

**REPORT TO THE SCRUTINY PANEL - PEOPLE  
MEETING OF 1<sup>st</sup> September 2011**

---

**Status:** For information and comment

**Title:** Freedom of Information Act 2000, Environmental Information Regulations 2004. The Effects on Harborough District Council [HDC] since 1<sup>st</sup> January 2005.

**Originator:** S Done (Team Leader for Corporate Administration)

**Where from:** Scrutiny Commission

**Where to next:**

*Objective: On 26<sup>th</sup> May 2011 the Scrutiny Commission agreed the scope for this report (Minute 51, 2011/12 refers), to discuss the current position of the Council in relation to requests for information under the access to information legislation.*

1. Outcome sought from Panel

- 1.1. To consider and comment on the Council's processes and procedures for handling requests for information under access to information legislation.

2. Background

- 2.1. The Freedom of Information Act 2000 [FOIA 2000] and Environmental Information Regulations 2004 [EIR 2004] are the primary pieces of legislation setting out rights of access to information held by public authorities.
- 2.2. The legislation is designed to empower members of the public with the statutory right of access to information held by a public body. The operative presumption is in favour of disclosure of all forms of information. However, this is a qualified, not an absolute right and is mitigated by certain exemptions and exceptions provided by the respective legislation.
- 2.3. Both pieces of legislation became effective in English law as from 1<sup>st</sup> January 2005.

3. Key Facts

- 3.1. The legislation has one purpose and that is to enable access to publically held information. Some key features include:
- It encourages organisations to be open and transparent.

- It applies to public bodies only (Listed under Schedule 1 Part VII) FOIA 2000
- It affects everyone within that organisation
- It empowers everyone irrespective of identity or place of residence. *(It also applies to foreign nationals where England and Wales is not their domicile of origin.)*
- It is retrospectively effective
- It works in conjunction with the Data Protection Act 1998
- The organisation is required to respond within 20 working days
- Is monitored and regulated by the Information Commissioners Office.

3.2. With the overarching goals above in mind, Harborough District Council has developed a process for dealing with requests for information submitted under these Acts (Appendix A). The aim of this procedure is to ensure access to information held by the Council in order to promote greater openness, provide increased transparency of decision making and to build public trust and confidence. These aims will be balanced against the need for discretion in relation to such areas as personal privacy, the need for confidentiality and the responsible use of public data. Guidance notes have also been produced in relation to exemptions and exceptions and are to be used when deciding upon the release of information into the public domain (Appendix B and C).

3.3. Appendix D shows the process of a request from receipt to disclosure from the Information Officer's viewpoint.

3.4. Appendix E shows how a department is to handle a request for information where it receives it directly.

3.5. The types of questions asked can effectively be about anything to do with the Council and its activities and there is no requirement for the person submitting the request to explain or justify why they require the information. Examples of the range of information requested are:

- Details of empty commercial properties
- Number of estates passed to the Crown (Treasury Solicitor) where the deceased has died intestate
- Details of budget setting procedures etc
- ICT contract details
- Waste contract details
- Press enquiries regarding topical issues.
- General spending trends
- Use of corporate credit cards
- CEO expenses etc
- Transport costs

3.6. The emphasis of the legislation is increasing openness with public information. If information is already available publically then there is no need to submit a formal request for information under the legislation.

3.7. Public authorities are required to maintain a publication scheme detailing what information is available and how it can be accessed. (See section 7.) Work is in progress to ensure that as much information as possible included in the publication scheme is available via the Council's website.

#### 4. Performance

4.1 Since 1<sup>st</sup> January 2005, HDC has generally seen a steady year on year increase in the number of requests for information it receives.

<b>Year</b>	<b>Number Received</b>	<b>Number responded to within 20 WD's</b>	<b>Number responded to outside 20 WD's*</b>	<b>Compliance Performance %</b>
2005	51	20	31	<b>39.21</b>
2006	46	33	13	<b>71.73</b>
2007	67	38	29	<b>56.71</b>
2008	131	100	31	<b>68.70</b>
2009	214	162	52	<b>76.33</b>
2010	303	267	36	<b>88.11</b>
2011 (to 4 <sup>th</sup> August)	255**	225	16	<b>93.36</b>

\* excludes days where the response period is suspended awaiting clarification or further information.

\*\* includes 14 requests still outstanding on 4<sup>th</sup> August.

