

# PERTH AND KINROSS COUNCIL

## SCRUTINY COMMITTEE

15 September

### FOI PERFORMANCE REPORT 2020-21

#### Report by Head of Legal & Governance Services

(Report No. 21/162)

#### **PURPOSE OF REPORT**

This report describes the Council's performance in relation to its obligations under the Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004 for the year 2020-21.

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 ("FOISA") was fully implemented in January 2005 and established a general public right of access to all information held by Scottish public authorities.
- 1.2 The Environmental Information (Scotland) Regulations ("EIRs") was implemented alongside FOISA in January 2005 and provide a right of access to environmental information held by Scottish public authorities.
- 1.3 It has been agreed that the Council's performance in these areas should be reported annually to the Executive Officer Team and the Scrutiny Committee.
- 1.4 This is the report for the year 2020-21.

#### **2. EXECUTIVE SUMMARY**

- 2.1 The number of requests in 2020-21 decreased by 24% from the preceding year. The period which experienced the steepest drop in numbers was Quarter 1.
- 2.2 The Council's target for responding to FOI requests within statutory timescales is 95%; in previous years this target has usually been met or exceeded.
- 2.3 In 2020-21, 78% of requests were responded to on time. This reduction in performance is considered to be attributable to temporary changes in legislation, the challenges of changing work practices due to Covid 19 and Council resources being directed towards its response to the pandemic.

2.4 It should be noted that an extension to the timescale to respond to requests was made in the Coronavirus (Scotland) Act. However, the extension was abolished in the subsequent legislation, meaning that all requests that had benefited from the extension were automatically late.

### 3. PERFORMANCE

3.1 During 2021, the Council received 1188 requests for information under FOISA. This represents a reduction on previous years.

3.2 The largest decrease was during Quarter 1, when 39% fewer requests were received than during the corresponding period in 2019-20. This reflects the reduction in FOI requests received across all sectors during the first period of Covid 19 restrictions.

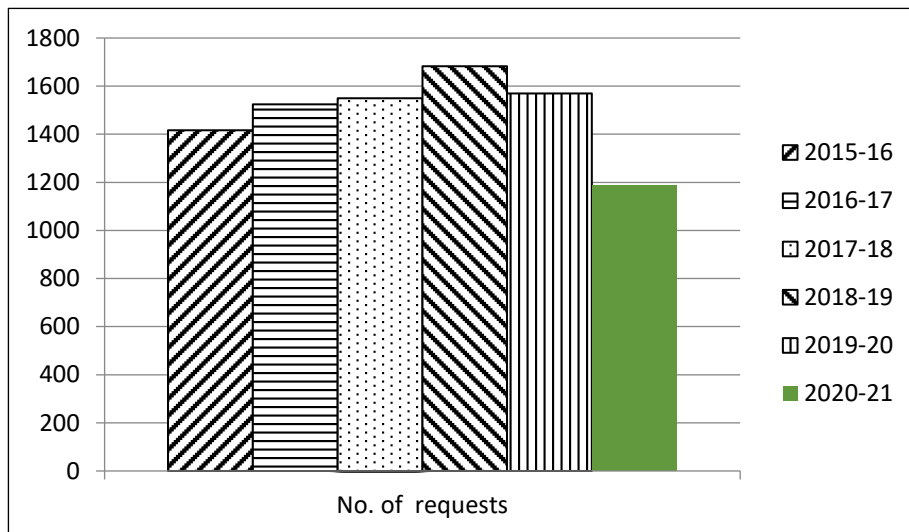


Figure 1 – Number of requests for information under FOISA/EIRs

3.3 Of the 1188 requests received:-

- 32 were subsequently rejected when no clarification was received from the requestor
- 17 were withdrawn by the applicant
- 3 requests remain in progress awaiting clarification from the applicant.

