

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO POLICY AND FINANCE COMMITTEE

Agenda Item No.

meeting date: 27 SEPTEMBER 2011
title: FREEDOM OF INFORMATION
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1 PURPOSE

1.1 To inform Members about the Council's duties under the Freedom of Information Act 2000 and connected legislation and to inform them about the resources required to meet the Council's obligations.

1.2 Relevance to the Council's ambitions and priorities

- Council's Ambitions – In order to be a well-managed Council it is important for Members to understand the duties of the Council and the resources required to meet these.
- Community Objectives – as above.
- Corporate Priorities – as above.
- Other considerations – The resources required to meet the Council's obligations have been increasing since the Act's implementation in 2005.

2 THE FREEDOM OF INFORMATION ACT 2000

2.1 The Freedom of Information Act 2000 ("the FOIA") provides for a general right of access to information held by public authorities or by those providing services to public authorities. The right of access provisions came into force on 1 January 2005. The FOIA also requires each public authority to adopt a publication scheme. The requirement for the Council to adopt a publication scheme came into force on 28 February 2003.

2.2 The FOIA was intended to increase the openness and transparency of the public sector, transforming the default setting from "this should be kept quiet unless" to "this should be published unless". It was hoped that this, in turn, would enable the public to better understand public authorities' decisions and ensure that services provided by the public sector were seen to be efficiently and properly delivered.

2.3 A request for information under the FOIA is any request which is: in writing (including email and fax); received in legible form; capable of being used for subsequent reference; states the name of the applicant and an address for correspondence; and describes the information requested. What will be deemed a valid request is therefore broad. Its breadth is ever-increasing. For example, the ICO has recently confirmed that requests submitted via Twitter could be valid requests in freedom of information terms and authorities that have Twitter accounts should plan for the possibility of receiving them.

- 2.4 Written requests sent by members of the public to council officers often are, and should be treated as, freedom of information requests. However, only requests channelled into the legal department (usually because they mention the Act, come via the contact centre, or because officers have concerns/queries about how to respond to them) are “counted” as formal FOIA requests in this report. Provided that requests are dealt with by the Council’s officers this appears to be a sensible approach. We do not have the resources to channel any and all correspondence through the legal department, even if it were considered necessary to do so.
- 2.5 Members should note that the FOIA is “applicant blind”. It is irrelevant why a given individual wants information, or for what s/he wants it. As explained below, the majority of formal FOIA requests received by this Council come from journalists or commercial entities on “fishing expeditions”.
- 2.6 Subject to the exemptions in the FOIA when any person (“the applicant”) makes a request to this Council for information the Council must: (a) inform the applicant whether or not the Council holds that information (this is sometimes referred to as “the duty to confirm or deny”); and (b) if the Council does hold the information, communicate that information to the applicant (this is sometimes known as “the duty to communicate the information”). If and when the Council communicates the requested information to the applicant it is deemed to have satisfied these requirements.
- 2.7 Information (which means information recorded in any form) will be held by the Council if: (a) it is held by the Council, otherwise than on behalf of another person; and (b) it is held by another person on behalf of the Council (i.e. the definition is wider than mere possession). Applicants might also express a preference for the means of communication of the information (for example, to receive a copy, to inspect the document themselves, to receive a summary of it).
- 2.8 The Council must comply with an information request quickly and in any event not later than twenty working days following the date of receipt of the request except in limited prescribed circumstances.
- 2.9 The Council has a fees policy for dealing with FOIA requests which is available on the information legislation pages of the Council’s website. The fees policy is based upon the legislative provisions on permissible charges for requests.
- 2.10 Where the Council believes that an exemption under the FOIA might apply, it must give the applicant a notice stating that an exemption might apply and explaining why this is the case. If the Council concludes that a qualified exemption applies because the public interest in non-disclosure outweighs the public interest in disclosure, it must give the applicant a reason for arriving at that decision. These are technical decisions and knowledge of the exemptions and the interplay between them is required.
- 2.11 Refusal notices can be challenged by applicants. The Information Commissioner’s Office (“the ICO”) deals with such challenges. Decisions of the ICO are regularly published and take on a “precedent” value. Keeping up with the latest ICO interpretation of an exemption, especially given the interplay between the various exemptions and other legislative provisions, is a full time job. It is perhaps partly for this reason (coupled with the ever-increasing number and complexity of requests) that some councils have appointed dedicated information officers.
- 2.12 The FOIA is only one of a group of legislative provisions that deal with the public’s rights to obtain information held by public authorities. Others, such as the

Environmental Information Regulations 2004, the Data Protection Act 1998 and the Reuse of Public Sector Information Regulations 2005 (which, as its name suggests deals with re-use of information supplied, rather than its initial supply), each provide unique rights, exemptions and duties. Complying with each of these, and understanding the overlap between them, is complex and requires adequate resources.

