

**PERTH AND KINROSS COUNCIL**

**Scrutiny Committee**

**21 June 2017**

**FOI Performance Report 2016-17**

**Head of Legal & Governance Services**

**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 2016-17.

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.

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 2016-17, the Council received 1524 requests for information under the FOI(S)A 2002. This represents an increase of 7.6% from 2015-16 in line with the general trend as illustrated in Figure 1 below

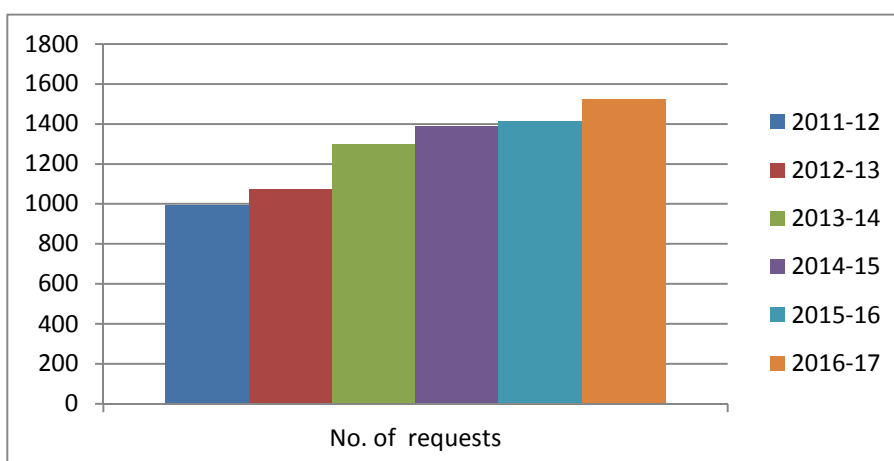


Figure 1

2.2 Of the 1524 requests received: -

- 24 were subsequently rejected when clarification was not received from the applicant; and
- 14 were withdrawn by the applicant.

2.3 Of the 1486 information requests processed, 179 of those 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 2016-17 broken down by month.

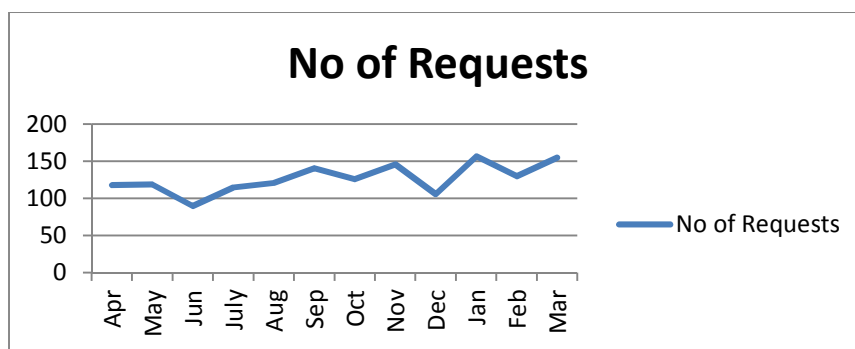


Figure 2

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 37% of the overall total of requests received. A breakdown is illustrated at Figure 3 below:

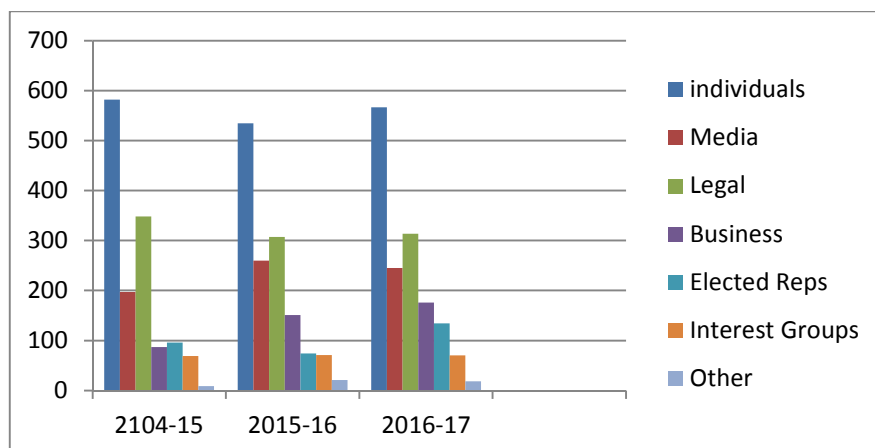


Figure 3

2.5 In the course of the year, the Council may receive several requests from the same requester. During the year 2016-17 requests were received from 866 different requesters. The number of requests made are broken down as follows :-

- 670 requesters made a single information access request accounting for 670 requests
  - 181 requesters (making <10 requests each) accounted for 538 requests
  - 4 individuals accounted for 54 requests
  - 8 media organisations accounted for 125 requests
  - 3 businesses accounted for 57 requests
  - 1 legal firm accounted for 18 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 1486 valid requests made, the processing time was as follows:

≤ 20 working days	21-25 working days	26-30 working days	> 30 working days
1406 (95%)	46 (3%)	24 (1.5%)	10 (0.5%)

