

## AGENDA SUPPLEMENT

### Audit and Governance Committee

**To:** Councillors Pavlovic (Chair), Daubeney, Fisher (Vice-Chair), Lomas, Mason, Wann and Webb

**Date:** Wednesday, 17 February 2021

**Time:** 5.30 pm

**Venue:** Remote Meeting

The Agenda for the above meeting was published on **9 February 2021**. The attached additional documents are now available for the following agenda item:

**6. Corporate Governance Team Report (Pages 1 - 16)**  
**(Information Governance and Complaints)**

This report provides updates in respect of: information governance performance; Information Commissioners Office (ICO) decision notices; publishing of the disclosure log; Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman cases; and other updates from the information governance and complaints team.

This agenda supplement was published on **12 February 2021**.

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**Audit and Governance Committee****17 February 2021**

Report of the Director of Governance

**Information Governance and Complaints****1. Summary**

1.1 This report provides Members with updates in respect of:

- Information governance performance
- Information Commissioners Office (ICO) decision notices from last report November 2020 to date of this report
- Publishing of disclosure log
- Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman cases from last report November 2020 to date of this report
- Other updates from information governance and complaints team

**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.

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

2.2 At Committee in November 2020, we provided the reports in a graphical format and from the further comments provided, I have amended these into another style for further comments and feedback and they are at Annex 1.

2.3 There has been an increase to 555 in this reporting quarter (October to December 2020) for the combined number of FOI and EIR requests received, compared to 486 in July September 2020.

It is also an increase on the number we received last year between October to December 2019, which was 473 (not on Annex 1).

- 2.4 Given the impacts of covid 19 on resources and capacity as well as the increase in requests received, we continue to maintain an over 80% performance for responses being provided within the timescales set out in the legislation. For October to December 2020, this was 81.68% and is only a small decrease from the same months in 2019 (not on Annex 1), of 84.84%.
- 2.5 Since the last report to Committee, work is still not yet complete across different information governance networks and groups in the Yorkshire and Humberside region regarding sharing of performance information that is informative and useful. I will continue to update the Committee on the progress of the regional work when available.

### **3. ICO decision notices**

- 3.1 If someone is unhappy with the response they receive in relation to an FOI, EIR or SAR request, or if they want to raise a complaint under data protection legislation in relation to the rights of individuals, there is an opportunity to seek an internal review and then to complain to the ICO. The ICO publishes their decision notices and their full reports are available on the following link [| Search | ICO](#)
- 3.2 Since the last report in November, the ICO has published one decision notice for the council and the summary is available at Annex 2.
- 3.3 This decision notice upheld the complaint and we have complied with the ICO's findings. We will ensure that the learning from this decision notice is applied to other relevant requests for information.

### **4. Publishing the disclosure log**

- 4.1 We continue to monitor the published 'disclosure log' online in 'plain text' which meets the accessibility standards and to understand customer appetite and demand. The disclosure log complements the existing online form, which allows customers an

easy online method to request information. I will provide an update to Committee later this year.

## **5. Complaints**

- 5.1 Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman decisions and recommended actions, from the last report to Committee in November, to the date of this report are shown at Annex 3.
- 5.2 There was one case determined by the Housing Ombudsman and six cases determined by the LGSCO in the time period of 7<sup>th</sup> November 2020 (date previous report to Committee was prepared) to date of this report.
- 5.3 Of these seven cases, two were closed after the LGSCO's initial enquiries and five were upheld with recommendations and/or remedies. These are shown in Annex 3 under the actions column. It is worth noting that in one upheld case the Ombudsman noted the council had already put in place the remedies.
- 5.4 The 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.
- 5.5 We are progressing with the implementation of the new corporate toolkit for the 4Cs – complaints, concerns, comments and compliments following this Committee's unanimous support in November. We have also now been to the Customer and Corporate Services Scrutiny Management Committee on 8<sup>th</sup> February 2021 who also supported the move to the new corporate toolkit.
- 5.6 I will provide a report to both these Committees later this year on the performance of the new corporate toolkit.

