

Corporate Governance and Standards Committee Report

Ward(s) affected: n/a

Author: Ciaran Ward

Tel: 01483 444072

Email: ciaran.ward@guildford.gov.uk

Lead Councillor responsible: Matt Furniss

Tel: 07891 022206

Email: matt.furniss@guildford.gov.uk

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Freedom of Information Compliance Update

Executive Summary

This is a regular report to monitor the Council's performance in dealing with Freedom of Information (FOI) and Environmental Information Regulations (EIR) requests.

As of 19 December 2016, the Council's performance rate for delivery of responses to FOIs stands at 86%, which compares favourably with the figure of 81% recorded at the end of 2015. The Council therefore meets the Information Commissioner's performance indicator of 85%, but falls slightly short of the 90% target agreed by the Corporate Management Team.

Recommendation to Committee

That the Committee notes the officer actions and continues to receive updates.

Reasons for Recommendation

- To ensure that Members are kept up to date with developments in the FOI/EIR framework
- To ensure that Members have the necessary information to enable requests for information to be made easily to the Council and properly responded to
- To assist with learning lessons and improving performance following requests for information made to the Council

1. Purpose of Report

- 1.1 The Corporate Governance and Standards Committee has requested this report to ensure the Council improves its response timescales for FOI and EIR requests. The report also gives Members the chance to comment on the current system of monitoring and answering requests made to the Council under the Freedom of Information Act/Environmental Information Regulations.

1.2 Appendix 1 contains the performance figures for each service area and a total for the Council, including volume of FOI/EIR requests received and the percentage responded to on time.

2 eCase Update

2.1 The eCase system for the logging of FOI/EIR requests was implemented in June 2016. New features were added in December 2016 as part of an upgrade. This includes:

- A Case Timeline view is now available on the Case Details screen. It provides a visual of the key stages of the case. The five most recent entries are now visible on the Case Details screen.
- When an Internal Review is opened on a case, the team member assigned to investigate it will now see an Internal Review clock next to the Internal Review request on their Workbasket. The 20 working day service level is assigned to the Internal Review and visible when you hover over the clock.
- Reject Assignment (Case Creator) – if the Drafter has had a discussion with the Hub Coordinator and they have both decided that the case cannot be answered within the team, the Drafter can click on the Reject Assignment (Case Creator). The case will then be reassigned back to the person who originally created the case for reallocating.
- Edit Response Date – the owner of the case can now edit the date the response was sent if they are assigned this role on their user account.

2.2 eCase is a vast improvement on the previous system whereby requests were logged on Sharepoint. Under the old system, no statistical tools were available and no automated reminder or alert functions were in use to remind allocated drafters if their response was approaching its deadline.

3. Background

3.1 The GBC website has a [section on Freedom of Information](#) which provides general information and assistance to members of the public on how to submit a request. The site includes a link to the Council's publication scheme and an online form is available to facilitate the submission of FOI requests.

