



Committee report

Committee	CORPORATE SCRUTINY COMMITTEE
Date	11 OCTOBER 2022
Title	REPORT ON THE COUNCIL'S HANDLING OF FREEDOM OF INFORMATION REQUESTS
Report of	DIRECTOR OF CORPORATE SERVICES

SUMMARY

1. This report seeks to outline how the council currently manages its statutory duty of processing requests for information made pursuant to the Freedom of Information Act 2000, analyse the number of requests for information received and the council's overall performance.

BACKGROUND

2. The Freedom of Information Act 2000 ('the FOI Act') gives a statutory general right of access to information held by a public authority. It is a right of access to information which must be formally recorded (manually or electronically) and held by the council at the time the request is received. It includes all recorded information that is held electronically or on paper including emails, reports, plans, photographs, video, etc. The information must be held, otherwise than on behalf of another person, at the time of the request.
3. Under the FOI Act, the council must respond to requests for information from the public (as well as publish certain information proactively). Where a request is received, and the scope of the request clarified with the requester if necessary, the council must consider what recorded information it holds in relation to that request. A decision is then made as to whether this information should be released the requester in full, in part or not at all. In certain situations, it may be appropriate to 'neither confirm nor deny' whether the council holds information in relation to a request received.
4. When considering whether information held by the council should be released, a number of exemptions are set out in the FOI Act which justify the non-disclosure of information held to a requester. These exemptions (together with the relevant FOI Act section number) can cover information held which relate to the following:
 - Information Accessible by Other Means (s21);
 - Information Intended for Future Publication (s22);
 - National Security (s23 & s24);
 - Defence (s26);
 - International Relations (s27);

- Relations Within the United Kingdom (s28);
- UK Economic Interests (s29);
- Investigations and Proceedings Conducted by Public Authorities (s30);
- Law Enforcement (s31);
- Court Records (s32);
- Audit Functions (s33);
- Parliamentary Privilege (s34);
- Formulation of Government Policy and Ministerial Communications (s35);
- Effective Conduct of Public Affairs (s36);
- Communications with His Majesty, the Royal Family or regarding honours (s37);
- Health and Safety (s38);
- Personal Information (s40);
- Information Provided 'In Confidence' (s41);
- Legal Professional Privilege (s42);
- Commercial Interests (s43);
- Prohibitions on Disclosure (i.e. Court Order) (s44).

5. The council is also entitled to refuse an entire request for information if it would cost too much (over £450) or take too much staff time (over 18 hours) to gather the relevant information, the request is considered vexatious, or the request repeats a previous request received from the same person.
6. In order to adhere to the requirements of the FOI Act, the council adopted its Access to Information Policy. This also ensures compliance regarding requests made by the public under the Environmental Information Regulations 2004 ("EIRs"), which are similar in nature to requests made under the FOI Act, as well as any guidance issued under Section 45 of the FOI Act. Where FOI is referred to in this report, it is taken to include EIR requests also, as at initial request stage the council does not log these separately.
7. This report has been prepared in response to the Scoping Document prepared by the Scrutiny Committee. The remainder of this report considers the six bullet-point queries raised in the Scoping Document in turn.

To look in detail at issues highlighted in an Internal Audit report to the Audit Committee on 23 November 2020 dealing with FOI requests.

8. The Internal Audit Report dated 26 October 2022 (considered by the Audit Committee on 23 November 2020) considered the council's approach to both requests under the FOI Act and Subject Access Requests (SARs). Whilst FOIs are requests for any information which may be held by the council, SARs relate to requests for personal information held by the council relating specifically to the requester.
9. It is noted from the Scoping Document provided by the Scrutiny Committee that its intention is to consider the council's approach to FOI requests. Therefore, this report has been prepared on this basis and its scope limited to the FOI requests only.
10. The remainder of the queries included in the Internal Audit report regarding the council's handling of FOI requests are dealt with by the queries raised by the Scrutiny Committee's Scoping Document as follows.

Are individuals seeking information that is readily available online?

