

Standards Committee –18 October 2010

Data Protection Act 1998 – Annual Report, 2009/10

Service Area: Business Change: Programme Delivery and Governance

Summary of report:

The purpose of this report is to examine the impact of requests made to the council under the Data Protection Act (DPA, or 'the Act') during the 12 month period from 1 April 2009 to 31 March 2010 and will make a comparison with the figures from the previous year ending March 2009.

Recommendations:

1. To note the contents of this report.
2. To continue to receive annual reports on DPA matters on an on-going basis.

Background

In order to operate efficiently and effectively, Walsall Council has to collect and use personal information about people with whom it works, and about people who work for the authority. These include members of the public, current, past and prospective employees, clients and suppliers. In addition, the council may be required by law to collect and use information in order to comply with the requirements of central government and of particular public bodies.

Walsall Council regards the lawful and correct handling of personal information as vitally important to its operations and to maintaining confidence between the council and those for whom it provides its services.

The Data Protection Act (1998) controls the processing of personal data. It applies to the council as a 'data controller' and regulates how we process 'personal data' that we hold about 'data subjects'. The Act legally enforces eight principles of good practice to safeguard the rights of individuals.

This report does not cover every request that the council receives to disclose personal information. Many requests are straight forward and will be dealt with on a daily basis by individual services as "business as usual". Service areas have their own procedures in place to ensure such requests are dealt with in accordance with relevant legislation. This report covers more complex requests made direct to Corporate Performance Management, part of Programme Delivery & Governance, or forwarded to that team by other council services.

The Data Protection Act requires any organisation collecting and processing personal data to be registered with the Office of the Information Commissioner as a data controller. The Act defines the following eight principles to be followed when handling personal data:

1. Personal data shall be processed fairly, lawfully and, in particular, shall not be processed unless specific conditions are met.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under the Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

In addition, the legislation sets out a number of rights that a data subject has under the Act, with which the council as a data controller is legally obliged comply. 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.

Any request made under DPA has to be responded to within 40 calendar days

The Act is closely related to the Freedom of Information Act 2000 and Environmental Information Regulations 2004 both of which enable requests to be made for information held by a public authority, and the Human Rights Act 1998 which essentially grants individuals the right to a private life and the common law duty of confidence.

Role of Data Protection Officer

The Data Protection Officer (DPO) role sits within Corporate Performance Management, alongside responsibilities for Freedom of Information, Environmental Information Regulations and the council's records management policy.

The main role of the DPO is to:

- Maintain the council's arrangements including protocols and procedures relating to the Act
- Coordinate the Council's responses to complex requests made under the DPA
- Act as a corporate source of training, expertise and advice on the Act
- Consider the application of any exemptions in conjunction with the service or third party concerned, and the Council's Legal Services if appropriate
- Provide advice and assistance to data subjects wishing to use the legislation
- Implement the corporate DPA complaints procedures including the internal complaints process and liaison with the office of The Information Commissioner.

In the 12 month period from 1 April 2009 to 31 March 2010 the team received and processed 108 requests made under the DPA legislation. This is a 48% increase on the number of requests received in the previous year.

The council made a full response to 86% of the requests received, showing an improvement of 24% on the previous year. A further 7.5% of requests were closed due to the information no longer being required or the requesters failing to provide the necessary clarification or identification to be able process the request. 6.5% of the requests received during this period were still open at the time of reporting, which is also a small improvement on the previous period.

The requests that are still open fall mainly into the category of those asking for files relating to their time in care. This can be a lengthy process and, in most cases, it will involve copying, reviewing and redacting large amounts of detailed information relating to a person's time as a looked after child.

The Act states that any requests made under DPA must be responded to within 40 calendar days. In the year 2008/09, 51% of requests were responded to within the 40 day limit; this has increased to 77.5% in 2009/10. A further 11% were responded to within 40-50 days, 2% within 50-60 days and 9.5% took over 60 days.

As in 2008/09, the majority of the requests came directly from the data subject. These mainly consisted of current and former service users and current and former employees. Figure 3 also shows that significant number of requests were also received from third parties such as insurance companies and solicitors. Generally, these requests are involved with the investigation of liability following a road traffic accident or complex insurance claims. Requests from solicitors and insurance companies increased from 12 in 08/09 to 30 in 09/10.