3.2 The performance figures for 2016 (to date as of 19 December) are included in Appendix 1.

4. Update on progress

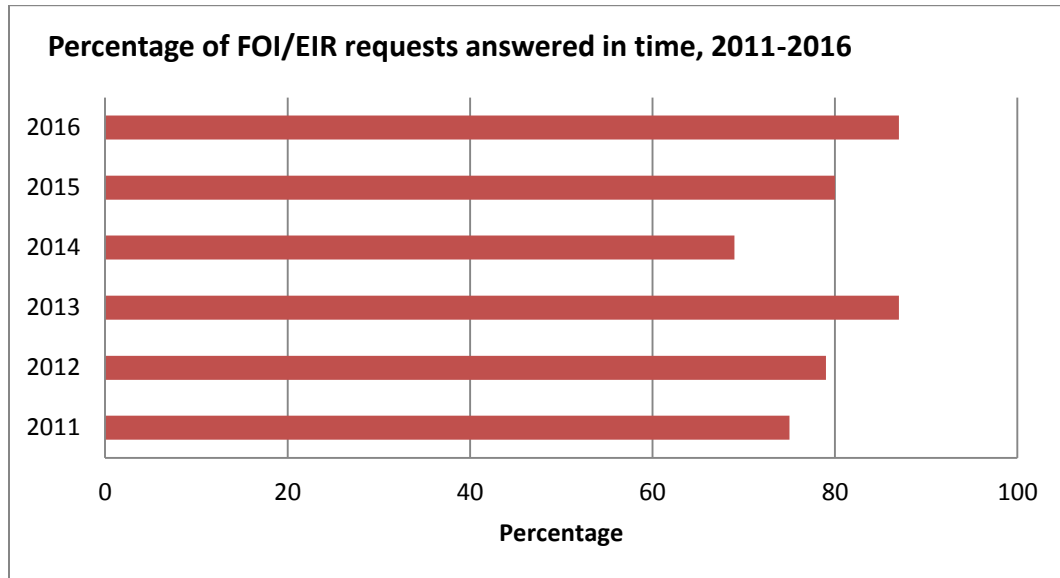
4.1 During 2016 (as of 19/12/2016), 707 information requests (including both FOI and EIR) have been received. The total number of requests received during 2015 was 672, so volume has increased slightly by 5% during this 12 month period.

- 4.2 Although the Appendix records a total figure of 712 requests this reflects the fact that some requests were shared by a number of different service areas. For the purposes of statistical analysis they have been counted as separate requests.
- 4.3 Of the requests received in 2016 to date, 29 which related specifically to environmental information were dealt with under the Environmental Information Regulations (4% of total). This figure should however be higher as some requests which should have been dealt with under EIR were handled instead under FOI. This will be rectified in the coming months through training and increased staff awareness.
- 4.4 In 53 requests, the information was partially or fully withheld due to exemptions (7% of the total).
- 4.5 The most frequently used exemption under FOI during this time was section 21 (information available by other means) – used 23 times. Examples include [information on business rates](#), on [public funerals](#), Council [budgets/spending](#) and [planning applications](#) which is mostly available on the Council website, so in each case the requester was simply directed to the relevant section on the website.
- 4.6 The second most commonly deployed FOI exemption was section 12 (the time and cost to collate the information would exceed the statutory limit of 18 hours) - used 14 times. As the Council has a duty under the FOI Act to assist the requester, in such cases requesters are normally asked to narrow down the scope of their request to make it more manageable – e.g. the Council may suggest they ask for figures going back five years rather than ten.
- 4.7 The most frequently used EIR exception was regulation 12(4)(b) – i.e. that the request was “manifestly unreasonable” (the equivalent of the FOI Act’s section 12). This exception was used on five occasions.

5. Response Timeliness

- 5.1 During 2016, 86% of requests were responded to within the 20 working day deadline. This compares favourably with previous years as illustrated in the bar chart below.
- 5.2 The best performing directorate was Community Services with a figure of 93% of requests answered within the deadline.
- 5.3 The overall average response time for 2016 was 13 days. 40% of requests were completed within less than 10 working days – i.e. in less than half the statutory time scale, so the overall turnaround rate for requests is quite high.
- 5.4 A total of 14% of requests were not answered in time. This is due to a number of different issues, including complex multi departmental requests and difficulty in producing the information requested. It should also be noted that, under some exemptions in the FOI Act, the Council is required to consider the Public Interest Test (PIT) in deciding whether disclosing the requested information would outweigh the public interest in withholding it. In such cases the deadline can be

