

Report to the Finance and Performance Sub-Committee

9 February 2017



By the Head of Legal and Democratic Services
INFORMATION REPORT

Not Exempt

**Analysis of requests made under the Freedom of Information Act 2000 and Environmental Information Regulations 2004
1 October 2016 to 31 December 2016**

Executive Summary

This report is to provide Members with an overview of the Freedom of Information function and the number of Freedom of Information (FOI) and Environmental Information Regulations (EIR) requests that were received by Horsham District Council from 1 October 2016 to 31 December 2016.

For the period, 1 October 2016 to 31 December 2016 the Council received 214 requests for information. 165 requests were answered under the Freedom of Information Act, the other 49 requests were considered under the Environmental Information Regulations. The number of requests received in the last quarter was 33% higher than the equivalent period in 2015, when 161 requests were received.

Business process change has continued to deliver the 20 day response outcome expected by the duty. By reshaping the way responses are processed, the Council is meeting the duty at the standard of the best councils in spite of the significant growth in requests. From 1 October 2016 to 31 December 2016, 96% of requests have been responded to within 20 working days as against a target of 85%.

Recommendation

That the Sub Committee is recommended to:

- i) Note the contents of this report.

Reasons for Recommendations

- i) To ensure that Members are kept up to date with any developments in the freedom of information function; and
- ii) to continue to provide Members with the necessary assurance that requests for information can be easily made to the Council and are properly responded to; and
- iii) to assist with learning lessons and improving performance following requests for information made to the Council.

Background Papers

- Previous reports to the Finance and Performance Sub Committee and predecessor member bodies within the Council.
- The Freedom of Information Act 2000
- Horsham District Council Publication Scheme
- Horsham District Council Privacy Policy

Wards affected: All wards.

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Background Information

1 Introduction and Background

1.1 This report summarises the function of Freedom of Information at Horsham District Council from 1 October to 31 December 2016. The Council prepares this report quarterly.

1.2 Summary of the Freedom of Information 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 only the stated exemptions within the Act
- Has a duty to provide advice and assistance to the applicant in making the request
- Cannot charge for providing the information other than photocopying, postage and other such disbursements, unless the time that would be required to produce the information would exceed the appropriate limit as defined within the Act – currently £450.00 (which equates to 18 hours at £25 per hour).
- Must offer a requester the right to appeal a decision made by the authority prior to them taking a complaint to the Information Commissioner.
- Must adopt and publish a Publication Scheme as defined by the Information Commissioner.

1.3 Environmental Information Regulations

The Environmental Information Regulations 2004 (EIRs) give enhanced access to environmental information by giving anyone the right to access environmental information held by public authorities. A request can be made in writing, by telephone or in person.

Environmental Information is defined as any information in written, visual, aural, electronic or any other material form on:

- The state of the elements e.g. air, water, land, landscape, nature sites and biological diversity
- Factors affecting or likely to affect the elements such as substances, noise, emissions etc.
- Measure such as policies, plans, programmes, land planning regimes
- Reports on the implementation of environmental information
- State of human health and safety including contamination of the food chain, conditions of human life, cultural sites, built structures inasmuch as they are or may be affected by the state of the elements or by any of the factors, measure or activities.

In view of the above, a large part of the Council's functions is caught by the Environmental Information Regulations such as development control and enforcement, strategic planning, waste management and environmental health, rather than the Freedom of Information Act.

1.4 The key differences between the EIRs and FOIA are:

- Requests for environmental information do not have to be made in writing
- Information held by the Council includes information held on behalf of another person or organisation

- There are no absolute exceptions - every exception is subject to the public interest test
- There is an express presumption in favour of disclosure
- There is no cost limit on disclosure

2 Relevant Council policy

2.1 The Council has a duty to enable the provision of information to requestors within the parameters set by the Freedom of Information Act. The Council must also protect information collected by the Council in accordance with the Council's Privacy Policy. The statutory background is to be found in the Freedom of Information Act 2000, The Data Protection Act 1998 and the Environmental Information Regulations 2004.

3 Details

3.1 Improvement

The number of requests received by the Council has increased when compared with the same period last year. The improvement trend in responding to requests is shown below.