- 2.13 As the body of “case law” builds up, and following the change of government, it is becoming increasingly apparent that the current policy drive favours greater, rather than reduced, use of these types of regimes and that the public (which includes journalists, business, and those with an axe to grind) is ever more aware of their “right to know”.

3 PRACTICAL IMPLICATIONS

- 3.1 In terms of fees charged, the vast majority of freedom of information requests dealt with by this Council are dealt with for free (i.e. there is no charge to the applicant). This is despite the fact that some requests take a considerable amount of time to deal with. If requests take less than 18 hours’ of officer’s time, the Council cannot (legally) charge for that officer’s time. Needless to say, 6 or 7 hours (or 16 or 17 hours) of an officer’s time is a considerable cost which therefore has to be absorbed by the Council, (especially in these times of financial constraint).
- 3.2 There are some things which the Council could charge for under the legislation (e.g. putting the information in any preferred format that the applicant has requested such as on a DVD), printing and photocopying (maximum fee of 10p per sheet); and postage. However, under the fees policy this Committee has previously decided that the Council will waive any fees less than £5.
- 3.3 I would estimate that at least 90% of all requests are dealt with electronically. Thus, even without the £5 *de minimus*, we would still be obliged to deal with the vast majority of requests for free. In the case of written (postal) requests, to spend postage advising an applicant that they must pay us for postage in order for us to answer their request (when, with the initial letter, we could have provided them with the answer) would seem to breach the Code of Practice’s guidance.
- 3.4 Time spent advising applicants that we do not hold the information that has been requested of us (for example, because the County Council deals with that area), or that the information is available on our website (in which case the exemption in section 21 of the Act would be applicable), takes time and resources. We must do this, in order to comply with the Act’s requirements. However, it is another cost which is absorbed by the Council (dealt with by the legal department).
- 3.5 Often the Council holds information in a form that cannot simply be “passed on” to members of the public. This is because the Council also has to be mindful of other legislation (such as provisions under the Data Protection Act which might prohibit the disclosure of certain personal data, or the possibility of an action for breach of confidence, should we disclose information that was imparted to the Council in confidence). In such circumstances, Council officers have to produce “redacted” versions of the information (e.g. a copy of the list as requested by the applicant, but with all of the “offending” personal data removed from it). Once again, this takes time and resources and has to be undertaken with a degree of care. As all officers have a full workload, providing information to respond to freedom of information requests on top of this workload, and within a defined timeframe, sometimes causes disgruntlement.

3.6 As the tables below show, the number of requests received by the Council continues to rise.

3.7 In terms of how requests are dealt with, the situation has changed little since 2005 when the then Legal Services Director and his assistant co-ordinated the then small number of requests received by the Council. Thus:

- The Council's solicitor and the legal assistant receive requests, email these to the appropriate officers, then collate and send out the response using a pro forma. They keep a numbered and dated record of responses;
- Refusals notices are created by the Council's solicitor and the legal assistant where the client department has concerns or where they (legal) have concerns about the data requested/provided. Requests are only refused where the legal case supports this (i.e. there are sometimes debates between officers and the legal department, or repeated chasing, in order to obtain information);
- A system of channelling requests through designated officers (such as service managers) might be preferable, since, with the increasing number of requests and increasing work pressures in all areas, legal officers often find themselves drafting responses rather than simply collating them and "chasing" officers to provide information for responses;
- With increasing workloads and decreasing resources to deal with them it is possible that the Council will not meet the 20 working day time limit to respond in respect of all FOIA requests received;
- The IT department have similar resource constraints in that the role of data protection officer has historically been the role of an officer within their department;
- Some requests might be dealt with more efficiently if information was more readily available on the Council's website. However, this requires resources (and given the number of journalists who ask this Council about school provision or social services, it is apparent that making information available on the internet does not ensure that people would look at this before requesting the information via an FOIA request).