A total of 19 requests came from other local authorities or government departments. The general nature of these requests was concerning investigations being carried out into benefit and student loan claims. Some of these requests can be attributed to information requested under the National Fraud Initiative.

In the year 2008/09 access to adult social care records had been the main area where data subjects were requesting information under the Data Protection Act. However, in 2009/10, the highest number of requests received were from solicitors asking for information about Taxi Drivers either currently licensed or previously licensed with the authority.

Requests for access to CCTV footage processed by the central team increased by 50% on last year's figures to a total of 15. Generally these requests originated from

insurances companies looking to establish liability as a result of a road traffic accident.. This increase may be due to improvements in the process of capturing these requests.

A person who is a data subject has the right to complain to the council if they feel they have been denied any of their rights under the Data Protection Act. Any complainant who does not believe they have had a satisfactory response from the council to any complaint relating to Data Protection, has the right to contact the Information Commissioner.

During 2009/10 there were 2 complaints made to the council with regards to inappropriate processing of personal data. In each case the data subject had concerns about their personal details being published on the council website.

Both complainants referred their concerns to the Information Commissioner. In each case the council was given the opportunity to respond to the allegations and in each case the commissioner decided the council had acted appropriately and took no further action.

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:

In order to operate efficiently and effectively, Walsall Council has to collect and use personal information about people with whom it works. These include members of the public, current, past and prospective employees, clients and suppliers. In addition, it may be required by law to collect and use information in order to comply with the requirements of central government.

Under the DPA the council is legally required to notify the office of the Information Commissioner (ICO) about the data it collects and holds.

This notification is renewed annually and includes the following details:

- The purpose(s) for collecting and holding personal data
- The type of information collected
- The type of people about whom information is collected
- Who it is disclosed to

It is a legal requirement to ensure our entry on the ICO register is accurate. Notification of changes to the information collected or processed must be made within 28 days.

Resource considerations

Due to changes in the Information Commissioners notification fee structure that came into force 1st October 2009, the council is now required to pay an annual renewal fee of £500. Prior to this date the annual fee was £35.00

Citizen impact:

Only 27% of requests were received from both current or ex service users and local residents. However, legislation requires Data Controllers to respond to all valid requests for information made under the Act within time limits.

Environmental impact:

None.

Performance and risk management issues:

Policy and procedures for dealing with Data Protection Requests have been developed to minimise risk to the council. Central coordination aims to ensure 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 by the council continues to rise, 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:

Legislation stipulates all requests should be dealt with within the set timescales and within the terms of the Data Protection Act. As such 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 Data Protection and information sharing is an important aspect of customers' experience of the council. Working Smarter objectives and principles currently underpin work underway to improve information sharing with council partners.

Background papers: None

Contact officers:

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Signed:

Executive Director: Rory Borealis

Date: 30 September 2010

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| <p>Data Protection Act Subject Access Annual Report</p> |
| <p>1 April 2009 to 31 March 2010</p> |

Introduction

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This report examines the impact of requests made to the authority under the Data Protection Act (DPA, or 'the Act') during the 12 month period from 1 April 2009 to 31 March 2010 and will make a comparison with the figures from the previous year ending March 2009.

It should be noted that this report does not cover every request that the council receives to disclose personal information. Many requests are straight forward and will be dealt with on a daily basis by individual services during "business as usual" activities. Service areas have their own procedures in place to ensure such requests are dealt with in accordance with relevant legislation.

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The Data Protection Officer (DPO) role sits within the Customer Focus and Intelligence Team (part of Business Change) alongside Freedom of Information, Environmental Information Regulations and Records Management.

The main role of the DPO is to:

- Maintain the council's arrangements including protocols and procedures relating to the Act
 - Coordinate the Council's responses to complex requests made under DPA legislation
 - Act as a corporate source of training, expertise and advice on the Act
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 - Provide advice and assistance to data subjects wishing to use the legislation
 - Implement the corporate DPA complaints procedures including the internal complaints process and liaison with the office of The Information Commissioner.

