

Information Governance Annual Report

2016/17

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Executive Summary

This Information Governance Annual Report sets out how the Council has performed throughout 2016/17 in the following areas:

- **IG Toolkit** – Updating on the Council's compliance with the NHS IG Toolkit accreditation standards
- **Legislation** - Reporting on the Council's achievements against legislation including Freedom of Information Act 2000, Environmental Information Regulations 2004, Data Protection Act 1998 and Local Government Transparency Code 2014
- **Data Sharing** - Outlining how the Council is moving towards a more joined-up organisation between Services and with Partners through the establishment of an effective Data Sharing culture
- **Information Security Incidents** - Reporting on the annual record for Information Security Incidents and what action is being taken to ensure Council information continues to be held securely
- **Governance** - Explaining the progress which has been made around formal governance for the Information Governance Framework across the Council
- **Training and Awareness** – Outlining the Information Governance training for all members of staff and users of the Council's IT system
- **Communications** – Providing an update on how Council-wide culture change is being implemented through ongoing communications initiatives to all members of staff

An outline is also provided for the work programme for 2017/18, to enable Members to understand how this important topic is being further developed and embedded within the Council.

There have been significant achievements throughout the year including:

- Achievement of the Level 2 Accreditation for the NHS IG Toolkit with a score of 71%
- The ongoing achievement of Open Data legislation requirements
- Development of the Information Governance Action Plan to improve policy, implementation and understanding of IG matters across the organisation

These achievements required the collaboration of Officers from all Directorates and partners from across the region. These examples of strong and joined-up working practices provide confidence for the future development of the Information Governance culture within the Council.

The Information Governance Board would be grateful for any comments from Members on the content of this report and ideas of what items Members would find useful to have included in future Information Governance Annual Reports.

Introduction

Information Governance (IG) brings together all of the requirements, standards and best practice that apply to the handling of information on all media. It allows the Council to manage information in an appropriate, efficient and secure manner that balances the importance of maintaining confidentiality and individual privacy at the same time as promoting openness and transparency.

The Council has five core pillars of IG:

- **Records Management** including email - to ensure the Council effectively manages and uses its paper and digital records
- **Publication and Transparency** - the council should adopt a strategic and shared approach to developing a publication scheme that is up to date, relevant and easy to navigate, which will involve a council wide approach, centrally co-ordinated, to manage and publish relevant information
- **Information Sharing and Processing** - to enable Services to meet statutory duties and support integrated services and joint commissioning
- **Legislation compliance** with regards to Data Protection, Environmental Information and Freedom of Information
- **Organisational Culture Change** - Services develop their Information culture and effectively allocate responsibilities for Information Assets within their Service.

Having effective Information Governance practices:

- assists with the effective use of our information assets
- enables effective information sharing, generating useful intelligence streams
- creates an effective and dynamic organisation
- instils confidence in the citizens of Kirklees
- contributes to the management of risk
- helps officers protect the Council's reputation
- helps avoid statutory penalties

In order to achieve effective Information Governance practices the Council uses the tools within its Information Governance framework. This framework ensures that the organisation and individuals have information that is accurate, meets legal requirements, is dealt with effectively and is secure. This is an important foundation for the Intelligence requirements of the new Council.

The Information Governance Framework has five fundamental aims:

- To support and promote the effective and appropriate use of information
- To encourage responsible staff to work together, preventing duplication of effort and enabling more efficient use of resources
- To develop support arrangements and provide staff with appropriate tools and support to enable them to discharge their responsibilities to consistently high standards
- To enable the Council to understand performance relating to information use and manage improvement in a systematic and effective way

- To enable the effective sharing of information across Council Services and with partners

The Framework currently encompasses:

- Data Protection Act 1998
- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Local Government Transparency Code 2014
- Information Governance Strategy which incorporates
 - Information Governance Policies
 - Information Sharing Policies and Guidance
 - Records Management Policies and Guidance
 - Information Security Policies and Guidance

The IG Framework and its corresponding Strategy is updated annually to reflect the changes required to develop IG to support Intelligence in the New Council.

Background

Information Governance is a dynamic area in terms of regulation with a range of new and amended requirements each year.

Prior to 2012 the Council's focus on Information had essentially been driven by legislation compliance, including the Data Protection Act 1998, Freedom of Information Act 2000 and Environmental Information Regulations 2004. The Information Access Team had been established for a number of years to co-ordinate and manage the requests for information from the public and their responses from Services.

In 2012 the Council appointed the position of Information Governance and Senior Support Manager. Part of this role was to take stock of the Council's Information Governance landscape and help the Council develop an Information Governance framework.

In 2013 it was identified that in order to have a consistent and Council-wide approach to Information Governance a Director-led Board was required. This Information Governance (IG) Board was established and is chaired by the Council's Senior Information Risk Officer (SIRO). The Terms of Reference for the Board are updated annually and can be found in Appendix A.

There follows a summary of the work carried out over the 2016/17 financial year.

Work completed through 2016/17

NHS IG Toolkit Accreditation

In 2014/15 it was identified that in order to establish, strengthen and maintain partnership relations with national government and the NHS, the Council would have to annually prove their IG credibility by achieving the IG Toolkit to a level 2 accreditation level.

For Local Authorities this Toolkit focuses on the following topic areas:

1. Information Governance Management
2. Confidentiality & Data Protection Assurance
3. Information Security Assurance
4. Care Records Assurance

Achieving this standard requires significant resource investment and compliance with rigorous IG standards by the whole organisation. The level 2 accreditation was achieved in 2015/16 with a score of 66%. The same level 2 accreditation is required for 2016/17 but with an increased score which shows the organisation is 'working towards level 3'.

This increased score was achieved by Council services and in March 2017 the council submitted the toolkit evidence with a score of 71%.

Data Protection

The topic of Data Protection is primarily focussed on the safe keeping of personal data about individuals rather than Council data. This is a very high priority for the Council and its partners, as they serve a diverse range of people and therefore data protection relates to a significant volume of data across the Council.

Data protection requests are currently managed centrally from Governance & Democratic Services within the Information Governance Team and also within some specific service areas. In 2016 Children and Young people Services appointed to a full-time Access to Records Officer post, this is the part of the Council which receives the bulk of the subject access requests in terms of volume. The published figures for data protection requests, known as Subject Access Requests (SARs), show an increase of 10% on last year from 187 in 2015/16 to 205 in 2016/17.

The response rate by Kirklees Council to these requests has decreased slightly from 81% compliance in 2015/16 to 80% compliance in 2016/17. This is well below the ICO's required compliance rate of 90% within 40 calendar days. More detail on these figures can be found in Appendix B.

Disclosures

In addition to the Subject Access Requests received by individuals, the Council is committed to assisting the law enforcement agencies in their investigations whilst still achieving compliance with the Data Protection Act 1998. These requests are termed Disclosures.

There are no measured response deadlines for Disclosures; however the Council uses the SAR response deadline measurement of 40 days to assist with monitoring performance around disclosures.

In 2016-17 the Council received 436 disclosure requests which is an increase of **52.45%** on the number received in 2015-16 (286), and achieved a 91% response rate within 40 days, which is an improvement on the 84% rate in 2015-16

General Data Protection Regulation (GDPR)

In May 2016 a new Regulation was passed for Data Protection which brings all European countries into line. The GDPR comes into force in May 2018. Many of the concepts and principles of the Data Protection Act (DPA) are the same within the GDPR however there are some new elements and some significant enhancements, so the Council will need to approach data protection differently in order to remain compliant.

The GDPR places greater emphasis on the documentation that the Council, as a data controller, must keep to demonstrate their accountability. Compliance with GDPR will require the Council to review our approach to information governance and how we must manage data protection as a corporate issue.

The Information Governance Board started work in 2016/17 to adapt policies, increase training, identify all information assets and strengthen arrangements with partners to ensure the Council remains compliant with the new legislation. Further information about GDPR can be found in the [Legislation Changes](#) section of this report.

Freedom of Information Act 2000 & Environmental Information Regulations 2004

This section details how the Council has performed throughout the 2016/17 year in respect of information access requests received and processed under the Freedom of Information Act 2000 (Fol) and Environmental Information Regulations 2004 (EIR).

The Act and the Regulations require public authorities, including the Council to reply to information requests within 20 working days - either providing the information or saying why it cannot be provided.

The Council received 1,636 requests during 2016-17 which is 139 more than the number received in 2015-16, which is a 9.3% increase.

The Council's compliance rate for responding to requests has reduced to 81% which is below the Information Commissioner's Office (ICO) current minimum standard of 85% and well below the new expectation that 90% of responses should be sent out within deadline.

Compliance rates have fluctuated greatly over the 12 months, ranging from 68% in February 2017 up to 89 in July; July saw the second highest monthly volume of requests received.

The average response time for 2016-17 was, at the time of writing, 17.08 days although some requests remain open and within date.

The increase in the volume of requests received is, for the first time, not a common theme across most of the West Yorkshire Council's, Kirklees has the highest, increase at 9%, with two of the other West Yorkshire Council's seeing increases of 4% and less than 1%.

Cost of Fol requests

The cost of Fol responses has been a discussion point for a number of years. During the year, the Finance Department analysed the work required to complete an FOI request. Using this analysis, the Council estimates the average cost of responding to Fol requests is £267.08 per request. This results in an estimated cost of responding to FOI requests at £436,946.96.

Internal reviews and Complaints

The number of internal reviews carried out of the responses to requests has increased significantly on the previous year, from 38 in 2015-16 to 80 in 2016-17. The Council needs to ensure that internal reviews are concluded in a more timely manner.

The number of complaints made to the ICO has increased by 6, from 8 in 2015-16 to 14 in 2016-17. The ICO did not take any regulatory action against the Council in any of the cases they have made a decision on to date. One ICO Decision Notice from 2015-16 was appealed to the First Tier Tribunal (Information Rights) in 2016-17 but withdrawn by the Appellant prior to hearing.

The IG Board reviews Fol response figures each month, which helps raise the profile of any specific difficulties when they arise.

More detail on the Fol and EIR response rates for 2016/17 is included in the Freedom of Information Act 2000 and Environmental Information Regulations 2004 Annual Report in Appendix C.