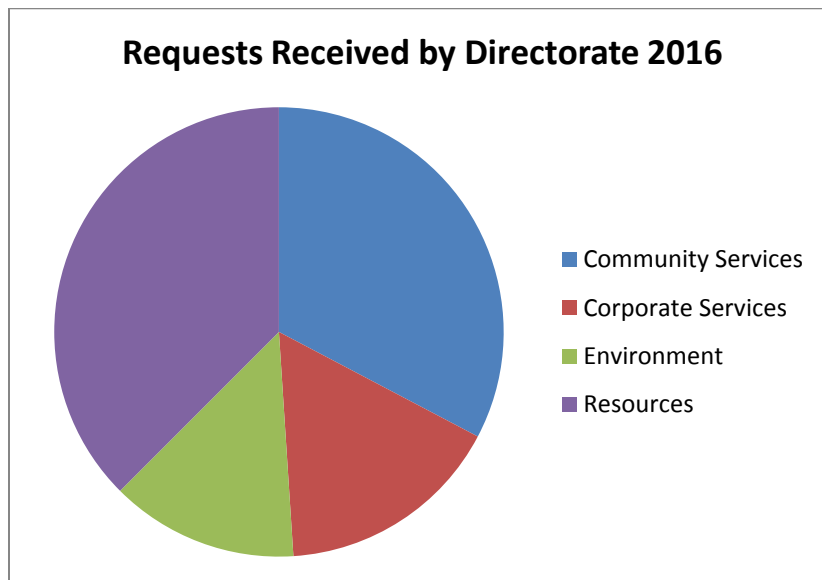
extended for a further 20 working days. However, these statistics do not take into account this fact.



The average response time over the past six years was 78%. Both figures for the last two years have exceeded this average.

6. Requests received by directorate

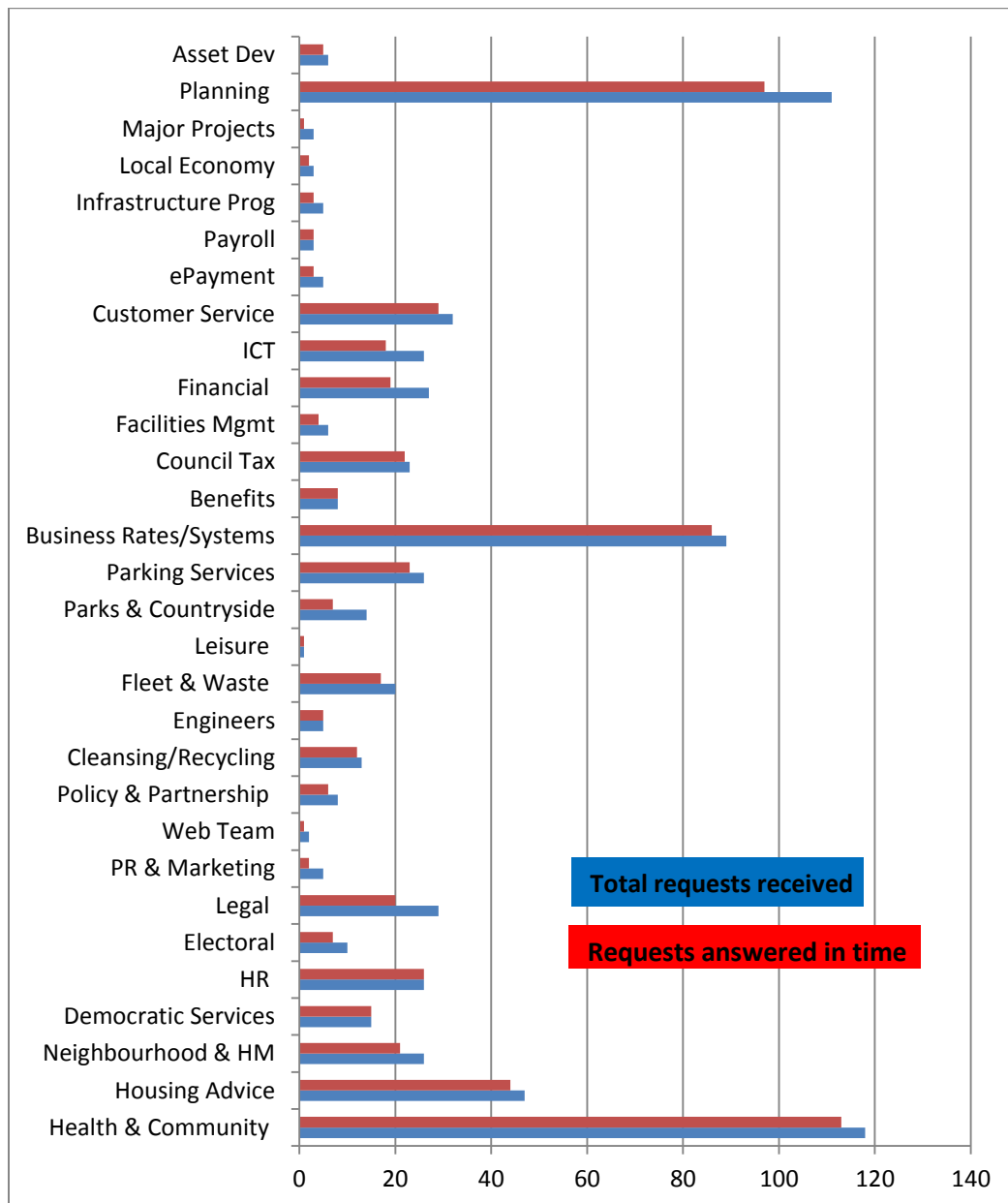
6.1 Resources received the most requests of any directorate during the year, with a figure of 219, amounting to 38% of the total. Environment received the least requests – 79 in total, accounting for 14%. The chart below provides a breakdown of requests received by service area.



