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| Meeting: | Audit and governance committee |
| Meeting date: | Wednesday 28 November 2018 |
| Title of report: | Annual review of the council's information access and information governance requirements |
| Report by: | Customer services, information and records manager |

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To inform the committee of performance in the areas of complaints, data incidents and requests for information made to the council over the municipal year 2017/18. Volumes of requests for information to the council under legislation including the Freedom of Information Act 2000 and data protection legislation are increasing, and the requests themselves are often more complex. Fewer formal complaints have been made to the council and the rate of complaints upheld by the Local Government and Social Care Ombudsman compares well with other local authorities. The council also has a system in place for monitoring data incidents and reporting data breaches to the Information Commissioner's Office.

Recommendation

That:

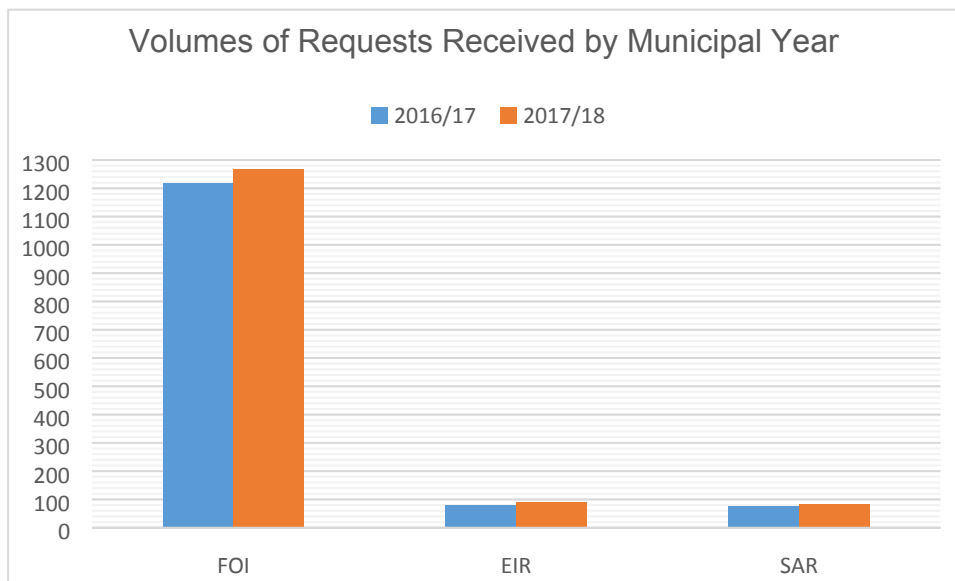
- (a) the information set out in the report regarding requests for information and complaints over the past year be reviewed with regard to any risks arising and the committee determine any recommendations it wishes to make to improve mitigation of those risks.**

Alternative options

- 1 There are no alternative options as the report provides a factual summary of performance in order to assist the committee fulfil its function to annually review the council's information governance requirements.

Key considerations

- 2 **Requests for information:** From May 2017 to April 2018 the council dealt with 1,267 requests under the Freedom of Information Act 2000, 89 requests under the Environmental Information Regulations 2004, and 83 requests where individuals asked for data about themselves under data protection legislation. There were 41 requests across all of the aforementioned legislation that were answered outside of the statutory deadlines for responses to be made, meaning that the overall response rate was 97%, well within the Information Commissioner's Office threshold for responses within deadline. The Information Commissioner's Office is the regulator for information legislation, and for information requests in this same period there were no council cases reported for review to the Information Commissioner's Office where a decision notice was issued.



- 3 Information requests are administered by the Information Access Team within the council. There has been a notable increase in the number of requests received since the beginning of 2018, which has implications regarding capacity for responses to continue to be within deadline. The Information Access Team continue to encourage teams to publish more information in order to reduce the workload needed for responding to requests.
- 4 Equally, there has been a rise in requests requiring specialist work to consider the application of exemptions to refuse in whole or in part the information to be supplied in response to a request. Exemptions may be for information that consists of, for example, personal data, legal advice, commercially sensitive information, or information that is already publically available. An FOI/EIR Officer post has therefore been created through a restructure of the service to handle these requests and to ensure that a considered and balanced response is made. The FOI/EIR Officer will also be making further efforts with

teams to publish information proactively, and will be publishing statistics on information requests received quarterly.

