

Leeds City Council Freedom of Information and Environmental Information Regulation Requests

Date: 20th February 2023

Report of: Director of Resources

Report to: Strategy and Resources Scrutiny Board

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

- The Council's corporate Key Performance Indicator (KPI) in relation to the percentage of Leeds City Council information requests (Freedom of Information and Environmental Information Regulations – FOI/EIR) answered within timescales.
- The UK's access to information legislation is primarily about a culture change from 'need to know' to 'right to know'. For public authorities it encourages greater openness and transparency in decision making and thus supports the ambitions and priorities of the council to being open, honest and trusted. It allows public debate to be better informed and more productive and is in keeping with the Council's values.
- To facilitate improved compliance, the Council is developing a renewed approach to information management and governance that will seek to use new modern software such as Power Apps and E-discovery, subject to the development of appropriate and tested protocols that will guide their use.
- Elected Members' access to information held by the council via the FOI legislation.

Recommendations

The Scrutiny Board is asked to:

- a) consider the contents of this report and note the council evolving approach to information management and governance with specific regard to FOI and EIR requests, and that the implemented and future planned arrangements are and will improve the performance of the council's responses to these requests through a dedicated programme of work.
- b) Note that a review and update are taking place of the full Elected Members Information Governance (IG) Resource Document which will be completed before the end of the financial year 2022/23. This will then be provided to all Members. The Resource Document includes guidance on Members' Access to Information which has already been updated – see appendix 3 for a copy of this.

Why is the proposal being put forward?

- 1 To provide the Strategy and Resources Scrutiny Board with an update on the measures currently underway to improve performance against the council's statutory obligations in relation to FOI/EIR information rights requests.
- 2 Having experienced a change of management and strategic direction in the last year, the Council's Information Management and Governance Team (IM&G) is embarking on ambitious plans to not only meet the Council's KPI, but to create a modern initiative-based service, both to the public and to Council Services. This will include digital efficiencies in relation to how we respond to information requests, and how we lead the Council in implementing and embedding sustainable information management for the future.
- 3 The Covid pandemic affected most local authority's ability to respond to FOI/EIR requests in a timely manner, and performance dropped across all of the public sector during this period.
- 4 In response to this and other concerns with the capacity of the information governance working model at the time, an external review was initiated in 2020/21 and reported to Corporate Governance and Audit Committee in 2021. This highlighted several recommendations for change in order to increase delivery capacity, improve working practices and compliance with statutory requirements. In Q2 2021/22 the dedicated Requests Team was disbanded as part of the new operational structure with clearly defined roles and responsibilities of all IM&G staff. The new operational model supported the development of a multidisciplinary workforce, intended to increase the capacity to deal with information requests in a more efficient manner, without the need to increase overall staffing numbers.
- 5 Whilst the intention of the review focused on the correct issues at the time, the implementation of the new working model will be a contributing factor to the speed of improving performance, owing to the complexity of bringing multiple teams together into one with various legacy processes and systems all needing to be reviewed and updated, and the need to embed new ways of working. This alongside the demand for the service and the various frontline services who are required to provide information for responses, who are all under significant workload pressures, creates challenging conditions in which to operate.
- 6 The Information Management and Governance (IM&G) management team is now in the middle of a new rolling programme of change, which began in April 2022, to review all operational processes relating to this area of work and to create standard operating procedures which will drive efficiencies in terms of the time taken to deal with information requests.
- 7 The programme is split into 3 phases, with phase 1 going live on 1st July 2022. Phase 1 changes focused on the triaging, logging and allocation of requests to services, and receipt of information back to IM&G. This saw performance rise in Q2 to 89.62%, just shy of the Council's KPI of 90%. This was an improvement in performance from the previous quarter and the same quarter of the previous year of 10% and IM&G is working hard to embed these changes.
- 8 As part of this phase, live performance dashboards were developed on SharePoint to support all directorates with responding to and monitoring their information requests, with a key purpose being to reduce the number of late responses to requests.
- 9 In September 2022 IM&G submitted a report to Corporate Leadership Team outlining the council's recommended approach to further improving performance in handling statutory information requests. This included a requirement for Directorates to review

their named service contacts with responsibility for coordinating responses to these requests within the statutory timeframes; the aim being to help services coordinate their requests without placing unnecessary burdens on multiple staff across all services. This was largely adopted, and a further report was submitted to CLT in early February 2023 in relation to areas benefiting from this approach, with areas highlighted that could still benefit from this approach. In addition, a revised reminder and escalation process was presented and agreed which will result in Chief Officers being made aware of requests in their area are overdue, once gradual escalation has been undertaken with their direct reports.