- Between April and July 2015 the Council received 216 requests 83% of which were responded to within 20 working days;
- From 1 August to the end of September, there have been 124 requests, 98% of which were responded to within 20 working days.
- From 1 October to the end of December, there have been 161 requests, 99% of which were responded to within 20 working days.
- From 1 January to the end of March 2016, there have been 209 requests, 96% of which were responded to within 20 working days.
- From 1 April to 30 June 2016 there have been 175 requests, 95% of which were responded to within 20 working days
- From 1 July 2016 to 30 September 2016 there have been 195 requests, 97% of which were responded to within 20 working days
- Of the 214 requests received between 1 October 2016 to 31 December 2016 96% have been answered within 20 working days

The improvement in response time is the result of changes to the business process to deliver the outcome expected by the duty. By reshaping the way responses are processed, the council will now meet the duty at the standard of the best councils. The Committee should note that there has been an increase in the number of complex requests where a list of questions is asked, requiring answers to be obtained from two or more departments in the Council. These requests take longer to resolve.

3.2 Responding to requests

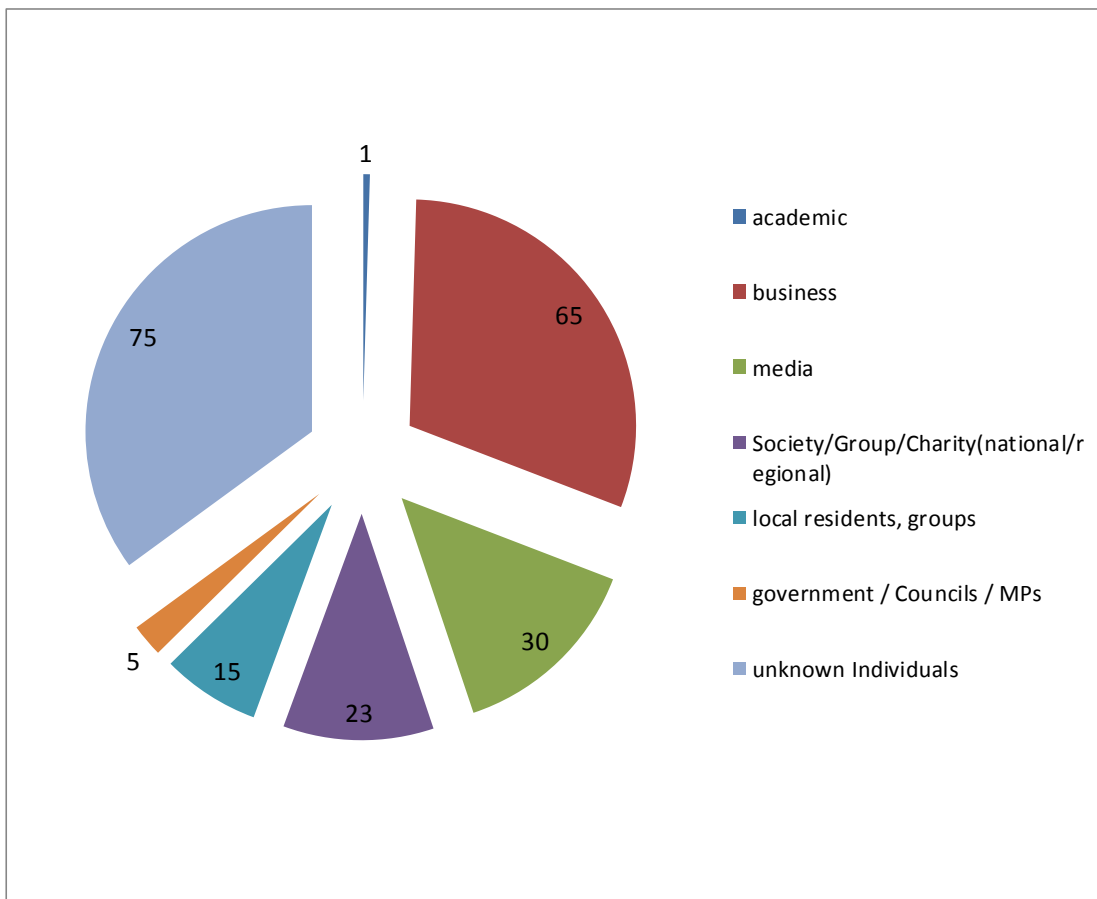
The Freedom of Information Act requires public authorities to reply to FOI requests within 20 working days. As such, the Council would have a target to respond to 100% of requests on time. However, pragmatically, the target set by the Information Commissioner's Office (ICO) is 85% of requests being responded to in 20 days. The Council is meeting the duty at the standard of the best councils.