7. Requests received by service area

- 7.1 The service area which received the most requests in 2016 was Health & Community Care Services with a total of 118 (16.5% of all requests received across the Council.) 95% of these requests were answered within the statutory deadline.
- 7.2 This was closely followed by Planning with a total of 111 (15.5%). 87% of these requests were responded to in time.
- 7.3 Full details can be found in Appendix 1, and in the graph below.

Requests received by service area 2016



8. Internal Reviews

- 8.1 Applicants can ask for an internal review if they are not content with the Council's original decision. The Codes of Practice issued under the FOI Act and EIRs state that internal review procedures should "encourage a prompt determination of the complaint". Reviews should be completed within 20 working days. However reviews under the EIRs often relate to complex and difficult issues and up to 40 days may be taken to complete them.
- 8.2 Five requests in 2016 went to internal review. Four were under EIR and one under FOI. Of the five reviews, in three cases the Council's original decision was upheld. Two of the internal reviews are still being carried out.
- 8.3 One EIR request originally submitted in 2015 was referred to the Information Commissioner. On appeal by the Council the case was subsequently referred to the First Tier Tribunal of the General Regulatory Chamber Information Rights (EA/2016/0065 Guildford Borough Council v The Information Commissioner and Extreme Oyster Ltd) with judgment passed on 14 November 2016.
- 8.4 The Council's appeal against disclosure of the information on grounds of commercial confidentiality to protect a legitimate economic interest ([EIR Reg. 12\(5\)\(e\)](#)) was allowed by the Tribunal. The requested information consisted of valuations of identified sites relating to the Town Centre Masterplan. It was ruled that disclosure of the information would have hindered the Council's ability to obtain value for money and would have created an unequal playing field, hampering the Council's ability to negotiate, and this would not be in the public interest.

