

PERTH AND KINROSS COUNCIL

Scrutiny Committee

13 June 2018

FOI PERFORMANCE REPORT 2017-18

Report by Head of Legal & Governance Services (18/191)

PURPOSE OF REPORT

This report provides the Committee with an overview of the Council's performance in relation to requests for information under the Freedom of Information (Scotland) Act 2002 for the year 2017-18.

The report also provides an overview of some of the Council's other information-related activities.

1. BACKGROUND

- 1.1 The Freedom of Information (Scotland) Act 2002 ("FOI(S)A") was fully implemented in January 2005 and established a general public right of access to all information held by Scottish public authorities.
- 1.2 It has been agreed that the Council's performance should be reported annually to the Executive Officer Team and the Scrutiny Committee.

2. CONTEXT: REQUESTS RECEIVED

- 2.1 During 2017-18, the Council received 1550 requests for information under the FOI(S)A 2002. This represents an increase of 1.8% from 2016-17 in line with the general trend as illustrated in Figure 1 below.

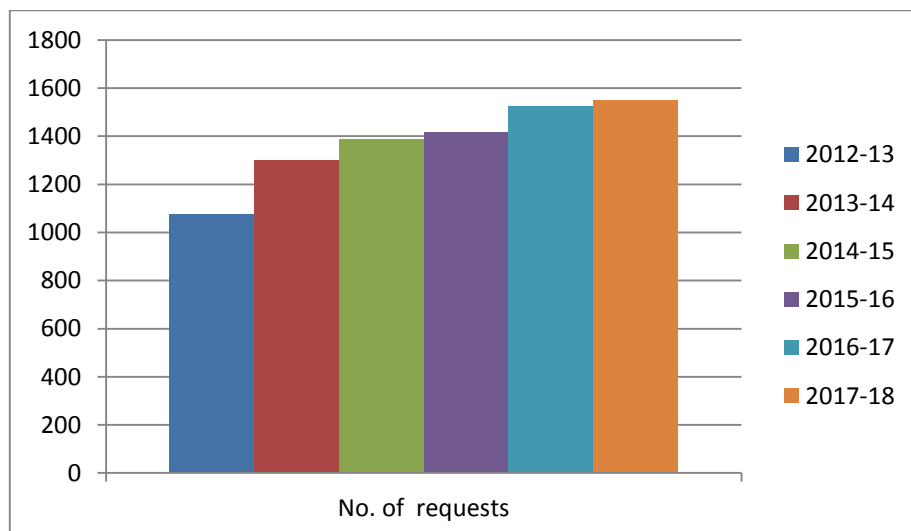


Figure 1

2.2 Of the 1550 requests received: -

- 31 were subsequently rejected when clarification was not received from the applicant;
- 17 were withdrawn by the applicant; and
- 4 remain in process awaiting clarification from the applicant.

2.3 Of the 1550 information requests received, 179 were processed under the Environmental Information (S) Regulations.

The Figure 2 below shows the number of FOI(S)A / EI(S)R requests received in 2017-18 broken down by month.

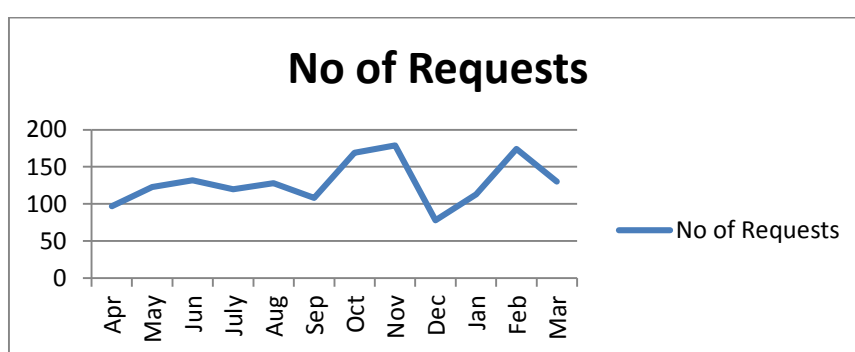


Figure 2

2.4 Analysing the requests based on the type of applicant shows the highest single group making requests are members of the general public. However as a percentage of the total number, that equates to 33% of the overall total of requests received. A breakdown is illustrated at Figure 3 below

