

ANGUS COUNCIL

SCRUTINY AND AUDIT COMMITTEE – 1 DECEMBER 2020

FREEDOM OF INFORMATION AND EIR REQUESTS

REPORT BY JACKIE BUCHANAN, DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT

This report provides information to elected members about Freedom of Information and Environmental Information requests received by the council for the period 1 January 2015 until 30 September 2020, including details of the key themes of such requests.

1. RECOMMENDATION(S)

1.1 It is recommended that the Committee:

- (i) consider and note the contents of this report regarding FOI and EIR requests received by the council, including details of key themes of such requests.

2. ALIGNMENT TO THE ANGUS COMMUNITY PLAN/COUNCIL PLAN

2.1 This report contributes to the achievement of the corporate priorities set out in Angus Community Plan and Council Plan by providing the Scrutiny & Audit Committee with information and assurance about council systems and processes dealing with FOI and EIR requests.

3. BACKGROUND

3.1 Report 203/20 entitled “Annual Governance Statement Assurances” was considered by Scrutiny and Audit Committee on 25 August 2020. As part of the discussion on that report it was agreed that a report regarding FOI and EIR requests received by the council would be submitted to the next Scrutiny and Audit Committee, including details of key themes of such requests.

3.2 The Freedom of Information (Scotland) Act 2002 (FOISA) came into effect on 1 January 2005. Under FOISA, a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority, subject to certain conditions and exemptions which are set out in the FOISA. The Environmental Information (Scotland) Regulations 2004 (the EIRs) also came into force on 1 January 2005 and give the public rights of access to environmental information held by Scottish public authorities. In the following they are both referred to as forming part of the Scottish FOI regime.

The council has adopted the Model Publication Scheme 2016 which was produced and approved by the Scottish Information Commissioner. The Publication Scheme sets down, in a structured way, the different types of information about the council that we are committed to publish. Information is classified by type to make it easier for people outside the council to find. The Publication Scheme and the council's Guide to Information are on the [council's website](#).

An applicant for information has the right to ask the council to review its action and/or decisions if they are dissatisfied with the way in which the council has dealt with the request for information. If still dissatisfied with the review decision, or if the review decision has not been received within 20 working days, an applicant may appeal to the Scottish Information Commissioner.

Since April 2013, all Scottish public authorities have been required to provide quarterly statistics on requests and decisions dealt with under the Scottish FOI regime, details of reviews dealt with and exemptions/exceptions applied for each request. These statistics are available on the Scottish Information Commissioner's website at www.itspublicknowledge.info.

4. CURRENT POSITION

- 4.1 During 2020 the pandemic had a notable impact on the number of requests received during the lockdown. Levels from June onwards are more in line with previous years with the expected annual figure for 2020 estimated to be in the region of 1100-1150 requests. Table 1 sets out the number of requests received from January-September 2020. Table 2 provides information on the services dealing with the highest number of requests over the same period.

Table 1

2020	Requests
January	115
February	105
March	74
April	36
May	46
June	102
July	131
August	84
September	84

Table 2

Service	Number of requests by service
AHSCP	55
CFJ	23
ECP	75
Finance	89
Housing	42
HR	29
Legal	
1. Service requests	140
2. Corporate requests	62
Planning	47
Roads	74
Schools & Learning	57

A comparison with the annual number of FOI/EIR requests received from 2015 is set out in the table below. Members will note that the FOI/EIR year corresponds to the calendar year.

Year	2015	2016	2017	2018	2019	2020*
Requests received	833	1047	1156	1240	1346	777
Requests answered within statutory timescale	86%	73%	81%	84%	83%	81%

* To 30 September 2020 (3 quarters)

Members will note from the table above that over the years there has been a steady increase in the number of requests made to the council. The council is legally bound to comply with FOISA and EIRs. A failure to respond to a FOI/EIR request within the statutory timescale is a breach of the legislation. The number of responses issued outwith the statutory timescale is reported to CLT on a regular basis.

FOI requests are dealt with within existing staff resources. They are recorded and co-ordinated centrally by Legal and Democratic Services. In addition, Legal and Democratic Services deal with any requests which are specific to their service, all of the corporate requests (which are supported by staff within services), the preparation and submission of quarterly statistical returns to the Scottish Information Commissioner, drafting of guidance documents, the provision of FOI-related advice to services and dealing with reviews and appeals.

TYPE OF APPLICANTS/SOURCES OF REQUESTS

The following table provides an indicative breakdown of the source of requests for information:

Type of Applicant	2015	2016	2017	2018	2019	2020*
Campaign Group	5	3	7	10	40	1
Commercial & other Organisations¹⁾	185	282	274	291	301	218
Elected Representatives²⁾	41	70	64	89	131	15
Individuals³⁾	352	413	477	551	540	332
Media	195	221	202	217	253	93
Public Authorities⁴⁾	17	27	98	45	34	104
Solicitors	43	30	22	20	47	13
Others	1	1	12	17	0	1
Total	839	1047	1156	1240	1346	777

* To 30 September 2020 (3 quarters)

1) Companies, Scottish partnerships, unions etc

2) MSPs, MPs, community councillors

3) No further breakdown is recorded. It is estimated that university students account for 4-5 requests annually.

4) Scottish Parliament, councils

KEY THEMES

We do not currently record or categorise requests by themes of information requested as themes span a wide variety of information. Some information which is repeatedly requested is proactively published in the form of Open Data on the council's [Open Data Portal](#). These data sets are freely available to everyone to use and republish as they wish, without restrictions from copyright. This currently includes for example some information on Common Good, all council expenditure items above £500, planning information etc.

