

Standards Committee – 18 October 2010

Freedom of Information Act 2000 – Annual Report, 2009/10

Service Area: Programme Delivery and Governance

Summary of report:

The purpose of this report is

1. To present a detailed annual report on the impact of the Freedom of Information (FOI) Act on the council in the period 1 April 2009 to 31 March 2010 (attached).
2. To outline actions currently underway 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.

Background

This report, and the attached annual report, examine the impact upon the council of the Freedom of Information Act 2000 ('the Act') and the Environmental Information Regulations 2004, for the year 1 April 2009 to 31 March 2010.

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 Act requires public bodies to:

- reply within 20 working days either providing the information or saying why not, using the stated exemptions within the Act
- provide advice and assistance to the applicant in making the request
- not to 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'
- offer a complaint or appeal procedure prior to the requestor taking a complaint to the Information Commissioner.

The council has adopted a centralised model for the receipt and processing of FOI /EIR requests. The function sits alongside the role of the Data Protection Officer within Corporate Performance Management. The main roles of the central team are to:

- Coordinate the response to requests made under FOI, EIR and DPA legislation
- Act as a corporate source of training, expertise and advice on the legislation, its use and interpretation, and 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 the 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 number and complexity of requests received in the 12 month period covered by this report show a continuing and consistent upward trend. In the year 2009/10, the council received 630 FOI / EIR requests, an increase of 26.5% on the 2008/09 figure of 498 requests. A similar tendency is reported by neighbouring councils. The Information Commissioner's annual report for 2009/10 notes a national increase in the use of FOI.

79% of FOI and EIR requests processed during 2009/10 received a response within 20 working days. This reflects a 9% improvement in performance from the previous year. In addition, during this period, there has also been a noticeable increase in the length and complexity of requests made to the council, many involving multiple services across the council. The view has been taken that a well considered and complete response is preferable to a timely but incomplete one.

Although the subjects of requests for information continue to be wide ranging, these figures show significant numbers of requests being received in the Resources Directorate, in particular council budgets and expenditure. Other areas of substantial growth are transport & infrastructure, planning & building control, procurement, performance management, parking, consumer affairs and ICT. Further details can be found in the attached annual report, which will be placed on the council's website following its consideration by your Committee.

Legal considerations:

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

Resource considerations

There are no specific financial implications arising from this report. However it is noted that recent changes in the interpretation of the EIR by the ICO, resulting in the provision of, information previously supplied on a cost recovery basis being provided to requestors for inspection free of charge, have had an adverse impact on the income stream for the Planning and Building Control Service.

Citizen impact:

The council's response to FOI and EIR 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. As set out in the report, a large number of requests now come from the news media and individuals national and local.

Environmental impact:

A significant proportion of requests for information relate to environmental matters, and, are considered under the Environmental Information Regulations. The relationship between FOI and these regulations are discussed in detail in the annual report.

Performance and risk management issues:

The council's policy and procedures for dealing with FOI and related legislation have been developed to minimise risk to the council. Central coordination ensures a consistent approach, mindful of statutory timescales and the legal framework including the use of exemptions, and the need to consult with third parties. The annual report shows a continuing increase in both the quantity and complexity of requests made to the council, making increased demands upon staff time and skills, both within the central team and at a service level. There has also been a small increase in the number of appeals and subsequent complaints to the Information Commissioner's Office (ICO). The council has received one Decision Notice from the ICO which was partially upheld

Equality implications:

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.

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.

Vision:

The council's approach to access to information is a key aspect of customer experience. Responding to requests for information, and making more information routinely available to local people contribute to the council's strategic priorities to make effective use of resources and deliver quality services that meet customer expectations. Current arrangements will be subject to change in line with Working Smarter principles.