Open Data

The Local Government Transparency Code 2014 was initially published in May 2014 replacing the Code of Recommended Practice for Local Authorities on Data Transparency, first published in September 2011. The Code sets out the minimum data that local authorities must publish and data that the Government recommends local authorities to publish.

The regulations came into force in October 2014. At the same time the Department for Communities and Local Government [DCLG] published a revised version of the Code including some notable changes as well as a further recommendation that local authorities go further than its requirements and provide additional datasets with more detail. The Transparency Code has not been updated since 2015. During

2016, DCLG carried out a consultation on proposed changes to the Code. Since the consultation, there has been no updates made to the Code.

The code has two elements; information which must be published and information that is recommended for publication. In 2016, Kirklees Council published data and information, where available, to meet the mandatory requirements of the code. We also started to obtain data & information that would meet the recommended elements at this point.

For 2017, this local emphasis on requesting data that meets the recommended element of the code has continued and some compliance improvements from 2016 have been made.

The continued focus on the recommended requirements is in preparation for a future anticipated request for all authorities to meet the recommended criteria.

The full detail of the situation up to the end of 2016/17 can be found in Appendix D.

Data Sharing

To achieve effective, streamlined services, both internally and with partners, it is vital that the information held is shared effectively and in line with the Data Protection Act. There are a range of reasons why data must be shared and there are also legislative reasons why data must not be shared. It is very important that the culture of the Council is focussed on achieving a modern and efficient approach to information whilst maintaining data security and ensuring data sharing uses established legal gateways or the full consent of the individual. It is the role of the Information Governance team within the Council to perform the enabling role required by Council Services to ensure data can be shared with colleagues and Partners.

This is essential for the future as the organisation will be working more closely with community partners to commission and deliver joined services which require sharing personal information. In order to achieve these requirements, it is important that Information Governance is considered within all arrangements to enable effective and legal data sharing between Council Services and also between the Council and Partners.

Whenever data is shared, there must be an agreement in place which identifies the requirements of the data sharing exercise and also the potential legal gateways which are being utilised, or a full record of consent by the individuals concerned, if Personal Data is being shared.

On a wider scale the Council is one of the 45 signatories to the West Yorkshire Inter-Agency Information Sharing Protocol. This protocol sets out the requirements for the signatories to utilise when sharing information between each other, which makes the sharing process much more effective and efficient.

Information Security

There were 56 Information Security incidents reported in 2016/17. These incidents are recorded by the Information Governance Team and each incident was raised to Senior Managers for assessment against criteria for reporting to the ICO. Each of these incidents is investigated and training and communications implemented to mitigate against repeated incidents of these types.

Following assessment, none of these incidents were considered to meet the criteria which require a referral to the ICO.

Governance

Throughout 2016/17 the IG Board has worked through a clear IG Action Plan, particularly focussed around the 2016/17 IG Strategy and the requirements of the IG Toolkit.

There is now more corporate understanding of Information Governance and the opportunities it presents. We have strong commitment from the New Council Transformation budget to put in place more resources to develop the IG culture and facilitate Services to establishing robust IG practices. At the end of the year Agilisys, a national IG consultant, was commissioned to come in and begin work with the IG team to develop a strong IG Strategy, Records Management Plan, Publication and Transparency framework and establish an organisation Information Asset Register.

The IG Board has an established approach to policy review which means that all of the IG related policies are reviewed and updated annually at the IG Board. These Policies form part of the Information Governance Framework which provides the foundation for the Council's intelligence work.

The IG Board performs a council-wide, strategic role for Information Governance, with three task groups which report up to the board having performed more of the operational tasks for IG. The three task groups review the appropriate IG policies before they are taken to the IG board as well as:

- Information Security Task Group – overseeing all information security incidents and information sharing or processing agreements
- IG Implementation Task Group – overseeing IG Toolkit requirements, Publication arrangements and links to Intelligence
- Records Management Task Group – setting standards for records management, overseeing the Central Council Archive and ensuring retention schedules are updated.

Training and Awareness

Having a strong culture of Information Governance is vital to the success of many Council activities going forward and IG training is now mandatory for all Kirklees Council employees, councillors, volunteers, contractors or other individuals who may have access to council data

The mandatory training has been developed in a number of formats to ensure that every individual working within the Council can access IG training as required. A new approach to IG Training has been developed towards the end of the year. This will ensure all users of IT equipment will be required to complete regular training on IG topics or policy updates.

Communication

Colleagues from the Communications and Marketing Team sit on the IG Board and form part of the Task Groups implementing the Action Plan. A Communications Plan is well established, and links closely to the IG training approach to ensure relevant and targeted messages are released across the Council.

Information Risk Management

Information Risk encompasses all the challenges that result from an organisation's need to control and protect its information. Poorly managed information could lead to a material impact on the Council's operation. Information risks can affect the Council:

- financially
- operationally
- they can damage reputation
- they can lead to regulatory sanctions

The purpose of information risk management (IRM) is to reduce the Council's information risks to an acceptable level and to keep them under control in a manageable way, rather than try to eliminate them entirely. The IG Board has a standing agenda item for IRM, which means that any identified risks are highlighted and resulting action agreed, to keep the risk manageable and mitigating actions effective.

Information Governance Resources and Budget

2016/17 has seen a step change in the approach the Council has towards Information. The approval of the Intelligence Vision for New Council came with the recognition that to have a successful Intelligence Hub requires robust IG practices across the organisation.

As part of this change, the IG Team has received New Council Transformation funding to create a new post, Information Governance Officer, and appoint three IG Officers and an additional two Business Support staff on a temporary basis until December 2018.

These Officers were appointed in January 2017 and have specific responsibilities for:

- Information Sharing and Information Security
- Records Management and Central Archive
- Legislative Compliance and Publication

This increased resource will also help support the legislation changes with the introduction of GDPR in 2018.

In addition to the funds for increased resources, the Transformation Fund has also paid for the commissioning of an IG Consultant, Agilisys, who will help develop the IG approach through 2017/18. Funds have also been provided for senior management training, specifically around the role of Information Asset Owner and Senior Information Risk Owner.

Work Programme for 2017/18

Legislation Changes

The General Data Protection Regulation (GDPR) comes into force in **May 2018** and replaces the current Data Protection Act (1998). Many of the concepts and principles of the Data Protection Act (DPA) are the same within the GDPR however there are some new elements and some significant enhancements, so the Council needs to approach data protection differently as an organisation.

The GDPR places greater emphasis on the documentation that the Council must keep to demonstrate their accountability. Compliance will require the Council to revisit our approach to information governance and emphasises how we must manage data protection as a corporate issue.

The legislation expands the potential for breaches and increases the possible fines from £500,000 under the Data Protection Act to **£20,000,000** under GDPR.

GDPR applies to ALL personal information collected and used. It places greater emphasis on:

- the documentation that the Council must keep to demonstrate accountability
- the explicit consent obtained in order to use and share personal information
- the speed the Council must respond to requests for personal information (from 40 days to 30 days)
- the ability of the council to DELETE all personal data about an individual if requested
- reporting all information security incidents over a set threshold to the ICO within 72hours
- having a full, clear and up to date view on what personal information is held by the Council, and which organisations this information is shared with
- updating and communicating information use to the public through privacy notices
- holding a thorough and current information processing log for all appropriate contracts
- appointing a Data Protection Officer, focussing on Data Protection, operating independently and reporting to the Chief Executive
- ensuring Data Protection by Design across all Service areas utilising Privacy Impact Assessments for all projects

Key work areas for development

To achieve compliance with GDPR and enable the success of the Councils Intelligence Vision, the following activities will be continued through the 2017/18 financial year:

- The strategic leadership and management of IGM for the Council is prioritised and implemented

- The principles of the intelligence vision will be applied to information management itself using the Information Asset Register.
- The Information Asset Owners will manage use of the information within their areas of responsibility to ensure information sharing is carried out in an effective manner, compliant with the Information Sharing Policy
- Information Asset Owners will ensure that the Information Asset Register is maintained for their areas of responsibility
- The knowledge within reports created by Services for decisions at Cabinet are made available to the Intelligence Hub and re-used to support a more intelligent Council.
- The publication of information is carried out by all services in an open and transparent way, enabling the Intelligence Hub and the wider public to have access to data sets to produce efficient services for residents.
- The Records Management Plan, will be developed in accordance with the Model Records Management Plan requirements of the Keeper of Records Scotland, and will be implemented across all Services to ensure the Councils records are logged and managed effectively in compliance with the Records Management Policy.
- An Archive will be created at the Red Doles Lane site, which will eventually contain all paper records which the Council holds.
- An Email Management Strategy is implemented across all users to ensure email records are maintained consistently and non-essential emails are regularly deleted in compliance with the Records Management Policy
- Training for all employees will be available to ensure a robust IGM culture is embedded throughout the organisation.

Achieving these actions will support the work to develop the intelligence culture for the council and ensure the Council is making strong progress to remain compliant with the new General Data Protection Regulation.

Conclusion

The work across the Information Governance Framework has achieved considerable momentum throughout 2016/17. This has included increased promotion of IG through Comms messages and awareness raising for managers.

The strengthened New Council position on Intelligence has meant that having a robust IG foundation has become a priority. This has brought in resources and funding to commission external support for some large development projects.

The IG Pillars of Information Sharing, Publication and Records Management are now coming into view, with projects planned for implementation in 2017/18 which will make a significant difference to bringing robust IG focus to Council processes going forward.

These developments cannot be made without considerable collaboration between Council Officers from all Directorates. The cross-service working demonstrated through IG activities in 2016/17 has been incredible and there has been a fantastic team effort to make it all happen so successfully. This needs to be continued throughout 2017/18 to build the strong IG foundation, which will enable the Council to develop into an Intelligent organisation.

The Information Governance Board would be grateful for any comments from Members on the content of this report and ideas of what items Members would find useful to have included in future Information Governance Annual Reports.

Appendices

Appendix A – IG Board Terms of Reference

Information Governance Board

Terms of Reference

(Updated March 2017)

Purpose

The Information Governance Board provides a framework and strategic steer to the organisation in relation to Information Governance. The Board ensures that the Council safely uses its information assets to deliver its priorities and objectives legally, securely, effectively and efficiently.