11. Requests received by the council for information are wide and varied in nature. Information relevant to a request will often be held by a number of different departments which requires co-ordination between service areas. The council is a complex organisation. As a unitary authority solely responsible for the provision of all local government services on the Island, information requested by way of FOI request will commonly be held by more than one service area or require input from multiple service areas.
12. For example, over the course of a one-week period between 8th August 2022 and 15th August 2022, the council received the following requests (full details of which can be found in Appendix 1):

	Relevant Service Area	Subject of Request	Individual Parts of Request to be Responded to
1.	Schools	Schools Commissioning Framework Data	Spreadsheet prepared by requester to be completed
2.	Schools	Schools Supplement Grant information	3
3.	CIU (appeal)	Internal Appeal regarding response to previous FOI relating to ██████ Road	5 (with additional sub-parts)
4.	Waste Management	Management and Vehicles	3
5.	Housing Benefit	Housing Benefit and the Armed Forces Compensation Scheme	2 (with additional sub-parts)
6.	Recreation/Leisure	Street Operatives	1
7.	Planning	Proposed Development in Niton	Request for all information held by the council
8.	Planning	Island Strategy	3
9.	ASC/Homelessness	Homes for Ukraine scheme	7
10.	Waste Management	Wheelie Bins	2
11.	Childrens Services	Expenditure on Childrens Services	3 (with additional sub-parts)
12.	Procurement	Staff Contracts and Ground Maintenance Software	21
13.	Environmental Health	A specific matter	Request for all information held by the council

13. Where information is regularly requested, service areas are encouraged to make this available on the council's website, meaning that requesters can be signposted to where the information they are seeking is held online. For example:
 - [Business Rates - Service Details \(iow.gov.uk\)](#)
 - [IWC Workforce Information - Service Details \(iow.gov.uk\)](#)
14. It is the decision of the service area manager what information is published on the website and the responsibility of the service area to ensure that information included on the council's website is accurate, up to date and reviewed regularly.
15. In addition to information relating to regular FOI queries being made available on our website, the council is required by the FOI Act to make public a variety of information in accordance with its publication scheme.

16. The FOI Act requires every public authority to have a publication scheme approved by the ICO and to publish information covered by the scheme. An approved model published by the ICO for public authorities has been adopted by the council. The scheme is published on both the 'old' council website at [Freedom of Information Requests - Service Details \(iow.gov.uk\)](http://www.iow.gov.uk/foi) and the new beta website at [Publication scheme \(iow.gov.uk\)](http://www.iow.gov.uk/foi). The council's publication scheme is considered in more detail later in this report.
17. Where it is found that the requested information is already available on the council website, the reply will direct the customer to where they can find the information. There is an exemption under FOI for 'information already reasonably accessible' under Section 21, but the council does not quote this exemption at initial request stage – it merely directs the customer to where they can find the information. Therefore, requests dealt with in this way will not be included in the council's figures regarding the number of FOI requests received.

How FOI requests are handled.

18. A summary of the process for handling FOI requests by the council can be found in Appendix 3.
19. Under the FOI Act, where a request is received, a response should be sent not later than 20 working days from the date of receipt. Unless there are particular public interest decisions to be made, this time limit cannot be extended under the legislation. However, this time limit will not begin until the council is confident that it fully understands the information being requested from it (which will include clarifying this with the requester when necessary).
20. The Corporate Information Unit ('CIU') is part of the council's Legal Services department and consists of five staff members (3.9 FTE) who provide advice and assistance on all information governance matters, including FOIs. This is overseen by the Strategic Manager of Legal Services, and the Assistant Director of Corporate Services (who is also the Data Protection Officer).
21. CIU manage the generic email account for receiving requests for information (information@iow.gov.uk), initially logging each request onto the council's Customer Relationship Management (CRM) system. This is where most requests are received although they can also be received by post, and/or by any council department or member of staff. CIU will deal with some FOI requests where they are relevant to its own service area, complex in nature, potentially controversial (for example, where requests have been received following negative press coverage) or will require input from multiple council departments.
22. As the council is a unitary authority covering a large number of service areas, FOIs are sent to the relevant department/service to respond to. The council operates a network of Departmental Information Guardians ('DIGs') as a point of contact for dealing with formal requests for information. These are nominated officers (and deputies) within each service area who will be allocated FOI requests relevant to their service area and thereafter co-ordinate the response to the request. The council's DIG network is set out in Appendix 2.