## **6. Other updates**

- 6.1 The council's Senior Information Risk Owner (SIRO) is now Janie Berry. This role comes from Health and Social Care (Information Governance) measures that were identified to strengthen information assurance controls for information assets, and applies to all organisations completing the NHS Data Security and Protection Toolkit (DSPT) and processing NHS patient information. This role works closely with other roles in the council e.g. Data Protection Officer (DPO), Caldicott Guardian (CG) and Information Asset Owner(s) and we are now working on an action and implementation plan, to ensure the SIRO can
- Lead & promote a culture that values, protects and uses information for the benefit of customers and staff
  - Advise the council on information risk issues
- 6.2 This will include regular reporting to ensure CMT are adequately briefed on information risk issues. This SIRO report will be included as part of this report to Committee on at least an annual basis.
- 6.3 Following on from the support and approval to implement the corporate toolkit for complaints, concerns, comments and compliments (the 4Cs) from April, previous comments and feedback on information governance performance reports and new requirements for a SIRO report, we are now working on what our performance report needs to contain and look like. This template will be provided in the next report to Committee in July, and then from September onwards, Committee will receive the completed template for the relevant time period. This gives us the opportunity to seek your comments on the new template as well as time to collate and analyse the first quarter information.
- 6.4 We are continuing to work on embedding good records management across the council and have recently updated our file naming strategy as well as how to classify information which supports the wider work on Microsoft 365 rollout. We also meet regularly with York Explore /Archives so that we can work together better in the areas of transferring records to them as well as digital records continuity and preservation.

- 6.5 As a public authority able to use investigatory powers, (Investigatory Powers Act 2016 but sometimes still referred to as RIPA from the Regulation of Investigatory Powers Act 2000) we are required to submit annual statistics on our level of use of these powers, to the Investigatory Powers Commissioner (IPCO). This was completed and returned for the end of January 2021 deadline and go into the IPCO's next Annual Report to Parliament.
- 6.6 There are changes to this IPCO annual return required ahead of the next submission which means we need to include the statutory purpose or grounds for each use of investigatory powers we are given. This will be included in the work that is underway with teams across the council, on the processes and procedures in place for managing and monitoring both RIPA and Covert Human Intelligence Source (CHIS) requests.
- 6.7 We will launch soon an online tool to support the completion of data protection impact assessments (DPIAs). This will support our ability to evidence where and how we have integrated data protection into our processing activities and business practices, and so demonstrate "*data protection by design and default*". It will enable more robust and timely risk assessments to be undertaken and a more effective way to report on risks and ensure appropriate actions are taken to mitigate these risks.
- 6.8 The complaints, feedback and information governance team have recently updated their name to reflect their corporate role and are now the Corporate Governance Team and so, we are asking Committee if we can also change the title of this regular report to Corporate Governance Report

**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. Legal Implications**

The Council has a duty to comply with the various aspects of information governance related legislation.

## **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 and damage its reputation. Individual(s) may be at risk of committing criminal offences.

## **13. Recommendations**

Members are asked:

- To note the details contained in this report.
- To agree the change of title for this report.

### Contact Details

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Chief Officer Responsible  
for the report: Janie Berry,  
Director of Governance