3.4 Of the 1188 requests received, 300 were processed under the EIRs.

3.5 Figure 2 below shows the number of FOISA/EIRs requests received in the year, broken down by month.

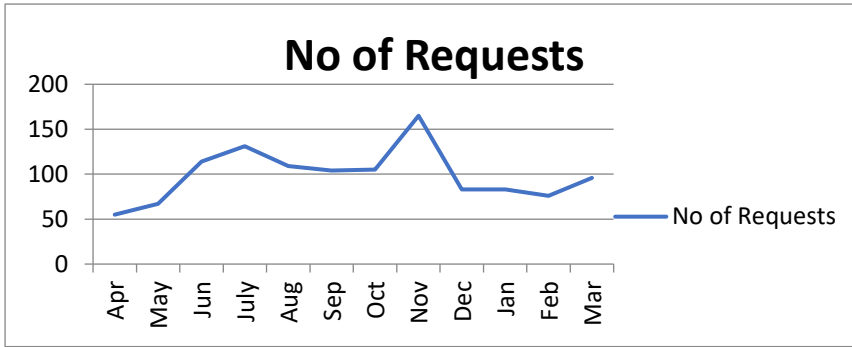


Figure 2 – Number of requests April 2020 to March 2021 by month

3.6 Analysing the requests received based on the type of applicant shows the highest single group making requests are members of the general public. During 2021, 641 (or 54%) of the requests received were from members of the public. This represents an increase of 13% from 2019-20. A breakdown is illustrated at Figure 3 below:

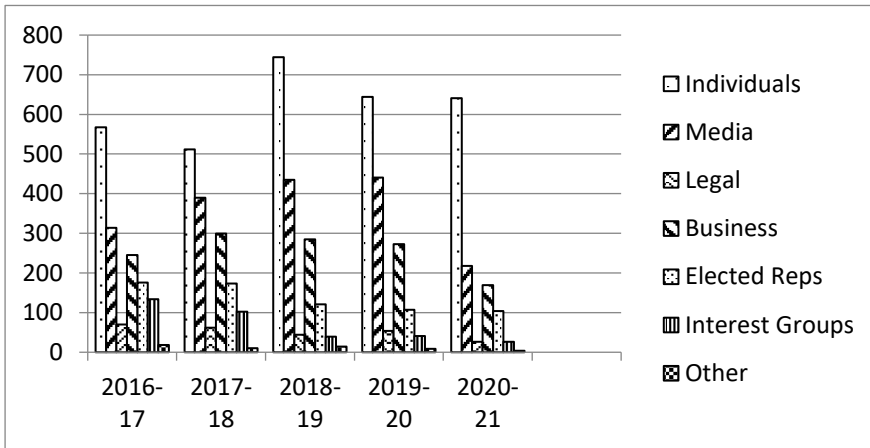


Figure 3- Summary of type of applicant.

3.7 In the course of the year, the Council may receive several requests from the same requestor. During the year 2020-21, requests were made by 890 requestors. The number of requests is broken down as follows:

- 771 requestors each made a single request for information
- 4 requestors made more than 10 requests for information, totalling 105.

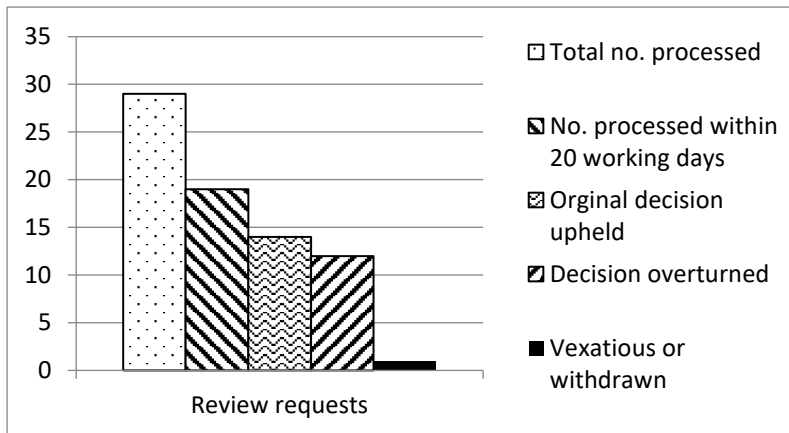
3.8 There was a 50% reduction in the number of requests received from the media during 2020-21, when compared to 2019-20. There was a smaller, but still significant reduction of 38% in the number of requests received from businesses.