Background papers: None

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Signed:



Executive Director: Rory Borealis

Date: 1st October 2010



Walsall Council



**Freedom of Information &
Environmental Information
Regulations
Annual Report**

1 April 2009 to 31 March 2010

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1. Introduction and overview of the legislation

The Freedom of Information Act (FOIA) and the Environmental Information Regulations 2004 (EIR) came into force in January 2005¹. However the revised EIR 2004 simply built on the obligations already imposed under the Environmental Information Regulations 1992. Since their implementation the council has reported annually on the impact of the legislation and examined the effectiveness of the internal procedures established to ensure compliance as well as outlining any learning and action points.

This report examines the continuing impact of the Freedom of Information Act and the Environmental Information Regulations upon the council during the 12 month period 1 April 2009 to 31 March 2010 and reflects the continuing desire to keep under review internal systems and practices set up to meet the challenges this legislation presents.

1.1 Summary of the FOI 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, unless the time that would be required to provide the information would exceed the 'appropriate time limit'².
- 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

Summary of the Regulations

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

The regulations apply to most public authorities and to 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:

1. The state of the elements of the environment, such as air, water, soil, land, etc and the interaction among these elements
2. Emissions and discharges, noise, energy, radiation, waste and other such substances
3. Measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment

¹ EIR in force since 1992 updated 2004

² Appropriate time limit cost- The Fees Regulations state that this cost limit is £450 for all local authorities

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4. Reports, cost-benefit and economic analyses
 5. The state of human health and safety, contamination of the food chain
 6. Cultural sites and built structures (to the extent they may be affected by the state of the elements of the environment)

1.2 Generally the provisions of the Freedom of Information Act and the Environmental Information regulations are very similar. However, there are a number of differences which the council must reflect in its response to relevant requests. These include:

- requests for environmental information need not be in writing
- the definition of information held by a public authority includes information held on behalf of any other person
- the time limits for responding to a request apply to all requests including those involving consideration of the public interest. However, Regulation 7 allows for an extension from 20 to 40 working days for complex and high volume requests
- there are differences between the exceptions available under EIR and the exemptions available under FOIA
- no exception is made for requests that involve costs in excess of the 'appropriate limit' within the meaning of the Fees Regulations made under sections 9, 12 and 13 of the FOIA. Except in specified limited circumstances, all requests must be dealt with and any charges imposed must be reasonable
- the requirement for public authorities to have in place a complaints and reconsideration procedure to deal with representations alleging non-compliance with the EIR is mandatory.

1.3 Related legislation

The Freedom of Information Act is closely related to 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 adopted a centralised model for the receipt and processing of FOI/EIR requests. The function sits alongside the role of handling requests under the Data Protection Act and ensuring the Council's compliance with this Act. A separate report provides information on the council's performance in this area.

The main roles of the FOI 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 the 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.

3. Analysis of requests received - 2009/10

3.1 Number of requests received

The number and complexity of requests received in the 12 month period covered by this report show a continuing and consistent upward trend. A similar tendency is reported by neighbouring councils, and also noted in The Information Commissioner's annual report for 2009/10 as a national increase in the public take up of the rights conferred in the FOI / EIR legislation.