9. Requests for information held by Elected Members

- 9.1 The Council has received various requests in recent months for copies of correspondence held by Councillors. To clarify, although Guildford Borough Council is a public authority for the purposes of the Freedom of Information Act 2000, individual Councillors are not. However, whether information held by a Councillor is caught by the Act depends on how it is held. If the information is held for private or political purposes then it is not subject to the Act. If it is held on either the Council's computer system or a Councillor's own equipment *and* relates to the function of the Council, then that information may be caught by the Act. For these reasons it is important that Councillors do not use their Council email addresses for non-Council related correspondence.
- 9.2 Any such information would be subject to all relevant exemptions. Any requests for information held by Councillors is dealt with on a case by case basis and the Councillors concerned would be notified. Further guidance is available on the Information Commissioner's website:

[Information held by a public authority for the purposes of the Freedom of Information Act](#)

10. Consultations

- 10.1 This is a regular report and no formal consultations were necessary. Some of the contents of this report are based on feedback and comments received from councillors at the 24 November 2016 meeting of this Committee.

11. Equality and Diversity Implications

- 11.1 No Equality and Diversity Implications apply to this report.

12. Financial Implications

- 12.1 There are no financial implications to this report.

13. Legal Implications

- 13.1 Failure to respond to FOI/EIR requests within 20 working days is a breach of the respective legislation. As requesters whose FOIs/EIRs have not been answered within the statutory time limit have the right to request an internal review and/or to make a formal complaint to the Information Commissioner's Office (ICO) there are therefore direct legal implications associated with the risk of reputational damage to the Council, adverse publicity and active monitoring by the ICO.

14. Human Resource Implications

- 14.1 There are no HR implications within this report.

15. Summary of Actions

- 15.1 Directors will ensure requests remaining overdue in their service areas are resolved as soon as possible.
- 15.2 The Information Rights Officer will continue to provide updates for the Corporate Governance and Standards Committee.

16. Conclusion

- 16.1 While the Council's FOI/EIR performance figures are adequate given recent circumstances, a target of 90% compliance is achievable.
- 16.2 Key staff also need to become more aware of the difference between a Freedom of Information request and an Environmental Information Regulations request. The legislation under which a request is dealt with has significant repercussions, particularly with regard to the application of exemptions. This will be reflected in future staff training.

17. Background Papers

- Report on Compliance with Information Legislation 2015 (16 June 2016)
- Freedom of Information Compliance Update – November 2016
- Freedom of Information Compliance Update – January 2016

- Freedom of Information Compliance Update – September 2015

18. Appendices

Appendix 1: Performance figures for each service area

Appendix 1

COMMUNITY SERVICES	(Figures compiled 20/12/16)	TOTAL	Number of late responses	% Responded to in time
	Health and Community Care Services	118	5	95%
	Housing Advice Services	47	3	93%
	Neighbourhood and Housing Management	26	6	88%
TOTAL		191	14	93%
CORPORATE SERVICES				
	Democratic Services	15	0	100%
	Human Resources and Business Improvement	26	0	100%
	Electoral	10	3	70%
	Legal Services	29	9	72%
	PR & Marketing	5	3	40%
	Web Team	2	1	50%
	Policy & Partnership	8	2	75%
TOTAL		95	18	81%
ENVIRONMENT				
	Cleansing and Recycling	13	1	92%
	Engineers	5	0	100%
	Fleet and Waste Services	20	3	85%
	Leisure Services	1	0	100%
	Parks & Countryside	14	7	50%
	Parking Services	26	3	88%
TOTAL		79	14	82%
RESOURCES				
	Business Rates and Systems	89	3	96%
	Benefits	8	0	100%
	Council Tax	23	1	95%
	Facilities Management	6	2	66%
	Financial Services	27	8	70%
	Information Communications Technology	26	8	69%
	Customer Service Centre	32	3	90%
	ePayment	5	2	60%
	Payroll	3	0	100%
TOTAL		219	27	88%

PLANNING AND REGENERATION	(Figures compiled 20/12/16)	TOTAL	Number of late responses	% Responded to in time
	Infrastructure Programme	5	2	60%
	Local Economy	3	1	66%
	Major Projects	3	2	33%
	Planning Services	111	14	87%
	Asset Development	6	1	83%
TOTAL		128	20	84%