- 10 Phase 2 of the review will commence during Q4 2022/23 and will focus on the point of receipt of the response from the service to issuing the response to the requestor from a service quality perspective, aiming to firstly reduce the number of occasions requesters are dissatisfied with their initial responses, as well as dealing with any requests for reviews, complaints or appeals to the Information Commissioner's Office (ICO). Running alongside these changes, IM&G continue to work with service areas to offer more support where this is needed. More robust monitoring and review is also underpinning these changes and a change management process will be put in place to support continuous improvement, accepting suggestions from both IM&G staff and staff in services.
- 11 To get the full benefit from the process reviews, IM&G will be working with IDS colleagues to bring all the outputs together from the process reviews into phase 3 to develop and implement a single end-to-end solution to receive, log, allocate, remind/escalate, task manage, respond and report on information requests.
- 12 This is being done in line with the Council's recently agreed Digital Strategy and will be developed using Microsoft Power Apps. This will enable a more modern approach to processing information requests by automating many stages of the process in order to improve transparency, efficiency and quality.
- 13 Microsoft Power Apps have only recently been adopted by the Council, and whilst we would have wished to have progressed with a new system sooner, this is the most cost effective and sustainable option for the Council.
- 14 To supplement the new end to end information request Power App, the capabilities of the Microsoft 365 eDiscovery functionality (a tool to search all data within the M365 platform using search criteria) have been investigated and are currently being trialed to assess how they may be able to assist the FOI/EIR processes in order to respond to a request more efficiently. A protocol for the use of the technology has been drafted and this includes:
 - mandates on when the tool can be used. The intention being to use it as an assurance tool in response to appeals regarding information requests.
 - an authorisation process for use of the tool.
 - governance arrangements to safeguard access to data which is not relevant to the query.
- 15 A proof of concept to test the tool will be carried out and the intention is to have eDiscovery live by the beginning of Q2 2023/24 as an assurance tool, to gradually embed it into the day-to-day processing of information requests. Progress will be reported to a future Committee meeting.
- 16 In addition, this report is to remind Members that they have specific legal rights of access to council information by virtue of their roles as Members. It is generally anticipated that Members will rely on their 'need to know' rights rather than the public

rights under FOI.

- 17 Members have access to specific guidance issued by Legal Services about their rights of access to council information which takes account of relevant court decisions. Legal Services have also written guidance to assist Members with understanding how the FOI rules can impact on their work, which takes account of the advice available from the ICO, the regulatory body for FOI, and decision notices issued by the ICO. Both sets of guidance are published in the Elected Members IG Resource Document which can be found on the Elected Members toolkit on InSite. As noted, above, the wider document is currently being reviewed and InSite will be updated when this has been completed, and Members will be advised.
- 18 To assist Members, the group support offices and Members can approach the IM&G service directly for advice and assistance.

What impact will this proposal have?

Wards Affected:

Have ward members been consulted? Yes No

- 19 Reduce the regulatory risks outlined by delivering improved performance in respect of FOI/EIR requests received by the Council.
- 20 Establish greater public trust and confidence in the council.
- 21 Drive efficiencies in resources required to handle these requests within the IM&G service and across the authority.

What consultation and engagement has taken place?

- 22 Consultation on the phased improvement plans to this area of IM&G work was undertaken across a range of stakeholders including all IM&G staff, Information Management Board members, council services and the Director of Resources.
- 23 In line with the report to Corporate Leadership Team, all chief officers were asked to nominate named service contacts and points of escalation to coordinate information rights requests within their areas of responsibility. Further work is ongoing to ensure this list is accurate, up to date, covers all service areas and is robust.

What are the resource implications?

- 24 Effective internal processes and standard operating procedures coupled with embracing digital innovation will reduce the administrative functions and burden on staff time in processing these requests within IM&G and across the authority.

What are the legal implications?

