

## **CORPORATE AND COMMUNITIES OVERVIEW AND SCRUTINY PANEL 23 MAY 2022**

### **COUNCIL COMPLIANCE WITH FREEDOM OF INFORMATION AND DATA PROTECTION LEGISLATION**

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#### **Summary**

1. The Cabinet Member with Responsibility for Corporate Services and Communication (CMR) and the Strategic Director of Commercial and Change have been invited to the meeting to update the Panel on how the Council complies with requests for information made under both freedom of information and data protection legislation.

#### **Background**

2. Under the Freedom of Information Act (FOI), people can make a request for any information held by the Council; the Environmental Information Regulations (EIR) provides a broadly similar access route for environmental information.
3. Under data protection legislation (DP), primarily the General Data Protection Regulation and the Data Protection Act 2018, individuals have rights in relation to the information the Council holds about them. This includes the right to be provided with a copy of the information the Council holds about them (a 'subject access request').
4. While the Council must process and consider each request received, the Council does not always have to provide the requester with the information held as exemptions and exceptions may be applied. For example, personal data (information about individuals) would not usually be included in a response to a FOI request which puts the information into the public domain.

#### **UK General Data Protection Regulation and Data Protection Act 2018**

5. Following the UK's exit from the European Union (EU), the EU General Data Protection Regulation (EU GDPR) was retained in UK law as the UK GDPR.
6. The Data Protection Act 2018 (DPA 2018) sits alongside and supplements the UK GDPR, for example by providing exemptions. It also sets out separate data protection rules for law enforcement authorities, extends data protection to some other areas such as national security and defence, and sets out the Information Commissioner's functions and powers.
7. Under data protection legislation (DP), primarily the UK GDPR and the Data Protection Act 2018, individuals have rights in relation to the information the Council holds about them. This includes the right to be provided with a copy of the information the Council holds about them (a 'subject access request').

8. Article 5 of the UK GDPR sets out seven key principles which lie at the heart of the general data protection regime:

- a. Lawfulness, fairness and transparency
- b. Purpose limitation
- c. Data minimisation
- d. Accuracy
- e. Storage limitation
- f. Integrity and confidentiality (security)
- g. Accountability

9. On 28 June 2021, the EU approved adequacy<sup>1</sup> decisions for the GDPR and the Law Enforcement Directive (LED). This means data can continue to flow as it did before, in the majority of circumstances. Both decisions are expected to last until 27 June 2025.

## **Freedom of Information/Environmental Information**

10. Under the Freedom of Information Act (FOI), people can make a request for any information held by the Council; the Environmental Information Regulations (EIR) provides a broadly similar access route for environmental information.

11. Requests can be made to any Council officer, and they do not need to mention the legislation, they do need to ask for 'recorded information' and the requester needs to provide a name. FOI requests need to be put in writing, EIR requests can be made verbally.

12. Both types of requests must be answered within 20 working days commencing the day after the request is received.

13. In FOI, fees can be charged for any hours it will take to respond to a request over the 'appropriate limit' rather than refuse the request (requests can be refused if they will take more than 18 hours to find, extract, and collate the relevant information). However, the first 18 hours cannot be charged for, and the fees notice must be issued before the work is completed.

14. Requests are coordinated by the Corporate Information Governance Team (CIGT), which is part of IT and Digital. They are centrally logged, assessed and allocated to the relevant Directorate or service area Information Access Coordinator (IAC) with any relevant advice about to identify, collate, and respond to the requester.

15. An in-house built request management system, Veritas, is used to manage all FOI and EIR requests and people can make a request directly into the system from the Council's website. The system then manages the whole request process from beginning to end, tracking who has been asked to find information, facilitating the supply of the information to the relevant Information Access Coordinator so the appropriate response can be drafted, to the final response to the request and any disclosure of information requested. The system includes a series of template letters to assist consistent and compliant responses across the whole Council and includes

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<sup>1</sup> 'Adequacy' is a term the EU uses to describe countries, territories, sectors or organisations it deems to have an "essentially equivalent" level of data protection to the EU.

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facilities to record requests for internal review of our responses and any subsequent referral to the Information Commissioner's Office (ICO).

16. Appendix 1 provides further detail about requests for information under FOI and EIR, including numbers, response times and the service areas they relate to.

## **Subject Access Requests**

17. Under data protection legislation, individuals are entitled to ask the Council for a copy of the personal data it holds about them. This is known as a Subject Access Request (SAR).