- 3.2 The figure for completion within the statutory timescale is in line with 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 1486 valid requests processed: -
- 648 requests (44%) were satisfied in full
  - 609 requests (41%) were satisfied in part
  - 229 requests (15%) resulted in no information being issued
- 3.5 66 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 21 requests to review its decision (complaints about the initial response), which represents 1.4% of the total requests made. One request for review was subsequently withdrawn by the requestor. A breakdown of the relevant review data is contained in Figure 4

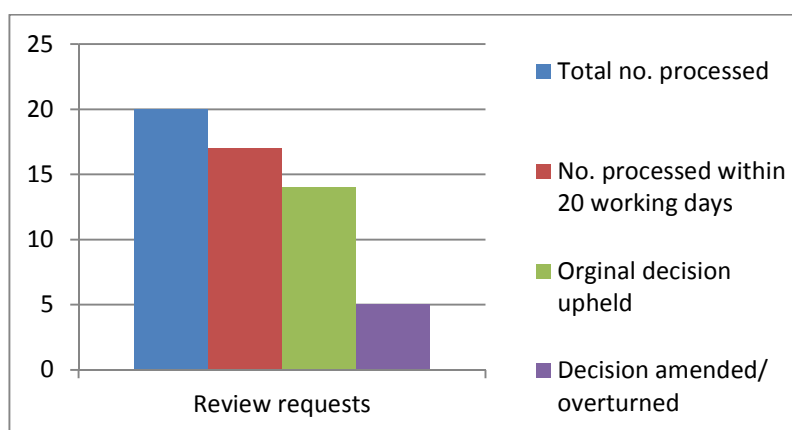


Figure 4

- 4.2 Of the 20 review decisions, 5 were subsequently appealed to the Scottish Information Commissioner during 2016-17.
- 1 appeal was withdrawn following the disclosure of additional information
  - 2 appeals were partially upheld and ordered the disclosure of some information
  - 1 appeal was overturned but with observations made about the Council's handling of the request.
  - 1 appeal is still the subject of investigation by the Commissioner.

## 5 ISSUES /OBSERVATIONS

- 5.1 The number of requests in 2016-17 increased (7.6%) from the preceding year which is in line with the trend in recent years.
- 5.2 Going forward, if the current trend continues in respect of increasing numbers of requests, the target of 95% for responding to FOI(S)A within the statutory timescale will likely become difficult to maintain. 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 2016 for local authorities ranks the Council 2nd in terms of the percentage of responses issued on time.
- 5.5 A review of common requests was again undertaken to identify possible subjects for the proactive publication of information with a view to reducing the number of requests in those areas. Very few areas were identified where this would be useful and possible without generating additional work, but this continues to be monitored by the FOI team and is part of ongoing work in conjunction with the Council's Open Data project.

## **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. At this stage therefore we cannot provide information regarding trends in respect of these requests.
- 6.2 During the year the FOI team received 102 subject access requests. Of these:
- 13 did not provide the necessary information when requested
  - 3 were withdrawn.
- 6.3 Of the remaining 86 requests :-
- 14 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 86 requests that were processed 61 (71%) 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 25 hours to process, with a maximum of 60 hours recorded for a single request. The overall average time to process a request in the year was 8 hours.
- 6.6 There were no major data breaches recorded during the year.
- 6.7 The UK Information Commissioner contacted the Council once during the year in relation to a complaint by a member of the public, but concluded that that it was likely that the Council had complied with the DPA and no further action was required..

- 6.8 Work is in progress for the implementation of the General Data Protection Regulation in May 2018. This is a significant undertaking and will be the subject of a separate report to the Council in due course.

## **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 ('intercept') about 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, there was one directed surveillance authorised in relation to a criminal investigation conducted by Trading Standards; no covert human intelligence sources were used.
- 7.4 During the year no electronic communications information was obtained.
- 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 the 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 very good and on target for 2016-17;
  - (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 policy on directed surveillance and interception of communications.

### **Author(s)**

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**Approved**

<b>Name</b>	<b>Designation</b>	<b>Date</b>
Jim Valentine	Depute Chief Executive	9 June 2017

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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** - N/A

2. **Resource Implications** - N/A

3. **Assessments**

### Equality Impact Assessment

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

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 - N/A

Legal and Governance - N/A

Risk - N/A

4. **Consultation** - None

5. **Communication** - None

**2. BACKGROUND PAPERS**

None

**3. APPENDICES**

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

## **The Regulation of Investigatory Powers (Scotland) Act 2000**

### **The use of powers to conduct directed surveillance and interception of communications**

#### **Policy Statement**

The Regulation of Investigatory Powers (Scotland) Act gives powers to Local Authorities to undertake directed surveillance and to utilise covert human intelligence sources in prescribed circumstances

In prescribed circumstances the Council also has powers under the Regulation of Investigatory Powers Act to obtain information ('intercept') about electronic communications.

Where grounds to exercise such powers are established, the Council will only undertake directed surveillance or the interception of communications when no other reasonable means are available to obtain the necessary information, and then only with the prior approval of the Head of Legal and Governance Services and in accordance with statutory guidance .