- 25 Non-compliance with FOI/EIR legislation has the potential to result in enforcement action from the Information Commissioner's Office which can include an information notice or enforcement notice. Failure to comply with these notices could lead the council to be held in contempt of court.
- 26 The ICO has recently put in place a new Upstream Regulation Team that has several objectives in line with the ICO's 'ICO25 strategic plan'. Amongst the changes that local authorities will start to see are less detailed decision notices, strict deadlines for ICO

correspondence, and a quicker turnaround of casework, to ease current ICO backlogs with FOI complaints. As part of the ICO's approach under the ICO25 strategic plan, they will also start to proactively prioritise those cases with the highest public interest and seek to deliver appropriate resolutions in these cases as quickly as possible. The Upstream Regulation Team will also be focusing on improving the publication of information and toolkits plus support to local authorities to reduce the number of complaints that reach the ICO, as opposed to downstream regulation in the form of corrective measures or sanctions, although these will still be applied where appropriate.

- 27 As part of this new approach, the IM&G Management Team have had 2 meetings with the ICO Group Manager for FOI casework, with whom the management team is actively engaging.
- 28 There are no restrictions on access to information contained in this report.

What are the key risks and how are they being managed?

- 29 The risk associated with not adhering to UK access legislation leaves the council more susceptible to breaches of legislative and regulatory obligations, affecting the confidence of its citizens when handling and responding to information requests.
- 30 This in turn could cause damage to the council's reputation and the trust which citizens place in the council to be open, honest and trusted.
- 31 Enforcement action from the Information Commissioner's Office.
- 32 There are two corporate risks associated with Information Governance;
 - LCC 26 - Information Management and Governance
 - LCC 31 - Major Cyber Incident
- 33 A number of associated Directorate level risks are also managed which sit under the corporate risks.
- 34 RES 33 is a new directorate risk created in 2021/22 in respect of the risk of the council's ability to meet legal statutory timeframes for responding to information rights requests.

Does this proposal support the council's 3 Key Pillars?

Inclusive Growth Health and Wellbeing Climate Emergency

- 35 The information governance arrangements aim to ensure that all council information is managed appropriately and lawfully.

Options, timescales and measuring success

a) What other options were considered?

- 36 As part of Phase 3, and as preferred option, the IM&G management team is currently engaging with IDS to consider utilising the new Power Apps platform using an agile approach, which IDS is championing to digitise paper and manual processes across directorates to deliver efficient ways of working. It is intended to explore the opportunity to create a Power App version of the case management system for the recording, processing and monitoring of all information rights requests starting in Q1 2023/24.

b) How will success be measured?

- 37 Monitoring and reporting of performance against published KPI's.

What is the timetable for implementation?

30 By the end of the financial year 2022/23 to:

- Evidence a steady improvement in performance against published KPI's
- To complete Phase 1 of the operational improvement plan and to commence Phase 2.

By the end of the financial year 2023/24 to:

- Complete Phase 2 and 3 of our improvement programme
- See the Council's corporate information requests KPI return to pre-pandemic compliance levels
- Fully implement eDiscovery into normal day-to-day operations

Appendices

1. Performance Against KPIs
2. Benchmarking figures
3. Access to Information Guidance for Members

Background papers

N/A

APPENDIX 1 – Performance Against KPIs

	2019/20		2020/21		2021/22		2022/23 (Q1 to Q3 only)	
	No of requests	% compliance to statutory timescale (KPI 96%)	No of requests	% compliance to statutory timescale (KPI 96%)	No of requests	% compliance to statutory timescale (KPI 90%)	No of requests (Q1 to Q3 only)	% compliance to statutory timescale (year to date) (KPI 90%)
Leeds City Council: FOI/EIR requests	2301	86.27%	2158	84.03%	2024	77.3%	1461	83.7%
Adults & Health					140	78.2%	84	86.7%
Children & Families					274	57.6%	169	72.8%
City Development					392	78.7%	397	88.8%
Communities & Environment *					525	84%	317	84.8%
Resources & Housing *					692	78.5%	493	82.3%

APPENDIX 2 – Benchmarking figures

Number of FOI/EIR requests received and % within statutory timeframe for 2021/22 and Q1 2022/23

Year	Quarter	Leeds City Council		Manchester City Council		Newcastle City Council*		City of Cardiff Council		Birmingham City Council		Nottingham City Council		City of York Council	
		Requests	%	Requests	%	Requests	%	Requests	%	Requests	%	Requests	%	Requests	%
2021-22	Q1	494	77.4%	474	82%	352	82%	336	91%	593	86%	317	94%	396	76.9%
	Q2	493	79.2%	472	81%	677	81.4%	315	88%	615	77%	306	95%	419	77.5%
	Q3	466	74.3%	494	79%	1003	82.5%	353	91%	487	80%	324	95%	387	79.2%
	Q4	569	75.1%	552	76%	1289	83%	432	96%	486	81%	312	96%	483	81.2%
2021/22 Year-end total		2022	77.1%	1992	79%	3321	83%	1436	92%	2181	81%	1259	95%	1685	81.2%
2022-23	Q1	544	78%	540	83%	358	82%	383	95%	375	80%	344	96%	339	83.90%

*Does not include any social housing related FOIs, these are processed separately by Our Homes Newcastle.

