

## AGENDA ITEM NO 8

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### REPORT ON FREEDOM OF INFORMATION/ ENVIRONMENTAL INFORMATION REGULATION SCHEME AND REQUEST DATA: VOLUME/ TIME TAKEN AND COMPLIANCE (& RELATED ISSUES)

To: Personnel & Corporate Services Committee

Date: 7 February 2013

From: Jeanette Thompson, Head of Legal & Democratic Services/Monitoring Officer  
[M237]

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#### 1.0 ISSUE

1.1 To receive a report on the Freedom of Information (FOIA) 2000/ Environmental Information Regulations 2004 (EIR) request data: volume/ time taken/ compliance and an update on related data access developments (on landcharges and the Central Government Transparency Agenda).

#### 2.0 RECOMMENDATION

2.1 To note the contents of the report, and request a further annual update on or around February 2014.

#### 3.0 BACKGROUND/ISSUES

##### ***Publication Scheme:***

3.1 On 29 September 2008 the Policy & Resources Committee approved a new Freedom of Information Model Publication Scheme, as proposed by the Information Commissioner (ICO) in relation to the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR) requests. Councils have not received any additional funding to administer this Scheme – nor for the transparency agenda actions proposed. This Model Scheme listed documents that should be available for inspection or available on line and came into force on 1 January 2009.

3.2 Following the adoption of the Model Scheme, authorities are obliged to review and update the information guide and the contents part of the Scheme, on a regular basis. However, in early 2012 it was intimated by the ICO that it intended to review the nature of the Publication Scheme. A consultation exercise was undertaken and later in 2012 the ICO issued a release, setting out its intention to roll out a new Publication Scheme, with associated guidance on types of documents and charging. This, it is understood, will link in with the Government's transparency agenda, with the new intended Scheme being used as a way of "encouraging" Local Authorities to undertake "pro-active information sharing with the citizen"<sup>1</sup>. As this follows other Central Government transparency agenda consultations on a regulatory Transparency Code and Dataset Code (see below), authorities will have to wait to see if the Scheme and various Codes are clear and provide effective, non-bureaucratic ways of sharing authority information.

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<sup>1</sup> ICO "Publication scheme plan for 2012/13.

**Resources:**

- 3.3 Following the Policy & Resources Committee decision of 20 September 2008, legal has recorded the resource implications on the Council of having to deal with the FOIA/ EIR requests and an annual report has been brought to Committee to review the impact on officer's time and consider any compliance issues. Since 1 November 2008 FOIA/ EIR administration officers have coordinated time recording for each request and monitored compliance. Since September 2012, the log of requests and responses is kept on the Council's website. More assistance is provided to Council officers by FOI administration and a current member of staff is being developed to provide further support to officers.

**Time spent on answering FOIA/ EIR requests/ administration:**

- 3.4 During this monitoring period (**1 October 2011 to 31 December 2012**) officers answering the requests have recorded **757 hours** (compared with the previous of 440, 324.40 and 145.16 hours in the sequential years before). FOIA/EIR administration/ coordination has recorded around **445 hours** (compared with the previous year of 356.25).
- 3.5 Whilst the monitoring period for this report was extended by 2 months – this nevertheless shows that officers involvement in FOIA/EIR requests has again noticeably increased. The total time expended by officers administering and answering the requests during the above monitoring period *is equivalent to* **14.31 full working days<sup>2</sup> per month**, an increase from the previous year's tally of 9.48 days.

**Volume of FOIA/ EIR requests:**

- 3.6 In April 2007, FOIA/ EIR administration became more centralised/ organised and the following number of requests have been recorded:
- |            |   |             |             |
|------------|---|-------------|-------------|
| April 2007 | - | March 2008: | <b>85</b>   |
| April 2008 | - | March 2009: | <b>337</b>  |
| April 2009 | - | March 2010: | <b>249</b>  |
| April 2010 | - | March 2011: | <b>547*</b> |
| April 2011 | - | March 2012: | <b>878*</b> |
- NB** during the subsequent 9-month period the Council has **received 613 further requests** for information, which continues to show an ongoing increase in requests.

\*This includes Personal Search information, which since August 2010 has to be accessible via the (free) EIR route.

**Period of time recording:**

- 3.7 The overall trend for requests and time expended by staff continues upwards. Volume and complexity of requests, however, continue to fluctuate from month to month. For that reason it is difficult to give overall predications on numbers and amount of officer time involved, although the overall direction is an increase in requests and time spent.

