

REPORT TO: Cabinet

MEETING DATE: 13 September 2022

BY: Executive Director for Council Resources

SUBJECT: Freedom of Information (Scotland) Act 2002 and Data Protection Act 2018 (GDPR) – Compliance Statistics in 2021

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 2021 (i.e.: from 1 January 2021 to 31 December 2021).
- 1.2 To report on the Council's compliance with the timescale laid down by the Data Protection Act 2018 (GDPR) for the calendar year 2021 (i.e.: from 1 January 2021 to 31 December 2021).

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 2021, 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 Governance (previously People and Governance). 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 2021 was 1,119. By way of comparison, 1,178 requests were received during the previous calendar year, 2020. A decrease of 59 which is attributed to the ongoing 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 2021 was 46. By way of comparison, 36 review requests were received during the previous calendar year, 2020. An increase of 10.

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 2021:

	FOI				EIR			
	2021		2020 (for comparison)		2021		2020 (for comparison)	
On time	785	99%	842	99%	167	99.5%	278	98.5%
Late	6	1%	6	1%	1	0.5%	4	1.5%
Cancelled/Withdrawn	6		8		11		12	
Suspended	16		0		98		1	
Invalid	21		25		8		2	
Ongoing			0					
TOTAL ACTIONED	834		881		285		297	

3.6 The table below provides a breakdown of the response timescales for FOI and EIR requests for review in 2021:

	FOI				EIR			
	2021		2020 (for comparison)		2021		2020 (for comparison)	
On time: Within 20 Working Days	15	79%	15	100%	25	92.6%	20	100%
Late	4	21%	0		2	7.4%	0	
Upheld or partially upheld	14		12		22		13	
Overtaken	5		3		5		7	
Decision reached for the first time (previously we failed to respond).	0		0		0		0	
Additional Info Provided	0		0		0		0	
Invalid	0		0		0		0	
Still Outstanding			0				0	
Total Actioned	19		16*		27		20	

*One internal review was subsequently cancelled by the applicant.

3.7 The top three categories of enquirer in 2021 were:

- 1) General Public (50%)
- 2) Commercial Organisations (25%)
- 3) Media (12.5%)

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 although this may be extended by a further two months for complex requests.

3.9 Data Protection (DP) statistics are recorded by Governance (previously People and Governance). 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 2021 was 120. By way of comparison, 97 requests were received during the previous calendar year, 2020.

	2021		2020 (for comparison)	
Completed on time (within one month or extended time)	79	95%	77	95%
Late	4	5%	4	5%
Suspended	32		13	
Withdrawn	5		3	
Ongoing	1		0	
Total Actioned	119		97	

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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