

Report to: **Overview and Scrutiny Panel**

Date: **21 November 2019**

Title: **Guidance on Information Commissioner's Office Procedure**

Portfolio Area: *Leader*

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken:
Referral of recommendation

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Recommendations:

That the Panel RECOMMEND to Council that the procedure in paragraph 1.6 to inform Members and the public of decisions made by the Information Commissioners Office (ICO) in relation to requests for information be adopted.

1. Executive summary

- 1.1 Public Authorities have a statutory duty to comply with requests made by the public to receive information that it holds in accordance with the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Council has processes in place in order that all officers can identify requests and to ensure that the Council responds quickly on receipt of a request as the legislation requires the Council to reply within 20 working days unless an extension of time has been agreed.
- 1.2 When an individual is not satisfied with the response of the Council they can seek an internal review of the decision and if they consider the matter remains unresolved they can refer it to the Information Commissioners Office for a formal decision.

- 1.3 On the 12 September 2019 the Council received a Decision Notice from the ICO in relation to a request for environmental information. The Decision Notice required the Council to release a drawing it had sought to withhold. The Council complied with the Notice. The Decision Notice was circulated to Members who were unfamiliar with the background to the request and therefore were unable to respond to the matters raised by the public.
- 1.4 Requests are received on a daily basis but the percentage of requests that are referred to the ICO is very small. They are dealt with by officers as a matter of procedure in accordance with the legislation. On the rare occasions that a Decision Notice requires the Council to take further action, it is important that the action is taken promptly and there is a mechanism for advising the Council of the outcome and review whether any further action is appropriate.
- 1.5 Consistency and transparency is key to all Council decisions as it enables the public to have confidence in the services it provides. The Council already publishes details of the requests that it receives and the information that it discloses as a result of a request. This report reviews the current process and recommends changes are made to increase awareness among Members and the public and to demonstrate the Council is complying with its statutory obligations.
- 1.6 It is recommended that
 - i. The Council takes the necessary steps to publish on a quarterly basis details relating to the number of requests handled by the Council and the decisions taken in relation to those requests in accordance with the s45 Code of Practice.
 - ii. The Council reviews its Publication Scheme in the light of requests for information it receives annually.
 - iii. When the Council is advised by the ICO that a request has been referred the Leader and Portfolio Holder is notified and if the matter relates to a planning issue the Ward Members are also notified.
 - iv. All Members are notified with a copy of the Decision Notice when it is received, in addition to it being published on the website, and the matter will be reported to the Overview and Scrutiny Panel.

- v. When an ICO decision recommends further action is taken by the Council, the FOI Officer will ensure that the relevant officer takes the action on behalf of the Council or seeks the agreement of the Monitoring Officer if they wish to challenge the Decision.

2. Background

- 2.1 The Freedom of Information Act 2000 (FOI) requires the Council to have a Publication Scheme which identifies the types of information that the Council holds, and provides details of how, where and when it will be published. There is a duty to keep this under review.
- 2.2 The Act also gives people the right to request information that the Council holds and the Council has to release the information within 20 working days or explain why it is withholding the information. A decision to withhold the information can only be made if one of the exemptions in the Act applies.
- 2.3 Similar rights and duties are also provided in the Environmental Information Regulations 2004 and these Regulations need to be applied where the information requested relates to matters affecting land, air, flora and fauna as described in the Regulations. The Council can only withhold information when an exception applies and when the public interest is assessed as being best served by withholding it.
- 2.4 The ICO publishes detailed Guidance Notes for public authorities to assist them in determining how to apply the exemptions and exceptions as well as all the Decision Notices it has issued to date. Before withholding information the Council reviews this Guidance as the presumption is always in favour of disclosure.
- 2.5 Across South Hams District and West Devon Borough Councils officers have dealt with 5,764 requests for information in the past 5 years, there tend to be on average 60 requests on going at any one time.
- 2.6 A request can be made for any information that is held by the Council. Personal information should not normally be released as part of a request as the information is protected by data protection legislation. This report is not concerned with requests for personal data and does not affect the rights of the individual to privacy.

- 2.7 Requests received by the Council can be for any information held by the Council and regularly cover all services provided by the Council. These are published on the Council website and recent examples include:-
- a. Internal emails relating to planning applications
 - b. Costs incurred by the Council in legal proceedings
 - c. Requests relating to assets
 - d. Housing or benefits advice
 - e. Environmental health queries
 - f. Human Resources
 - g. Contracts, leases licences
 - h. Commercial assets
 - i. Policies and draft documents
- 2.8 Since 2009 only five requests relating to South Hams DC have been referred to the ICO and of these the complaint was upheld in full on two occasions, upheld in part on another and not upheld on another occasion. The fifth case is ongoing.
- 2.9 In order to give the public confidence in the Council it is important that it continually reviews its procedures. This is done on a regular basis but further consideration is always necessary when an adverse decision has been received by a regulator and particularly where it concerns compliance with a statutory duty.