The Board will:

- Develop and promote robust and consistent Information Governance practices across the Council;
- Embed the Kirklees Information Governance Framework throughout the organisation;
- Support and Advise the Council, Contractors and Partners on IG related matters
- Address Information Security risks and establish a risk management framework;
- Establish, monitor and enforce legal compliance with regards to Information Governance including authorising and approving Data Sharing Agreements;
- Promote and support a transparent information culture;
- Develop and implement Council-wide communications around Information Governance and associated training.
- Support, advise and challenge Services on the implementation of and compliance with associated/relevant legislation and Council policy;
- Ensure the organisation complies with statutory requirements set out by the Information Commissioners Office (ICO).
- Research and advise on relevant new legislation in relation to FOI, EIR, Data Protection, Open Data, Information Security and Records Management;
- Identify and provide organisational development arising from new/amended policies/procedures and assist services in response to changing legislation;
- Support Services to share information with partners effectively and securely and to process information in a legal and safe manner.

- Develop and promote a transparent information culture across the Council, with an aim to having 90% of the Council's non-personal information in the public domain;
- Develop and implement Council wide communications around Information Governance and associated training.

Governance

The **Senior Information and Risk Owner** will chair the Information Governance Board. The SIRO has organisational responsibility for all aspects of Information Governance, including the responsibility for ensuring that Kirklees Council has appropriate systems and policies in place to maintain the security and integrity of Kirklees Council's information. The SIRO will consult with the Board to obtain guidance in relation to Information Governance decisions.

The **Caldicott Guardian** will be a member of the Board acting as the 'conscience' of an organisation. The Guardian actively supports work to enable information sharing where it is appropriate to share, and advises on options for lawful and ethical processing of information. The Caldicott Guardian also has a strategic role, which involves representing and championing confidentiality and information sharing requirements.

Information Governance Manager (IGM)

The IGM is responsible for providing specialist advice and support on all aspects of Information Governance and is also responsible for reviewing the policy and ensuring it is updated in line with any changes to national guidance or local policy.

Terms of Engagement

- Frequency of meetings – every two months
- Attendance at meetings to be substituted by representatives as required, ensuring all Directorates are represented.
- The Board will provide updates to the Executive Team, Management Board, Corporate Governance and Audit Committee, the Cabinet Member responsible for Information Governance and Cabinet as appropriate.
- The Board will be Chaired by Julie Muscroft, Senior Information Risk Owner and Assistant Director for Legal, Governance and Monitoring
- The Information Governance and Senior Support Manager will co-ordinate the Board meetings, generate the agenda on consultation with the Chair and distribute papers
- Representatives from all work areas will sit on the board, with non-members being invited to present papers as appropriate

- Communications Strategy – the Communications Plan is updated on a monthly basis in line with developments across the organisation

Review

The Board will review the relevance and value of its work on an annual basis.

Working methods

The Board will have a strategic overview of the Information Governance framework across the organisation. This includes

- Legislative requirements – including FOI, EIR, Data Protection and Transparency
- Information Security
- Incident Reporting
- Records Management
- Information Sharing and Processing
- Organisational Culture, Training and Development
- Open and Transparent Publication

IG Sub-Groups

The Board will oversee a range of sub groups, each with an individual mandate for operation and performance. In 2017/18 these will include:

- Information Governance Implementation Team – Focussing on the GDPR compliance, the IG Toolkit conformance and Integrated Intelligence
- Records Management Team – Focussing on updating policies and guidance, overseeing and supporting the creation of the Central Archive and supporting the update of the council's retention schedules
- Information security team - Focusing on updating policy, approving information sharing agreements, creating a council-wide incident reporting matrix and developing an organisational approach to information security incidents.

Board membership

The Board is made up of Council Officers, with all Directorates represented. The 2017/18 membership is outlined in Appendix A

Appendix A

Information Governance Board Membership 2017/18

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|---------------------------------------|--|
| Chair - | Julie Muscroft (SIRO) – Assistant Director, Legal, Governance and Monitoring |
| Commissioning & Health Partnerships | Saf Bhuta (Caldicott Guardian) – Directorate Lead for Performance, Intelligence and Business Systems |
| Governance & Democratic Services | Carl Whistlecraft – Head of Governance & Democratic Services |
| | Katy Deacon - Information Governance & Senior Support Manager |
| | Lindsay Foody – Information Access & Security Officer |
| IT - | Andrew Brammall – Head of IT and Change |
| | Terence Hudson – IT Operational Manager |
| Audit - | Simon Straker – Audit Manager |
| Customer & Exchequer Services | Steve Bird – Head of Welfare & Exchequer Services |
| | Julian Hobson – Policy Officer |
| HR - | Maureen Manson – HR Officer |
| Learning & Organisational Development | Alison Monkhouse – Principal Strategic Liaison Officer |
| Communications - | Helen Rhodes – Senior Communications Officer |
| Safe & Cohesive Communities | Tim Cornwall – Service Improvement Manager |
| Public Health - | Sean Westerby – Emergency Planning & Business Continuity Manager |
| Investment & Regeneration | Adele Buckley - Head of Regeneration, Environment and Funding |
| | Jane Lockwood – Procurement Strategy and Advice Manager |

**Data Subject Access Requests
Data Protection Act 1998**

Annual Report 2016-17

Executive Summary

This report details how the Council has performed throughout 2016-17 in respect of requests for access to personal information received and processed under the Data Protection Act 1998 (DPA).

During 2016-17, Kirklees Council received 18 more requests (a 10% increase) for access to personal information than it did in the previous 12 months, increasing from 187 in 2015-16 to 205 in 2016-17.

The Council's performance in terms of compliance with the legislative timescales decreased slightly from the previous year, from 81% to 80%. The number of requests responded to within the statutory 40 calendar day timescale allowed under the DPA is well below the ICO's minimum expectation of 90% compliance.

The Council's performance in terms of the time taken to respond to requests appears to have improved slightly when looking at the average response time for dealing with requests; it was 32.7 days in 2016-17 compared with 35.9 days in the previous year. This does remain within the statutory 40 calendar day timescale allowed under the DPA and where the Council has not been able to respond within the statutory deadline this is generally because the requests are complex and voluminous. One case dealt with this year comprised 35 files and there were a couple of other which had 20+ files.

The compliance rate is of concern in the lead up to the implementation of the General Data Protection (GDPR) which is the new data protection legislation which comes into force on 25 May 2018; the GDPR will see the time for compliance drop from 40 calendar days to 1 month. During 2016-17 the Council responded to just 57% of requests within 30 calendar days.

The DPA does not provide for an extension of time to deal with requests. It is worth noting that the ICO does not take mitigating factors such as public holidays or lack of resources into account when making decisions about regulatory action to be taken. The Council does still need to make significant improvements to ensure that information and records are managed efficiently and effectively and resources are available to ensure compliance with the legislative timescales. It also needs to make sure that it advises applicants as soon as it is known that there may be a delay and keep them informed of progress.

Regionally, from the West Yorkshire Councils which have submitted annual figures, Kirklees is the only Council which has seen an increase in the number of requests, three other Councils having had between 4% and 20% less than in the previous year.

Guidance on dealing with requests for access to personal information continues to be reviewed and shared with officers dealing with requests.

Lindsay Foody
Information Access & Security Officer

3 May 2017

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5. Information Commissioner

- a. Powers
- b. Complaints Received re Kirklees

1. Introduction

This report discusses the main events of the year 2016-17 in relation to requests made under the Data Protection Act 1998, along with recommendations for improvements to the processes.

2. Summary of the Legislation

[Section 7](#) of the Data Protection Act 1998 (DPA) gives individuals important rights including the right to know what information is held about them and the right to correct information that is wrong. The Act helps to protect the interests of individuals by obliging organisations to manage the personal information they hold in an appropriate way.

The DPA sets out eight principles governing the use of personal data with which data controllers must comply unless an exemption applies:

- **Principle 1 – Personal data shall be processed fairly and lawfully**
This means that any personal data collected by an organisation must be provided with the consent of the individual. To be seen as acting fairly, the organisation collecting personal data must be transparent and ensure individuals are fully informed and understand what will happen to their personal information.
- **Principle 2 – Personal data shall be obtained for one or more specified and lawful purpose(s)**
This means that collected information must only be held and used for the reasons given to the Information Commissioner's Office (ICO) and the individual. Personal information must not be processed in any manner incompatible with the original purpose(s).
- **Principle 3 – Information collected must be adequate, relevant and not excessive**
This means that all data collected must be necessary to complete the needs of the data controller, who should not ask for or hold any personal data that is outside their concern. They will be in breach of the Data Protection Act if they hold data irrelevant to their purpose(s).
- **Principle 4 – Information collected must be accurate and up to date**
Data controllers must make every effort available to ensure the information they use is accurate. Inaccurate use could result in misrepresentation on behalf of the individual.
- **Principle 5 – Information must not be held for longer than is necessary**
The Data Protection Act states that a data controller must not hold onto data for any longer than is necessary. Retention schedules should be in place and records held

(including personal data) review regularly and any information no longer needed should be securely destroyed or archived as appropriate.

- **Principle 6 – Information must be processed in accordance with the individual’s rights**

This includes:

- A right of access to a copy of their information which is held;
- A right to object to processing their data;
- A right to prevent processing for direct marketing;
- A right to have inaccurate personal data rectified, blocked, erased, or destroyed;
- A claim to compensation for damaged caused by a breach of the Act.

- **Principle 7 – Information must be kept secure**

Data controllers have a duty to ensure personal information held is kept securely and appropriate technical and organisational measures taken to prevent unauthorised access and accidental loss, disclosure, destruction of or damage to it. Significant monetary penalties may be incurred for data protection breaches.

- **Principle 8 – Information should not be transferred outside the European Economic Area unless adequate levels of protection exist.**

This means that any personal information held by a data controller must not be stored overseas, unless adequate safe harbouring laws are met.

3. Kirklees Context

The Council maintains five register entries as data controllers:

| | |
|--|----------|
| Kirklees Metropolitan Council | Z575071X |
| Electoral Registration Officer For Kirklees Metropolitan Council | Z605248X |
| Superintendent Registrar for Kirklees Metropolitan Council | Z4939146 |
| Kirklees Youth Offending Team | Z5437178 |
| Returning Officer for Kirklees Metropolitan Council | ZA060314 |

The Council also maintains the register entries for its 69 Councillors who are Data Controllers in their own right in their capacity as Ward Councillors.