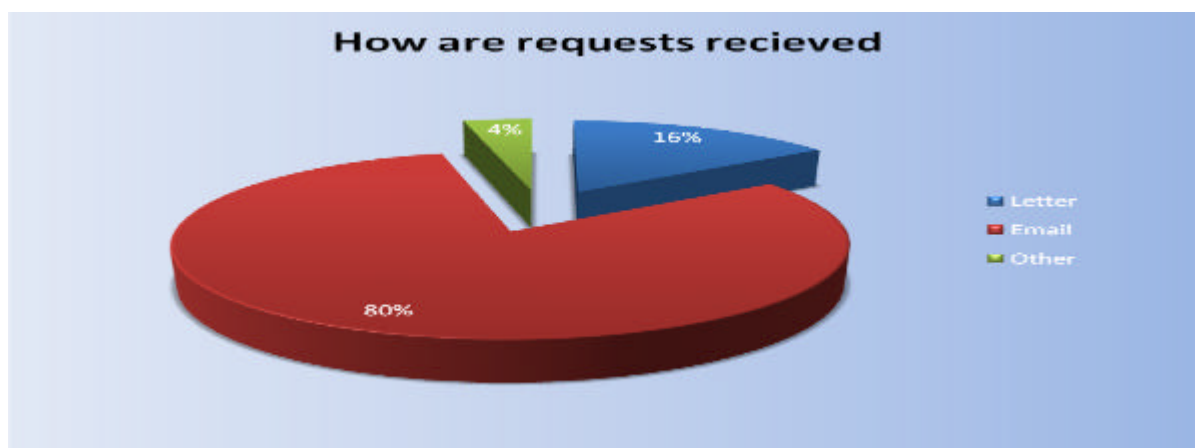
In the 12 month period from 1 April 2008 to 31 March 2009, the Unit coordinated responses to 498 FOVEIR requests. For 2009/10, this has significantly increased by 26.5% to 630 FOI / EIR requests.

	2008/09		2009/10	
	FOI	EIR	FOI	EIR
Number of Requests	486	12	578	52
	498		630	

3.2 How and where requests were received

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 630 requests received in this period many provided both email and postal addresses, however the overwhelming majority of requestors requested that they receive a reply via e-mail. Under the EIR a request can be made verbally.

During the period covered by this report the majority of registered FOI/EIR requests were received by email via the council's web-site or directly to foi@walsall.gov.uk



Form of Request FOI and EIR

Letter	98
E-mail	507
Other (including telephone for EIR)	25

Both the increase in number of requests and the increased use of e-mail reflect an increasing level of awareness of access to information legislation amongst those making the requests. However, given that a requestor does not have to specifically mention FOI, the comparatively

low number of requests received via individual service areas, may possibly indicate that staff have not identified requests as FOI/EIR requests. Ongoing training and awareness-raising is required to ensure that all staff remain aware of the relevant access to information legislation, the timescale for replying and the council's procedures. However, it is worthy of note that this year has seen an increase in the number of requests that have been appropriately recognised as requests that require specific consideration under the EIR. This is partly due to an increase and improvement in the guidance produced by the Information Commissioners Office and greater clarity on the definition of 'environmental information'.

3.3 Who has made the requests?

Neither the FOI Act nor the EIR require the person asking for the information to say why the information is required, although the Act does require 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 limited information and must therefore be treated with a degree of caution.

Category	2009/10	
	No.	%
Residents / Individuals local and national	296	47
Campaigning groups / Charities	39	6
Media local and National	164	26
Businesses Local and National	74	12
MPs / Councillors/ Political researchers	26	4
Legal / Solicitors	10	2
Other Public Bodies	16	3
Other	5	1

The table shows in particular a high volume of requests being submitted by the news media and a large increase in the number of requests made by individuals. However it has been noted that as the Act simply requires the requestor to provide 'a name and address,' details supplied are not always representative of the person actually making the request. There has however been an increase in the numbers of requests from local residents seeking information about issues that affect them and / or the local community.