23. The use of a DIG network is considered to be the most efficient way in which to manage FOI requests. The alternative model of having a centralised team that processes all requests would require additional resources in CIU to manage the increase in volume of FOI that they process, but also the centralised team would still need to contact individual service areas to access locally held information. It is likely that this alternative model would result in a de facto DIG model in time as likely the same person would be contacted within each area.
24. The DIG will then consider the request which has been received and liaise with colleagues to determine what information the council may hold in relation to it. They will also consider the FOI Act/EIRs for any relevant exemptions which might apply to the request, meaning that if information is held by the council it may be that it cannot or should not be disclosed. Where information includes that relating to a third party (such as another organisation/individual) we will consult with them, to seek their views on the disclosure.
25. An individual is nominated to act as a DIG based upon their knowledge of their service area and organisational skills to fulfil the role in addition to their day-to-day work within the council. This assists the efficient identification of the information.
26. During the process of the DIG dealing with the request, CIU will provide any support and guidance they might require. However, CIU is reliant on each service area to respond to FOI requests as they are familiar with their own information. Draft replies are shared with relevant senior staff in the service areas, to ensure no sensitive information is released, and to inform them what information is going into the public domain.
27. When providing a response, the DIG will generally respond in one of three ways:
 - By confirming information is held and providing information relating to the request (or the individual is signposted to where the information can be found, for example on our website). It may be that documents will need to be redacted in order to protect information which should not be released;
 - The council will acknowledge that it does hold information of the type requested, but an exemption set out in the FOI Act/EIRs means that we consider that the information cannot be disclosed;
 - The council will neither confirm nor deny that it holds information in relation to the request (although this is very rare).
28. Once a response is provided, if the requestor is unhappy with the response, they can request that the response be reviewed. Such reviews are considered as internal appeals/reviews, in accordance with our duties under the [Section 45 of the Cabinet Office's FOI Code of Practice](#). They are managed by CIU, who consult with the service area who provided the response, consider the relevant information they hold, the response which was provided, any exemptions which were applied to that information which meant that it did not have to be disclosed, and thereafter respond to the individual accordingly. There is no statutory timetable for providing a response to a request for internal review. Council policy is that a response to a request for internal review should be provided within 20 working days.

29. If an individual still remains dissatisfied, then they have the option to refer the decision to the Information Commissioner's Office ('ICO'). The ICO is the regulatory body for enforcement of the council's statutory duty to provide information. It will review the council's decision, any further information provided to them by the parties in relation to it, and thereafter issue a decision notice as to whether the council has complied with its statutory duties. CIU manages the process where decisions are referred to the ICO from the outset until their conclusion.

Analysis of the number of requests received.

30. It has been decided that requests under the FOI Act and EIR are considered together. The requirements are broadly the same for requests made under either the FOI or EIR. This ensures a customer-focused approach, as the public are only interested in receiving answers to the questions they have asked and are not concerned with which law or statute might apply to their request. The council will ensure that the correct access regime is used when considering exemptions, as they are different between FOI and EIRs. The figures set out in Appendix 4 include both FOI and EIR requests.
31. The following requests will be logged as FOI requests by the Council (and therefore be included in the figures set out in Appendix 4):
- Requests which specifically mention their right of access under FOI, DPA or EIRs.
 - Where the public authority requires further information from the applicant in order to identify and locate the information requested (although the twenty-day time-limit does not commence until the requester has clarified their request).
 - Requests which result in information being withheld for any reason under an exemption or exception.
 - Requests that are not processed because the public authority estimates the cost of compliance would exceed the appropriate limit.
 - Requests that are not processed because the public authority considers the request to be vexatious or repeated.
 - Requests that may prejudice third parties and/or the Isle of Wight Council, its Members, or its staff.
32. 'Business as Usual' requests are dealt with by the service as part of their usual business activity. Council departments deal directly with customers/clients on a daily basis and where information is readily available, it is not necessary to log all requests and direct them to the DIG (except where FOI is specifically mentioned). The following are considered to be 'Business as Usual' requests (which are not included in the council's FOI request figures set out in Appendix 4):
- If the information is reasonably accessible to the public by such means as it is published on the Internet, or available for inspection. This may include information leaflets, published reports or general information on the internet.
 - Information that is released as part of the council's normal business process. The council routinely provides information as part of their day-to-day processes, for example job application forms or information relating to case work.
 - General correspondence, including the questioning of certain actions.
 - Requests that do not include a name and address (or an email address) for correspondence.