The Information Access Team, which manages the process of receiving and responding to requests made to the Council under information access legislation, changed in December 2016/January 2017 from one full-time Information Access & Security Officer and three part-time Business Support Officers to one full-time Information Access & Security Officer, 2 full-time Information Governance Officers, one part time Information Governance Officer and two part-time Business Support Officers

The Team sits within Governance & Democratic Services, part of the Assistant Directorate of Legal, Governance & Monitoring.

The Information Access Team works with a network of Co-ordinators located within the different service areas across the Council in order to collate information requested. In May 2016, Children’s social care appointed to full-time Access to Records post.

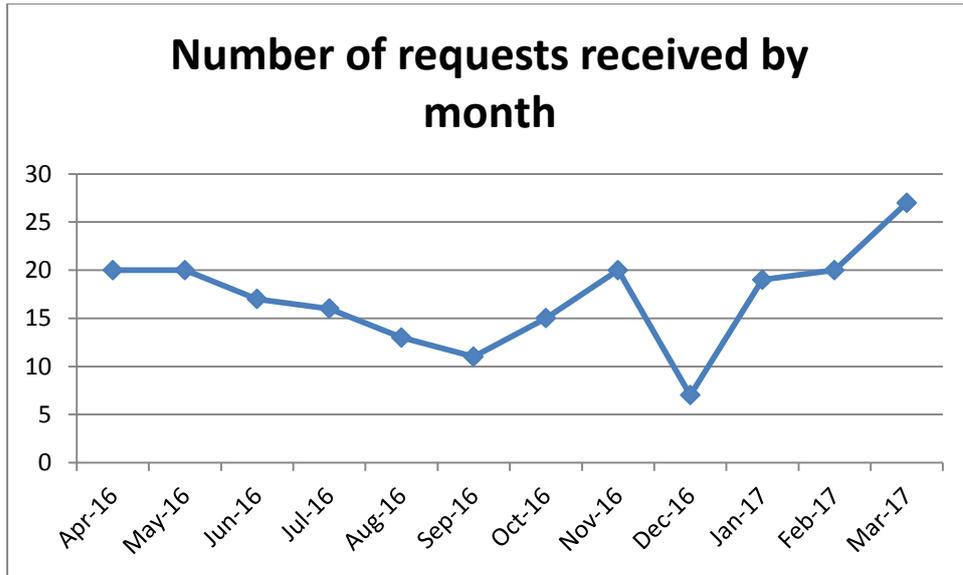
4. Statistics:

a) Numbers of Requests

The number of requests for access to personal information received between 1 April 2016 and 31 March 2017 has increased by 9% from figures reported last year, from 187 to 204, averaging at 17 requests per month compared to 15.6 per month in 2015-16.

| Monthly | Number | Quarterly | Number |
|----------------|------------|--------------|------------|
| April 2016 | 20 | Quarter 1 | 57 |
| May 2016 | 20 | | |
| June 2016 | 17 | | |
| July 2016 | 16 | Quarter 2 | 40 |
| August 2016 | 13 | | |
| September 2016 | 11 | | |
| October 2016 | 15 | Quarter 3 | 42 |
| November 2016 | 20 | | |
| December 2016 | 7 | | |
| January 2017 | 19 | Quarter 4 | 66 |
| February 2017 | 20 | | |
| March 2017 | 27 | | |
| Total | 205 | Total | 205 |

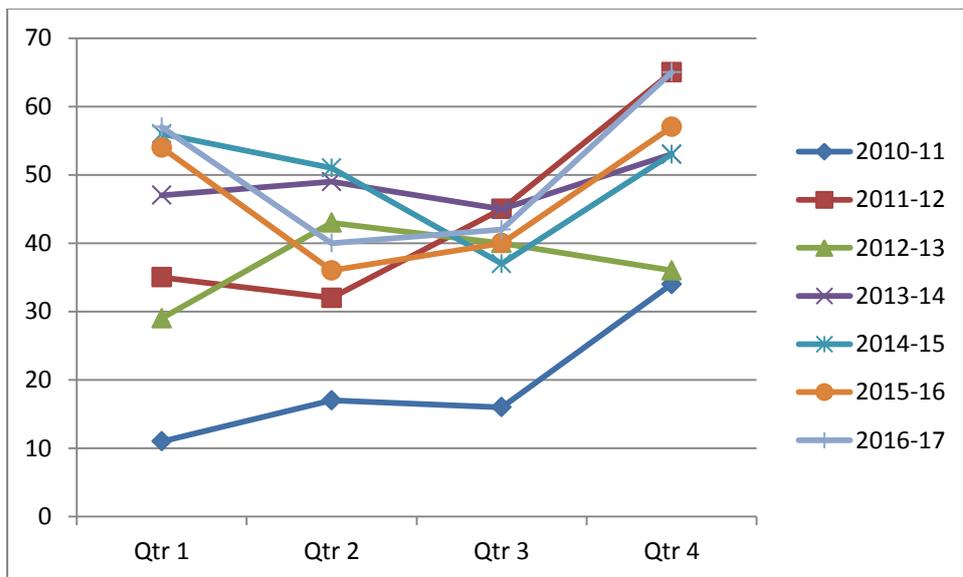
The following chart plots the figures from the above table:



Year on year figures are:

| Quarters | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 |
|---------------|-----------|------------|------------|------------|------------|------------|------------|
| Qtr 1 | 11 | 35 | 29 | 47 | 56 | 54 | 57 |
| Qtr 2 | 17 | 32 | 43 | 49 | 51 | 36 | 40 |
| Qtr 3 | 16 | 45 | 40 | 45 | 37 | 40 | 42 |
| Qtr 4 | 34 | 65 | 36 | 53 | 53 | 57 | 66 |
| Totals | 78 | 177 | 148 | 194 | 197 | 187 | 205 |
| % Change | n/a | +127% | -16% | +31% | +2% | -5% | +10% |

The following chart plots the figures from the above table:



b) Time Taken to Respond to Requests

The DPA requires data controllers to reply to requests for access to personal information within 40 calendar days. There is no scope in the Act for extending this.

Compliance with the 40 calendar day deadline is reported quarterly through PERFORM; targets and tolerances are:

| Primary Ref No | PI Definition (Kirklees Action) | Target 2014-15 | Tolerances | | | | | Factors influencing the setting of targets / tolerances |
|----------------|--|----------------|------------|-----|-----|-----|------|---|
| | | | R | RA | A | AG | G | |
| KI 366 | % of Data Protection requests replied to within 40 calendar days | 100% | 79% | 80% | 85% | 90% | 100% | Legal compliance and the ICO's minimum expectation of performance is 90% No scope for extending deadline |

In 2016-17 the Council responded to 80% of requests received within the deadline; this compares with 81% in 2015-16, showing a slight decrease in compliance, but significant scope for improvement and the Council's compliance falls short of the ICO's minimum expectation of a 90% compliance rate.

| Requests Received | | Legal Deadline of 40 Calendar Days | | Response Within 30 Calendar Days * | |
|-------------------|------------|------------------------------------|------------|------------------------------------|------------|
| Monthly | Number | Number | % | Number | % |
| April 2016 | 20 | 18 | 90% | 13 | 65% |
| May 2016 | 20 | 18 | 90% | 12 | 60% |
| June 2016 | 17 | 12 | 71% | 8 | 47% |
| July 2016 | 16 | 13 | 81% | 8 | 50% |
| August 2016 | 13 | 11 | 85% | 7 | 54% |
| September 2016 | 11 | 10 | 91% | 6 | 55% |
| October 2016 | 15 | 12 | 80% | 9 | 60% |
| November 2016 | 20 | 17 | 85% | 14 | 70% |
| December 2016 | 7 | 5 | 71% | 3 | 43% |
| January 2017 | 19 | 17 | 89% | 12 | 63% |
| February 2017 | 20 | 17 | 85% | 12 | 60% |
| March 2017 | 27 | 6 | 46% | 5 | 38% |
| Total | 205 | 156 | 80% | 104 | 57% |

* The figures in the last 2 columns are shown only to identify the number of requests which were responded to within 30 days which will become the legal deadline under GDPR

The average response time in 2016-17 was 32.7 days; this compares with 35.9 days in 2015-16, which shows an improvement in time taken to respond to requests.

c) Requests by Directorate

The total figure in this section is higher than the 205 total number of requests received because 36% of the 205 requests received (74) were for information held by two or more services.

The figures below show the total number of requests each dealt with, so for example, where a request was made for personal information and this was sent to both Adults Services and Exchequer & Welfare, the same request is counted twice in the table below.

Note: Requests which related to information held by a large number of areas of the Council are recorded just once as "Council-wide".

| Directorate | 2016-17 | Percentage of Total Received |
|--|------------|------------------------------|
| Chief Executive's Office | 4 | 1% |
| Adults (social care, public health, commissioning) | 47 | 17% |
| Children Services (social care and learning) | 117 | 42% |
| Communities, Transformation & Change | 22 | 8% |
| Place | 29 | 10% |
| Resources | 57 | 20% |
| Council-wide | 2 | 1% |
| KNH | 1 | 0% |
| Not Council – Other Org | 0 | 0% |
| Total | 279 | 100.00% |

d) Outcomes

| Outcome | 2016-17 | Percentage of Total Requests Received |
|-------------------------------|------------|---------------------------------------|
| Supplied | 97 | 47% |
| Refused (in whole or in part) | 25 | 12% |
| Not Held | 14 | 7% |
| Discontinued | 49 | 24% |
| Outstanding / Suspended | 20 | 10% |
| Total | 205 | 100% |

At the time of writing, 20 requests remain outstanding: 6 responses are overdue and 14 are suspended whilst we await further information from the applicant; the responses to the open and overdue requests are being chased.

Where requests are refused in whole or in part, this is because one of the exemptions from disclosure applies, including personal information relating to a third party, same or similar requests, legal privilege, etc. [Part IV](#) of the DPA sets out the exemptions. [Section](#)

8 of the DPA lists some of the circumstances in which a request need not be complied with.

