

Report of the Deputy Chief Executive and Director of Customer and Corporate Services

Information Governance and Complaints

1. Summary

1.1 This report provides Members with updates in respect of:

- Information governance
- ICO decision notices
- Use of FOI Act exemptions including section 14
- Personal data breach
- LGSCO Complaints

2. Information Governance Performance

2.1 The Council publishes performance data on timeliness for responding to requests made under Freedom of Information Act (FOI), Environmental Information Regulations (EIR) and Data Protection Act subject access to records requests (SARs), via the York Open Data platform via the below link. The current performance information for the last two full quarters (April to September 2018) are shown in full at Annex 1. This includes the performance information for the same reporting period in 2017 for comparison and highlighted are the figures which may be of most interest.

<https://data.yorkopendata.org/group/freedom-of-information>

2.2 The Council's performance for responding in time to both FOI and EIR enquiries continues to exceed the 90% target, which the ICO sets as an indicator for those authorities which may require attention. This is despite an increase in the volume of both FOI and EIR requests received.

2.3 In response to requests from the Committee for benchmarking information with other local authorities, I have been able to get via WYLaw (a collaborative group of York and the five West Yorkshire legal teams who work together to share knowledge and good practice, provide mutual support and undertake collaborative procurements) figures for numbers of requests received. This is shown in the table below. I will continue to look for additional benchmarking information and update committee through my next report.

WYLaw - 1st April 2017 - 31st March 2018

	FOI	EIR
BRADFORD	1503	226
CALDERDALE	1267	43
KIRKLEES	1263	250
LEEDS	2009* est:1507/502	
WAKEFIELD	1349	17
YORK	1290	562
WYCA	77	18

* Leeds - We do not separate FOI/EIR requests - estimated split 75% FOI/25% EIR

3. ICO decision notices

3.1 If someone is unhappy with the response they receive in relation to an FOI or EIR request there is an opportunity to seek an internal review and then to complain to the ICO. The ICO publishes their decision notices and these are all available at

<http://search.ico.org.uk/ico/search/decisionnotice>

3.2 Further to committee's request that the details and summaries from the ICO decision notices are provided and the discussion

around this at the last meeting, these are shown in Annex 2. These are from 14 August to 1 November 2018 as the ones prior to these dates are from December 2017.

- 3.3 The committee's attention is drawn to the most recent ICO decision notice - FS50754577 – at paragraph 2:

“The Commissioner’s decision is that the request is vexatious and that it would have been unreasonable in the circumstances for City of York Council (“the Council”) to have been required to issue a fresh refusal notice. The Council is therefore entitled to rely on Section 17(6) of the FOIA in order not to issue a fresh refusal notice.”

And also at paragraph 25:

“Furthermore, the Commissioner considers that it is unlikely that complying with this request (or even issuing a fresh refusal notice) would do anything to stem the stream of requests from this particular requestor (and she notes that the requestor had submitted at least 17 requests between the previous decision notice and the current request). The Commissioner also notes that the Council is still making efforts to comply with requests which it recognises as being for information with a strong public interest.”

See Annex 4 for the full decision notice.

4. Use of FOI Act exemptions including section 14

- 4.1 The council does not reject or ignore any FOI requests or enquiries, as we will respond with one of the following responses

- that the information is not held by the council
- the information requested
- none of the information requested with an explanation of what exemption(s) we have applied including public interest test if applicable
- part of the information requested and an explanation of what exemption(s) we have applied for the information we have not supplied, including public interest test if applicable

- 4.2 Exemptions are set out in the FOI Act as sections 21 to 44 but some common examples are however some of the more common ones are other individual(s) personal data, prejudicing someone's commercial interests, endangering health and safety, prejudicing legal professional advice
- 4.3 For 1 April 2017 to 31 March 2018, from a total of 1852 requests, 165 were exempted in full (8.9% of the total received) and a further 79 were partially exempt (4.3% of the total received). This means that we provided all or part of the information requested in 91.1% of requests.
- 4.4 For period 1 April 2018 to 30 September 2018 (which is the last full reporting period for this financial year), from a total of 1057 requests, 97 were exempted in full (9.2% of the total received) and a further 20 were partially exempt (1.9% of the total received). This means that for April to September we provided all or part of the information requested in 90.8% of requests.