Number of requests received (see figure 1)

In the 12 month period from 1 April 2009 to 31 March 2010 the Customer Focus and Intelligence Team received and processed 108 requests made under the DPA legislation. This is 48% increase on the number of request received in the previous year.

The council made a full response to 86% of the requests received, showing an improvement of 24% on the previous year. A further 7.5% of requests were closed due to the information no longer being required or the requesters failing to provide the necessary clarification or identification to be able process the request. 6.5% of the requests received during this period were still open at the time of reporting, which is also a small improvement on the previous period.

The requests that are still open fall mainly into the category of those asking for files relating to their time in care. This can be a lengthy process and, in most cases, it will involve copying, reviewing and redacting vast amounts of detailed information relating to a persons time as a looked after child.

This process is improving as the retrieval of records once a request has been submitted is now much quicker. However, due to the volumes of information in each case, the team still has difficulty meeting the target for processing responses to such requests. In many cases responses to such requests may also involve seeking the consent of a third party whose details may also appear within the records. Again this can cause additional delays.

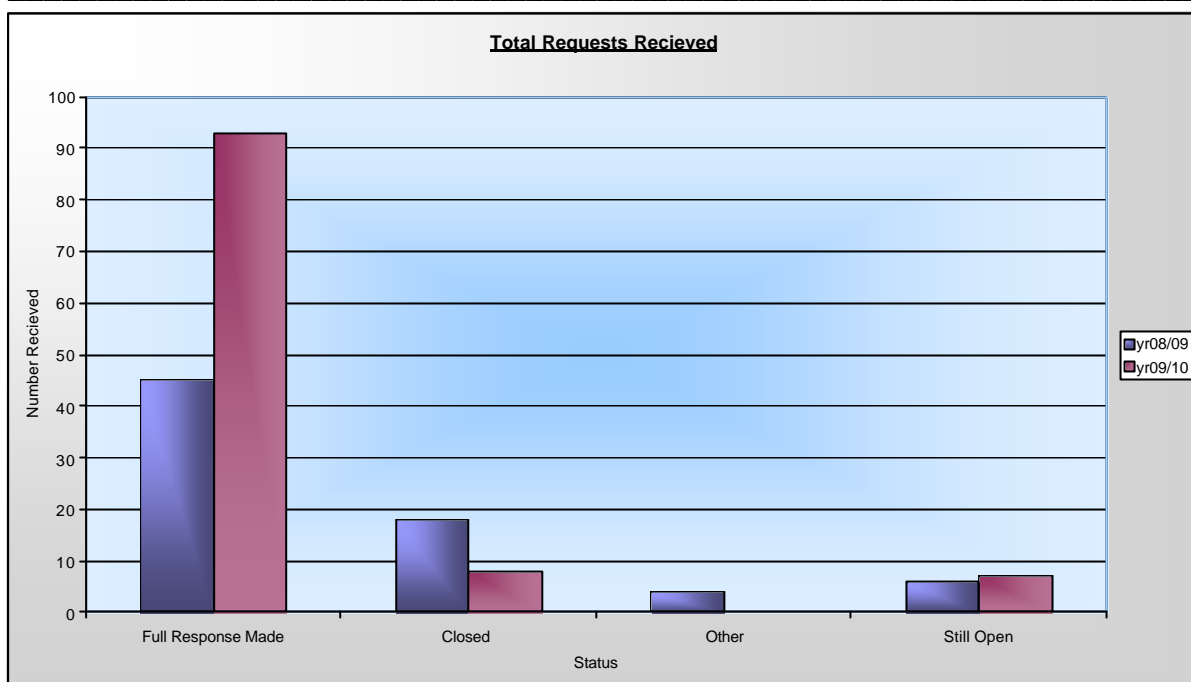


Figure1: Comparison of number of request received during the year 08/09 and the year 09/10

Time to respond to requests (see figure 2)

The Act states that any requests made under DPA, must be responded to within 40 calendar days. In the year 08/09, 51% of requests were responded to within the 40 day limit; this has increased to 77.5% in the year 09/10. A further 11% were responded to within 40-50 days, 2% within 50-60 days and 9.5% took over 60 days.