4.2. HDC is expected to receive in excess of 400 requests for information submitted under the information access legislation this year (2011).

#### 5. Performance Monitoring

5.1 All received requests for information are logged electronically and a unique number is allocated to each request. The date of receipt is recorded and the latest date for response is calculated. The progress of the request is monitored by the Team Leader for Corporate Administration once the request has been allocated to the relevant service area. Reminders are sent to prompt a response before the due date.

5.2 As from 2011 a weekly report is circulated to Management Board detailing outstanding or currently live requests. This has assisted in progressing outstanding requests and improving compliance.

#### 6. Charging Mechanisms

6.1 The legislation does provide a charging mechanism for the information which we compile in response to requests for information under section 9 FOIA 2000. Such charges can only be items such as those specified in paragraph 6.2 below.

- 6.2 Under Section 12 FOIA 2000 the Council cannot charge for the staff time in locating and providing the requested information if the cost is below the appropriate limit (currently set at £450 calculated at 18hrs charged at £25 per hour). Where the cost of collating the information exceeds this threshold then the Council is not required to provide the information. No such limit applies to requests submitted under the Environmental Information regulations 2004.
- 6.3 The Council is permitted to recover the costs of materials used in providing the information, i.e. postage and paper etc. but is not permitted to recover the cost of staffing or any other sundry expenses when determining any such charges. This is as a result of a high profile case known as the Markinson case. (Markinson v Information Commissioner Tribunal, Appeal number EA/2005/0014, FER0061168.)

## 7. Publication Scheme

- 7.1. Under section 19 of the FIOA 2000, we are required to produce, maintain and publish a Publication Scheme. Such a scheme needed to be implemented by the 1<sup>st</sup> January 2009. Harborough District Council has adopted the Information Commissioner's Model Publication Scheme (Appendix F).
- 7.2. The Publication Scheme is specifically designed so as to allow the organisation to proactively disclose information which it routinely holds as part of its ordinary course of business. The aim is to create a framework whereby information concerning the operation and management of the Council and Council services is regularly disclosed, potentially reducing the need for the public to submit individual requests for information.

## 8. HDC and the Information Commissioner's Office [ICO]

- 8.1. Since the coming into force of the legislation referred to in this report, two decisions to withhold information have been referred to the ICO by the original requestor, for reconsideration. Both cases refer to requests logged in 2009. One case, in relation to the release of confidential financial data which formed part of a feasibility study in relation to a planning application was withheld by HDC with that decision subsequently being upheld by the ICO. The second case involved the disclosure of minutes from a confidential meeting. HDC originally withheld the minutes, but was advised to disclose them by the ICO. HDC then disclosed the requested information.

## 9. Equality Impact Assessment Implications/Outcomes

- 9.1. There are no equality implications arising directly from this report as it reflects current policy and procedure and does not propose any changes. Existing policies and procedures are determined by legislation and are applicable to all with no adverse impact on any group. A full review of DPA/FOI policies and procedures is included in the Council's 3 year rolling programme of Equality Impact Assessments and will be undertaken in 2012/13.

10. Legal Issues

10.1. The Council has a mandatory obligation to comply with the legislation as referred to throughout this report.

10.2. Failure to comply could result in performance compliance notices being served and or punitive sanctions i.e. pecuniary fines.

11. Resource Issues

11.1. None specifically arising from this report.

12. Carbon Management Implications

12.1. None specifically arising from this report.

---

**Previous report(s): N**

**Information Issued Under Sensitive Issue Procedure: N**

**Appendices:**

**A: Information Request Handling Procedures Under the Freedom of Information Act 2000 & Environmental Information Regulations 2004. (*FOI Procedure.pdf*)**

**B: FOI Exemptions Guidance (*FOI Exemptions Guidance Master.pdf*)**

**C: Environmental Information Regulations Exemptions (*EIR Exceptions Guidance Master.pdf*)**

**D: Freedom of Information/ Environmental Information Regulations—Request For Information Process Overview. (*FOI Process 2.pdf*)**

**E: Freedom of Information/ Environmental Information Regulations—Request For Information Process (Direct) (*FOI EIR Direct Request Process Flow.pdf*)**

**F: Model Publication Scheme (*Model Publication Scheme.pdf*)**

**Information Issued Under Sensitive Issue Procedure: No**