3.3 Analysis of Requests 1 October 2016 to 31 December 2016

Requestors are grouped for analysis purposes. This allows officers to understand the profile of requests and respond by amending the publication scheme according to demand.

For this quarter, where the identity of the requestor is known, 65% of requests have been received from either businesses or the media.

The Council's Publication Scheme has been updated in line with requirements of the Information Commissioner's Office, namely to adopt the model publication scheme.



3.4 Disclosure Log

Responses to requests are being published more consistently on the Council's website via the Disclosure Log. This has allowed some requestors to be referred directly to a published response, which saves officer time.

3.5 Online information – Channel Shift

The updated publication scheme on the FOI page of the Council's website will proactively assist with handling a number of routine requests. The direct links to business rates information, payments over £500 and to the contracts register have been added to the top of the page. A direct link to West Sussex County Council's page has also been added for those wanting to make enquiries relating to roads, education, social care or libraries. New

requesters, not requiring any of the above, are directed towards an online form to make a request, and an email address.

3.6 Internal Reviews

Requestors are able to ask the Council for an internal review if they are not content with the Council's initial decision on whether or not to release the information they have requested. This is facilitated by way of a well-established internal review process. The Codes of Practice issued under the FOI Act and EIRs state that internal review procedures should "encourage a prompt determination of the complaint". Reviews under the FOIA and the EIR should be completed within 20 working days. However, reviews under the EIRs often relate to complex and difficult issues and up to 40 working days may be taken to complete. Requestors that remain dissatisfied with the response of the council after the review may appeal to the Information Commissioners Office (ICO).

In the last quarter; 1 October 2016 to 31 December 2016 the Council received eleven requests for an internal review. This compares to just three review requests in the previous quarter. In ten of these internal reviews, the Council upheld the decision to withhold information, in the remaining review the Council provided further information. Requestors have three months from the date of the internal review to appeal to the ICO, to date two of the requestors who asked for a review have appealed to the ICO.

4 Next Steps

- 4.1 The Council will continue its business process improvement. The FOI software system is due to be upgraded so that response emails may be sent directly from the system. This would reduce administration time, as currently emails from Outlook are copied into the system manually.

5 Outcome of Consultations

- 5.1 Feedback from Members on this Sub-Committee or predecessor bodies has been sought quarterly. Responses to feedback have been embedded in business process improvements.

6 Other Courses of Action Considered but Rejected

- 6.1 The Council has a duty to respond to requests for information. There are therefore no alternative courses of action.

7 Resource Consequences

- 7.1 The function has continued to meet growing demand within existing resources.

8 Legal Consequences

- 8.1 The Council has continued to discharge the functions and duties of the Freedom of Information Act 2000, The Data Protection Act 1998 and the Environmental Information Regulations 2004.

9 Risk Assessment

- 9.1 Risk CRR02 on the Council's Corporate Risk Register describes the Council's legal obligation to protect personal data. The Council's approach to Freedom of Information is part of the mitigation of Risk CRR02.

10 Other Considerations

- 10.1 The Human Rights Act 1998 requires not only that the Council shall not infringe the convention rights but also (by inference) promotes the convention rights. The Act is intended to change organisational culture and to promote transparency and openness. It is also intended to enhance, thereby, citizens' rights, particularly under Article 6 (The Proper Determination of Civil Rights). Article 8 of the European Convention on Human Rights, provides that individuals have a right to respect for their private life.
- Interference must be justified and be for a particular purpose.
 - Justification could be protection of health, prevention of crime, protection of the rights and freedoms of others.
 - A decision to share information and the reasoning behind it should be recorded.
- 10.2 The increase in the publication of information through the Council's Publication Scheme continues to enable those who want to use the data to understand the Council's approach to sustainability through its service delivery and supplier relationships.