

## **Proposed Freedom of Information Requests Policy**

*Assistant Director:* Ian Clarke, Legal and Corporate Services  
*Service Manager:* Lynda Creek, Fraud and Data Manager  
*Lead Officers:* Lynda Creek, Fraud and Data Manager  
Zac Tredger, Fraud and Data Intern  
*Contact Details:* lynda.creek@southsomerset.gov.uk Tel: 01935 462204  
zac.tredger@southsomerset.gov.uk Tel: 01935 462205

### **Purpose of the Report**

The purpose of this report is to inform members of a proposed policy for the management of Freedom of Information Requests (FOIs) under the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR). The Policy seeks to redress the balance between the administrative burden and the mitigation of risks arising out of any potential non-compliance with these statutes.

### **Public Interest**

Proper compliance with freedom of information legislation builds trust between this Council and its community by enabling the people to engage more with what we do and why we do it, the press to better inform the electorate, and local businesses to acquire information to support enterprise and growth.

### **Recommendation**

That Audit Committee recommend approval of the Freedom of Information Requests Policy to District Executive.

### **Background**

The Environmental Information Regulations (EIR) and Freedom of Information Act (FOIA) were brought into force in 2005, giving all persons right to access (on request) environmental information, and any information not accessible under other legislation, respectively. Public authorities must respond appropriately to FOI requests within prescribed timescales, releasing all requested information which is held and not exempt from disclosure (under an exemption given in the legislation).

There are also ancillary duties relating to the potential issuing—on request—of licences to re-use the information disclosed by the Council where the Council has intellectual property rights. This licence is typically an Open Government Licence under the Re-use of Public Sector Information Regulations (RPSI), which came into force in 2015.

The Council received in excess of 1,200 requests for information under the EIR or FOIA in the 2015 calendar year. Officers sometimes struggle to differentiate between FOIA and EIR requests and to then deal with them appropriately. It is estimated that 15% of all requests are not answered within the appropriate time-limit.

The Council's current policy was produced in 2000, when the FOIA first became law, and a fundamental review and assessment of the law and key procedural issues was necessary to make it 'fit for purpose' having regard to the volume of requests now being received, which the Information Commissioner's Office noted was comparable with that of central government bodies such as the Foreign & Commonwealth Office (see the Mitigating Risk

Subsection below). The review showed that the approved procedures for addressing the management of information requests have not been consistently applied and many had been established by practice within and between services.

Approximately 80% of FOI/EIR requests are sent to the Legal email inbox, of which about 85% are then referred to the relevant service(s) for input. Officers in other services are supposed to log the requests they receive directly and notify Legal when they communicate with the applicant about a request transferred to them by Legal. This enables the Legal Assistants to keep the central log of FOI requests up to date. Unfortunately the review found this does not happen consistently.

The EIR permits the Council to charge for staff time spent managing a request for information but the FOIA does not. Roughly 50% of requests received by the Council in 2015 were for environmental information so could have been chargeable.

### **Introduction to Proposed Policy including Novel Procedures**

The Policy will be accompanied by a detailed guidance document to assist officers to manage these requests (a copy of the guidance document can be provided to members upon request). An Explanatory Note is provided in Part III of the Policy, which introduces and explains the novel rules, procedures and concepts and the reasons why these changes are needed.

### **Financial Implications**

#### Revenue and Cost Recovery

In 2015 the Council received more than 600 requests for environmental information. The review found that many of these requests were incorrectly classified as FOIA requests, for which no charge was made. Requests under the EIR can be charged for staff time (on a pro-rata basis) at £25 per hour and part of the plan is to increase understanding within the Council amongst the teams dealing with requests so that in future charges are levied where appropriate.

Requests under either the FOIA or EIR can be charged (in-advance) to recover the cost of materials necessary for their management, but only if a charging schedule has been published; such a schedule is now available on the Council's website and is provided in Schedule I in the Policy. The ability to charge will help to recover the costs incurred in compliance and may discourage the submission of baseless or disproportionately broad requests.

#### Mitigating Risk

In July the Information Commissioner's Office (ICO)—(the regulatory body for data law matters) examined the Council's FOI compliance statistics following a complaint about the timeliness of our responses. Information was provided to show that the Council was already alert to the issue and had started reviewing and streamlining its procedures to address the underlying issues. The ICO indicated that he would be revisiting the matter in the New Year, to see what progress had been made.

There is a regime of fines and other sanctions which may be levied by the ICO when requested information is unlawfully deleted or altered, or if the Council fails to comply with an ICO enforcement notice and is held in contempt of Court. The Council may also be fined if personal data are disclosed to a third party unlawfully. The ICO may take other actions causing the Council's prestige to suffer and our relationship with our citizens, the press and

local businesses to deteriorate. The new procedures and Policy seek to reduce the risk of action by the ICO and improve our overall management of requests.

### **Council Plan Implications**

The recommended Policy will support the promotion of high quality, cost effective (front line) services, specifically by mitigating and recovering costs whilst doing more to ensure that a consistent high quality service is provided for persons seeking information in pursuit of the public interest.

### **Consultation Feedback**

The Policy was sent to the Unions and the Corporate Performance Team for consultation, and their recommendations were either implemented or rejected with a reason.

### **Carbon Emissions & Climate Change Implications**

This Policy has no carbon emissions or climate change implications.

### **Equality and Diversity Implications**

Equality analysis is ongoing in conference with the Equalities Officer. All issues initially highlighted have been resolved satisfactorily, but we await final confirmation that the draft Policy meets the General Equality Duty in its current form.

### **Background Papers**

- Appx A - Draft Freedom of Information Request Policy (Including Charging Schedule)
-