5. Information Commissioner

The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

a) Powers

The ICO has a number of options available for taking action to change the behaviour of organisations and individuals that collect, use and keep personal information, including criminal prosecution, non-criminal enforcement and audit. The ICO also has the power to serve a monetary penalty notice on a data controller.

The main options (which the ICO may exclusively or any combination justified by the circumstances) are:

- *serve information notices requiring organisations to provide the Information Commissioner's Office with specified information within a certain time period;*
- *issue undertakings committing an organisation to a particular course of action in order to improve its compliance;*
- *serve enforcement notices and 'stop now' orders where there has been a breach, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;*
- *conduct consensual assessments (audits) to check organisations are complying;*
- *serve assessment notices to conduct compulsory audits to assess whether organisations processing of personal data follows good practice;*
- *issue monetary penalty notices, requiring organisations to pay up to £500,000 for serious breaches of the Data Protection Act occurring on or after 6 April 2010*
- *prosecute those who commit criminal offences under the Act; and*
- *report to Parliament on issues of concern.*

Source: <https://ico.org.uk/about-the-ico/what-we-do/taking-action-data-protection/>

b) Complaints Received re Kirklees

The Information Commissioner's Office made the Council aware of 6 complaints they had received about Kirklees in respect of data protection; this is an increase on the previous year's 2 complaints made to the ICO. The ICO considered it unlikely that the Council complied with the requirements of the Data Protection Act 1998 on one occasion only, but did not consider regulatory action was required in any case.

| Summary | Outcome |
|--|---|
| Complaint about the handling of a DSAR by the Council and no response being received | ICO is not taking further action In respect of this matter. |
| Complaint that the Council has not provided all the information the data subject is entitled to under subject access | ICO decision is that the Council does not appear to have breached the Data Protection Act 1998. |
| Complaint that the Council has not provided all the information they are entitled to | ICO decision is that the Council does not appear to have breached the Data Protection Act 1998. |
| Complaint re Council's information rights practice | ICO decision is that it is likely the Council has breached the Data Protection Act 1998 in terms of its practice and notes the action taken and safeguards in place to prevent a recurrence. The ICO decision is that it is likely that the Council has not breached the Data Protection Act 1998 in terms of responding to the subject access request. ICO requires no further action. |
| Complaint about online electoral registration system creating error and not being able to amend it | Matter resolved by Council; ICO informed and no further action required. |
| Complaint about no response to a DSAR being received | ICO provided with no evidence of receipt of DSAR by Council and requires Council to respond within 18 days; response sent within timescale. No further action required. |

Appendix C – Fol and EIR Annual Report

**Freedom of Information Act 2000
and
Environmental Information Regulations 2004**

Annual Report 2016-17

Executive Summary

This report details how the Council has performed throughout 2016-17 in respect of information access requests received and processed under the Freedom of Information Act 2000 (FoI) and Environmental Information Regulations 2004 (EIR).

The Council received 1,636 requests during 2016-17 which is 139 more than the number received in 2015-16, which is a 9.3% increase.

The Council's compliance rate for responding to requests has reduced to 81% which is below the Information Commissioner's Office (ICO) current minimum standard of 85% and well below the new expectation that 90% of responses should be sent out within deadline.

Compliance rates have fluctuated greatly over the 12 months, ranging from 68% in February 2017 up to 89 in July; July saw the second highest monthly volume of requests received.

The average response time for 2016-17 was, at the time of writing, 17.08 days although some requests remain open and within date.

The increase in the volume of requests received is, for the first time, not a common theme across most of the West Yorkshire Councils, Kirklees has the highest increase at 9%, three other Councils having had increases of less than 1% and 6%.

The number of internal reviews carried out of the responses to requests has increased significantly on the previous year, from 38 in 2015-16 to 80 in 2016-17. The Council needs to ensure that internal reviews are concluded in a more timely manner.

The number of complaints made to the ICO has increased by 6, from 8 in 2015-16 to 14 in 2016-17. The ICO did not take any regulatory action against the Council in any of the cases they have made a decision on to date. One ICO Decision Notice from 2015-16 was appealed to the First Tier Tribunal (Information Rights) in 2016-17 but withdrawn by the Appellant prior to hearing.

Lindsay Foody
Information Access & Security Officer

3 May 2017

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- d. Time Taken to Respond to Requests
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- a. Powers
- b. Complaints Received re Kirklees
- c. Decision Notices
- d. Tribunals

1. Introduction

This report discusses the main events of the year 2016-17 in relation to requests made under the Freedom of Information Act 2000 (Fol Act) and the Environmental Information Regulations 2004 (EIR), along with recommendations for improvements to the processes.

2. Summary of the Legislation

The legislation gives the public rights of access to information held by public authorities. They allow requests to be made by anyone, from anywhere.

a) Freedom of Information Act 2000

The Fol Act has created a general right of access to information held by public authorities. People have the right to be told whether particular information is held in recorded form, and if so, to have a copy of it. Requests for information must be made in writing.

The Act places a number of obligations on public authorities in the way that they respond to information requests, and it also creates a number of exemptions. In particular, personal information about the person requesting information is exempt, because it is available under the Data Protection Act 1998, which also exempts private information about other people.

Other exemptions include information which is:-

- available by other means;
- intended for future publication;
- held in confidence;
- prejudicial to commercial interests;
- held for investigations and proceedings or law enforcement;
- environmental information, available under the EIR.

In many cases the exemption is not absolute, and we have to take account of the public interest before information can be refused.

The Fol Act also requires the Council to publish a number of classes of information in a Publication Scheme. This scheme commits an authority to publishing important information as part of its normal business activities so that people do not need to make specific requests.

b) Environmental Information Regulations 2004

The EIR give enhanced access to environmental information, by giving members of the public and others the right to access environmental information held by public authorities. A request can be made by letter, email, telephone or in person.

The regulations apply to most public authorities and to any organisation or person under the control of a public authority who has environmental responsibilities. This can include some private companies or public private partnerships, for example companies involved in energy, water, waste and transport.

Environmental information is divided into the following six main areas:

- the state of the elements of the environment, such as air, water, soil, land;
- emissions and discharges, noise, energy, radiation, waste and other such substances;
- measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment;
- reports, cost-benefit and economic analyses used in these policies, plans and agreements;
- the state of human health and safety, contamination of the food chain and cultural sites and built structures (to the extent they may be affected by the state of the elements of the environment).

Environmental information should be proactively made available, and for information which is not already available, the default position is to make information available on request, but the Regulations allow public authorities to refuse requests for information in specific circumstances; these are called 'exceptions'.

3. Kirklees Context

The Information Access Team, which manages the process of receiving and responding to requests made to the Council under information access legislation, changed in December 2016/January 2017 from one full-time Information Access & Security Officer and three part-time Business Support Officers to one full-time Information Access & Security Officer, 2 full-time Information Governance Officers, one part time Information Governance Officer and two part-time Business Support Officers

The Team sits within Governance & Democratic Services, part of the Assistant Directorate of Legal, Governance & Monitoring.

The Information Access Team works with a network of Co-ordinators located within the different service areas across the Council, who arrange for information requested to be collated and draft responses to be signed off by nominated managers.

4. Statistics:

a) Numbers of Requests

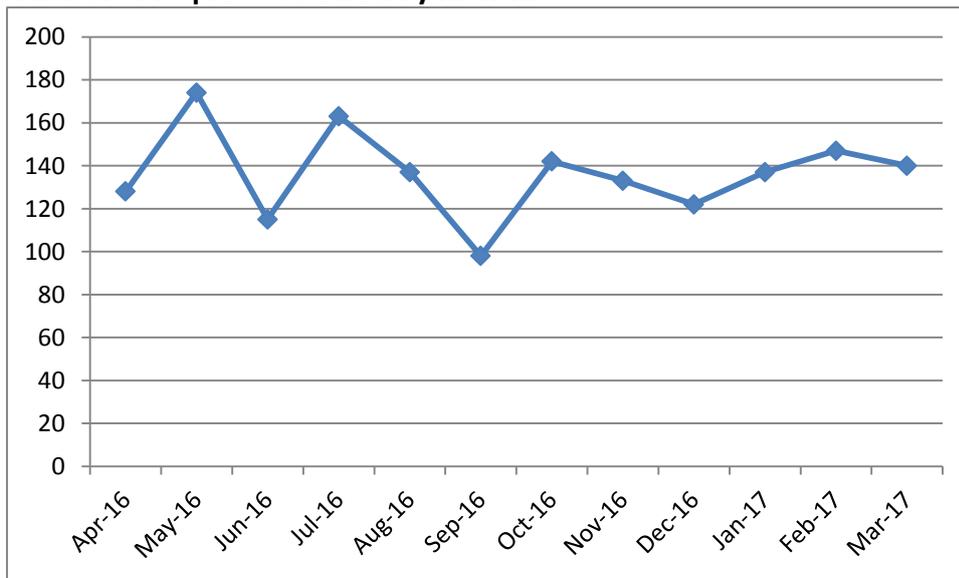
The number of Freedom of Information (FoI) and Environmental Information (EIR) requests received between 1 April 2016 and 31 March 2017 has increased by 139 (8%) from the previous year; an increase which averages at 136 requests per month compared to 125 per month in 2015-16:

| Monthly | Number |
|----------------|--------------|
| April 2016 | 128 |
| May 2016 | 174 |
| June 2016 | 115 |
| July 2016 | 163 |
| August 2016 | 137 |
| September 2016 | 98 |
| October 2016 | 142 |
| November 2016 | 133 |
| December 2016 | 122 |
| January 2017 | 137 |
| February 2017 | 147 |
| March 2017 | 140 |
| Total | 1,636 |

| Quarterly | Number |
|--------------|--------------|
| Quarter 1 | 417 |
| Quarter 2 | 398 |
| Quarter 3 | 397 |
| Quarter 4 | 424 |
| Total | 1,636 |

The following chart plots the figures from the above table:

