

**PERTH AND KINROSS COUNCIL**

**Scrutiny Committee**

**22 April 2015**

**FOI Performance Report 2014**

**Report by Head of Legal Services**

**PURPOSE OF REPORT**

This report describes the Council's FOI performance for the year 2014. This information is reported annually following the completion of the requests received in each calendar year.

**1. BACKGROUND / MAIN ISSUES**

- 1.1 The Freedom of Information (Scotland) Act 2002 was fully implemented in January 2005 and established a general public right of access to all information held by Scottish public authorities.

It has been agreed that the Council's performance should be reported annually to the Executive Officer Team and the Scrutiny Committee.

Requests dealt with under the Environmental Information Regulations (Scotland) 2004 are included in the report, but are not generally mentioned separately.

**2. REQUESTS RECEIVED**

- 2.1 During 2014, the Council received 1385 FOI requests. This represents an increase of 10.8% from 2013.

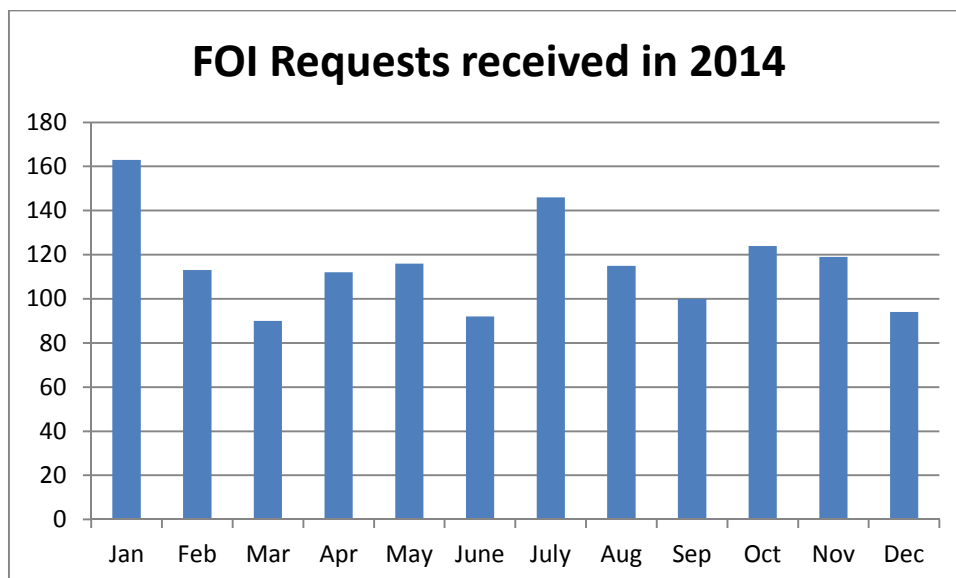
| Year     | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|----------|------|------|------|------|------|------|
| Requests | 697  | 871  | 961  | 1070 | 1249 | 1385 |

The number of requests received by the Council was the highest in any year so far, although the percentage increase was lower than the previous year.

- 2.2 Of the requests received, 12 were subsequently rejected when clarification was not received from the applicant and 26 were withdrawn by the applicant. Clarification is still awaited for three requests.

- 2.3 The number of requests received on a monthly basis continues to show considerable fluctuation throughout the year and does not conform to any obvious pattern.

Whilst holiday periods are traditionally quiet spells, July proved to be the second busiest month in 2014.



Comparison with figures from previous years confirms that it is impossible to anticipate peaks and troughs on a monthly basis, but on average the Council receives 115 requests per month, up from 104 per month in 2013. There were only three months in 2014 when the Council received fewer than 100 requests.

