

REPORT TO: Cabinet

MEETING DATE: 14 September 2021

BY: Executive Director for Council Resources

SUBJECT: Freedom of Information (Scotland) Act 2002 and Data Protection Act 2018 (GDPR) – Compliance Statistics in 2020

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 2020 (i.e.: from 1 January 2020 to 31 December 2020).
- 1.2 To report on the Council's compliance with the one month timescale laid down by the Data Protection Act 2018 (GDPR) for the calendar year 2020 (i.e.: from 1 January 2020 to 31 December 2020).

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 2020, 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 2020 was 1,178. By way of comparison, 1,417 requests were received during the previous calendar year, 2019. A decrease of 239 which is attributed to the Covid-19 pandemic. Overall, numbers of FOI requests have been increasing steadily and becoming more complex 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 2020 was 36. By way of comparison, 44 review requests were received during the previous calendar year, 2019. A decrease of 8.

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 2020:

	FOI				EIR			
	2020		2019 (for comparison)		2020		2019 (for comparison)	
On time	842	99%	1,016	93%	278	98.5%	226	97%
Late	6	1%	72	7%	4	1.5%	8	3%
Cancelled/Withdrawn	8		26		12		19	
Suspended	0		3		1		7	
Invalid	25		38		2		2	
Ongoing	0		0					
TOTAL ACTIONED	881		1,155		297		262	

3.6 The table below provides a breakdown of the response timescales for FOI and EIR requests for review in 2020:

	FOI				EIR			
	2020		2019 (for comparison)		2020		2019 (for comparison)	
On time: Within 20 Working Days	15	100%	19	83%	20	100%	21	100%
Late	0		4	17%	0		0	
Upheld or partially upheld	12		11		13		17	
Overtaken	3		6		7		3	
Decision reached for the first time (previously we failed to respond).	0		6		0		1	
Additional Info Provided	0		0		0		0	
Invalid	0		0		0		0	
Still Outstanding	0		0		0		0	
Total Actioned	16*		23		20		21	

*One internal review was subsequently cancelled by the applicant.

3.7 The top three categories of enquirer in 2020 were:

- 1) General Public (48%)
- 2) Commercial Organisations (24%)
- 3) MSPs/MPs (13%)

3.8 **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 2020 was 97. By way of comparison, 122 requests were received during the previous calendar year, 2019.

	2020		2019 (for comparison)	
	Completed on time (within one month)	77	95%	108
Late	4	5%	3	3%
Suspended	13		8	
Withdrawn	3		3	
Ongoing	0		0	
Total Actioned	97		122	

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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DATE	25 August 2021