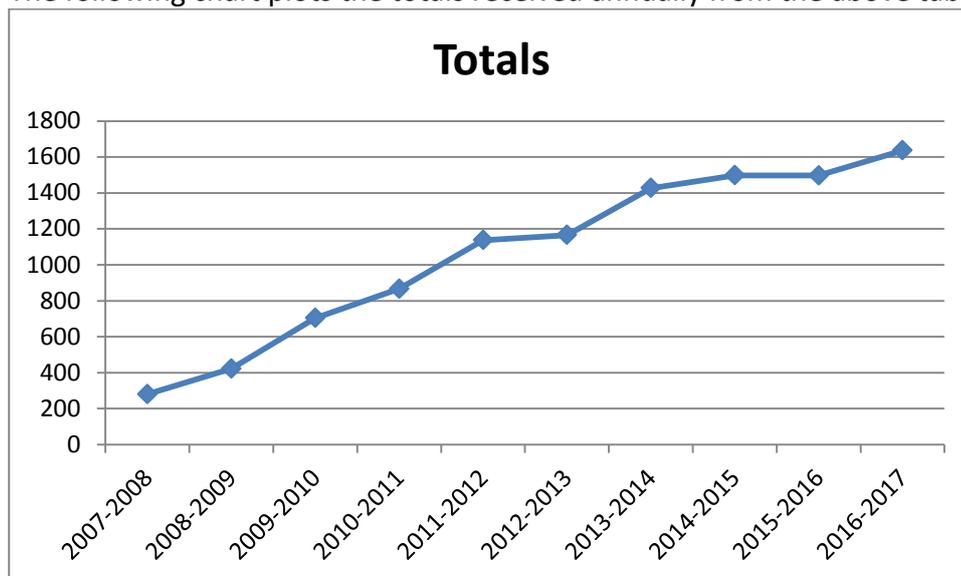
Number of requests received by month:



The increase in volume is a trend which has been consistent over the years since 2008-09, although it plateaued in 2012-13 and again 2014-15 and 2015-16, and has risen again in 2016-17:

| Qtrs | 2007-2008 | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 | 2015-2016 | 2016-2017 |
|----------------|------------|------------|------------|------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Qtr 1 | 62 | 86 | 135 | 185 | 299 | 332 | 283 | 353 | 336 | 417 |
| Qtr 2 | 86 | 106 | 182 | 180 | 263 | 273 | 356 | 357 | 350 | 398 |
| Qtr 3 | 53 | 97 | 193 | 197 | 248 | 218 | 384 | 352 | 361 | 397 |
| Qtr 4 | 79 | 133 | 194 | 305 | 327 | 343 | 404 | 436 | 450 | 424 |
| Totals | 280 | 422 | 704 | 866 | 1,137 | 1,166 | 1,427 | 1,498 | 1,497 | 1,636 |
| %Change | -1% | 34% | 40% | 19% | 24% | 2% | 18% | 5% | 0% | 8% |

The following chart plots the totals received annually from the above table:



b) Sources of Requests

Whilst both the FOI Act and the EIRs require an applicant to provide a valid name and address, applicants are under no obligation to say why the information is required, or whether they are applying as an individual or on behalf of an organisation. Some applicants do choose to provide this information voluntarily when making a request. The following tables are based on the limited information provided and so should be treated with a degree of caution.

| Source of Request 2016-17 | Number | % of Total Requests Received |
|-----------------------------------|--------------|------------------------------|
| Business | 291 | 17.79% |
| Clubs, Societies & Charities | 62 | 3.79% |
| Individuals | 195 | 11.92% |
| Media | 243 | 14.85% |
| Other | 613 | 37.47% |
| Pressure Group (Local & National) | 168 | 10.27% |
| Research & Academic | 64 | 3.91% |
| Totals | 1,636 | 100.00% |

| Source of Request - Comparison | 2015-16 | 2016-17 | Difference |
|-----------------------------------|--------------|--------------|------------|
| Business | 331 | 291 | -40 |
| Clubs & Societies | 102 | 62 | -40 |
| Individuals | 204 | 195 | -9 |
| Media | 228 | 243 | 15 |
| Other | 429 | 613 | 184 |
| Pressure Group (Local & National) | 131 | 168 | 37 |
| Research & Academic | 72 | 64 | -8 |
| Totals | 1,497 | 1,636 | 139 |

Requests which are classified above as ‘Other’ are generally where the addresses and content of the requests, give little clue as to the requester’s identity, background, or the intended use of the information. This is particularly the case with email requests.

2016-17 has seen a reduction in requests classified as ‘Business’ and a slight increase in requests classified as ‘Media’ which is at odds with previous years.

c) Requests by Directorate

The total figure in this section (2,067) is higher than the total number of requests received (1,636) because 431 requests were for information held by two or more services. The figures below show the total number of requests each Directorate dealt with, so, for example, where a request was made for information about Social Workers in Adults Services, this was sent to both Adults and HR, and the same request is counted twice times below.

Requests which related to information potentially held by all areas of the Council, for example, for registers of gifts and hospitality, are recorded just once as “Council-wide”.

Occasionally, the Council receives requests for information which the Council does not hold and which are transferred on to the public authority which does hold that information, for example, requests about Trading Standards are passed on to West Yorkshire Joint Services, and requests for information held by schools are passed on to the school in question. These are transferred on to the appropriate organisation, with the agreement of the applicant, and recorded as “Not Council – Other Organisation”.

| Directorate | 2016-17 | % of Total Requests Received |
|--------------------------------------|----------------|-------------------------------------|
| Children’s Social Care & Learning | 321 | 15.53% |
| Adults’ Social Care | 107 | 5.18% |
| Commissioning & Health Partnerships | 35 | 1.69% |
| Council-wide | 10 | 0.48% |
| Communities, Transformation & Change | 183 | 8.85% |
| Chief Executive’s Office | 4 | 0.19% |
| KNH | 46 | 2.23% |
| Place | 708 | 34.25% |
| Public Health | 51 | 2.47% |
| Resources | 589 | 28.50% |
| Not Council – Other Organisation | 13 | 0.63% |
| Total | 2,067 | 100.00% |

d) Time Taken to Respond to Requests

The Act and the Regulations require public authorities including the Council to reply to information requests within 20 working days either providing the information or saying why it cannot be provided.

In 2016-17 1,323 (81%) requests were responded to within 20 working days. This is under the threshold that triggers the Information Commissioner's Office's (ICO) monitoring of public authorities when responding to freedom of information requests which has been 85%, and is a decrease in performance on 2015-16 (86%).

It is of particular concern this year because the ICO announced in March 2017 that she has raised the threshold that triggers monitoring of public authorities to 90%. In an interview with the BBC last year, the ICO suggested that allowing authorities to be late on 15% of requests is not tough enough.

[Read the rest of the interview where the Information Commissioner sets out her thoughts on information rights here.](#)

Compliance with the 20 working day deadline is reported quarterly through PERFORM; targets and tolerances are:

| Primary Ref No | PI Definition (Kirklees Action) | Target 2016-17 | Tolerances | | | | | Factors influencing the setting of targets / tolerances |
|----------------|---|----------------|------------|-----|-----|-----|------|--|
| | | | R | RA | A | AG | G | |
| KI 363 | % of FoI and EIR requests responded to in 20 working days | 100% | 74% | 75% | 80% | 85% | 100% | Legal compliance is 100% and the ICO's minimum expectation of performance is 85% |

Overall, 92% of requests received a response within 30 working days or less, and although there is nothing within the legislation relating to this timescale, it does demonstrate that where deadlines are being missed, the majority are responded to fairly quickly afterwards, with a many being only a day or two late. This indicates that exceeding the 90% response rate is achievable with some more planning.

| Requests Received | | Legal Deadline of 20 Working Days | | Response Within 30 Working Days | |
|-------------------|--------------|-----------------------------------|-------------------|---------------------------------|-------------------|
| Monthly | Number | Number | % | Number | % |
| April 2016 | 128 | 112 | 87.50% | 123 | 96.09% |
| May 2016 | 174 | 148 | 85.06% | 167 | 95.98% |
| June 2016 | 115 | 97 | 84.35% | 108 | 93.91% |
| July 2016 | 163 | 145 | 88.96% | 155 | 95.09% |
| August 2016 | 137 | 116 | 84.67% | 131 | 95.62% |
| September 2016 | 98 | 77 | 78.57% | 88 | 89.80% |
| October 2016 | 142 | 119 | 83.80% | 137 | 96.48% |
| November 2016 | 133 | 108 | 81.20% | 122 | 91.73% |
| December 2016 | 122 | 94 | 77.05% | 107 | 87.70% |
| January 2017 | 137 | 103 | 75.18% | 128 | 93.43% |
| February 2017 | 147 | 99 | 67.81% | 119 | 81.51% |
| March 2017 | 140 | 107 | 79.26% | 120 | 88.15% |
| Total | 1,636 | 1,325 | Av: 81.12% | 1,505 | Av: 92.18% |

The Council met or exceeded the ICO's expected compliance rate in only 2 months of the year, which is a significant decrease in performance from the previous year when it achieved this in 8 of the 12 months.

At the time of writing: 6 requests remain 6 suspended (whilst the Council awaits clarification from the applicants), and 18 responses are overdue.

The Council estimates the average cost of responding to Fol requests is £267.08 per request. This results in an estimated cost of responding to FOI requests at £436,946.96.

e) Outcomes

The Fol Act and the EIRs have a limited number of circumstances under which requested information can be withheld. Under the Fol Act these are called 'exemptions' and under EIR these are called 'exceptions'. There are 8 'absolute' Fol exemptions, the remainder are 'qualified' which means that the Council has to consider whether the public interest in withholding the information outweighs the public interest in providing it or not. Under EIR, all the exceptions are qualified.

The legislation assumes that requested information will be disclosed unless one or more of the exemptions or exceptions is engaged. Of the 1,636 requests received during 2016-17, the Council provided the information requested on the majority of occasions. Where an applicant subsequently withdrew their request, this was recorded as 'Discontinued'. On occasions, the Council is asked for information which it does not hold, for example, trading standards or crime information, which is held by other organisations and not the Council; requests may also be for information which the Council does not already hold and has no requirement to hold, for example, the number of times a particular birth certificate has been viewed/ordered – in these cases the outcome is recorded as "Not Held".