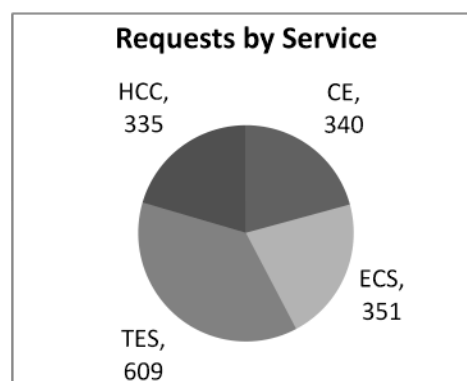
- 2.4 Analysing the requests based on the type of applicant shows that the general public remains the largest group of applicants, although the percentage of requests from this group is decreasing.

|                         | <b>2012</b> |           | <b>2013</b> |          | <b>2014</b> |          |
|-------------------------|-------------|-----------|-------------|----------|-------------|----------|
|                         | <b>No.</b>  | <b>%.</b> | <b>No.</b>  | <b>%</b> | <b>No.</b>  | <b>%</b> |
| Individuals             | 496         | 46        | 562         | 45       | 594         | 43       |
| Media                   | 196         | 18        | 243         | 19       | 331         | 24       |
| Legal                   | 76          | 7         | 86          | 7        | 73          | 5        |
| Business                | 125         | 12        | 170         | 14       | 198         | 14       |
| Elected representatives | 96          | 9         | 106         | 8        | 81          | 6        |
| Interest groups         | 64          | 6         | 75          | 6        | 97          | 7        |
| Other                   | 17          | 2         | 7           | 1        | 10          | 1        |

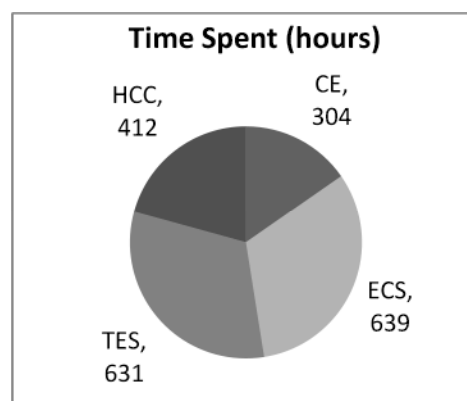
Media organisations and journalists remain the second largest source of requests with the percentage of requests from this group showing a marked increase in 2014. Businesses continue to be the third largest group of requesters.

2.5 During the year requests were received from 806 different requesters. The vast majority (635) made only one request, and a further 156 requesters made fewer than 10 requests each. The remaining 14 requesters made 308 requests between them. These requesters comprise four individuals (54, 13, 11, and 10), five media organisations (114 in total), four businesses (88 in total), and elected representatives in the Scottish Parliament (18 in total).

2.6 Any one request may require information from more than one Service. This diagram gives the split of the requests for information by Service and shows that the Environment Service received the most requests, considerably more than any of the other Services.



2.7 The number of requests does not necessarily reflect the amount of time spent dealing with them. This diagram shows the amount of time recorded as spent responding to requests (in hours). It is known that the amount of time spent is not recorded for all requests.



Education and Children's Services spent most time dealing with requests reflecting the complexities of obtaining information and checking it for accuracy. The Environment Service, receiving considerably more requests, spent almost as much time dealing with them.

Many of the requests directed to the Chief Executive's Service are readily satisfied from central management information systems and require a relatively short time to retrieve the information.

2.8 On average the amount of time recorded as spent in responding to an FOI request within each Service is

|                                 | Average Time (hours) |
|---------------------------------|----------------------|
| Chief Exec                      | 0.9                  |
| Education & Children's Services | 1.8                  |
| Environment Service             | 1.0                  |
| Housing & Community Care        | 1.2                  |

The overall average is 1.2 hours spent on each request by Services which is a slight decrease from 1.3 hours in 2014.

This excludes time spent by the FOI team, which amounted to approximately 2.9 hours on average for each request during 2014. This is down from 3.3 hours in 2013 and reflects the reduced staffing situation in the FOI Team for just over half the year.