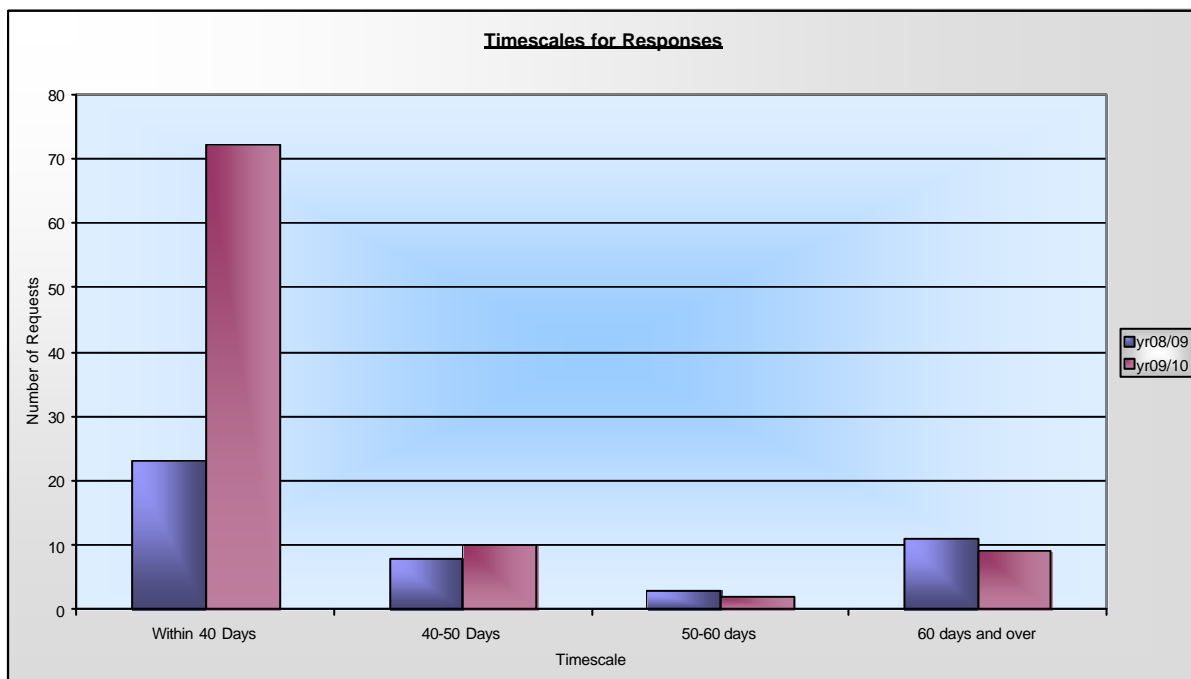


Figure 2: Comparison of timescales for responses during the year 08/09 and the year 09/10

Who has made the requests (see figure3)

As with the previous year, the majority of the requests came directly from the data subject. These mainly consisted of current and former service users and current and former employees. Figure 3 also shows significant number of requests were also received from third parties such as insurance companies and solicitors. Generally, these requests are involved with the investigation of liability following a road traffic accident or complex insurance claims. Requests from solicitors and insurance companies increased from 12 in 08/09 to 30 in 09/10.

A total of 19 requests came from other local authorities or government departments. The general nature of these requests was concerning investigations being carried out into benefit and student loan claims. Some of these requests can be attributed to information requested under the National Fraud Initiative.

Requesters that fall into the miscellaneous category include the Criminal Case Review Commission, The Insolvency Service, a Debt Collector and a Fraud Investigation Company.