3. Outcomes/outputs

- 3.1 The Council has worked hard in the past five years to better monitor and deal with requests for information. Attention has focussed on training officers, monitoring and responding to requests and publishing information as often as possible within the requisite timeframe.
- 3.2 The aim is to ensure all requests are dealt with fully within the timeframe and where this is not possible errors are corrected at the internal review stage. On the rare occasion a matter is referred to the ICO the aim would be that the outcome is the Council was entitled to withhold the information. When this is not the case that we act quickly to comply with the Decision Notice, publish the Decision and have regard to that Decision in future.

- 3.3 The Council provides a link on its website so the public can easily make a request and access information relating to requests already received. By monitoring the types of requests received and the information published as a consequence the Council can identify trends in the type of information the public want to routinely access.
- 3.4 Members can play an important role in assisting officers in identifying these trends and also need to be aware of the outcome of cases reviewed by the ICO as they determine whether the Council properly applied the exceptions or exemptions contained in the legislation. In particular cases often turn on an assessment as to whether the public interest is better served by withholding or disclosing the information.
- 3.5 The Cabinet Office has published a Code of Practice in pursuance of its powers under s45 of the FOI, which public authorities are encouraged to adhere to as best practice by the ICO.
- 3.6 This guidance recommends the publication of statistics relating to the number of requests the Council receives, the outcome of the requests, including the timeframe in which they were dealt on an quarterly basis and the number of requests for internal reviews annually.

4. Options available and consideration of risk

- 4.1 Given the number of requests that are received, the timeframes set down in law and the amount of information that the Council holds it is not considered practical to involve Members in respect of all requests.
- 4.2 A decision to refuse a request can only be an exemption or exception contained in the legislation is engaged. This is a matter of judgement and often involves an assessment of what is in the public interest. There is a presumption in favour of disclosure. Officers receive training on the exceptions and exemptions that apply and routinely refer to the Guidance provided by the ICO and the Decision Notices that it publishes. Internal Reviews are always carried out by a qualified lawyer.
- 4.3 Members do need to have sufficient information in order to be satisfied that the Council is complying with its statutory duties. They also need to be made aware of occasions where there is a complaint or referral to the ICO. Given the

number of requests and the number of referrals a balance needs to be struck to ensure resources are used effectively and efficiently.

5. Proposed Way Forward

It is recommended that

- i. The Council takes the necessary steps to publish on a quarterly basis details relating to the number of requests handled by the Council and the decisions taken in relation to those requests in accordance with the s45 Code of Practice.
- ii. The Council reviews its Publication Scheme in the light of requests for information it receives annually.
- iii. When the Council is advised by the ICO that a request has been referred the Leader and Portfolio Holder is notified and if the matter relates to a planning issue the Ward Members are also notified.
- iv. All Members are notified with a copy of the Decision Notice when it is received, in addition to it being published on the website, and the matter will be reported to the Overview and Scrutiny Panel.
- v. When an ICO decision recommends further action is taken by the Council, the FOI Officer will ensure that the relevant officer takes the action on behalf of the Council or seeks the agreement of the Monitoring Officer if they wish to challenge the Decision.

5.2 The Council has been proactive in publishing information relating to requests and increasing awareness in respect of Council decisions. It intends to build on this work as part of its commitment to improving transparency.

6. Implications

Implications		The purpose of the report is to improve understanding and review the way in which the Council deals with request for information.
Legal/Governance		As set out in the Report
Financial implications to include reference to value for money		There are no additional financial implications arising out of the recommendations in the report

Risk		As can be seen from the Statistics set out in the report access to information is important to members of the public and the Council. The Council has taken steps to ensure that it proactively publishes information and it responds to requests. When information is withheld without good reason the Council can be criticised which has the potential to damage its reputation. Members are in the frontline in responding to this criticism. The damage to reputation can undermine the work that is taking place on a daily basis
Supporting Corporate Strategy		Delivering Council services effectively and efficiently.
Climate Change - Carbon / Biodiversity Impact		No direct carbon/biodiversity impact arising from the recommendations
Comprehensive Impact Assessment Implications		
Equality and Diversity		None
Safeguarding		None
Community Safety, Crime and Disorder		None
Health, Safety and Wellbeing		None
Other implications		None

Supporting Information

Cabinet s45 Code Of Practice and ICO Code of Practice

<https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

<https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

South Hams Council Disclosure Log

<https://www.southhams.gov.uk/article/4908/Disclosure-Log>