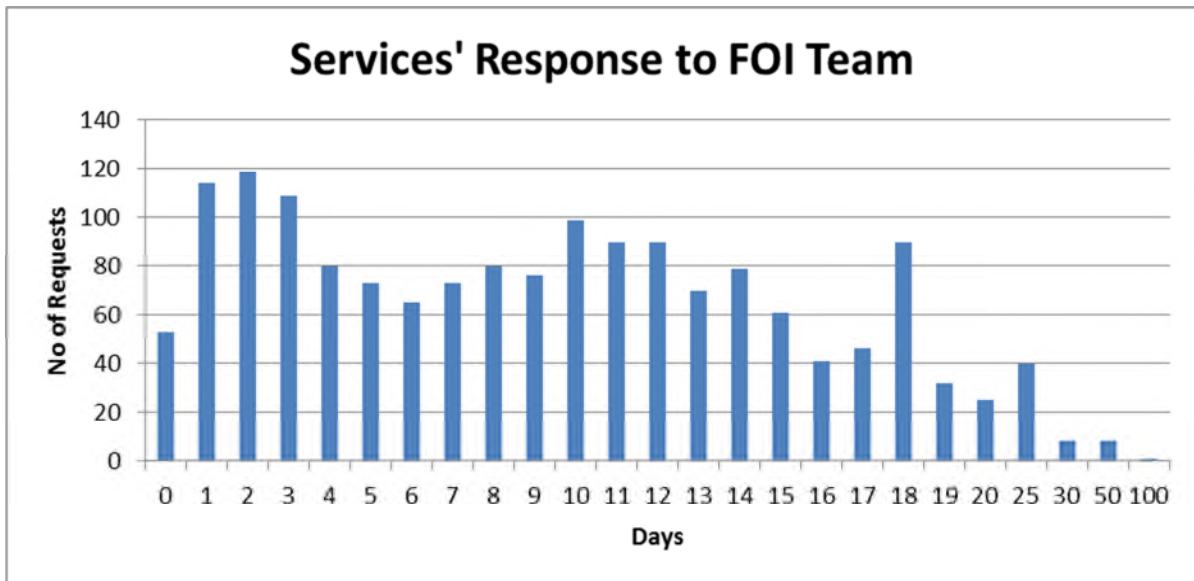
- 2.9 210 of the requests received were dealt with under the Environmental Information (Scotland) Regulations 2004, compared to 115 in 2013.

### **3. PERFORMANCE**

- 3.1 Of the requests received, 53% were satisfied in full and a further 31% were satisfied in part. The remaining 16% received no information at all. In other words, 84% of the requests received at least some of the information asked for. This pattern is very similar to previous years.
- 3.2 The predominant reasons for not supplying information were because the Council didn't have it; because it included personal information; or because it was available elsewhere.
- 3.3 During the year, 28 requests were refused completely or in part because of excessive cost. The costs of satisfying these requests were estimated ranging from £832 to £12,377, with an average cost of approximately £3,227.

Responding to such requests normally requires manually reviewing a large number of files or documents to obtain the requested number or details, e.g. non-domestic rates, fixed penalty notices for parking, etc.

- 3.4 Of the requests received, 96.5% were completed within the statutory 20 working-day timescale. This is above the Council's target of 95% and is up from 94.5% the previous year.
- 3.5 49 requests were not completed within the statutory timescale, 20 fewer than in 2013. Five of the late requests were completed on day 21 and four on day 22. A further 28 were completed by day 30. There were 12 occasions when it took longer than 30 days to complete the response (compared to 11 in 2013).
- 3.6 This situation can be clarified somewhat by considering the number of days that Services take to supply the information to the FOI Team compared to the nominal target of 10 days. In many cases when information was supplied after the target it was by arrangement with the FOI Team, taking account of the particular circumstances of the request and the section providing the information.



Overall, 42% of the responses from Services to the FOI Team took more than the target of 10 days. This is significantly better than 2013 when 62% of the responses took more than 10 days.

There were 37 occasions when Service responses to the FOI Team took longer than 20 days. The remaining 12 late response were due to the workload of the FOI Team at the time.