#The cumulative figure for Leeds for Q1 to Q3 is 83.7%

APPENDIX 3 - Access to Information Guidance for Members

Legal Services

Access to Information Guidance for Members

1. Background

- 1.1 This guidance tells Members about their rights of access to Council information, and takes account of relevant Court decisions.
- 1.2 This guidance does not repeat all details of the formal rules about access to information, and these can be found in the Access to Information Procedure Rules, in Part 4 of the Council's Constitution.
- 1.3 As Members have specific legal rights of access to Council information by virtue of their roles as Members, it is generally expected that Members will seek to rely on these rights rather than the public rights under the FOI Act.

2. "Need to Know" Rights

2.1 When does a Member have a "need to know right"?

Members have the right to inspect all documents in the possession of the Council, so far as is reasonably necessary to enable them to perform their duties as Members of the Council. This can range from a request for general information about an aspect of the Council's activities to a request for specific information in order to assist a constituent. This can also include information a Member might need to discharge their duties as a member of a Panel, or Committee. Requests for information on this basis should normally be made to the Director or other senior officer for the service which holds the information.

The Courts have said the "need to know" test involves the application of a screening process, and in certain sensitive and confidential areas such as child care, the screening process should be administered with great strictness.

The Courts have also said that the decision whether a Member has a good reason for access to information can be delegated to officers, but if there is a continued difference of opinion the decision will ultimately lie with the Members, and the decision of Members is the final word, subject only to an application for judicial review. The Courts have also said that in deciding whether there is a "need to know", the bias if any, should be in favour of allowing access to information rather than concealing it.

There is also provision in the Local Authorities (Companies) Order 1995 that a "regulated company" (companies which the Council controls or certain "influenced" companies) must provide to an elected Member "such information about the affairs of the company as the member reasonably requires for the discharge of his duties", unless that would constitute breach of an enactment, for example, the data protection rules, or an obligation owed to any person, for example, an obligation of confidentiality. In effect this puts Members in the same position in relation to these companies as they would be if they were exercising their "need to know" rights.

2.2 What sort of information is a Member entitled to?

In making these requests, Members should

- have regard generally to the different roles of Members and officers as set out in the Protocol on Member/Officer Relations in Part 5 of the Council's Constitution
- avoid over-involvement in issues raised by individual constituents
- be particularly careful when having direct contact with relatively junior officers, to avoid the appearance of abusing their position
- justify the request in specific terms, unless circumstances exist where a Member's need to know will be presumed – for example a need to know will be presumed where a Member is on a committee and wants to inspect documents relating to that committee's business, or where the information requested is already in the public domain
- only use the information for the purpose for which it was provided, and
- get the prior agreement of the Directorate concerned to any disclosures to the press or the public.

2.3 Are there any limits on these rights?

As mentioned above, the Courts have said that Members can decide the scope of these “need to know” rights, subject to their decisions on this being “reasonable”. The Courts have said that it is necessary for authorities to see whether a Member's need to know is legitimately outweighed by other factors. The Council has decided that there are a number of factors, arising from case-law or from the Council's own long-standing conventions, which may limit or outweigh a Member's need to know. These factors are set out in the Access to Information Procedure Rules, and they include the following

- the need to know does not extend to a “roving commission” through Council documents
- the need to know would only extend to having access to someone else's personal data or private information in exceptional cases, and even then only the minimum amount of data needed for the purpose should be disclosed
- draft documents compiled in the context of emerging Council policies, and draft reports will not usually be disclosed
- a Member of one party group will not have a need to know in relation to a document prepared for another party group
- documents prepared specifically for one Member will not normally be provided to another Member, unless they agree otherwise (note, this includes e-mails or other correspondence between an officer and a Member)
- documents will not be disclosed where the Director concerned believes the Member may use them to prejudice the Council's or the public interest.
- Directors are entitled to take into account the level of resources they may need to divert from other business, to deal with locating and supplying documents.