18. Requests can be made to any Council officer, and they do not need to mention the legislation and can be made in writing or verbally. The Council will verify the identity of the requester, usually by requesting two documents confirming name, address and date of birth. Requests can be made by third parties (e.g. solicitors) if sufficient authorisation is provided. Requests are subject to a timescale of 1 month, commencing the day the request is received, unless it is considered complex or numerous when a further 2-month extension to be timescale can be applied. A fee cannot be charged for SAR requests unless it is assessed as 'manifestly unreasonable' and the Council decides to process the request rather than refuse the request, or if a request asks for additional copies of information.

19. Requests are centrally coordinated and logged by the Corporate Information Governance Team (CIGT) who provide advice, guidance, and request specific training to officers who are assigned subject access requests to respond to. In respect of requests for information from education and social services (comprising the majority of requests received), a dedicated team in CIGT completes the end-to-end process for Children's Services and Worcestershire Children's First, and the Business Operations Team complete the same for Adult requests.

20. Relevant information is searched for, extracted and then worked through to ensure that any personal data the requester is entitled to receive is identified for disclosure and any information that is subject to an exemption is removed (for example information about other third-party individuals). This is then reviewed by the relevant business area to quality check the disclosure before the information is sent to the requester, usually by Royal Mail Special Delivery.

21. The Council have received the following numbers of subject access requests. As the Council must validate the identity of the requester before a SAR can be processed, some requests do not progress from an enquiry:

Year	SAR enquiries received	Enquiries progressed to full requests	Total cases completed on time	Percentage completed on time
2018/19	221	140	144	65.2%
2019/20	227	128	134	59.0%
2020/21	217	130	143	68.4%
2021/22	237	140	167	72.9%

22. The numbers of enquiries received, their complexity, and their scope are increasing year on year and while this trend was already noticeable, the impact of the General Data Protection Regulation which came into force on 25 May 2018 accelerated this trend. Requests can be extremely time consuming as they need to be carefully processed to ensure that all relevant information is identified, any redactions and exemptions are appropriately applied and checked by the relevant social work contact. Similar to the FOI requests, it is very difficult to calculate the actual time taken to complete each request. For these reasons, it is increasingly difficult to complete requests within the statutory timescale with the current allocated resources and processes.

23. CIGT are working with colleagues in IT to develop a system to more effectively manage SAR and other information sharing requests (for example requests to share data with other organisations), which will enable the requests to be processed more efficiently and keep track of progress.

### Information Commissioner Office (ICO) Complaints

24. The ICO has a general duty to investigate complaints from members of the public who believe that an authority has failed to respond correctly to a request for information. If someone makes a complaint against the Council, the ICO complaints handling process gives the Council the opportunity to reconsider its actions and put right any mistakes. Due to the opportunity to resolve complaints informally, in many circumstances there is no formal outcome from the ICO.

25. The ICO can take enforcement action if they consider the complaint has not been resolved informally. For FOI/EIR complaints this is usually a decision notice stating what needs to be put right, but can also include an enforcement notice, information notice, or undertaking. For data protection complaints or concerns this could be an audit, enforcement notice, monetary penalty, or prosecution.

Metric	2021/22
Number of complaints received - Info Commissioner (FOI and EIR)	1
Number of complaints received - Info Commissioner (DP)	6

26. The FOI complaint received during 2021/22 led to a formal decision notice not upholding the complaint made by the requester.

### Training and Awareness

27. Information Governance training continues to feature as a key part of ensuring staff are aware of their responsibilities.

28. All staff are required to complete mandatory training modules on FOI/EIR and on DP. These modules are required to be completed every two years, so staff knowledge and awareness remains current. While the main route for completing this training is through eLearning, the training is made available in other formats to meet staff needs and requirements.

29. A more in-depth FOI module has also been launched to support the Directorate Information Access Coordinators who are an integral part of discharging and responding to FOI/EIR requests.

30. Information Governance messages continue to be provided to staff alerting them to the need to protect personal data and use it appropriately. These have included a blog from the Assistant Director for IT and Digital, OurSpace news stories, and updates to the guidance on the Intranet.

### **Information Asset Register**

31. The Council has an [Information Asset Register](#) which acts as a mechanism for understanding and managing the Council's information assets and the risks to them.