- 3.7 However, the average time for a response to a request was 14.3 days compared to 11.4 days in 2013. On average, there was a delay of five days between receipt of the information from Services and issue of the response. This is an increase from four days in 2013 and can be explained by the reduction in staff numbers in the FOI Team for half the year.

## ESTIMATED COSTS

- 3.8 The total cost to the Council of responding to FOI requests in 2014 is estimated at £105,648. This gives an average cost of approximately £76 for each request (compared to £84 in 2013).
- 3.9 The Council has not, to date, charged for FOI requests but continues to reserve the right to do so. It remains the position that the Council will not normally charge for providing information in response to a request unless it is information for which a charge is ordinarily set.

It is estimated that, under the statutory charging scheme, the Council would have been able to charge on approximately 119 occasions (out of 1348) and the total amount chargeable would have been approximately £550.

The actual cost of responding to these particular requests is estimated at £17,405.

- 3.10 The cost of raising 119 invoices and recovering the charges would be approximately £2,856.

## **REVIEWS AND APPEALS**

- 3.11 The Council received 49 requests to review its decision (complaints), which represents 3.5% of the requests. This compares to 34 reviews (approximately 2.7%) in 2013.
- 3.12 Three requests for review were subsequently withdrawn by the requestor. One review is still in progress.
- 3.13 All except 13 of the reviews were completed within the 20 working-day deadline. The exceptions were due to workload or the absence of key staff during the period of the review.
- 3.14 Of the 46 reviews completed, 31 upheld the original decision and 15 overturned it.
- 3.15 Eight requests were appealed (dissatisfied with the result of the review) to the Scottish Information Commissioner during 2014. In addition, there were two appeals made in 2013 which were decided upon during 2014.

One appeal was withdrawn by the requestor. The Council's decision was upheld in two of the appeals and was overturned in two with additional information to be provided to the requester in both cases. In three of the appeals the Council's response was found to have technical faults, but was not required to take any further action. The two remaining appeals are still the subject of investigation by the Commissioner.

## **ISSUES ARISING**

- 3.16 The FOI Team and employees dealing with FOI in Services have maintained good performance during 2014. The Council's response rate improved while again dealing with more requests than the previous year.
- 3.17 The FOI team have been short-staffed since June 2014, but a third FOI Officer has been appointed and will start in March 2015.
- 3.18 The projection of 1,390 requests for 2014 was very accurate.
- 3.19 It is currently anticipated that the number of requests will continue to rise by 11% in future years. This gives projections of 1,536 requests in 2015, 1,705 requests in 2016, and 1,832 requests in 2017.
- 3.20 The response rate of 96.5% for 2014 is a good improvement from 2013, but it is considered that the target of 95% will continue to be difficult to achieve in future years as the number of requests continues to rise and additional duties are undertaken by the FOI Team.
- 3.21 The number of requests for review received by the Council increased slightly, although the outcomes largely upheld the Council's responses. This is better

than feared because of the reduced staffing situation in the FOI Team for the latter half of the year.

3.22 The FOI Team continues to maintain a close working relationship with senior management teams through a number of measures. These include a weekly report of outstanding and recently completed requests, monthly reports for each Service showing the requests they dealt with and the time spent on each, and meetings with senior management teams and the Services' FOI Coordinators.

3.23 The FOI Team also delivered several training and awareness sessions about FOI to staff in the Environment Service.

3.24 The Scottish Information Commissioner required public authorities to supply details of FOI and EIR statistics on a quarterly basis and publishes them at [stats.itspublicknowledge.info](http://stats.itspublicknowledge.info).

The published information for the 12 months to December 2014 for local authorities ranks the Council 8<sup>th</sup> in terms of the number of requests received and 9<sup>th</sup> in terms of the percentage of responses issued on time.

3.25 In 2013, it was agreed that the processing of data protection requests for personal information ('subject access requests') would be centralised within the FOI Team. A phased approach to the implementation of this was being used, but this was stopped in mid-2014 due to the resignation of one of the FOI Team. This situation will be reviewed once the replacement is in post.