Other types of information frequently requested over recent years include information on the council's preparations for Brexit, on COVID-19 measures, other contemporary issues such as travel expenditure of staff, fixed penalty notices, business rate information, requests by search companies in relation to the status of properties, queries about expenses, travel and hospitality of elected members and reported cases to the Queen's and Lord Treasurer's Remembrancer.

REQUESTS FOR REVIEW/ APPEALS

An applicant has the right to ask the council to review its action and/or decisions if they are dissatisfied with the way in which the council has dealt with the request for information. Reviews involve the Director of Legal and Democratic Services and the Chief Executive providing a response to the applicant on whether the initial response to the applicant is to be either upheld

or modified/replaced. It is the review decision which the Scottish Information Commissioner will investigate.

If still dissatisfied with the review decision, or if the review decision has not been issued within 20 working days, an applicant may lodge an appeal with the Scottish Information Commissioner.

REQUESTS FOR REVIEW						
	2015	2016	2017	2018	2019	2020*
No of Reviews	12	10	6	9	11	6*
Review Withdrawn	1	1	1	0	0	1
Review Upheld	3	8	1	4	4	2
Review Not Upheld	7	1	3	4	6	1
Review Partly Upheld	1	0	1	1	1	1

* 1 decision pending

APPEALS TO SCOTTISH INFORMATION COMMISSIONER						
	2015	2016	2017	2018	2019	2020*
No of Appeals	1	3	1	2	0	0
Appeal Withdrawn	0	0	1	0	0	0
Appeal Upheld	0	2	0	0	0	0
Appeal Not Upheld	1	1	0	0	0	0
Appeal Partly Upheld	0	0	0	2	0	0

* To 30 September 2020 (3 quarters)

WORK IN PROGRESS

The following areas of work are in progress or planned:

- a) Commissioning of a new FOI request management system. In order to discharge our statutory obligations as council we are required to establish an auditable trail from receiving a request to issuing a response. Monitoring and recording is required with regard to the observance of statutory deadlines, searches of records carried out, the use of exemptions and exceptions (where we are required to withhold information), the provision of help and advice to the applicant, the provision of quarterly statistics to the Scottish Information Commissioner, and the provision of documentation to the internal Review Panel as well as to the Scottish Information Commissioner in case of requests for review or appeal. The new management system is expected to deliver:
 - time savings throughout council services;
 - process optimisation;
 - a reduction in duplication and re-working;
 - increased speed of service delivery;
 - increased reliability.
- b) Publication on the council website of a Disclosure Log. The purpose of the Disclosure Log is to give access to information that the council has previously provided in response to requests for information. An anonymised version of responses is added to the Log after they have been sent to applicants.
- c) Increased publication of Open Data sets which is hoped will result in a reduction in the volume of FOI enquiries.
- d) Currently Information Officers are kept updated on an *ad hoc* basis if and when significant decisions affecting the council have been made by the Scottish Information Commissioner. It is the aim to introduce a regular newsletter to keep Information Officers up to date with the FOI/EIR decisions of the Commissioner and developments in that area in general.

5. FINANCIAL IMPLICATIONS

- 5.1 All costs associated with dealing with FOI requests, reviews and appeals are contained within existing budgets. Currently the time spent on dealing with these requests is not recorded but it can be considerable both in terms of Legal support and Service input. There was no resource allowance made for public authorities when the FOI Regime was introduced. Also, in some instances commercial undertakings charge for the data that Councils supply through the FOI Regime and the Council cannot charge for such, for example information contained in Property Enquiry Certificates.
- 5.2 Under FOISA the council does not have to provide information where it would cost the council over £600 to do so. The council cannot charge for requests that cost less than £100 to deal with and it can charge 10% of costs for requests costing between £100- £600 to deal with. However, the council has decided that there will be no charge for requests costing less than £400 to process. In calculating the council's costs, the maximum rate it can charge for a member of staff is the actual cost of the member of staff's time up to a maximum rate of £15/hour. Any charges are subject to review.
- 5.3 For EIR requests there is no defined lower or upper limit for charging, and there is no maximum rate per hour. The Regulations state that the council can charge a reasonable amount for accessing environmental information and specifically state that the fee charged must not exceed the costs to the authority of making that information available. A charge will only be due where the cost of compliance is greater than £100. The council has introduced a council's [Charging Policy for EIR requests](#).

The council must ensure that the projected costs should be a reasonable estimate of the costs likely to be incurred and based only on the estimated actual costs to the authority. The council's fee notes are open to review and appeal to the Scottish Information Commissioner. Overpaid amounts must be returned to the applicant.

Staff Time	FOISA	EIR
Per hour charge	Max £15/hour*	At cost*
Determining whether information is held	No	No
Locating/Retrieving information	Yes	Yes
Considering application of exemption/Exception	No	No
Copying/Redacting	Yes	Yes

* Necessity test

- We can charge for postage
 - We cannot charge for access to public registers or material published under the Publication Scheme
- 5.4 There is currently one member of staff who is specifically employed to deal with FOI requests. Due to the increase in volume and complexity of requests Legal and Democratic Services are currently recruiting a full-time Assistant FOI Officer to support the co-ordination of services when dealing with requests and to increase the overall resilience of the service.

6. OTHER IMPLICATIONS

- 6.1 The council is legally bound to comply with FOISA and the EIRs. Non-compliance carries the risk of reputational damage to the council. The Scottish Information Commissioner has powers of enforcement which can be used where a public authority is consistently failing to comply with the legislation.

NOTE: No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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