2.4 Who makes the decision about this?

It is important that the person making this decision understands the nature of the Member's duties and responsibilities, and also how significant the information is for the service concerned and for the local area. Consequently, the decision whether a Member has a need to know will be made initially by the Director for the service area which holds the information requested. The Director must not have regard to party political advantage, nor must the Director's determination have the effect of preventing the Member concerned from giving evidence in Court, or of penalising the Member for so doing. Given that the limits on the need to know rights are set partly by Court decisions, the Director is required to take legal advice from the City Solicitor. As the Council itself is also entitled to set limits on these rights, a Member who is refused information can appeal against the Director's decision to a committee of the Executive Board.

2.5 How quickly does the information have to be provided?

There is no fixed time limit, and this will depend on the reason why a Member needs the information. For example, if a Member made a request specifically to raise an issue at a meeting, to delay a decision until after that meeting would simply render these rights ineffective. If a Member thought a Director was delaying a decision unreasonably, they could treat this as a refusal, and appeal to a committee of the Executive Board, as mentioned above.

3. Local Government Statutory Rights

3.1 In addition to their “need to know” rights, all Members are entitled to inspect any Council, or Council-controlled document containing material relating to any forthcoming Council or committee business, or Executive business which is to be transacted at a public meeting, unless

- it contains certain categories of “exempt” information
- (if it is material about Executive business), it contains the advice of a political adviser, or it is a draft report or draft background paper.

3.2 What about decisions by Directors, or other officers?

All Members are entitled to inspect any Council or Council-controlled document (report or background papers) containing material which relates to any decision made by an officer in accordance with Executive arrangements, subject to the same exceptions as mentioned in 3.1.

3.3 What about Scrutiny Members?

Again, in addition to their “need to know” rights, a member of a Scrutiny Board is entitled to copies of any Council or Council-controlled document (report or background papers) which contains material relating to Executive business unless

- it is in draft form or
- it contains “exempt” or “confidential” information unless relevant to an action or decision that member is reviewing or scrutinising, or to a review contained in the Board’s work programme or
- it is the advice of a political adviser or assistant.

3.4 What about appeals?

As with the “need to know” rights, it will be the Director of the service area holding the information who will make the initial decision about which items a Member is entitled to access. However, if a Member is refused access they can appeal to a committee of the Executive Board.

4 Rights under the Freedom of Information Act

4.1 For more information about the Freedom of Information Act, please see the document “Freedom of Information, Guidance for Members” issued by Legal Services.

5. Can Members ask for information in a particular format?

5.1 Does a Member have a right to a document, or just the information in it?

Under the FOI rules, a Member would only be entitled to get access to information, rather than a particular document, although the rules say if an applicant asks for information in a particular form, the Council should provide it in that form so far as reasonably practicable, having regard to all the circumstances including cost. Under the “need to know” rules and the local government

statutory rights, a Member is entitled to get access to the “document” which is in the control or possession of the Council, so a Member should be provided with the document itself rather than an edited version or summary (subject to excluding “confidential” or “exempt” information, where applicable).

5.2 Can a Member ask for copies?

Where a Member is entitled to access, they are also entitled to make a copy themselves or ask the person with custody of the document to supply them with a copy.

5.3 Where can a Member inspect documents?

Under the FOI rules, an applicant is entitled to a “reasonable opportunity” to inspect, if giving effect to this preference is “reasonably practicable”. Under the “need to know” rules and the local government statutory rights, the position is slightly less clear but it should be assumed a Member is entitled to access at all reasonable hours at the Council’s offices. This means a Member does not have the right to insist on original documents being sent to a constituency office or home address, and Members should agree appropriate arrangements with the service concerned.

6. What if a Member wants to disclose information they obtain under these rights?

If a Member makes a “need to know” request, the Director may ask the Member to keep the information confidential, if they consider the Member does not reasonably need to share the information with constituents, or others. However, wherever a Member wants to make a disclosure, the Director needs to consider the Member’s right to freedom of expression and the particular importance of that right for elected representatives, and whether members of the public may be entitled to get access to the information in any event under either their local government statutory rights, or their FOI rights. Again, if there is a disagreement over whether a Member reasonably needs to disclose a document or not, the Member could appeal against the Director’s decision to a committee of the Executive Board.

7. Further Guidance

For further information and guidance on these matters, please contact Mark Turnbull, Head of Service, Legal Services; e-mail mark.turnbull@leeds.gov.uk; tel. 0113 3789151.