32. This formed an integral part of the project to implement the changes UK GDPR brought in 2018 and now details the information the Council holds across the authority. It is a living document and is subject to regular review including when there are changes in service provision and delivery for example in-sourcing or out-sourcing of services.

### **Privacy Notices**

33. Privacy Notices are in place and accessible on the Council's website ([www.worcestershire.gov.uk/privacy](http://www.worcestershire.gov.uk/privacy)) providing information about the processing of personal data across Council services.

### **Data Protection Impact Assessment (DPIA)**

34. A DPIA is undertaken for processing that is likely to result in a high risk to individuals. It is a process designed to systematically analyse, identify and minimise the data protection risks of a project or plan. It is a key part of our accountability obligations under the UK GDPR, and when done properly helps assess and demonstrate compliance with data protection obligations.

35. DPIA screenings are used to determine when to do a DPIA, (adhering to ICO guidance '[When do we need to do a DPIA?](#)'). The screenings check whether the processing is on the list of types of processing that automatically require a DPIA, as well as considering other factors that may indicate it is a type of processing that is likely to result in high risk, such as processing the data of vulnerable individuals.

36. A streamlined approach has been taken to assist staff to complete DPIAs to ensure that data protection is built into the design of processes, systems and improvements. As the DPIA is only one of several impact assessments that need to be completed, a cross-discipline group, formed under the CIGB, worked with IT to develop the Joint Impact Assessment (JIA) system that enables staff to complete the

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screenings and assessments to identify any impact on data protection, equality, health and environmental sustainability in one place. This ensures consistency of completion, reduces the time taken by officers to complete the assessments, and minimises confusion from multiple processes to follow for separate assessments.

## **Purpose of the Meeting**

37. The Panel is asked to consider the information provided and:
- determine any comments to make to the Cabinet Member with Responsibility for Corporate Services and Communication
  - agree whether any further Scrutiny is required at this stage.

## **Supporting Information**

### **Appendix 1 – Requests for information under FOI and EIR**

#### **Contact Points**

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Emma James / Jo Weston, Overview and Scrutiny Officers

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## **Background Papers**

In the opinion of the proper officer, in this case the Assistant Director for Legal and Governance there are no background papers relating to the subject matter of this report:

[All agendas and minutes are available on the Council's website here.](#)

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**Appendix 1: Requests for information under FOI and EIR**

<b>Year</b>	<b>Measure</b>	<b>Adult Services</b>	<b>Children's Services / WCF</b>	<b>CIGT<sup>2</sup></b>	<b>Commercial and Change</b>	<b>Economy &amp; Infrastructure</b>	<b>Public Health</b>	<b>Total</b>
<b>2018/19</b>	<b>No. of Requests</b>	139	318	296	323	438	36	<b>1550</b>
	<b>Completed on time</b>	91.4%	69.2%	88.9%	69.3%	94.1%	94.4%	<b>82.6%</b>
<b>2019/20</b>	<b>No. of Requests</b>	125	278	57	400	595	35	<b>1490</b>
	<b>Completed on time</b>	92.0%	86.7%	86.0%	82.5%	98.5%	80.0%	<b>90.5%</b>
<b>2020/21</b>	<b>No. of Requests</b>	135	203	38	337	545	41	<b>1482</b>
	<b>Completed on time</b>	92.5%	85.3%	86.4%	76.6%	97.5%	74.6%	<b>87.7%</b>
<b>2021/22</b>	<b>No. of Requests</b>	115	268	144	336	530	66	<b>1459</b>
	<b>Completed on time</b>	99.1%	89.9%	95.1%	86.1%	97.6%	93.9%	<b>93.2%</b>

Rather than record the actual time taken to complete requests as this can be difficult to do with any certainty when several people are involved in responses (including staff from CIGT, IACs and the actual business areas), requests are categorised into one of three categories of time taken to complete the request:

<b>Year</b>	<b>Less than 5 hours</b>	<b>Between 5 and 15 hours</b>	<b>Over 15 hours</b>	<b>Total</b>
<b>2018/19</b>	1334	177	39	<b>1550</b>
<b>2019/20</b>	1362	95	33	<b>1490</b>
<b>2020/21</b>	1273	142	67	<b>1482</b>
<b>2021/22</b>	1341	95	23	<b>1459</b>

<sup>2</sup> These are usually requests where the scope covers multiple Information Access Coordinators, where further information is required to enable us to process the request, or are for information about services not provided by the County Council e.g. bin collections