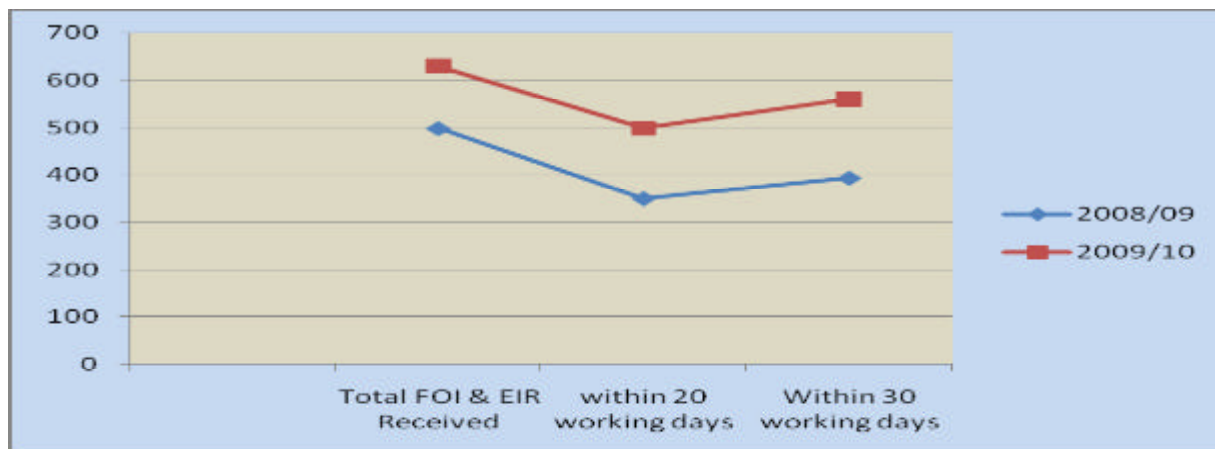
Requests from 'Other' requestors largely represent requests from individuals whose address, and actual requests, give few clues as to their identity, background, or the intended use of the information. This is particularly the case with some e-mail applications.

3.4 Time taken to respond to requests

The Act and the Regulations require public authorities including the council to reply to information requests within 20 working days either providing the information or saying why it cannot be provided.

79% of FOI and EIR requests processed during this period received a response within 20 working days. This reflects a **9%** improvement in performance from the previous report despite a **27%** increase in the number of requests which has stretched resources. In addition, there has also been a noticeable increase in the length and complexity of requests that have been made, many involving multiple services across the council. The view has been taken by the service that a well considered and complete response is preferable to a timely but incomplete one, and it is also noted that **92%** of requests received a full response within 30 working days or less. The Information Commissioner has recognised that, whilst public authorities should strive to provide a response within 20 working days, generally he

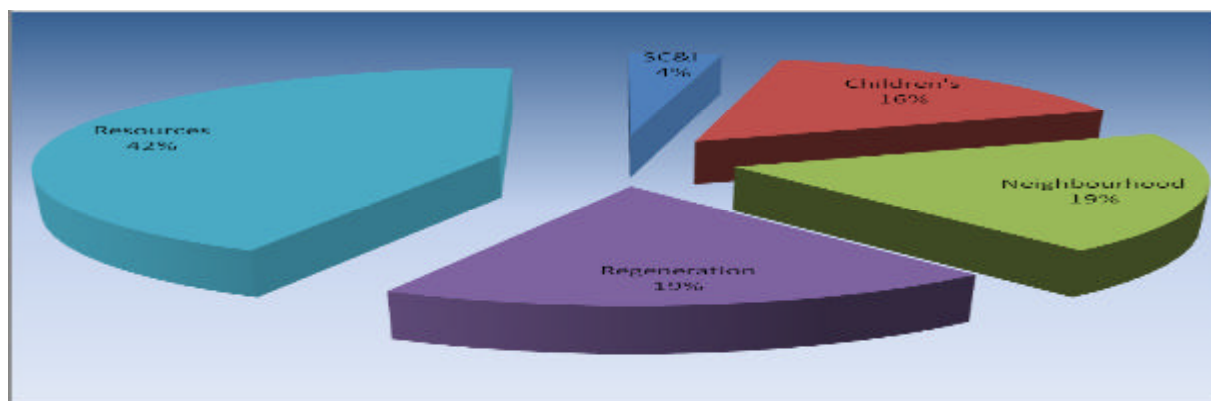
will not criticise an authority where the response has been delayed, provided that one has been provided in a reasonable time. Where it becomes apparent that the timescale may be breached, the Customer Focus and Intelligence team seeks to ensure that requestors are kept informed of the progress of their request and the reasons for delay.