3.26 An issue was encountered during the year regarding the use of wide-ranging confidentiality clauses in contracts which stopped the disclosure of requested information about a public event. This was the cause of some adverse publicity and is the subject of a current appeal to the Scottish Information Commissioner.

## **EXTERNAL INVOLVEMENT**

3.27 The Council is represented regularly on the FOI / DP group of the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR).

3.28 Representatives of the Council regularly attend seminars organised by the Centre for FOI in Dundee.

3.29 Representatives of the Council attend the annual FOI Conference organised in conjunction with the Scottish Information Commissioner.

3.30 Fife Council organised and hosted a number of networking meetings for FOI practitioners which the FOI Team attended.

3.31 Advice was provided to both Live Active Leisure and Horsecross Arts about FOI when the organisations came under the scope of the legislation.

- 3.32 One of the members of the FOI Team passed the Practitioner Certificate in the Freedom of Information (Scotland) Act 2002 during the year. This means that both of the FOI Officers have this qualification.

#### **4. PROPOSALS**

- 4.1 The performance target for responding to FOI requests will remain at 95% for 2015. This remains a challenging target, but it is still felt to reflect the reasonable expectation that almost every request should be completed within the statutory timescale.
- 4.2 The Scottish Information Commissioner is developing a series of self-assessment modules for public authorities regarding FOI compliance. Two modules have been published so far and it is anticipated that further modules will be published during 2015. These are available at [www.itspublicknowledge.info/ScottishPublicAuthorities/Self-AssessmentToolkit/Self-AssessmentToolkit.aspx](http://www.itspublicknowledge.info/ScottishPublicAuthorities/Self-AssessmentToolkit/Self-AssessmentToolkit.aspx).

It is planned to conduct a self-assessment of the Council during 2015 using at least the first module.

- 4.3 It is planned to review and update the Council's FOI e-Learning module during 2015.
- 4.4 The Council has previously considered the use of an application system for managing FOI requests but has been unable to identify one with appropriate functionality. It is planned to review the market again during 2015 with the hope of identifying a system that could improve request-handling in a cost-effective manner.
- 4.5 The standard correspondence used by the Council for FOI will be reviewed during 2015 to make more use of Plain English and remove unnecessary technical references.
- 4.6 The Council will start keeping a clear record of all searches undertaken by employees at the review stage to assist in responding to the Scottish Information Commissioner at the appeal stage.

#### **5. CONCLUSION AND RECOMMENDATION(S)**

- 5.1 The Council's performance on FOI continues to be very good.
- 5.2 FOI 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. It also acts as a reminder to the Council to manage its information well and, in particular, to maintain good, accessible records.
- 5.3 The Committee is asked to
- a) note the report and highlight any matters of concern



- b) note the FOI performance target of 95% for the Council for 2015
- c) note the actions proposed for 2015 in sections 4.2 - 4.6

#### **Author(s)**

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#### **Approved**

| <b>Name</b> | <b>Designation</b>     | <b>Date</b>   |
|-------------|------------------------|---------------|
| John Fyffe  | Depute Chief Executive | 17 March 2015 |

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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

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

### 1. Strategic Implications

#### Single Outcome Agreement

1.1 N/A

#### Corporate Plan

1.2 N/A

### 2. Resource Implications

#### Financial

2.1 There are no resource implications arising from this report.

#### Workforce

2.2 There are no workforce implications arising from this report.

#### Asset Management (land, property, IT)

2.3 There are no resource implications arising from this report

### **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

- 3.3 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 N/A

#### Legal and Governance

- 3.4 N/A

#### Risk

- 3.5 N/A

### **4. Consultation**

#### Internal

- 4.1 None

#### External

- 4.2 None

### **5. Communication**

- 5.1 None

### **2. BACKGROUND PAPERS**

None

### **3. APPENDICES**

None