In a small number of cases, the Council has refused to either confirm or deny whether it holds any requested information. The Fol Act allows a public authority to do this only where a confirmation that requested information is or is not held would in itself reveal information that falls under an exemption. This is called a 'neither confirm nor deny' (NCND) response.

| Outcome | 2016-17 | % of Total Requests Received |
|------------------------------|----------------|-------------------------------------|
| Supplied (all or in part) | 967 | 59.11% |
| Refused (all or in part) | 474 | 28.97% |
| Not Held (and referred) | 112 | 6.85% |
| Discontinued (and duplicate) | 56 | 3.42% |
| Neither Confirm Nor Deny | 3 | 0.18% |
| Open (and overdue) | 18 | 1.10% |
| Suspended | 6 | 0.37% |
| Total | 1,636 | 100.00% |

Some requests were refused, in whole or in part, and the relevant exemption or exception applied. In some cases, two or more Fol exemptions applied to information requested in a single request,

and so the total number of times exemptions or exceptions were applied will exceed the total number of requests received.

During 2016-17 607 exemptions / exceptions were applied (in whole or in part) to 479 requests (this number includes the 3 requests for which information was not held for the purpose of the FoI Act was requested and are recorded as 'Not Held' in the table above as well as the 3 cases which are recorded as 'Neither Confirm Nor Deny'):

| FoI Exemptions / EIR Exceptions Applied | | | 2016-17 | % Total Requests Refused |
|---|-------------|---|------------|--------------------------|
| EIR | reg12(4)(b) | Manifestly unreasonable | 8 | 1.32% |
| EIR | reg12(4)(d) | Relates to unfinished documents or incomplete data | 1 | 0.16% |
| EIR | reg12(4)(e) | Would involve disclosure of internal communications | 0 | 0.00% |
| EIR | reg12(5)(b) | The course of justice, fair trial, conduct of a criminal or disciplinary inquiry | 0 | 0.00% |
| EIR | reg12(5)(d) | Confidentiality of public authority proceedings when covered by law | 2 | 0.33% |
| EIR | reg12(5)(e) | Confidentiality of commercial or industrial information when protected by law to cover legitimate economic interest | 25 | 4.12% |
| EIR | reg12(5)(f) | Confidentiality of commercial or industrial information when protected by law to cover legitimate economic interest | 16 | 2.64% |
| EIR | reg6 | Already publicly available and easily accessible | 52 | 8.57% |
| EIR | reg13 | Personal data | 30 | 4.94% |
| FoI | s12 | cost of compliance exceeds appropriate limit | 84 | 13.84% |
| FoI | S14 | Repeated or vexatious request | 11 | 1.81% |
| FoI | s21 | Information reasonably accessible by other means | 189 | 31.14% |
| FoI | s22 | Information intended for future publication | 6 | 0.99% |
| FoI | s24 | National security | 5 | 0.82% |
| FoI | s3(2)(a) | Not held for the purposes of the FoI Act | 3 | 0.49% |
| FoI | S30 | Investigations and proceedings conducted by public authorities | 1 | 0.16% |
| FoI | s31 | Law enforcement | 31 | 5.11% |
| FoI | S36 | Prejudice to the effective conduct of public affairs | 1 | 0.16% |
| FoI | s38 | Health and safety | 5 | 0.82% |
| FoI | s40 | Personal information | 99 | 16.31% |
| FoI | s41 | Information provided in confidence | 14 | 2.31% |
| FoI | s42 | Legal professional privilege | 3 | 0.49% |
| FoI | s43 | Commercial interests | 21 | 3.46% |
| FoI | s44 | Prohibitions on disclosure | 0 | 0.00% |
| Total | | | 607 | 100.00% |

f) Internal Reviews

Where an applicant is unhappy with the response received to their information request they can ask for an internal review of the handling of the request / response received.

Internal reviews are carried out by officers in Legal Services who have had no input to the original response. The FoI Act does not specify a timescale for completing internal reviews, but the ICO requires these to be done promptly within a reasonable timescale, which he considers to be 20 working days from receipt of the request. The EIRs require internal reviews to be completed within 40 working days of receipt of the request.

In 2016-17 the Council carried out 80 internal reviews, compared with 38 in 2015-16.

The Council notes that 40% of all internal reviews requested (32) were made by two applicants, who each submitted multiple requests throughout the year (71, which was 4.34% of all requests received) which has accounted for the unusually high number of internal reviews requested during 2016-17:

| Monthly | Number received | Responded to within Deadline | % in deadline | Average Time to respond (working days) |
|----------------|-----------------|------------------------------|-------------------|--|
| April 2016 | 8 | 4 | 50.00% | 24.5 |
| May 2016 | 5 | 2 | 40.00% | 21.67 |
| June 2016 | 18 | 17 | 94.44% | 22.61 |
| July 2016 | 7 | 7 | 100.00% | 14.29 |
| August 2016 | 7 | 6 | 85.71% | 21 |
| September 2016 | 14 | 7 | 50.00% | 24.29 |
| October 2016 | 5 | 1 | 20.00% | 46.6 |
| November 2016 | 2 | 2 | 100.00% | 28.5 |
| December 2016 | 2 | 1 | 50.00% | 20 |
| January 2017 | 1 | 1 | 100.00% | 19 |
| February 2017 | 7 | 6 | 85.71% | 21.14 |
| March 2017 | 4 | 3 | 75.00% | 18.67 |
| Total | 80 | 57 | Av: 70.91% | Av: 23.52 |

At the time of writing, 3 internal review decisions remain outstanding and are overdue.

| Internal Review Outcome | 2016-17 | % of Total Requests Received |
|-------------------------|-----------|------------------------------|
| Not Upheld | 55 | 68.75% |
| Partially Upheld | 8 | 10.00% |
| Upheld | 14 | 17.50% |
| Open (and overdue) | 3 | 3.75% |
| Total | 80 | 100.00% |

Although there is no timescale for completion of internal reviews which is set out in the FoI legislation, the Council would wish to see a significant improvement in the timescales for FoI reviews.

5. Information Commissioner

The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

a) Powers

There are a number of tools available to the ICO for taking action to help organisations follow the Freedom of Information Act, Environmental Information Regulations, INSPIRE Regulations and associated codes of practice. They include non-criminal enforcement and assessments of good practice.

Specifically, where authorities repeatedly or seriously fail to meet the requirements of the legislation, or conform to the associated codes of practice, the ICO can take the following action:

- *conduct assessments to check organisations are complying with the Act;*
- *serve information notices requiring organisations to provide the ICO with specified information within a certain time period;*
- *issue undertakings committing an authority to a particular course of action to improve its compliance;*
- *serve enforcement notices where there has been a breach of the Act, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;*
- *issue practice recommendations specifying steps the public authority should take to ensure conformity to the codes;*
- *issue decision notices detailing the outcome of the ICO's investigation to publically highlight particular issues with an authority's handling of a specific request;*
- *prosecute those who commit criminal offences under the Act; and*
- *report to Parliament on freedom of information issues of concern.*

Source: <https://ico.org.uk/about-the-ico/what-we-do/taking-action-freedom-of-information-and-environmental-information/>

b) Complaints Received about Kirklees

The ICO made the Council aware of 14 complaints they had received about Kirklees' handling of FoI and EIR requests:

| Summary | Outcome |
|--|---|
| Complaint about delay in responding to a request | ICO instructed Council to respond within 10 working days. Response sent to applicant within timescale specified |
| Complaint about handling of an Fol request (NCND refusal under s40 – personal information; appeal not upheld at internal review) | ICO decision is that the Council correctly applied the exemption provided by section 40(5) and does not require any steps to be taken. The ICO notes that the internal review outcome was sent outside 40 working days and recommends IR outcomes are provided within 20 workings days. See Decision Notice FS50623104 below |
| Complaint about handling of an Fol request (refusal under s12 – exceeds appropriate time limit) | ICO decision is that the Council has correctly applied the exemption set out at section 12(1) of the Fol Act (time for compliance) and also complied with the requirement at section 16(1) to provide advice and assistance. See Decision Notice FS50630261 below |
| Complaint about handling of an Fol request (response was information not held; appeal not upheld at internal review) | ICO decision is that the Council has not complied with section 1(1) (the general right of access to information) of the Fol Act and requires the Council to issue a fresh response that does comply with Section 1(1) or issue a valid refusal notice under s17. Response sent to applicant within timescale specified See Decision Notice FS50630073 below |
| Complaint about handling of an Fol request (refusal under s31 – law enforcement) | ICO decision is that the Council was correct to rely on the section 31(1) to neither confirm nor deny that the information is held. The ICO does not require the Council to take any steps to comply with the legislation Decision Notice FS50642945 refers |
| Complaint about handling of an Fol request (refusal under s42 – legal privilege) | ICO decision is that the Council has properly applied section 42 to the withheld information and requires the Council to take no further action in this matter See Decision Notice FS50645010 below |
| Complaint about handling of an Fol request | Awaiting contact from ICO |
| Complaint about handling of three Fol requests | Awaiting contact from ICO |
| Complaint about handling of an Fol request (refusal under s14(1)) | Awaiting contact from ICO |
| Complaint about handling of an Fol request (refusal under section 3(2)(a)) | Awaiting contact from ICO |
| Complaint about handling of an Fol request (refusal under section 3(2)(a)) | Awaiting contact from ICO |
| Complaint about handling of an EIR request (refusal under Reg13) | Awaiting contact from ICO |

| | |
|--|---------------------------|
| Complaint about handling of an EIR request (refusal under section Reg13) | Awaiting contact from ICO |
| Complaint about handling of an FoI request (refusal under s21, s31, s40) | Awaiting contact from ICO |

c) Decision Notices

When a complaint is made under the FOI Act against a public authority, the ICO investigates the facts behind the complaint and may then issue a decision notice. This is the Commissioner's view on whether or not the public authority has complied with the FOI Act or the EIR and can include legally binding steps for the public authority to follow.

When a decision notice is issued, the ICO informs both parties of their right to appeal to the First-tier Tribunal (Information Rights).

The ICO published the following Decision Notices in relation to 4 complaints made about Kirklees in 2016-17:

Case Ref: FS50623104

15 September 2016, Local government (District council)

Summary: The complainant has requested information from Kirklees Metropolitan Council ("the Council") about communications between the Council and the Crown Prosecution Service ("the CPS") in relation to given building addresses. The Council applied the exemption provided by section 40(5) of the Freedom of Information Act ("the FOIA"). The complainant subsequently contested the Council's application of this exemption. The Commissioner's decision is that the Council has correctly applied the exemption provided by section 40(5). The Commissioner does not require any steps to be taken.

