them new rights of access to personal information about themselves. In such cases information is released to them under the Data Protection Act.

However, the more challenging aspects of this exemption apply where FOI provide adjusted access rights to personal information held by the council about third parties. If the third party does not consent to release of the requested information, the public interest test is applied. Much of the material taken out of (redacted from) released documents in this period was personal information such as staff names, job titles and contact details. Recent decisions by the Information Commissioner reflect his thinking on the interplay between the private and public life of council employees.

### 3.8 Complaints procedure

The Code of Practice contained in Section 45 of the Act recommends that each public authority should have in place a procedure for dealing with complaints about the way in which information requests have been handled and, under section 17 of the Act, where information has been refused, must inform the applicant of their rights of appeal. Ultimate appeal to the Information Commissioner will only be considered when internal appeals have been exhausted.

All template FOI response letters inform the applicant of the council's complaints and appeals process. Initially, if it is not possible to resolve problems informally, any complaints about the outcome of an FOI request are processed through the "Tell Us" complaints system. If the complaint is still not resolved it is then referred to an internal appeals panel consisting of senior managers who have not been involved in the original decision. Advised by an independent representative from Legal Services the panel examines the documentation and produces a formal decision notice informing the applicant of the outcome of the appeal and their rights of access to the Information Commissioner.

In the reporting period, five complaints about the outcome of information requests were received. Of these only one went to internal appeal and the appeal panel upheld the original decision to refuse disclosure.

## 4. Public Consultation

In April 2007 a survey was undertaken to evaluate the experiences of 79 local people who had used the Freedom of Information process to request information from the council in the previous twelve months. The resources have not been available in this reporting period to undertake a similar survey. However, it is planned to research other methods of capturing customer feedback in the near future.

## 5. Conclusions and learning points

### 5.1 The requirement for culture change

The Freedom of Information Act, when passed in 2000, was intended as a tool for cultural change, providing new levels of openness and accountability in all areas of government. Therefore it is important that it is not approached as merely another piece of legislative compliance but as a chance to examine and alter old attitudes to the management and release of information to the public.

The following action points, aimed at such culture change, were identified in the FOI report presented to Standards Committee in January 2008:

- Maintain staff commitment and awareness of FOI and EIR through an ongoing training programme and improved communications
- Ensure that relevant staff in Corporate Performance Management and specialists in areas such as Environmental, Planning and Legal Services maintain and expand their knowledge of information governance
- Address low patterns of awareness amongst partners holding information on our behalf and amongst contractors who may wish to include binding clauses in new contracts forbidding release of information.
- Maintain awareness of developing guidance from the Information Commissioner on the new frameworks for the Publication Scheme and ensure that more information is routinely available to the public via the council website which is both accurate and current.
- Investigate what information, if any, could be released and charged for under re-use of public sector regulations.

These points are being addressed by:

- A limited programme of staff training and awareness on matters relating to FOI and EIR.
- Development of additional skills and knowledge in the central team in order to provide reliable advice and guidance on FOI and EIR to both staff and public. This has included the appointment of a specialist data protection officer to advise on the storage and use of all personal data collected by the council.
- Inclusion in the new education contract with Serco of legal clauses specifically relating to duties under Freedom of Information and Data Protection legislation. This has resulted in an improvement in the co-ordination of responses to requests for information held in Children's Services.
- Working with the new Policy Coordination Officer in Corporate Performance Management to ensure that council policies and strategies are pro-actively published on the web-site.
- Identifying the barriers to licensing re-use of information held by the council.

### 5.2 Improvements in corporate records management

As the number and complexity of requests for information increases, the maintenance of accurate, reliable and consistent information systems that facilitate



speedy retrieval is central to compliance with the legislation – as it is to corporate planning, performance measurement and risk management. Information should be structured and stored with recognition that it may be disclosed to third parties. Personal, commercially sensitive or confidential information that may be exempt under the Act should be capable of easy extraction from public files.

The Code of Practice on Records Management attached to the Freedom of Information Act sets out practices which public authorities should follow in relation to creating, keeping, managing and disposing of records. Although CMT adopted a records management policy based on best practice in May 2005, at present there is only limited resource either centrally or within directorates to begin to implement and enforce it.

The demands of FOI, with its 20 day deadline for answering requests, continue to highlight weaknesses in corporate records management, and the following action points were identified in the FOI report presented to Standards Committee in January 2008:

- Continue to develop best practice policies and standards in records management practice.
- Work with the Transformation team to promote best practice in records management alongside the development of the Model Office programme. This to include awareness of
  - Record retention periods; the efficiencies to be gained by applying them; the risks associated with premature destruction of important records.
  - The risks associated with poor management of email as records
- Work with Business Support and Facilities Management to encourage more efficient use and storage of paper records.

Progress on these action points includes:

- The development of a corporate information management strategy aimed at standardising policies and procedures for the storage and dissemination of recorded information held by the council, including guidance on the secure storage and sharing of personal data.
- Joint working with Legal Services and HR on the development of guidelines and mechanisms for the collection and storage of information relating to personnel matters. This work will set agreed retention periods for such records.
- Consideration by Facilities Management of the cost of a corporate record store for semi-current paper records compared with the cost of professional off-site storage.