## **Performance Monitoring**

- 3.9 On 7 April 2020-21, emergency legislation – the Coronavirus (Scotland) Act 2020 - was passed, temporarily extending the maximum timescale for responding to FOI requests and requests for review from 20 to 60 working days.
- 3.10 The amended provisions were initially due to expire on 30 September 2020. However, the Coronavirus (Scotland) (No. 2) Act, which came into force on 27 May, revoked this provision, meaning the extension was only in place from 7 April until 26 May 2020. Public authorities were given five working days' notice of this change; all requests which were being considered on 27 May 2020, including those which were already older than 20 working days, became subject to the 20-day timescale once again.
- 3.11 It should be noted that at no point was any legislative provision made for an extension to the time taken to respond to requests falling within the scope of the EIRs.
- 3.12 The Council's target for responding to requests within statutory timescales is 95%. During 2020-21, 78.3% of requests were completed within timescales. Given the scale of the Council's response to the pandemic and the changes to working arrangements throughout the organisation, this performance is considered to be creditable and a reflection of the importance the Council has placed on maintaining transparency during the pandemic.
- 3.13 Officers dealing with FOI requests have continued to deal with many complex and voluminous subject access requests, many of which relate to historical childcare records. Additional resources are being put in place to assist with these requests.
- 3.14 Of the 1147 valid requests for information received by the Council during 2020-21:-
- 489 (43%) requests were satisfied in full
  - 457 (40%) requests were satisfied in part
  - 201 (17%) requests resulted in no information being issued
- 3.15 Where information was not provided to requestors, 15 requests were refused completely or in part on the grounds of excessive cost, the estimated cost involved in processing being in excess of £600.

## **Reviews and appeals**

- 3.16 The Council received 26 requests to review its decision (complaints about the original response to FOI requests received during 2020-2021), which represents 2% of the total requests received. A breakdown of the relevant review data is contained in Figure 4:-



**Figure 1 – Summary of request for reviews**

- 3.17 7 reviews were processed outwith the statutory 20 working days deadline. It should be noted that the challenges presented by changes to legislation, working practices and the prioritisation of the Council’s response to Covid 19 also affected performance in this area.
- 3.18 During 2020-21, the Scottish Information Commissioner issued decisions on 5 appeals following reviews carried out during 2019-20. In each of the cases, the Council either released additional information during the course of the investigation or was not required to take any further action.
- 3.19 One appeal to the Scottish Information Commissioner was withdrawn by the applicant before a decision was reached. One appeal to the Scottish Information Commissioner is currently under investigation.

### **Surveillance & Interception of Communications**

- 3.20 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 (‘intercept’) about electronic communications.
- 3.21 Council officers have a duty to report on the use of these powers to the Council’s elected members.
- 3.22 During the year, no directed surveillance was authorised and no covert human intelligence sources were used.
- 3.23 During the year no electronic communications information was obtained.
- 3.24 The Council’s policy statement on the use of directed surveillance and the interception of communications is attached as Appendix 1.

#### 4. CONCLUSIONS AND RECOMMENDATIONS

- 4.1 The council's processes and procedures for handling information requests are adequate and effective in ensuring high levels of compliance and performance, despite the challenges faced during 2020-21.
- 4.2 The Council-wide response to Covid 19 continues to impact on Services' ability to respond to request for information within statutory timescales.
- 4.3 It is recommended that the Scrutiny Committee: -
- (i) Consider and comment on this report
  - (ii) Note the content of this report

#### Author(s)

Name	Designation	Contact Details
Jillian Walker	Data Protection Officer	01738 477933 Email: <a href="mailto:foi@pkc.gov.uk">foi@pkc.gov.uk</a>

#### Approved

Name	Designation	Date
Lisa Simpson	Head of Legal & Governance	12 August 2021

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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

<b>Strategic Implications</b>	<b>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

#### Community Plan / Single Outcome Agreement

1.1 Not applicable.

#### Corporate Plan

1.2 Not applicable.

### 2. Resource Implications

#### Financial

2.1 Not applicable.

#### Workforce

2.2 Not applicable.

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

2.3 The Head of Finance and Support Services, Housing and Community Care has been consulted and has indicated agreement with the 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

- 3.2 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 Part of the Governance framework.

#### Risk

- 3.5 Not applicable

### **4. Consultation**

#### Internal

- 4.1 None

#### External

- 4.2 None.

### **5. Communication**

- 5.1 None.

## **2. BACKGROUND PAPERS**

None.

## **3. APPENDICES**

- Appendix 1 - Policy Statement – Directed Surveillance and Interception of Communications