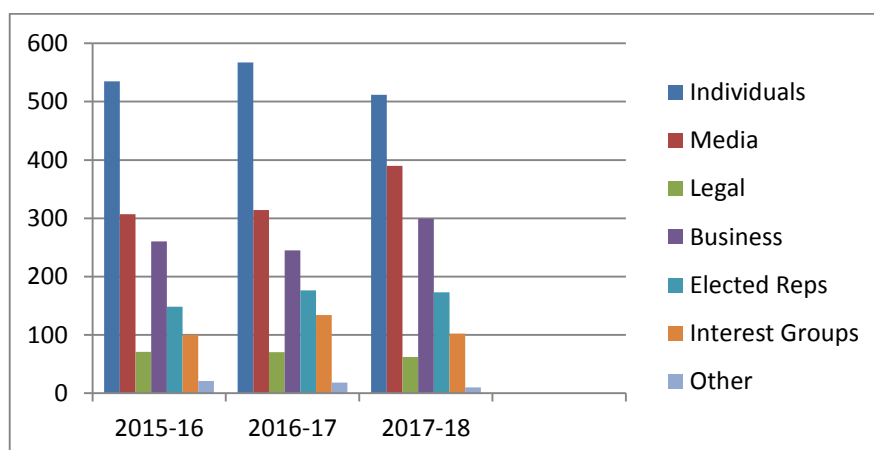


Figure 3

2.5 In the course of the year, the Council may receive several requests from the same requester. During the year 2017-18 requests were received from 657 different requesters. The number of requests made are broken down as follows :-

- 671 requesters made a single information access request accounting for 671 requests
- 198 requesters (making <10 requests each) accounted for 623 requests
- 5 media organisations accounted for 147 requests
- 5 businesses accounted for 82 requests
- 1 legal firm accounted for 15 requests
- 1 trades union accounted for 12 requests

2.6 The subject matter of the requests was wide and varied and did not identify any particular theme or issue. Where requests for the same or similar information are identified by the FOI team, Services are notified and encouraged to make this information available on the website.

3 PERFORMANCE

3.1 The statutory timescale for processing requests for information under FOI(S)A is twenty working days with the option for extension depending upon the circumstances.

Of the 1498 valid requests made, the processing time was as follows:

≤ 20 working days	21-25 working days	26-30 working days	> 30 working days
1405 (94%)	61 (4%)	18 (1%)	14 (1%)

3.2.1 The figure for completion within the statutory timescale was therefore slightly below the Council's target of 95%.

3.3 Reasons for delays in processing times were primarily due to the complexity and volume of the information requested. In some cases, the delay was due to the unavailability of relevant staff to provide the information (e.g. school information requested during school holiday periods).

3.4 Of the 1498 valid requests processed: -

- 644 requests (43%) were satisfied in full
- 593 requests (40%) were satisfied in part
- 261 requests (17%) resulted in no information being issued

3.5 40 requests were refused completely or in part on the grounds of excessive cost – the estimated cost involved in processing being in excess of £600.

3.6 The predominant reasons for not supplying information in respect of the remainder were that the information requested was: -

- not held by the Council;
- personal data or information otherwise exempt under FOI(S)A;
- already available to the public

4 REVIEWS AND APPEALS

- 4.1 The Council received 25 requests to review its decision (complaints about the initial response), which represents 1.6% of the total requests processed. A breakdown of the relevant review data is contained in Figure 4

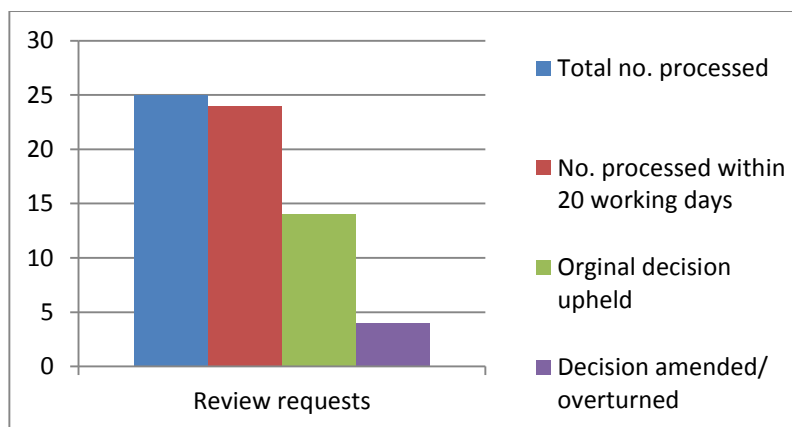


Figure 4

- 4.2 Of the 25 review decisions, 4 were subsequently appealed to the Scottish Information Commissioner during 2017-18.
- 1 appeal was withdrawn following the disclosure of additional information
 - 1 appeals was upheld and ordered the disclosure of the requested information
 - 1 appeal was overturned
 - 1 appeal is still the subject of investigation by the Commissioner.