- 5 Comparing volumes of requests made under the Freedom of Information Act 2000 with other local public authorities, the Wye Valley Trust received 595 requests, and West Mercia Police received 1,183 requests for the whole force area.
- 6 A significantly larger number of requests were made under the subject access provisions of the Data Protection Act 1998 in this period compared to previous periods. These requests can be complex and potentially involve many hours work so are time-consuming both from the point of view of volume and identification of exemptions. They often involve very sensitive issues and require a greater degree of engagement with the requester, such as those carried out for care leavers. Under the new data protection legislation that came into force in May 2018 – the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 - the statutory timescale for responding to subject access requests was reduced by 10 days to one month and the £10 fee was cancelled. This again has implications regarding capacity for responses to continue to be within deadline.
- 7 The information governance team deals with requests made by the police in relation to criminal investigations to view council information, and requests from other public sector organisations in relation to such matters of investigation of fraud and child protection matters concerning closed social care cases. The volumes of such requests have again remained stable over the past year compared with the last two years.
- 8 **Complaints:** When a complaint has exhausted the Herefordshire Council complaints procedure administered by the information access team, the final response always includes the Local Government and Social Care Ombudsman (LGSCO) contact details so that people can approach them independently if they want to. The role of the LGSCO is to investigate and resolve justified complaints in a way that is fair to everyone involved. For findings by the LGSCO of maladministration and injustice (where the council has been found to be “at fault”) a decision notice will give recommendations that may include compensation payments.
- 9 The volume of complaints made to the council for this period (591 complaints) is less than in the previous period (692 complaints). Whilst complaints over the past year have covered a wide range of issues, generally themes of not responding to contacts, and taking too long to provide a service have been found. Quarterly reports to directors highlight these areas and recommend action to be taken, so that complaints trend data can be actively used to inform improvement. In this way the complaints process provides a space to resolve underlying problems before they result in further issues.
- 10 The LGSCO themselves publish statistics by financial year. The LGSCO annual review of complaints covering April 2017 to March 2018 figures for comparative authorities are as follows:

| Authority | Not upheld | Upheld | Uphold rate |
|-----------------|------------|--------|-------------|
| Bedford Borough | 9 | 4 | 31% |
| Shropshire | 17 | 8 | 32% |
| Wiltshire | 12 | 8 | 40% |

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|------------------------------|----|----|-----|
| Herefordshire | 8 | 6 | 43% |
| Northumberland | 12 | 9 | 43% |
| Solihull | 4 | 3 | 43% |
| North Somerset | 10 | 8 | 44% |
| Rutland | 1 | 1 | 50% |
| Cheshire West and Chester | 6 | 7 | 54% |
| Cheshire East | 20 | 24 | 55% |
| East Riding of Yorkshire | 8 | 12 | 60% |
| Cornwall | 28 | 44 | 61% |
| Isle of Wight | 5 | 9 | 64% |
| Central Bedfordshire | 4 | 8 | 67% |
| Bath and North East Somerset | 2 | 9 | 82% |