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<sup>2</sup> Based on 7 productive/ chargeable hours per day

- 3.8 The varying complexity of the requests meant that some could be answered in 5 minutes, with the longest taking **16.35 hours** to respond to (excluding administration). Notwithstanding this, officers have to deal with any volume of requests as they arise – because all requests should (subject to some exceptions) be acknowledged within 5 working days and answered within statutory limits (of 20 working days). If they are not, then Reviews can be requested and then a complaint made to the ICO if a requestee is not satisfied with the response/ or the way this has been handled. It is worth noting that the Council cannot legally charge for officers' time for these requests, until or unless the individual request reaches/ is likely to reach 18 hours. The 18-hour limit can also be a basis for refusing to deal with a request under FOIA or if the request is manifestly *unreasonable* under EIR.

***Compliance- answering FOIA/ EIR requests: October 2011- December 2012:***

- 3.9 Under the FOIA/ EIR handling procedure, the requests should be sent to the administration team/ logged and allocated by the Head of Service. This allows the FOIA/ EIR administration team to monitor and remind officers of the due date. This centralisation continues to work well, as for the above monitoring period all but 2 of the 1069 requests were dealt with, within 20 working days by officers (representing a **99.81%** compliance rate). This is a significant achievement for a small District Council on the growing numbers – especially as the ICO will name/ shame and monitor those Councils with late response rates.
- 3.10 A number of reviews were undertaken during the monitoring period, however, only one applicant complained to the ICO in relation to a trees/ planning enforcement disclosure matter. The only issue that the ICO raised, was the way the document had been redacted (ie removal of some information from the documentation). Two different methods had been used and the ICO indicated that the legal officer involved should re-do the redactions with one method. This was refused on the basis that this was unnecessary and not an effective use of officer time – nor were there any legal or guidance requirement to do this. This was not pursued further by the ICO, and other issues raised by the complainant were not upheld.

***Further developments/ concerns:***

***Landcharges***

- 3.11 The Local Authorities (Charges for Property Searches) Regulations 2008 (“CPSR”) came into force on the 23<sup>rd</sup> December 2008, which meant that new search fees had to be set for access to property data (Con29 Land Charge searches) on a time costed basis (current charge £66).
- 3.12 Following on from the fee changes, several complaints were made to the ICO (against other Local Authorities), in respect of the charging regime for property data and claims from the private sector that this data should be freely available under EIR. Judicial Review proceedings were issued against

one local authority (York City Council<sup>3</sup>) by one of the search companies regarding a refusal to provide free access, and bulk request charges (for unrefined information). Whilst the Judge in that case found that a local authority was not obliged to allow free open access to all of its unrefined property information, search companies continued to request free access under EIR.

- 3.13 In March 2010 the Department of Communities and Local Government (“DCLG”) sent notice that a New Burdens Grant<sup>4</sup> had been awarded to Local Authorities providing landcharges information. In August 2010, the Government issued Rules<sup>5</sup> revoking the fee for Personal Searches (fixed at £22 at the time), and since that date Personal Search requests have to be dealt with as EIR requests.
- 3.14 In the meantime, the Local Government Association has been working with Local Authorities and the Government to try to clarify issues/ provide advice and guidance and has co-ordinated action on behalf of local authorities on this matter.
- 3.15 In early 2011, Solicitors issued proceedings against a number of Suffolk authorities and the Government for restitution of the personal search fees income (reclaiming monies paid since January 2005), on the basis that this was contrary to the European Directive on access to environmental information. In July 2011, another firm of solicitors representing approximately 150 Personal Search companies, threatened and then issued proceedings against all the Local Authorities in England and Wales regarding alleged unlawful charges and damages for breach of the Competition Act 1998. Bevan Brittan solicitors have been appointed to represent the Local Authorities and the cases are still ongoing.
- 3.16 If the final outcome is that all such information has to be provided under EIR, then there will clearly be an impact on time and administration. Land Charges search fee income may be lost altogether. A small proportion of the loss to personal search income has been mitigated by the New Burdens Grant. Note that the Land Registry is currently seeking to establish a Local Land Charge search service – with talk of a prototype being piloted this year. If this is successful, the Land Registry will seek the transfer of the service and information from local authorities (for free) from 2014-2017.

**Transparency Agenda:**

- 3.17 Following the introduction of the requirement for Local Authorities to publish spend data over £500 from January 2011 (introduced by this Council from 30 November 2010) and a Contracts/ Tenders Register detailing all new contracts/ tenders over £500 from 1 February 2011, Central Government has continued with initiatives on transparency with “Making Open Data Real” consultation, consultation and follow up on the Protection of Freedoms Act 2012, “Improving Local Government Transparency: Making The Code of

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<sup>3</sup> (*OneSearch Direct Holdings Ltd (formerly SPH Holdings Ltd) (trading as OneSearch Direct) v City of York [2010] EWHC 590 (Admin)*).