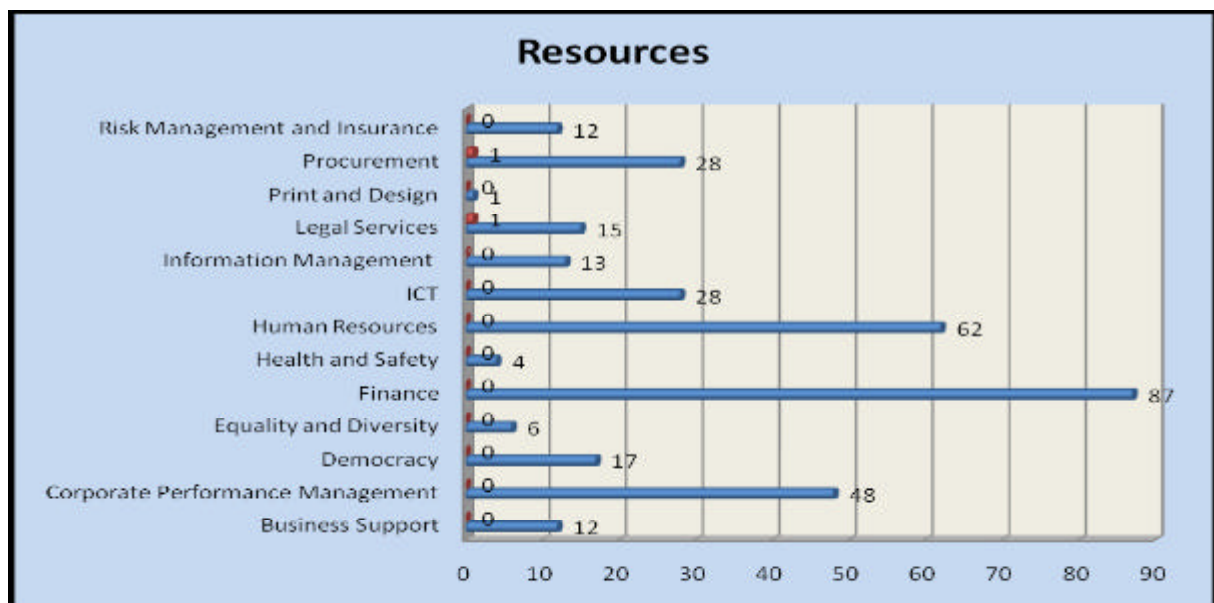
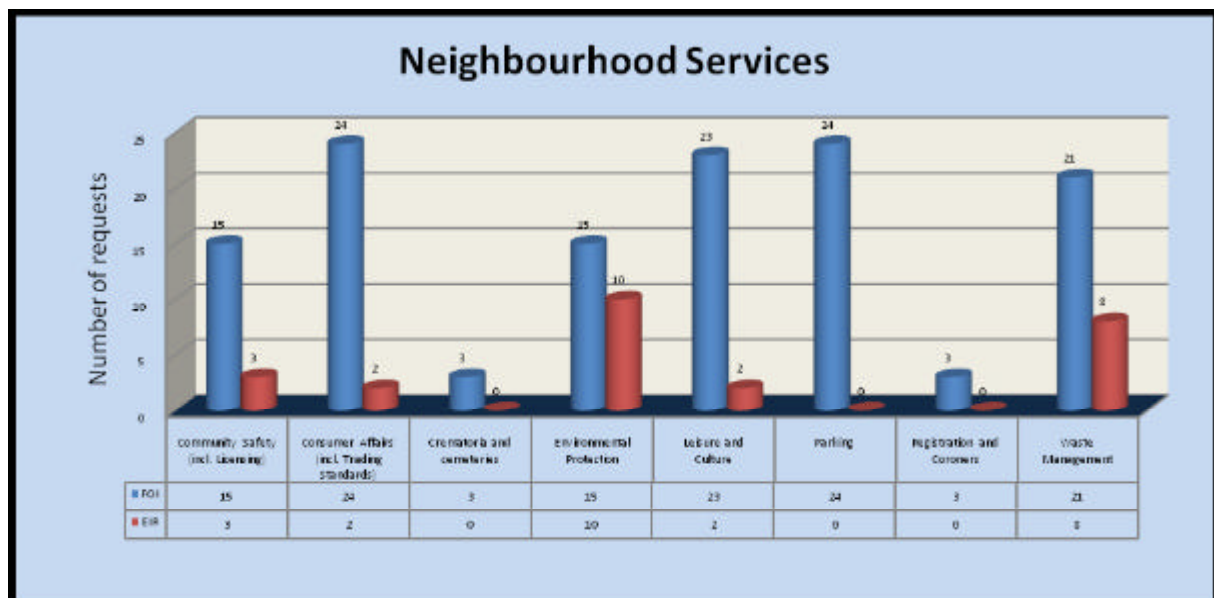