5 ISSUES /OBSERVATIONS

- 5.1 The number of requests in 2017-18 increased (1.8%) from the preceding year which is in line with the trend over the last five years.
- 5.2 The Council failed to meet its target of 95% for responding to FOI(S)A within the statutory timescale for the first time in five years. If the current trend continues in respect of the increasing numbers and increasing complexity of information requests, the target of 95% is unlikely to be maintained. The team will however continue to look for more effective and efficient ways of working, to try to maintain the current high standards of performance, and where possible improve.
- 5.3 The number of requests for review remain a small percentage of the total number received which would indicate good levels of customer satisfaction in terms of the quality the Council's responses and the effectiveness of our process.

- 5.4 The Scottish Information Commissioner requires public authorities to supply details of FOI(S)A and EIR statistics on a quarterly basis. The information for the 12 months to December 2017 for local authorities ranks the Council 7th in terms of the percentage of responses issued on time.

6 DATA PROTECTION ACT

- 6.1 As from year 2016/17, all subject access requests under the Data Protection Act 1998 (DPA) are now handled by the FOI team.
- 6.2 During the year 2017-18 the FOI team received 93 subject access requests. Of these:
- 11 did not provide the necessary information when requested
 - 2 were withdrawn by the requester
- 6.3 Of the remaining 77 requests :-
- 3 are still in process
 - 74 have been completed
- 6.4 The timescale for processing requests for information under the Data Protection Act is 40 calendar days. Of the 77 requests that were processed 53 (69%) of the requests were completed within the statutory timescale.
- 6.5 The late responses were all due to the complexity or scale of the requests. Six of the requests each took more than 20 hours to process, with a maximum of 50 hours recorded for a single request. The overall average time to process a request in the year was 7.5 hours.
- 6.6 There were no major data breaches recorded during the year.
- 6.7 The UK Information Commissioner contacted the Council three times during the year in relation to complaints by members of the public. In two of the cases it was concluded that the Council had complied with the DPA and no further action was required. In the third case it was concluded that the Council has technically breached the DPA but that there were mitigating circumstances which were accepted by the Information Commissioner.
- 6.8 Work is in progress for the implementation of the General Data Protection Regulation in May 2018. Amongst the changes this brings is the reduction in the time to process a subject access request, the removal of the fee, and a requirement to report on compliance at a senior level within the organisation. The new legislation has required the current framework for processing personal data to be reviewed and accordingly information regarding subject access requests will form part of a separate report by the Data Protection Officer going forward.

7 SURVEILLANCE & INTERCEPTION OF COMMUNICATIONS

- 7.1 The Council has powers under the Regulation of Investigatory Powers (Scotland) Act to undertake directed surveillance and to utilise covert human intelligence sources. The Council also has powers under the Regulation of Investigatory Powers Act to obtain information about ('intercept') electronic communications.
- 7.2 Council officers now have a duty to report on the use of these powers to the Council's elected members.
- 7.3 During the year 2017-18, no directed surveillance was authorised and no covert human intelligence sources were used under RIP(S)A provisions.
- 7.4 During the year 2017-18 no electronic communications information was obtained under RIPA provisions.
- 7.5 The Council's policy statement on the use of directed surveillance and the interception of communications is attached as Appendix 1.

8 CONCLUSIONS

- 8.1 The council's processes and procedures for handling information requests are adequate and effective in ensuring high levels of compliance and performance

9 RECOMMENDATIONS

- 9.1 The Committee is asked scrutinise and make comment on content of the report and highlight any areas of concern.
- 9.2 The Committee is asked to note: -
 - (i) that the Council's performance in respect of processing requests under FOI(S)A continues to be good although slightly below target for 2017-18;
 - (ii) that FOI(S)A helps to provide an assurance of openness and transparency to the public in their dealings with the Council and it is essential that this service continues to operate to a high standard;
 - (iii) the Council's performance in respect of processing subject access requests under the Data Protection Act 1998 and the challenge that the breadth and complexity of these requests presents in achieving compliance with the statutory timescales; and
 - (iv) the Council's policy on directed surveillance and interception of communications.

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Approved

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Jim Valentine	Depute Chief Executive (Chief Operating Officer)	16 May 2018

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	None
Single Outcome Agreement	None
Strategic Plan	None
Resource Implications	
Financial	None
Workforce	None
Asset Management (land, property, IT)	None
Assessments	
Equality Impact Assessment	None
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal	None
Risk	None
Consultation	
Internal	None
External	None
Communication	
Communications Plan	None

1. Strategic Implications

1.1 Not applicable.

2. Resource Implications

2.1 Not applicable.

3. Assessments

Equality Impact Assessment

3.1 The proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) and assessed as **not relevant** for the purposes of EqIA.

Strategic Environmental Assessment

3.2 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals. However, no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

Sustainability

3.3 Not applicable.

Legal and Governance

3.4 Not applicable.

Risk

3.5 Not applicable

4. Consultation

None

5. Communication

None

2. BACKGROUND PAPERS

None

3. APPENDICES

Appendix 1 - Policy statement – directed surveillance and interception of communications