Report  
Approved

Date 12 February  
2021

**Wards Affected:** List wards or tick box to indicate all

All

For further information please contact the author of the report

**Annexes**

Annex 1 – FOI/EIR/SAR performance

Annex 2 – ICO decision notices summaries

Annex 3 – Ombudsmen cases

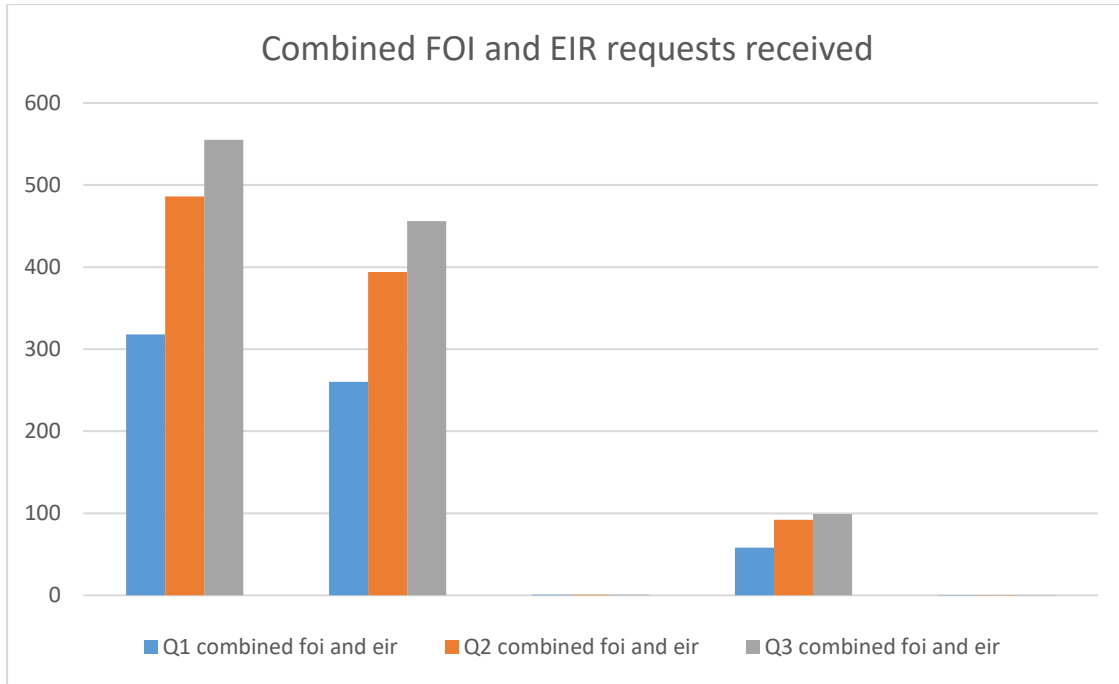
**Background Information**

Not applicable

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| <b>Annex 1</b>                  |                       |                         |                  |                             |                      |
|---------------------------------|-----------------------|-------------------------|------------------|-----------------------------|----------------------|
| <b>April 2020 to March 2021</b> |                       |                         |                  |                             |                      |
| <b>Q1 - April to June</b>       |                       |                         |                  |                             |                      |
|                                 | <b>total received</b> | <b>how many in time</b> | <b>% in time</b> | <b>how many out of time</b> | <b>% out of time</b> |
| <b>foi</b>                      | 219                   | 178                     | 81.28%           | 41                          | 18.72%               |
| <b>eir</b>                      | 99                    | 82                      | 82.83%           | 17                          | 17.17%               |
| <b>combined foi and eir</b>     | 318                   | 260                     | 81.76%           | 58                          | 18.24%               |
| <b>sar</b>                      | 41                    | 26                      | 63.41%           | 15                          | 36.59%               |
| <b>Q2 - July to September</b>   |                       |                         |                  |                             |                      |
|                                 | <b>total received</b> | <b>how many in time</b> | <b>% in time</b> | <b>how many out of time</b> | <b>% out of time</b> |
| <b>foi</b>                      | 296                   | 225                     | 76.01%           | 71                          | 23.99%               |
| <b>eir</b>                      | 190                   | 169                     | 88.95%           | 21                          | 11.05%               |
| <b>combined foi and eir</b>     | 486                   | 394                     | 81.34%           | 92                          | 18.66%               |
| <b>sar</b>                      | 34                    | 27                      | 79.41%           | 7                           | 20.59%               |
| <b>Q3 - October to December</b> |                       |                         |                  |                             |                      |
|                                 | <b>total received</b> | <b>how many in time</b> | <b>% in time</b> | <b>how many out of time</b> | <b>% out of time</b> |
| <b>foi</b>                      | 344                   | 287                     | 83.43%           | 57                          | 16.57%               |
| <b>eir</b>                      | 211                   | 169                     | 80.09%           | 42                          | 19.91%               |
| <b>combined foi and eir</b>     | 555                   | 456                     | 81.68%           | 99                          | 18.32%               |
| <b>sar</b>                      | 55                    | 40                      | 72.73%           | 15                          | 27.27%               |