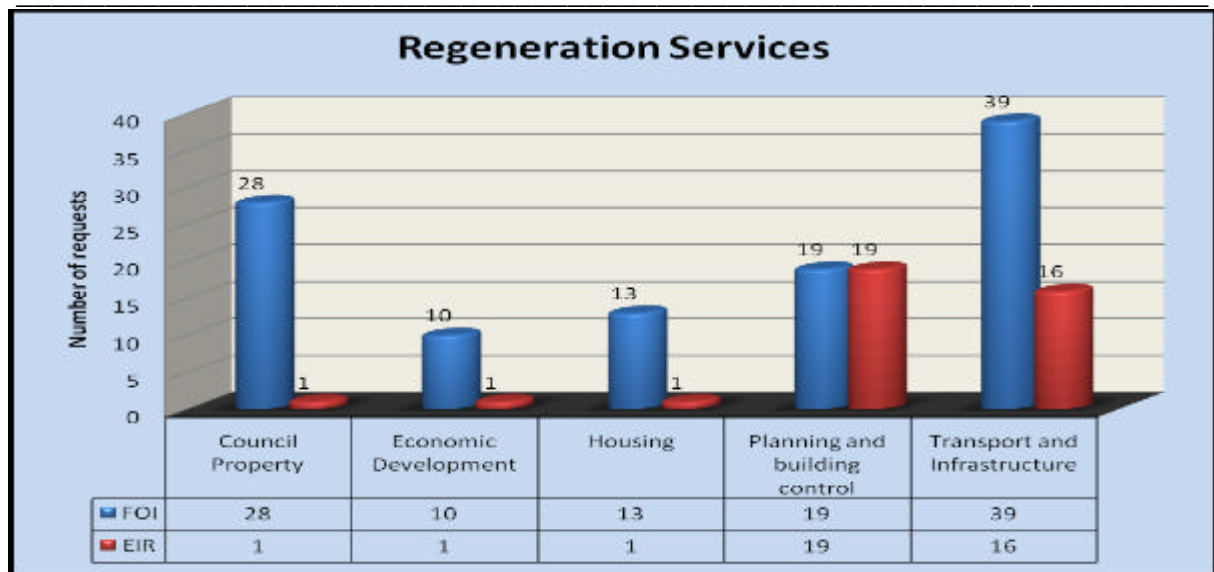


