

REPORT TO: Cabinet

MEETING DATE: 10 September 2019

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Freedom of Information (Scotland) Act 2002 and Data Protection Act 1998/2018 – Compliance Statistics in 2018

1 PURPOSE

- 1.1 To report on the Council's compliance with the 20 working day timescale laid down by the Freedom of Information (Scotland) Act 2002 for the calendar year 2018 (i.e.: from 1 January 2018 to 31 December 2018).
- 1.2 To report on the Council's compliance with the 40 calendar day timescale laid down by the Data Protection Act 1998 and, with effect from 25 May 2018, the Council's compliance with the one month timescale laid down by the Data Protection Act 2018 for the calendar year 2018 (i.e.: from 1 January 2018 to 31 December 2018).

2 RECOMMENDATIONS

- 2.1 Cabinet is asked to note the report and for Members to provide feedback on the compliance statistics.

3 BACKGROUND

- 3.1 **Freedom of Information (Scotland) Act 2002** - During 2018, East Lothian Council operated in accordance with the statutory requirements, particularly:

Requests for information – to be answered within 20 working days

Requests for review – to be answered within 20 working days by a Chief Officer or an officer nominated by them.

If requesters remained dissatisfied after completing this process, then they had a legal right to appeal to the Scottish Information Commissioner.

3.2 Freedom of Information (FOI) statistics are recorded by People and Governance (previously Licensing, Administration and Democratic Services). Guidance on how to handle information requests, and requests for review, is published on the Council's intranet, accessible to all employees.

3.3 The total number of FOI requests in 2018 was 1,448. By way of comparison, 1,427 requests were received during the previous calendar year, 2017. An increase of 21. Overall, numbers of FOI requests have been increasing steadily since the Freedom of Information (Scotland) Act 2002 came into force.

This figure includes information requests processed under the Environmental Information (Scotland) Regulations 2004 (EIR). A split of the FOI and EIR requests is provided at 3.5 of this report.

3.4 The total number of requests for review received in 2018 was 87. By way of comparison, 19 review requests were received during the previous calendar year, 2017. An increase of 68.

This figure includes reviews processed under the Environmental Information (Scotland) Regulations 2004 (EIR). A split of the FOI and EIR reviews is provided at 3.6 of this report.

3.5 Since January 2013, the recording system used has distinguished between FOI requests and requests falling within the Environmental Information (Scotland) Regulations 2004 (EIR). The table below provides a breakdown of the response timescales for both FOI and EIR requests in 2018:

	FOI				EIR			
	2018		2017 (for comparison)		2018		2017 (for comparison)	
On time	413	35%	1,038	88%	39	21%	100	78%
Late	752	65%	148	12%	149	79%	28	22%
Cancelled/Withdrawn	23		17		3		2	
Suspended	23		45		5		1	
Invalid	39		45		2		3	
Ongoing	0		0				0	
TOTAL ACTIONED	1,250		1,293		198		134	

The Scottish Information Commissioner is responsible for enforcing Scotland's Freedom of Information laws. In October 2018 the Scottish Information Commissioner decided to intervene in respect of the deterioration in the Council's compliance with statutory timescales.

Special measures were put in place and we can report that performance has significantly improved as a result. In July 2019, the Scottish Information Commissioner notified the Council that his intervention would cease as there has been a significant improvement in performance achieved through delivery of the Council's own action plan. This included increased staff resource, more active monitoring of the caseload, chasing service areas for the information, FOI training and staff absence cover arrangements. There has been a noticeable turnaround as a result and currently all requests are being responded to within timescales. The compliance statistics for 2019 will demonstrate this improvement when reported in due course.

3.6 The table below provides a breakdown of the response timescales for FOI and EIR requests for review in 2018:

	FOI				EIR			
	2018		2017 (for comparison)		2018		2017 (for comparison)	
On time: Within 20 Working Days	46	69%	14	82%	15	75%	0	0%
Late	21	31%	3	18%	5	25%	1	100%
Upheld	9		10		2		0	
Partially Upheld	0		2		0		0	
Overtuned	56		4		18		1	
Additional Info Provided	1		1		0		0	
Invalid	1		1		0		0	
Still Outstanding	0		0		0		0	
Total Actioned	67		18		20		1	

The increase in requests for review can mainly be attributed to the deterioration in the Council's compliance with statutory timescales. If an applicant contacted the Council to chase up a late response, the Council was obliged to treat it as a request for review.

3.7 The top three categories of enquirer in 2018 were:

- 1) General Public (44%)
- 2) Commercial Organisations (24%)
- 3) Journalists (14%)

3.8 **Data Protection Act 1998** – until 24 May 2018, East Lothian Council operates in accordance with the statutory requirements, particularly:

Requests for personal information ("Subject Access Requests") – to be answered within 40 calendar days

Data Protection Act 2018 (GDPR) – with effect from 25 May 2018, East Lothian Council operates in accordance with the statutory requirements, particularly:

Requests for personal information (“Subject Access Requests”) – to be answered within one month

- 3.9 Data Protection (DP) statistics are recorded by People and Governance (previously Licensing, Administration and Democratic Services). Guidance on how to handle requests for personal information (“Subject Access Requests”) is published on the Council’s intranet, accessible to all employees.
- 3.10 The total number of DP “Subject Access Requests” received in 2018 was 79. By way of comparison, 85 requests were received during the previous calendar year, 2017.

	2018		2017 (for comparison)	
Completed on time (within 40 calendar days)	8	58%	42	79%
Completed on time (within one month)	27			
Late	25	42%	11	21%
Suspended	19		32	
Withdrawn	0		0	
Ongoing	0		0	
Total Actioned	79		85	

4 POLICY IMPLICATIONS

- 4.1 None.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other – None

7 BACKGROUND PAPERS

- 7.1 None

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