|    |                      | <b>Total received</b> | <b>how many in time</b> | <b>% in time</b> | <b>How many out of time</b> | <b>% out of time</b> |
|----|----------------------|-----------------------|-------------------------|------------------|-----------------------------|----------------------|
| Q1 | combined foi and eir | 318                   | 260                     | 81.76%           | 58                          | 18.24%               |
| Q2 | combined foi and eir | 486                   | 394                     | 81.34%           | 92                          | 18.66%               |
| Q3 | combined foi and eir | 555                   | 456                     | 81.68%           | 99                          | 18.32%               |



**ICO published decision notices for City Of York Council****30 Oct 2020, Local government**

The complainant made a number of requests to the City of York Council (“the Council”) for information regarding the creation of a road. The Council did not respond to the complainant’s first request and refused the third request under regulation 12(4)(b) of the EIR (manifestly unreasonable). The Commissioner’s decision is that the Council has failed to demonstrate that the exception is engaged and is therefore not entitled to rely on regulation 12(4)(b) to refuse Request 3. She also finds that the Council has not complied with its obligations under regulation 5(2) of the EIR for Requests 1 and 2. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation. • Issue a response to Request 1. • Issue a response to part 1 of Request 2. • Issue a fresh response to Request 3 which does not rely on regulation 12(4)(b) of the EIR. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

**EIR 5(2): Complaint upheld EIR 12(4)(b): Complaint upheld**

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| LGSCO/<br>Housing<br>Ref | Directorate | Service<br>Area    | Summary of Final<br>Decision   | Actions  | Date of final<br>decision | Actions<br>completed<br>date | Actions<br>completed<br>in time Y/N | Decision                  |
|--------------------------|-------------|--------------------|--|--|---------------------------|------------------------------|-------------------------------------|---------------------------|
| 202003605                | HHASC       | Housing<br>repairs | The complaint is in response to the resident's request for replacement of his windows, and the landlord's communication. The Ombudsman find there is no fault in the decision not to replace the windows. However, fault has been found with the communication between the service and the customer. | Pay £75. Review Communications. Review complaints procedure. | 02/12/2020                | 31/12/2020                   | Y                                   | Upheld: Malad & Injustice |