3.5 Subject of requests

The information below illustrates the subject distribution of the requests received, using the top-level headings from the E-Gov Local Government Classification Scheme and the Council's current Directorate responsibility. As some requests relate to more than service area and / or Directorate, the total figure is in excess of the number of requests received. However this does go some way towards indicating the complexity of some of these requests.

<u>Directorate</u>	<u>No. of Requests</u>		
	FOI	EIR	Total
Social Care and Inclusion (Adult Services Only)	29	0	29
Childrens' Services	124	0	124
Neighbourhood Services	128	25	153
Regeneration Services	109	38	147
Resources	333	2	335
Grand Total	723	65	788





Although the subjects of requests for information continue to be wide ranging, these figures show significant numbers of requests being received in the Resources Directorate, in particular in the area of finance. This represents the growing number of requests relating to budget and expenditure by the council. The proportion of requests relating to salaries and levels of absence has also increased significantly. Other areas of substantial growth are transport & infrastructure, planning & building control, procurement, Corporate Performance Management, parking, consumer affairs and ICT. It is also important to note that a number of requests have been multi faceted and have involved multiple service areas, so the number of service areas shown above does not equate to the number of requests received

3.6 Fees charged

The Freedom of Information and Data Protection (Appropriate Limit and Fees) state that staff time, which amounts to less than 18 hours, spent in collecting information is not chargeable and that when responding to these requests a public authority may only charge for photocopying and postage. However where the time to collate the information in response to a request is expected to exceed 18 hours (the 'appropriate time limit') the council can decide whether to refuse the request or to charge a fee. As stated above the 'appropriate time limit' applies only to the FOI Act.

Under the EIR, a public authority cannot make a charge for allowing an applicant:

- access to any public registers or lists of environmental information; or
- to examine the information (at a place chosen by the public authority).

For all other situations, charging is at the discretion of the public authority (though any charge must be reasonable). There is also a requirement for public authorities to publish a schedule of charges (for example the price per sheet of photocopying). This information is currently available via the council website.

For the year 2009/10, in line with the spirit of the FOI Act the council has continued to offer advice and assistance to applicants, and promote a culture of open access to information. The council has taken the approach that when receiving a request which, as drafted, appears likely to exceed the 18 hours specified above, officers have generally sought to provide advice and assistance to requestors. This has enabled requestors to redefine, clarify or focus their request, and receive either partial or full replies, rather than the council simply refusing the request or seeking to levy a charge. Where the council has advised the requestor that there will be charge the request has invariably been withdrawn or the requestor has chosen to view the information on site, for which there is no charge. Consequently the majority of responses to requests have fallen within the appropriate time limit or have comprised less than 5 pages of documentation, where provided manually, thereby not incurring any cost. Also, as the vast majority of responses are provided electronically, this has reduced the need for photocopying and postage.

In addition July 2009, saw the implementation of new guidance from the ICO which redefined how information previously provided as part of local search information for conveyancing, is now provided by the Local Authority. New guidance from the ICO and subsequently from the LGA has confirmed that this information is Environmental Information and therefore access to it should be facilitated under the EIR.

This has resulted in an increase in the number of EIR requests being processed by the CFI team and also increased pressure in this area as these requestors are often keen to have the information within a shorter timescale than the 20 working day limit.

The above has also presented some financial implications for the Council as this information was previously provided on a cost recovery basis by the Planning and Building Control Service and therefore the income stream has and continues to be adversely affected.

3.7 Application of exemptions

FOI Act

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 578 requests received, 22 requests were refused or received partial replies 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 remaining 556, only 50 exemptions from disclosure have been applied. In the majority of cases this has meant that a partial reply was made providing the information not covered by the exemption(s). In only 10 cases were 2 or more exemptions applied under the Act.

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. This year, when considering possible exemptions, the council has predominantly employed 4 categories of absolute exemption and 5 categories of qualified exemption. These are broken down as follows:

Section of Act	Description of Exemption	Absolute(A)/ Qualified (Q)	No. of times used
12	Exceeds appropriate time limit	A	22
21	Information accessible to applicant by other means	A	16
22	Information intended for future publication	Q	0
30	Investigations and proceedings conducted by public authorities	Q	2
31	Law enforcement	Q	7
38	Health and Safety	Q	0
40	Personal Information (where disclosure may contravene the DPA)	A	19
41	Information provided in confidence	A	0
43	Commercial interests	Q	6

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 led a number of people to assume that this legislation gave them new rights of access to personal information about themselves, this is not the case. In such cases, information is released to them in accordance with the Data Protection Act. There is also a growing trend towards information being made accessible to the public via organisational websites and the council's own publication scheme, reflected in the increase of the use of Section 21.

