



**Havering**  
LONDON BOROUGH

# VALUE OVERVIEW & SCRUTINY COMMITTEE

11 October 2011

# REPORT

**Subject Heading:**

Access to Information

**CMT Lead:**

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**Policy context:**

Information Governance

**Financial summary:**

## SUMMARY

This report gives a summary of:

- The Access to Information team
- The way the team works in regard to Access to Information (including an explanation of Freedom of Information and related legislation)
- An explanation of Exemptions

The performance in responding to Freedom of Information requests in the period from January 2009 to August 2011

## RECOMMENDATIONS

That the Committee note the contents of this report.

## REPORT DETAIL

### **The Access to Information Team**

The Access to Information Team consists of three members of staff. Two full time and one part time member of staff. This consists of an Access to Information Officer and two Access to Information Assistants.

### **The way the team works**

This is best explained by reference to the Acts that govern the work of the team

**Freedom of Information Act 2000:** The above Act came into force on 1st January 2005 and gives access to any information the Council holds which is neither personal nor environmental (the latter being subject to a different regime, please see below) in nature. The Council has 20 working days in which to collate and supply the information to the requester. Some exemptions apply to the release of the information and the Council can levy a fee in certain circumstances subject to the Freedom of Information (Fees and Appropriate Limit) Regulations 2004. A Freedom of Information request can be made by anyone, anywhere in the world.

When a request is received, it is logged and acknowledged within 24 hours, then forwarded to the relevant service who holds the information that is being requested. Sometimes this can be one or more service, sometimes all services. The service is given 10 days to provide the information to the Access Information Team. The team then check the response and endeavour to get the response to the requester within the 20 days.

If an exemption is being applied, then the request, with the exemption is checked and sent to the Interim Assistant Chief Executive for 'sign off'. Then returned to the team for them to collate and forward the response to the requester.

**Data Protection Act 1998:** The above act came into force in October 1998 updating the previous act of 1984. This legislation provides a channel of access to personal information the Council holds about the requester. The Council has 40 calendar days in which to collate information, verify identity and release to the requester. In some cases a £10.00 fee is payable.

**Environmental Information Regulations 2004:** These regulations came into force on 1st January 2005 updating the previous regulations of 1992. The regulations provide access to any information the Council holds which is of an environmental nature such as, the state of human health and safety, emissions, trees, soil etc. The Council has 20 working days in which to collate and supply the information to the requester. Some exceptions may apply to release of the information and the Council can levy a 'reasonable' fee where necessary.

**Re-Use of Public Sector Information Regulations 2005:** The above regulations came into force on 1st July 2005. The regulations allow individuals access to information for which the Council owns the intellectual property rights and were introduced to encourage the re-use of such information. The Council has 20 working days to collate and supply the information to the requester. Information can be re-used providing the Council gives permission to do so by supplying a license with conditions of re-use. A fee may also apply and enables the Council to recoup a 'reasonable return on its investment'.

### **Exemptions**

Exemptions exist to help the Council protect vital and sensitive information that, if released, could harm the Council, another individual or business. The information is categorised into 3 main areas:

**Public:** This is information which is made public, which may include policies, procedures, financial statements, information that by law, the Council is required to publish. When a request for this type of information is received, it is usually released without exemptions.

**Private:** This information about the workings and running of the Council, its relationships with other business etc. There may well be elements that can be released, such as a copy of a contract in place, but there may also be elements that would attract an exemption, such as trade secrets of a contractor, information covered by legal privilege or protected under other laws.

**Personal:** This information contains details about a living individual that may be considered personal information. Personal Information is protected under the Data Protection Act, but there is a difference between the Data Protection Act and the Freedom of Information Act, in order to protect the release of personal data.

Exemptions are split into 2 types, 'absolute' and 'qualified'

**Absolute Exemptions** - the public interest test does not apply. If an absolute exemption applies, in all the circumstances, to the information held by the Council, no other test is required.

**Qualified Exemptions** – the public interest test applies.

Each case must be assessed on its own merit to decide whether the exemption can be applied or not. Of the 13 exemptions that apply to records held by Local Authorities, 8 are subject to the 'Public Interest Test'.

**Public Interest Test:** The Public Interest Test involves considering the circumstances of each particular case and the exemption that covers the information. Based on these facts the decision to disclose is made. The information can only be withheld if the public interest in withholding is **greater** than the public interest in the release of the information.

The easiest way to do this is to document the reasons why the public interest is served in releasing the information and the reasons why it is served in withholding. When done fairly and without bias, the result should clearly indicate where the public interest lies. If the reasons for and against are equal, the law is clear that the authority should favour releasing the information.

Where the Council considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the authority must still inform the requester what information is held, exemptions that apply and reasons why the public interest test favours withholding, unless to do so would be releasing the exempt information.

### **Performance regarding Access to Information**

The number of requests received by the Council has increased year on year. Requests have probably increased due to the national interest in the Access to Information Agenda. This is because of high profile stories in the press, such as MP expenses. This increased exposure has resulted in the public becoming more aware of their rights.

The totals for the last 3 years are summarised below:

- Requests received 2009 – 831, inclusive of 81 Data Protection Requests
- Requests received 2010 – 924, inclusive of 62 Data Protection Requests
- Requests received as of August 2011 – 759, inclusive of 36 Data Protection Requests

Overall the number of requests now handled each year has doubled compared with the first year of operation, but this has been achieved with no increase in staffing. It is questionable how much further growth in demand can be accommodated without additional resources. However, the overall financial position of the Council is noted.

## **IMPLICATIONS AND RISKS**

### **Financial implications and risks:**

The direct cost of the Access to Information Team is £77,541. Additionally there is the Departmental Officers time associated with preparing responses.

The Council has limited opportunity to recover the costs incurred in fulfilling its statutory obligations. On Freedom of Information requests, it can only charge for the cost of photocopying or otherwise providing actual documents. While there is a £10 charge for Data Protection requests, that is the maximum charge permissible and the cost of providing documents in response to the request generally that exceeds that amount.

**Legal implications and risks:**

There are no legal implications from this report. The council has a statutory duty to respond to FOI, EIR and DPA requests. Failure to do so adequately within the statutory timescale risks enforcement action by the Information Commissioner.

**Human Resources implications and risks:**

There are no additional comments from a Human Resources perspective.

**Equalities implications and risks:**

Narrative Report Only – not applicable.

**BACKGROUND PAPERS**

1. Chart of requests received 2009-2011
2. Block graph of requests received 2009
3. Block graph of requests received 2010
4. Block graph of requests received 2011