	April 17 to March 18	April 18 to Sept 18
total requests received	1852	1057
exempt in full	165	97
exempt in part	79	20
% exempt in full	8.9%	9.2%
% exempt in part	4.3%	1.9%
% answered in full	86.8%	88.9%

- 4.5 When considering the use of section 14 exemption, it is the FOI request that is considered vexatious, not the requester and if after refusing a request as vexatious, we receive a subsequent request from the same person, and we can refuse it, only if it also meets the criteria for being vexatious.
- 4.6 As per the ICO's guidance on the section 14 exemption, we should be prepared to find a request vexatious in legitimate circumstances and exercise care when we do refuse a request in this way.

- 4.7 As a general rule, we do not take into account the identity or intentions of a requester when considering whether to comply with a FOI request. This is because we cannot refuse a request simply because it does not seem to be of much value. However, a minority of requesters may sometimes abuse their rights under the FOI Act, which can threaten to undermine the credibility of the freedom of information system and divert resources away from more deserving requests and other council business.
- 4.8 If we do refuse to comply with a request that is vexatious, we do not have to comply with any part of it, or even confirm or deny whether we hold information. When assessing whether a request is vexatious, the FOI Act permits us to take into account the context and history of a request, including the identity of the requester and our previous contact with them, including where we have responded to the same or similar request previously and advised the requester we will not respond further. The decision to refuse a request often follows a long series of requests and correspondence.
- 4.9 When we do this we follow the ICO's guidance including asking ourselves whether the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation.

5. Personal data breach

- 5.1 On 1 November 2018, a third party contacted the council and told us they had found a way to access personal data of those people who use the One Planet York app. We cannot say for certain what the third party responsible has done with the data. They notified the Council of the vulnerability and did not request anything in return which suggests they are someone who looks for data vulnerabilities in the public interest. The data accessed included personal information such as name, address, postcode, email, phone and encrypted password.
- 5.2 The One Planet York is isolated from other council systems and therefore no access to other records held through happened as a result of this breach.
- 5.3 Both the Information Commissioner's Office (ICO) and the local cyber crime unit at North Yorkshire Police were notified of this

breach and we continue to co-operate with their investigations. This is alongside our own internal investigation as part of the breach management procedures and when these are completed, an update will be provided to Committee.

- 5.4 All registered users of the app were contacted with details of the breach, how it happened, what we doing about it along with advice and guidance for any concerns they may have.

6. Complaints

- 6.1 The cases where the Local Government and Social Care Ombudsman (LGSCO) made a decision between April and November 2018 are shown at Annex 3.
- 6.2 The annex details the decisions and actions recommended by the LGSCO. However there were also 16 cases where the LGSCO determined they would not investigate and they closed the cases after their initial enquiries.
- 6.3 The public report case was taken to Executive on 29 November 2018
- 6.4 The information governance and complaint team continue to work with the Corporate Management Team, Directorate Management Teams as well as with individual service areas to identify areas for improvement or shared learning opportunities.

7. Consultation

Not relevant for the purpose of this report.

8. Options

Not relevant for the purpose of this report.

9. Analysis

Not relevant for the purpose of this report.

10. Council Plan

10.1 The council's information governance framework offers assurance to its customers, employees, contractors, partners and other stakeholders that all information, including confidential and personal information, is dealt with in accordance with legislation and regulations and its confidentiality, integrity and availability is appropriately protected.

11. Implications

Relevant implications are set out in the body of the report

12. Risk Management

The council may face financial and reputational risks if the information it holds is not managed and protected effectively. For example, the ICO can currently impose civil monetary penalties up to 20million euros for serious data security breaches The failure to identify and manage information risks may diminish the council's overall effectiveness. Individual(s) may be at risk of committing criminal offences.

13. Recommendations

Members are asked:

- (i) To note the sustained performance levels.
- (ii) To note the details contained in this report.

Reason: To keep Members updated.

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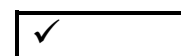
Report
Approved



Date 27 Nov 2018

Wards Affected: List wards or tick box to indicate all

All



For further information please contact the author of the report

Annexes

Annex 1 – Information Governance performance

Annex 2 – ICO decision notices summary

Annex 3 – LGSCO decision summaries

Annex 4 – ICO full decision notice

Background Information

Not applicable