In addition the ever increasing range of information being sought from the Local Authority has identified that in some cases the information is not actually held by the local authority and therefore exempt from disclosure. The Act prescribes that where the information is not actually contained within records held and controlled by the Council the information need not be obtained or in fact created in order to respond to the request.

(EIR)

There is an express presumption of disclosure under the EIR. Exceptions relating to personal data are contained in regulation 13. All of the other exceptions are contained in regulation 12 ('the regulation 12 exceptions'). Regulation 12 of the EIR sets out the exceptions which allow public authorities to refuse to disclose environmental information.

However, unlike with the FOIA, all the exceptions in the EIR (except those relating to personal data) are subject to a public interest test. This means that the authority must explain to the applicant why, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. There is a general presumption in favour of disclosure.

Of the 52 EIR requests received, an exception was applied to only 9 responses, details of which are below.

Regulation	Description of Exception	No. of times used
12(4)(b)	The request for information is manifestly unreasonable	3
12(4)(c)	The request is too general	1
12(4)(d)	The request relates to information which is unfinished or in the course of being completed	1
12(5)(c)	Intellectual property rights	3
3(2)	Information is not held	1
13	Information is personal data	1

3.8 Complaints / Review procedures

The Code of Practice contained in Section 45 of the Act and the Code of Practice issued in respect of the EIR recommend 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 procedures have been exhausted.

All FOI/EIR responses dispatched via the central FOI team 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 at that stage, the applicant is advised of his/her right to refer the matter 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 all relevant documentation and produces a formal decision notice informing the applicant of the outcome of the appeal and their right to refer the matter on to the Information Commissioner.

In the reporting period the following complaints were received by the Council and / or made to the Information Commissioner's Office.

Internal Appeals		Complaints to the Information Commissioner	
407/09	Partially upheld	364/08	Partially Upheld
376/09	Not upheld	376/09	Partially Upheld
79/10	Not upheld		

Where the complaints have been partially upheld these have related to, a delay in the provision of information requested due to interpretation of the request, in one case and the decision by the council not to release information considered to be covered by an exemption / exception, which has been subsequently overturned, in the 2 other cases. The council has noted that in one of these cases, this related to an area where there is currently much discussion and dissent on the interpretation of the EIR and varied opinions on the interpretation legislation and guidance. The ICO issued a Decision Notice to the council in respect of this complaint which was partially upheld.

4. Publication Scheme

As a result of the Publication Scheme Development and Maintenance Initiative the Information Commissioner introduced a new Model Publication Scheme that all public sector organisations were required to adopt from 1 January 2009. The council's web site was updated in December 2008 so as to comply with the new guidance.

5. Conclusions and learning points

5.1 The requirement for culture change

The Freedom of Information Act and Environmental Information Regulations were intended to be tools for cultural change, providing new levels of openness and accountability in all areas of government. Therefore, for public authorities such as the council, it is important that these changes are utilised to examine the approach taken to the management and release of information to the public. The FOI team continues to work with colleagues in other services to identify key documents for inclusion on the council web site. At the time of writing the Council has already taken steps to embrace the challenges of Open Data by publishing on line all Council spend with suppliers in excess of £500.

5.2 Development points

The following action points have been identified for the current year:

1. To implement and develop the newly identified IT system for recording and monitoring requests, alongside a move towards electronic records management in support of the Working Smarter Objective of 'Taking out waste'
2. To review the council's current centralised approach to FOI and EIR requests, given the significantly increased number of requests now received and the forthcoming changes to the 'way we do our business'.
3. To ensure that staff and others providing services on the council's behalf remain aware of the requirements of the FOIA and EIR including timescales
4. To maintain an awareness of the requirements of the Information Commissioner, and of best practice in the operation of the FOIA and EIR
5. To liaise with other services including ICT, and Facilities Management as appropriate to ensure that proposals impacting on office accommodation and business practice reflect good records management principles.