33. Certain external factors will impact the number of requests received by the council. For example, whenever there is some form of controversy reported by the media involving the council, the number of requests received in relation to that particular issue will commonly increase noticeably. In such situations service areas are encouraged by CIU to make public as much information regarding the particular incident as they are able to, although ultimately the decision as to what is or is not published on the council website or provided to the press remains with service managers.
34. Appendix 4 details the number of FOI requests, requests for internal review and ICO appeals responded to by the council per annum since 2016. Also included are benchmark figures comparing the council to three other similar local authorities – Hampshire County Council, Southampton City Council and Portsmouth City Council.
35. While Hampshire County Council predictably handles a slightly larger number of FOI requests per annum, the council's number of requests responded to per annum are comparable to the number of requests handled by both Southampton and Portsmouth City Councils over the same time periods.
36. In four of the six years for which data is available, the council has out-performed each of the other local authorities in terms of the percentage of FOI requests responded to within the ICO's twenty-day deadline. In the other two years, the council has been the second-highest performing authority and only lower than the leading performer by 2% (2016) and 3% (2021) accordingly.

The Council's overall performance in meeting the requirements of the Information Commissioner's Office to respond to Freedom of Information requests.

37. Previously, the ICO had a specific monitoring threshold which local authorities were expected to adhere to in relation to its response to FOI requests. Where a local authority fell below the required threshold in respect of responding to FOI requests within the ICO's twenty-day time limit, its performance would be monitored by the ICO. However, this is no longer the case and the ICO website illustrates that no organisation has been actively monitored for falling below this threshold since 2017. The ICO's approach is now more focused towards monitoring those organisations about whom the ICO receive a high number of complaints as to their performance.
38. Where an individual is dissatisfied with both the council's response to their FOI request and its reply to their request for an internal review, they are able to refer the matter to the ICO. Decision notices are published by the ICO on their website whenever they make a decision as to whether an organisation has failed to comply with its duties or not with regard to FOI requests and internal reviews.
39. The ICO website states that over the past 17.5 years, they have published over 13,500 decision notices relating to FOI requests. During the same period, the council has dealt with approximately 18,000 FOI requests. Of the 13,500 decision notices published by the ICO, only 17 of these involved the council.
40. Of these 17 decisions, only six made any adverse finding against the council. Five of these were 'technical' breaches (either a failure to comply with the twenty-day time limit or dealing with a request for information under the FOI Act when it should have been dealt with under the EIRs). Only on one occasion has the Council had a substantive finding made against it criticising its approach to an FOI request (on 30 April 2013).

The strategic approach to managing information and making information readily available as part of the Council's Publication Scheme

41. As referred to previously in this report, the FOI Act requires every public authority to have a publication scheme approved by the ICO and to publish information covered by the scheme. An approved model, published by the ICO for public authorities, has been adopted by the council and is currently published on both the 'old' and the new beta websites.
42. The publication scheme is a short document setting out our high-level commitment to pro-actively publishing information. It consists of seven commitments and seven classes of information. The scheme commits the council to publishing certain classes of information and specifies how this should be made available, what can be charged and what we need to tell members of the public about the scheme.
43. To properly maintain a publication scheme for a local authority such as the council is an onerous task. Similar to the publication of information on our website relating to frequently made FOI requests discussed above, CIU does not have the resources to maintain the publication scheme and ensure all information is both uploaded to the website and thereafter cross-linked to the publication scheme. Individual services areas are advised that they need to ensure the requirements of the publication scheme are put in place, however it is recognised that the majority of service areas will have issues freeing up the required resources to do so.
44. The problem of maintaining the publication scheme is also intrinsically linked to the development of the council's new website. At present, the publication scheme exists on both the 'old' and beta websites. The website project currently has this aspect of the development is currently signed off as being incomplete.

APPENDICES ATTACHED

- Appendix 1 – Full Details of FOI Requests Received by the Council Between 8th August 2022 and 15th August 2022
- Appendix 2 – Council's Departmental Information Guardian (DIG) Network
- Appendix 3 – Freedom of Information Act Request Response Workflow
- Appendix 4 – Isle of Wight FOI Request Statistics (with Benchmarking Comparisons to Other Local Authorities)

BACKGROUND PAPERS

- IWC Access to Information Policy
<https://wightnet.iow.gov.uk/documentlibrary/view/access-to-information-policy>
- ICO Decision Notices <https://ico.org.uk/action-weve-taken/>

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