

FREEDOM OF INFORMATION ACT 2000 AND THE IMPLICATIONS ON THE STANDARDS COMMITTEE

Report By: County Secretary and Solicitor

Wards Affected

County Wide

Purpose

1. To consider the Freedom of Information Act 2000 ("the Act") and the implications it will have on the work of the Standards Committee.

Background

2. The Act is a piece of legislation designed to give the public, greater access to information and promote transparency and openness in government. The subject access provisions of the Act come into force on 1st January 2005.
3. The Act gives members of the public a right of access to all recorded information held by Herefordshire Council, and imposes obligations to disclose information and to provide advice and assistance to those proposing to make a request for information.

Procedure

4. The Council has now set up a procedure for the handling of requests that fall under the Act.
5. Any letter or e-mail is a potential FOI request for information. The request must be legible, contain enough information to understand what is being asked for, and have an address to write back to.
6. The Council has 20 working days to confirm or deny that we hold the information requested and provide it, unless an exemption applies.
7. The Council has set up an Information Co-ordination Team to handle certain types of requests under the Act. The team will be led by the FOI Compliance Officer, Geoff Hardy and be supported by Adrian Rhead, Lucy Davies and Sam Smith in Legal Services. This team will be responsible for judging if information can be disclosed, or whether an exemption needs to be applied to stop the information from being released.
8. However, most requests will be handled within the relevant department, as it is the responsibility of every member of staff to recognise a Freedom of Information request. Only more complex requests will be forwarded to the FOI Compliance Officer.
9. The Information Team will then ask the relevant Service through the key Manager to gather information in their section if the request relates to information in their area of

Further information on the subject of this report is available from
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work. On occasion, the team also have the option to ask ICT Services to conduct a search of all emails in response to an FOI request.

10. One way that the Council plan to cut down on requests is to publish more information as if it is already easily available, members of the public can obtain it themselves without having to make a formal request.
11. The Council will shortly be publishing an updated Publication Scheme listing all the information that they currently publish.
12. The e-Gateway Project, which is currently underway to improve the Council web site, will incorporate this making it easier for staff to publish information on the Internet.

Records Management

13. Anthony Sawyer is currently carrying out records surveys of all departments, which will give an overall picture of what recorded information the Council holds. From the records survey, "retention schedules" will be produced, which will enable staff to see how long to keep records for. Records can then be destroyed (or in some cases, archived) in accordance with their retention schedule.
14. It must be remembered that it is an offence under the Freedom of Information Act to destroy information once the Council have received a request for it.
15. When creating records, we will ensure that they:
 - are authentic and reliable
 - provide evidence for decisions and activities
 - facilitate auditing
 - allow current staff and their successors to undertake appropriate actions

Impact on the work of the Standards Committee

16. There are a number of exemptions contained within the Act, which may be relevant to the work of the standards board.
17. Section 30 of the Act relates to Investigations and proceedings conducted by public authorities and all allows an exemption for information held by a public authority if it has at any time been held by the authority for the purposes of
 - a) any investigation which the public authority has a duty to conduct with a view to it being ascertained
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
 - b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct.

18. Information held by a public authority is exempt information if it relates to information obtained from confidential sources and was obtained or recorded by the authority for the purposes of its functions relating to

- (i) investigations falling within subsection 30(1)(a) or (b)
- (ii) criminal proceedings which the authority has power to conduct,
- (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
- (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations.

19. The duty to confirm or deny does not arise in relation to information which is exempt under this section.

20. Section 31 which relates to Law Enforcement may also be relevant. This provides an exemption for information acquired through the exercise of the public authority's function for the purpose of ascertaining whether

- a) any person has failed to comply with the law.
- b) Any person is responsible for any conduct which is improper
- c) Circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

21. Section 36 relates to prejudice to effective conduct of public affairs and may also be relevant. This exempts information held by a public authority where it is the opinion of the qualified person (any officer or employee authorised by a Minister of the Crown for the purposes of this section) that the disclosure of the information under this Act would, or would be likely to, inhibit

- (i) the free and frank provision of advice, or
- (ii) the free and frank exchange of views for the purposes of deliberation, or
- (iii) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

22. The duty to confirm or deny may not arise in relation to information to which this section applies.

23. Section 41 relating to confidentiality may also be relevant in that it provides an exemption for information obtained by the public authority from another person and the disclosure of the information to the public by the authority would constitute a breach of confidence actionable by that or any other person. The duty to confirm or deny would not arise here to the extent that, the confirmation or denial would constitute an actionable breach of confidence

Conclusion

24. The Standards Committee should be aware of the requirements of this legislation and the documents which will potentially be available for public inspection when determining complaints about members referred to it by the Ethical Standards Officers.

RECOMMENDATION

THAT the Commttee consider the impact of the Act and the effect it will have on their procedures and practices.