3.8 Whilst the Council's legal officers are doing their best to keep pace with the increasing number of FOIA requests and the case law arising from ICO decisions, it is becoming increasingly difficult for them to also do the additional "information" work which would be done by an information officer. Such tasks include providing advice on data protection issues and Subject Access Requests, updating the Council's publication scheme and setting out the fees for this, dealing with EIR requests (which cover a broad range of information), producing a licence regime under the Reuse of Public Sector Information Regulations 2005, and placing up-to-date information on the Council's website on all of these issues. Whilst these tasks are important, they must compete with other demands on the solicitor's time.

4 FOIA REQUESTS RECEIVED BY THE COUNCIL

4.1 Table One below gives an indication of how the volume of requests received by the Council has risen. Members should note that the numbers in the table are those formally recorded as being FOIA requests (i.e. requests received by the legal department via the contact centre etc.). As noted above, numerous other requests for information will have been received by individual officers and departments directly during these periods. Most will have been responded to without recourse to the FOIA. It is usually only when officers have a concern about whether they are able to

provide the information requested (in these “direct” requests) that they would refer the matter to the legal department for advice.

TABLE ONE: TOTAL REQUESTS	
Requests received 1 January 2005 – 31 March 2006 (3 months)	62
Requests received 1 April 2006 – 31 March 2007 (12 Months)	63
Requests received 1 April 2007 - 31 March 2008. (12 months)	86
Requests received 1 April 2008 - 31 March 2009. (12 Months)	172
Requests received 31 March 2009 – 30 September 2009 (6 months)	120
Requests received 1 October 2009 – 31 March 2010 (6 months)	144
Requests received 1 April 2010 – 31 September 2010 (6 months)	170
Requests received 1 October 2010 – 31 March 2011 (3.3 months)	171

- 4.2 Table Two below shows the types of requests received. Some types of requests are received repeatedly (from commercial organisations). The main ones are requests for deceased with no next known kin, and requests for rates information. We've received requests about tickets for the 2012 Olympics, employees based in Brussels and the costs of staff attending awards ceremonies.

REQUEST TYPE (15 April- 16 June 2011) – a 3 month snapshot (FOIAs 986-1070)	
Rates, council tax, empty properties	8
Parking/Fines	4
Employees/HR/Sickness, contact details etc	6
Referred to LCC (Trading Standards, education, Social Services)	16
Public Health Funerals	8
Waste	1
Planning	2
IT (including spending, website, equipment, data, licences)	5
Environmental health (including food premises, licences, infestations, fixed penalties, traveller sites)	
Charity – funding, cuts	
Council expenditure, budgets, expenses, credit cards (including amount spent on trips, attending awards ceremonies etc.)	11
Council property	4
Housing/tenants	3
Taxis and alcohol licences	3

Consultants/outsourcing/tenders	4
Other	5

4.3 As noted above, the FOIA is “applicant blind”, but Table Three table indicates who is making the most use of the FOIA’s provisions. Increasingly requests are received via the “whatdotheyknow” website.

NATURE OF APPLICANT (15 April- 16 June 2011) - a snapshot (FOIAs 986-1070)	
Journalist	20
Don't know (individual with personal address or made up address)- Note some of these may be journalists or act for companies	40
Company/ firm (including trade unions/charities/action groups)	26
Parliament	0 in this period
Solicitors	0 in this period

5. RISK ASSESSMENT

5.1 The approval of this report may have the following implications:

- Resources – Compliance with the FOIA is using more of the Council's legal resources.
- Technical, Environment and Legal – Compliance with the FOIA is a legal requirement.
- Political – As noted above, the FOIA is often used by individuals who have an axe to grind with the Council.
- Reputation – It is important that correct information is given out and that the full picture is disclosed.

6 RECOMMENDED THAT COMMITTEE

6.1 Note the contents of this report.

SOLICITOR

BACKGROUND PAPERS

- 1 The Council's webpages on information legislation:
http://www.ribblevalley.gov.uk/info/200220/data_protection_and_freedom_of_information
- 2 Information Commissioner's Office: <http://www.ico.gov.uk/>.

For further information please ask for Debbie Nuttall on extension 4403.