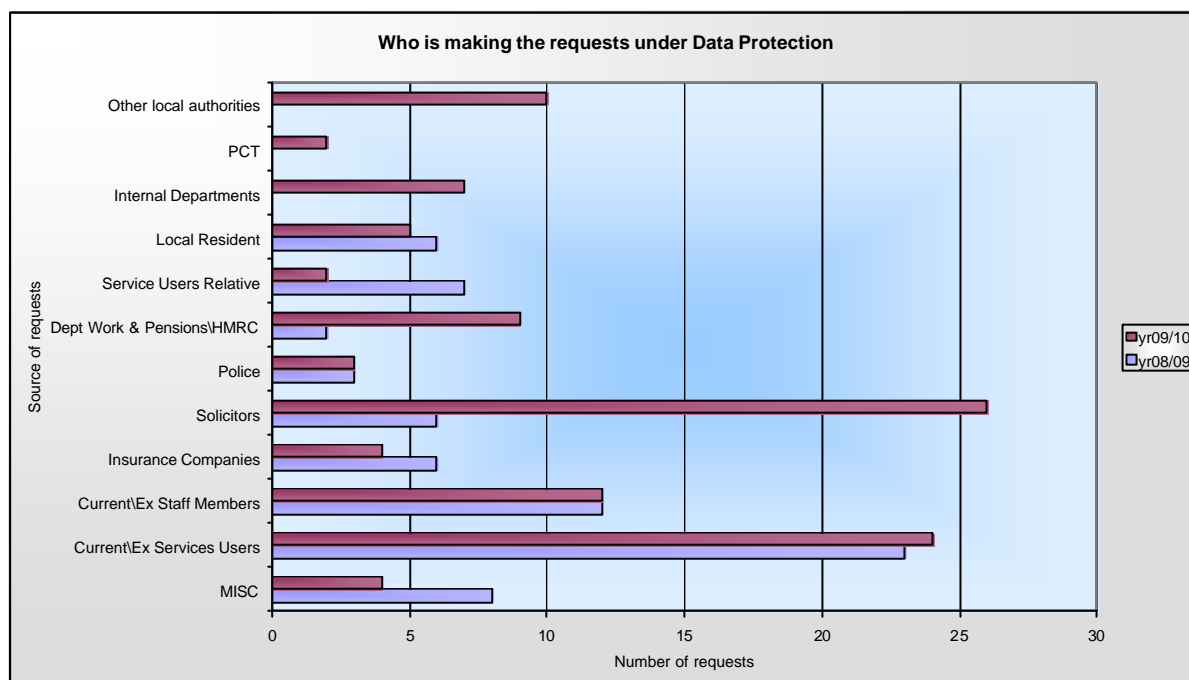


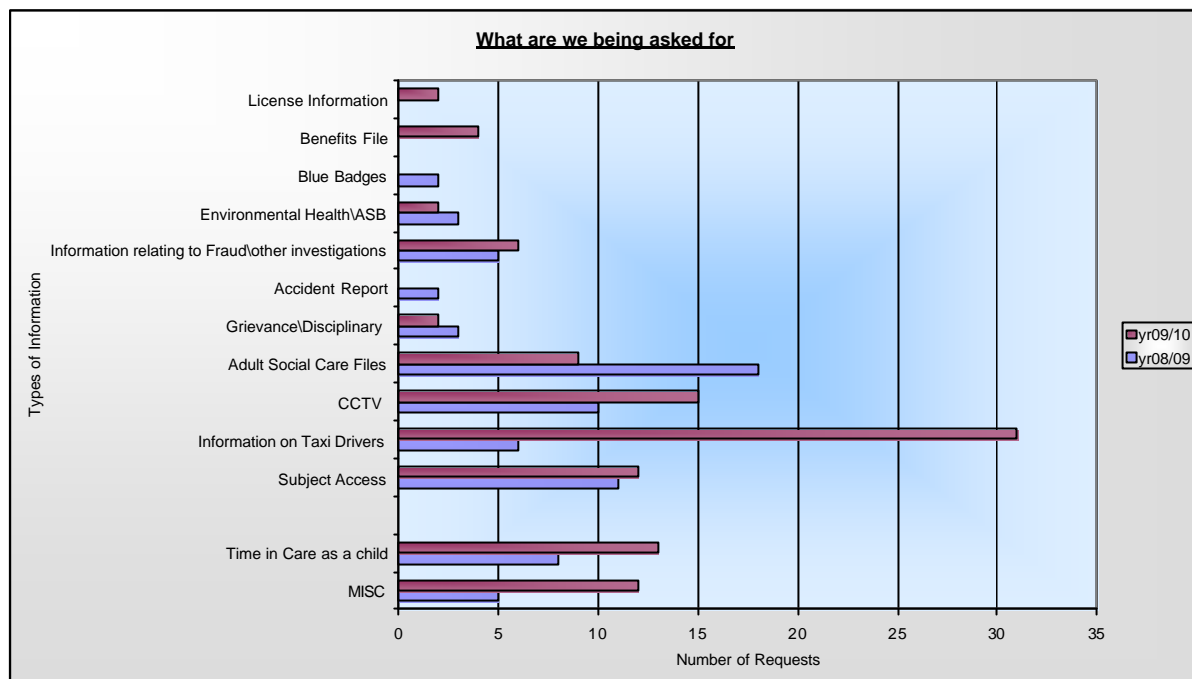
Figure 3: Comparison of types of requesters from year 08/09 and year 09/10