<sup>4</sup> Letter March 2010 of £34,355.83 to cover “potential restitutionary claims and loss of fee foregone 2010/11”.

<sup>5</sup> Local Land Charges (Amendment) Rules 2010, in force from 17 August 2010

Recommended Practice for Local Authorities on Data Transparency enforceable by regulations” consultation in October 2012 and a “Consultation on the Code of Practice (Datasets)”.

- 3.18 The thrust of such Codes will be the release of information in re-usable form on the Internet. Potential problem with such an approach is the additional burden that this will place on the Council to ensure that all such information is on the internet (with the possible issue with server capacity); the time taken to convert and checking/ compiling and “redacting” (removing) sensitive/ commercial or personal information from the data and issues relating to fraud. The current example of this is the £500 spend and £500 contract/ tender information. Currently that takes officers an hour per month to prepare such spend data and the contract/ tender register. That is 24 hours per year that the Council did not previously have to fund through officer time. The current process by the DCLG also undermines the role of the ICO, in that these Codes often seek to place duplicate or contradictory requirements on Local Authorities that will cause issues of inconsistency and problems with compliance.
- 3.19 Furthermore it follows on from requirements already imposed in a DCLG Code<sup>6</sup> for an “inventory of the public data”. Once prepared, these inventories should be registered on data.gov.uk as a single point of access for all public data from National and local government. The format of such inventories is still unclear at present; however, it is more than arguable that this could be covered under the terms of the Model Publication Scheme that the Council was already obliged to follow. These requirements will hopefully be clarified following the consultation referred to in 3.17.

#### 4.0 ARGUMENTS/CONCLUSIONS

- 4.1 FOIA/ EIR places increasing burdens on staff to deal with requests. This together with further transparency requirements (– whilst laudable), place substantial pressures on small authorities, that do not have the staff capacity to absorb the requirements as easily as larger ones.
- 4.2 This has not been assisted by the manner in which Central Government have approached the transparency issue – with various consultations and Codes being issued that are slightly contradictory. It is also arguable that a lot of the requirements under the Code are already dealt with under the Model Publications scheme and a more effective way to approach this would have been through this route/ ICO rather than duplicate through another avenue.
- 4.3 The format of the inventories has not been set out – and Local Authorities will have to wait to see whether this will be different from the new Publication Scheme requirements issued in April 2013.
- 4.4 Anecdotally, it is also worth noting that since the introduction of the various transparency requirements in 2011, there has been an increase in fraud related crime linked to the release of such data by Local Authorities, with an

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<sup>6</sup> 29 September 2011, DCLG “*The Code of Recommended Practice for Local Authorities on Data Transparency*”.

estimated cost of £7 million. Up to date information on such costs for 2012 is not readily available. The government's response under the Code/ draft proposals to change the Code and for further datasets is for Local Authorities to undertake risk assessments/ follow guidance on fraud<sup>7</sup> and to have anti-fraud measures in place to reduce the risk of such activities occurring. Unfortunately, if more data is required to be published in re-usable format, the burden that this will create may be substantial.

## 5.0 FINANCIAL IMPLICATIONS/ EQUALITY IMPACT ASSESSMENT

5.1 The level of requests for information, since 2007, has translated into a higher demand in terms of FOIA/ EIR administration. Overall time spent by officers on such requests during the monitoring period equates to **c.172 officer days per year, which the Council is unable to recover in terms of costs or productivity. This does not take into account the additional time spent on the transparency agenda issues.**

5.2 Photocopying charges only become a relevant consideration on the 11<sup>th</sup> page of any document, and whilst the Council can then charge for such information on a £0.10 per page basis for this and postage, the vast majority of requests can now be dealt with through email transmission, rather than hard copy.

5.3 In respect of Local Land charges: income adjustments had already been effected in relation to Personal Search income.

5.4 An Equality Impact Assessment (INRA) is not required – as this report seeks to provide an annual update to members on FOIA/EIR related matters.

## 6.0 APPENDICES

6.1 None.

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<sup>7</sup> The Chartered Institute of Public Finance and Accountancy Red Book 2 – *Managing the Risk of Fraud – Actions to Counter Fraud and Corruption.*

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
<p>FOIA/EIR logs.  ICO Publication scheme plan for 2012/13  DCLG Improving Local Government Transparency: Making The Code of Recommended Practice for Local Authorities on Data Transparency enforceable by regulations consultation. 10/12  Consultation – Code of Practice (Datasets).</p>	<p>Room 113  The Grange  Ely</p>	<p>Jeanette Thompson  Head of Legal &amp; Democratic Services  Services/Monitoring Officer  (01353) 616372  E-mail:  Jeanette.Thompson@eastcambs.gov.uk</p>