FOI 40: Not upheld

[View a PDF of Decision notice FS50623104](#)

Case Ref: FS50630073

13 December 2016, Local government (District council)

Summary: The complainant has requested information from Kirklees Metropolitan Council about any communications between the Council and the Crown Prosecution Service. The Council responded that no information was held. The complainant subsequently contested the Council's response. The Commissioner's decision is that the Council has failed to comply with section 1(1). The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation: Issue a fresh response that complies with section 1(1) or issue a valid refusal notice under section 17.

FOI 1: Upheld

[View a PDF of Decision notice FS50630073](#)

Case Ref: FS50630261

13 December 2016, Local government (District council)

Summary: The complainant has requested information from Kirklees Metropolitan Council about the number of staff subject to disciplinary action over six years. The Council refused to

comply with the request under section 12(1) of the Freedom of Information Act. The complainant subsequently contested the Council's refusal. The Commissioner's decision is that the Council has correctly applied the exclusion provided by section 12(1), and has also complied with the requirement of section 16(1) to provide advice and assistance. The Commissioner does not require any steps to be taken.

FOI 12: Not upheld

FOI 16: Not upheld

[View a PDF of Decision notice FS50630261](#)

Case Ref: FS50645010

23 March 2017, Local government (District council)

Summary: The complainant has requested a variety of recorded information which relates to the Kirklees Metropolitan Council's relationship with Kirklees Active Leisure. The Council has provided the complainant with much of the information he seeks, including references to locations on the Council's website where relevant information can be readily accessed. Notwithstanding its disclosure of information, the Council has withheld two paragraphs of a report made to its Cabinet on 8 November 2011, entitled 'Kirklees Sport and Leisure Facility Management – Options Appraisal and Update on Renewal Process'. The Council has relied on section 42 of the FOIA to withhold these paragraphs, on the grounds that the information they contain attracts legal professional privilege. The Commissioner's decision is that Kirklees Metropolitan Council has properly applied section 42 to the withheld information.

FOI 42: Not upheld

[View a PDF of Decision notice FS50645010](#)

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

d) Tribunals

An appeal to the First Tier Tribunal (Information Rights) was lodged during 2016-17 in respect of ICO Decision Notice [FS50595397](#) issued in February 2016. The appeal was subsequently withdrawn by the Appellant before it was heard by the Tribunal. FTT Case EA/2016/0064 refers.

Appendix D – Local Government Transparency Code

Local Government Transparency Code

Progress Report

May 2017

Anna Bowtell

Research & Intelligence Manager

SUMMARY

In 2015 & 2016, Kirklees Council published data & information, where available, to try to meet the requirements of the Local Government Transparency Code. Despite a recent consultation, the Transparency Code has not been updated since 2015 so we have been working with the same requirements as stipulated in the 2015 publication. The code has two elements; information which *must* be published and information that is *recommended* for publication. In 2016 & 2017, there has been additional local emphasis on requesting data that meets the *recommended* element of the code. This is in preparation for an anticipated request for all authorities to meet the recommended criteria in the near future.

The published data can be found here:

<http://www.kirklees.gov.uk/beta/information-and-data/open-data-sets.aspx>

| | 2015 | | 2016 | | 2017 | |
|---|---|---|---|--|---|---|
| | MUST be published | Recommended for publication | MUST be published | Recommended for publication | MUST be published | Recommended for publication |
| Expenditure Exceeding £500 |  |  |  |  |  |  |
| | 2 identifiers are not published: - Summary of purpose - Unrecoverable VAT | | 2 identifiers are not published: - Summary of purpose - Unrecoverable VAT | | 2 identifiers are not published: - Summary of purpose - Unrecoverable VAT | |
| Government Procurement Card Transactions |  |  |  |  | AWAITING DATA FROM SERVICE | |
| | 3 categories are not published: - VAT - Summary of purpose - Merchant Category | | 3 categories are not published: - VAT - Summary of purpose - Merchant Category | | Procurement Card Transactions have historically been published. However, a new report is being prepared to capture this data for publication in 2017. | |
| Procurement information |  |  |  |  |  |  |
| | Publishing contracts on Yortender £5k & above is not prescribed by procurement and £20k still remains the limit. Now publishing on Contracts Finder [.gov.uk site] – publishing >£25k as this is what is stipulated to procurement for non central government. The code asks for >10k. | | | | | |
| Local Authority Land |  |  |  |  | AWAITING DATA FROM SERVICE | |
| | 2 definite categories are not published: - Freehold or | | 1 definite category is not published: - Land or building | | | |

| | | | | |
|--|--|---|--|--|
| | leasehold - Land or building asset Queries about data accuracy & whether all assets stipulated are included in the list. | asset Recommended involves more regular publication, publishing to the Electronic Property Information Mapping Service & more in-depth categories e.g. hectares/reasons. | | |
|--|--|---|--|--|

| | | | | | | |
|--|--|--|--|--|--|--|
| Grants to voluntary, community & social enterprises and organisations | | | | | | |
| | It is currently an annual publication due to the manual collation that is required so difficult to move to a dynamic or more frequent reporting schedule. Not possible to disaggregate by various sectors as currently not recorded. | | | | | |

| | | | | | | |
|---------------------------|--|--|--|--|---|--|
| Organisation Chart | | | | | AWAITING DATA FROM SERVICE | |
| | Top three levels of the organisation published ONLY. | | Salaries over £50,000 have been reported with bands included. A current vacancy link has been added nearby for easy user access. | | Information currently being collected by Corporate HR. Delays due to senior management service re-design. | |

| | | | | | | |
|----------------------------------|--|-----|---|--|--|--|
| Trade Union Facility Time | | N/A | AWAITING DATA FROM SERVICE | | AWAITING DATA FROM SERVICE To be published Mid May 2017 | |
| | There are no 'Recommended' requirements. | | Information currently being collected by Corporate HR with HOS within each service. New TU legislation [from April 2016] stipulates publication by July 2018 [different timeframe]. | | | |

| | | | | | | |
|------------------------|--|-----|--|-----|--|-----|
| Parking Account | | N/A | | N/A | | N/A |
| | Does not include a breakdown of how the authority spends the parking account surplus. There are no 'Recommended' requirements. | | | | | |

| | | | | | | |
|---------------------------------|--|--|--|--|--|--|
| Controlled Parking Space | | | | | | |
| | The information requested is available. Accessibility could be improved by offering aggregated figures [although this is not specified precisely in the guidance]. | | | | | |

| | | | | | | |
|------------------------|--|-----|---|-----|---|--|
| Senior Salaries | | N/A | | N/A | AWAITING DATA FROM SERVICE | |
| | Only top 3 tiers were reported on. Job descriptions posted are out of date. There are no 'Recommended' | | Salaries over £50,000 have been published. Job Descriptions & 'responsibilities' [including budget/services/ functions] requires work – currently | | Information currently being collected by Corporate HR. Delays due to senior management service re-design. | |

| | | | | | | |
|---------------------|---|-----|---|-----|---|-----|
| | requirements. | | with HR to gather JDs for publication. | | | |
| Constitution |  | N/A |  | N/A |  | N/A |
| | Direct feed to web link – if content changes, link will update. | | | | | |
| Pay Multiple |  | N/A |  | N/A |  | N/A |
| | No comment to add. | | | | | |

| | | | | | | |
|-----------------------------------|--|---|---|--|---|---|
| Fraud |  |  |  |  |  |  |
| | Data received from service does not include the total £'s spent on investigation & fraud – 20% of the basic requirements for the code. Service is struggling with IT systems & change in officer ownership of the fraud section. | | | | Data now includes the spend on investigation & fraud. | |
| Waste Contract | Not Applicable for Kirklees | | | | | |
| Social Housing Asset Value |  | N/A |  | N/A |  | N/A |
| | No comment to add. | | | | Data routinely published in the month of September | |

In terms of enforcement, the Information Commissioners Office will not monitor compliance with the Code; it will react to complaints from the public under existing frameworks - the Freedom of Information Act and the Environment Information Regulations. We are not aware that any enforcement has been taken as a result of requests being made through these routes.

PROGRESS AND NEXT STEPS

Much officer time has been spent collecting, compiling & publishing the above data requirements. There have been delays due to sickness and management re-structuring but we have made good steady progress. We will continue to ensure that, where data is absent for 2016 and 2017, it is updated and published in line with the code's recommendations.

Kirklees council need to continue to ensure the following steps are taken to enable all requirements to be satisfied as fully and accurately as possible.

1. **Continuity through group contacts** – having a single dedicated officer in a service is not enough. A lot of delays in data publication have been a result of officers leaving the council and capacity and knowledge being at a shortfall. We need to ensure a small group of officers have oversight of the governance of the data within the service to allow for continuity in provision & publication.
2. **Formats** – to be truly transparent we need to up our game with accessibility. One way is to provide data in multiple formats on the website. At the moment some documents are called a 'csv' file but in reality they are excel files when opened. We need to proactively translate files before publication.
3. **Time Series** – keeping the old files present on the website for users is paramount. This allows users to compare time series data to help with their interpretation & generalisation of the data.
4. **Moving to 'recommended'** – although progress is being made in this direction, it still needs to be the main driver as we expect any future obligation will be to adhere to these 'recommended' requirements.
5. **Connecting our business intelligence** – the data published under the code is a small jigsaw piece in the organisation's attempt to understand itself as a business. Progress in the internal Integrated Intelligence Programme and the Business Intelligence work [led by IT] must incorporate this element. Benefits may include automation of data compilation and richness of understanding across datasets.
6. **Keeping our eyes out** – The Transparency Code is a small part of the open data agenda. We need to ensure we know what our neighbouring authorities are doing to meet these requirements and the additional work they are doing to complement open data. Leeds has

seen the development of the Data Mill and are currently incorporating 'big data' ideas into their platform. The Local Government Association have also provided guidance material on data standards and related schema to enhance dataset standardisation for comparability purposes. This area continues to grow and we need to be prepared to respond.