|          |       |                   |   |  |            |            |   |                                      |
|----------|-------|-------------------|---|--|------------|------------|---|--------------------------------------|
| 19012757 | HHASC | Adult Social Care | <p>Mr C complained to us about the way in which the Council carried out his financial assessment. He said the Council failed to make reasonable adjustments during the process and failed to properly deal with some of his disability related expenses (DREs). Mr C says this made him distressed and resulted in an assessed contribution he cannot afford. The Ombudsman found fault with regards to the Council's actions, which caused an injustice. The Council has agreed to reconsider part of his expenses and share the lessons learned with its staff.</p> | <ul style="list-style-type: none"> <li>• Provide an apology to Mr C for the faults identified above and the distress these have cause him. It should also pay him £200.</li> <li>• Look into Mr C's food wastage to decide if this can be reduced and/or whether it should allow a certain amount as DRE. It should explain its decision to Mr C and backdate the reduced contribution (if any) this may result in.</li> <li>• Review if it should treat some of Mr C's transport costs as DRE by coming to a view about: <ol style="list-style-type: none"> <li>1. The extent to which he needs to use a taxi sometimes.</li> <li>2. What his average travel costs are and to what extend this is covered by his PIP mobility.</li> <li>3. To what extent visiting family and friends by train is vital to meet his need for maintaining relationships and if Mr C can still afford to pay for these train journeys in light of his weekly contribution.</li> <li>4. The additional costs of Mr C's diet, by providing support to Mr C to obtain the required financial information.</li> </ol> </li> <li>• It should explain its decision to Mr C with regards to the above, and backdate any reduced contribution this may result in.</li> <li>• Once it has completed the above, and made any changes as needed to the contribution, it should come to a decision whether the final assessed weekly contribution is affordable for Mr C and explain this to him.</li> <li>• Share the lessons learned above with the Council's teams responsible for carrying out financial assessments.</li> <li>• Remind its social care staff of the requirement to raise and discuss any special communication needs at the first opportunity and record, log in system and flag communication needs in such a way that they are sufficiently clear and comprehensive for staff of all departments who have access to this.</li> <li>• Ask its social care staff to review whether a flag currently exists for all their clients who may need one, and if the information included is sufficiently clear and comprehensive.</li> </ul> | 01/12/2020 | 21/01/2021 | <p>N - Lack of engagement by customer - Ombudsman confirmed Remedy complete and satis</p> | <p>Upheld: Malad &amp; Injustice</p> |
|----------|-------|-------------------|---|--|------------|------------|---|--------------------------------------|



|          |       |                   |  |   |            |            |                                      |  |
|----------|-------|-------------------|--|---|------------|------------|--------------------------------------|--|
| 20000942 | EAP   | Parking           | Mr X complains the Council wrongly pursued enforcement action against him regarding a Penalty Charge Notice. Mr X also complains about delays in the Council's handling of the matter. He says the Council's actions have caused him unnecessary distress and upset. He also says he has spent a considerable amount of time and trouble in dealing with his complaint. We find fault by the Council in this matter for which the Council has agreed a remedy. | pay 100 and remind officers of procedures | 26/11/2020 | 22/1/20021 | N- due to staff covering other areas | Upheld: Malad & Injustice                          |
| 19021254 | EAP   | Planning          | Mr X complained about the Council's decision to approve an application on land behind his former home. We ended our investigation because we are unlikely to recommend a remedy for Mr X.  | NA  | 15/01/2021 |            |                                      | Closed after initial enquiries - No further action |
| 19009453 | HHASC | Adult Social Care | Ms C complains her mother was taken into hospital with hypothermia, and about the time it took to move her mother back to her own home again, after she had been discharged from hospital. We found the Council should have ensured that, when it became aware of a heating problem at the property, that appropriate steps were taken to resolve this immediately. The Council has agreed to apologise for this.  | Issue an apology                          | 07/12/2020 | 31/12/2020 | Y                                    | Upheld: Malad, No Injustice                        |

|          |     |                       |   |   |            |    |    |   |
|----------|-----|-----------------------|---|---|------------|----|----|---|
| 20008123 | EAP | Planning              | Mr X complains about the Council's decision not to take enforcement action against a neighbour's extension. We will not investigate this complaint because there is no evidence of fault by the Council.  | na  | 23/12/2020 | na | na | Closed after initial enquiries - No further action                            |
| 20005860 | CEC | Childrens Social care | The Council was at fault for its record-keeping after receiving information about the welfare of Mr B's son. Because of this, it is unable to provide evidence that it properly dealt with the information. The Council has apologised to Mr B and has offered £500 to recognise his, and his son's, distress. This is a suitable remedy. | None as council already remedied – we will follow up with the customer to progress these. | 05/02/2021 | na | na | Upheld: Malad and injustice – no further action – as council already remedied |