What are we being asked for (see figure 4)

The graph below shows the general areas where we are being asked to release information. In the year 08/09 access to adult social care records was the main area where data subjects were requesting information under the Data Protection Act. However, in 09/10 the highest number of requests received were from Solicitors asking for information about Taxi Driver's either currently licensed or previously licensed with the authority.

Requests for access to CCTV footage processed by the CFI team increased by 50% on last years figures to a total of 15. Generally these requests originated from insurances companies looking to establish liability as a result of a road traffic accident within the region. This increase can be attributed to improvements in the process of capturing these requests.

13 requests were received relating to information about a person's time in council care as a child. This compares to 8 received in the previous year. This is a 60% increase on last year's numbers and remains to be the most time intensive in responding to the requester.



Subject Access requests are primarily requests for all personal data held by the council, these are largely from staff both current and former. Miscellaneous requests for data included copies of pages from a visitors signing in book, copy of an employer reference provided the council, copy of a business premises lease, recording of a telephone conversation and information about a missing person.

Complaints procedure

A person who is a data subject has the right to complain to the council if they feel they have been denied any of their rights under the Data Protection Act. This can include their right to see any information the organisation holds about them, or if the information about them is used, held or disclosed unfairly, for a reason other than the one it was collected for; or without proper security. A person may also complain if they believe the information held about them is inadequate, irrelevant or excessive, inaccurate or out of date or has been retained for longer than is necessary.

Any complainant, who does not believe they have had a satisfactory response from the council to any complaint relating to Data Protection, has the right to contact the Information Commissioner.

During this reporting period there were 2 complaints made to the council with regards to inappropriate processing of personal data. In each case the data subject had concerns about their personal details being published on the council website.

Both complainants referred their concerns to the Information Commissioner. In each case the council was given the opportunity to respond to the allegations and in each case the commissioner decided the council had acted appropriately and took no further action.

Conclusions and learning points

The council's overall response for handling requests made under Data Protection increased to 86% of all request receiving a full response, of which 77.5% were within the 40 days time limit as required by the legislation.

Requests for information about licensed private hire drivers and CCTV footage within the borough accounted for 43% of all requests received.

Request volumes for next financial year (10/11) look set to be similar to 09/10; however the requests may be more complex as requesters become increasingly aware of their rights under the act.

The council's arrangements for handling requests made under the Data Protection Acts needs to continue to be reviewed. Over the last year record retrieval from offsite storage facilities has seen an

improvement. However, delays in responding to some requests, particularly those concerning a person's time in care are still present due to the complex nature and the large volumes of data that has to be reviewed to provide a full response.

The Data Protection Act (1998) is often seen as a barrier to sharing personal information, when in fact the Act offers guidance on how to share information in an appropriate manner, which we are legally bound to follow.

To ensure the authority continues to comply with data protection legislation priority needs to be given to increasing awareness of data protection through ongoing training and improved communications throughout the organisation.

In addition, we need to ensure continued awareness of council procedures and other guidance including decision notices from the Information Commissioner on the application of the Act ensuring that guidance is routinely available to members of staff responsible for the handling of personal information

It is also proposed the CFI Team will develop a Data Sharing Protocol to help facilitate Partnership working across the borough, due for completion during summer 2010.