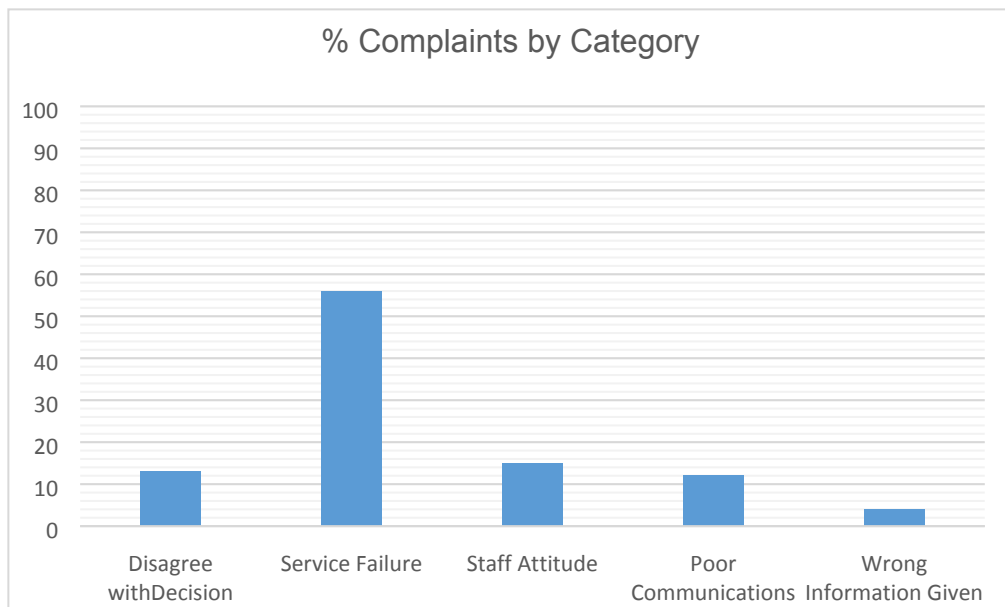
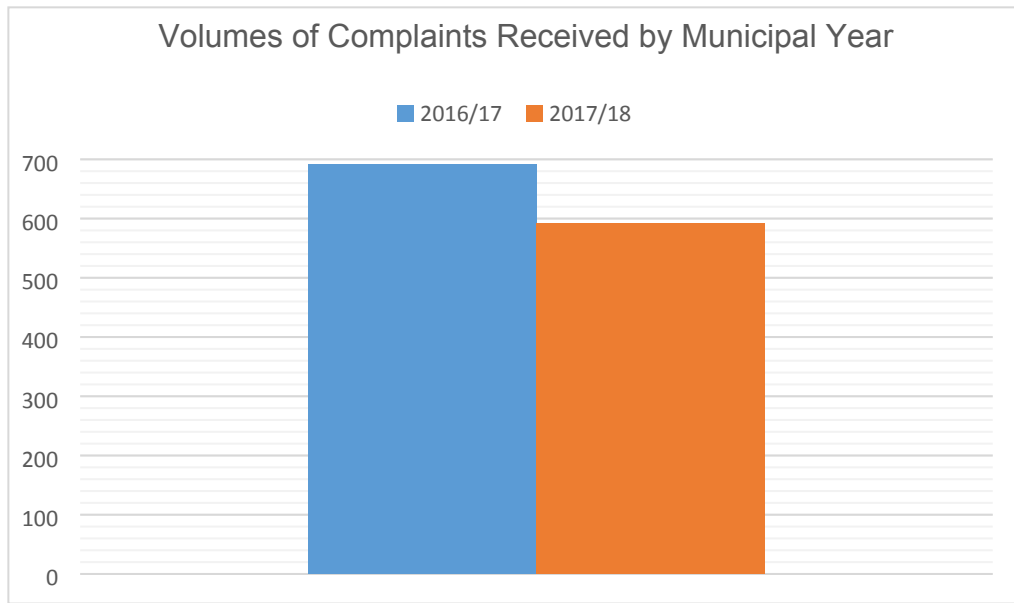
11 Herefordshire Council again is performing well amongst comparable authorities, and the uphold rate for requests is slightly down from the last period (45%). The LGSCO cases that were upheld against Herefordshire are set out on the LGSCO website <https://www.lgo.org.uk/decisions> and are summarised as follows:

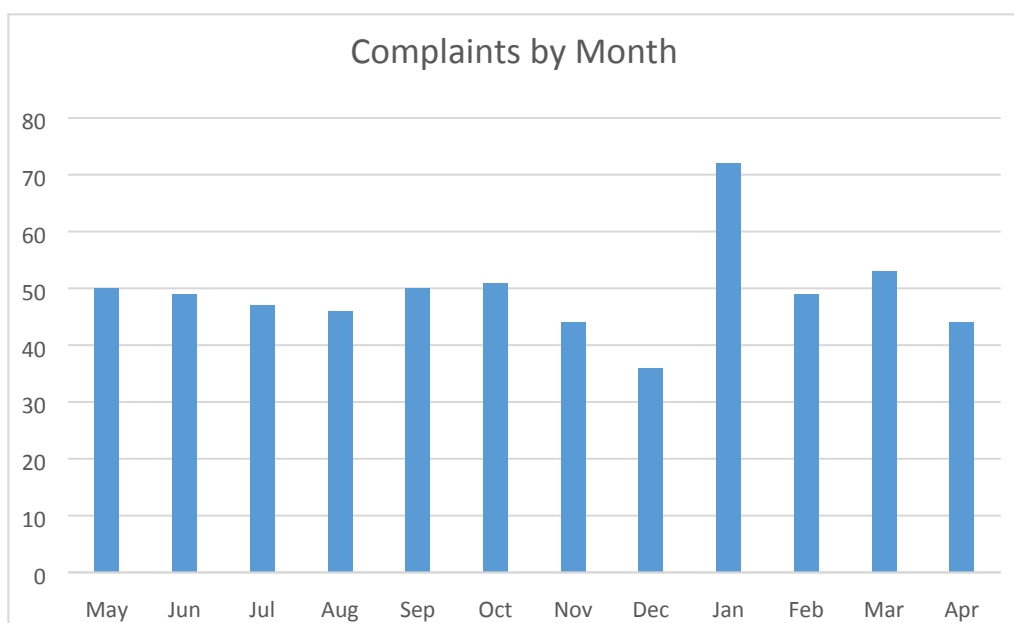
1. The council did not publicise a planning application in accordance with its Statement of Community Involvement
2. The council did not send documents within required timescales after placing children in the care of their grandmother, and did not complete an action agreed at a review.
3. Pathway planning did not run smoothly and a personal advisor was not changed quickly enough for a young person in care.
4. The council failed to promptly pass a planning enforcement case for consideration of legal proceedings after serving a breach of condition notice which did not result in compliance in the specified timescale
5. The council did not arrange additional education for a child with special educational needs for a six-month period of time.
6. The council did not provide correct information about the role of the Home Improvement Agency (HIA) in building works at a person's home.

In all cases the council has complied with the recommendations made by the LGSCO to resolve the case. In some cases compensation was recommended. The council

paid out a total sum of £2,100. There were however no findings of maladministration causing injustice.

- 12 The council dealt internally with 591 complaints, of which the council upheld or partially upheld 19%. In addition, 36 complaints were processed under the children’s complaints procedure for children’s social care. The graphs below show the volume of all complaints received by the council over the municipal year by volume and by category, plus overall complaints by month:





- 13 **Data breaches:** There have been no data breaches over the past municipal year that have been reported to the Information Commissioner's Office. The council's information governance team monitors low-level data security incidents, near misses, and allegations of breaches of data protection legislation, of which 73 such cases were reported and dealt with over the past municipal year.
- 14 **New data protection legislation:** The council's information governance team completed an action plan for compliance with the General Data Protection Regulations and Data Protection Act 2018 that came into force in May 2018, including face-to-face training of council staff. The new requirements of the legislation include mandatory data protection impact assessments being completed for new programmes, projects or systems that involve processing of personal data, mandatory reporting of data breaches to the Information Commissioner's Office, and transparency requirements to make information available on how the council processes personal data.
- 15 **RIPA:** The Regulation of Investigatory Powers Act 2000 (RIPA) restricts the circumstances in which local authorities may authorise directed (covert) surveillance. In summary, it can only be applied if it is for the prevention or detection of criminal offences if: the maximum term is of at least 6 months imprisonment; it is related to underage sale of tobacco or alcohol; serious criminal damage; dangerous waste dumping; or, benefit fraud. All applications for RIPA must have judicial approval. In the past municipal year, 2 RIPA applications were made.
- 16 **Community trigger:** The community trigger gives individuals and communities the right to review their case of anti-social behaviour or hate crime, if they are not happy with the response given by the relevant authorities. A community trigger can be applied for if an individual has reported three or more incidents of anti-social behaviour to the council, the police, or their housing association within the past 6 months, or if an individual and four or more individuals have complained separately about similar incidents of anti-social behaviour to the council, the police, or their housing association within the past 6 months. There have been fewer than 5 such instances over the past municipal year.

Community impact

- 17 In accordance with the adopted code of corporate governance, Herefordshire Council must ensure that it has an effective performance management system that facilitates effective and efficient delivery of planned services. Effective financial management, risk management and internal control are important components of this performance management system. Herefordshire Council is committed to promoting a positive working culture that accepts, and encourages constructive challenge, and recognises that a culture and structure for scrutiny are key elements for accountable decision making, policy development, and review
- 18 This report provides information about the council's performance in handling complaints and requests for information from members of the public, in order to provide assurance that the council handles requests and complaints effectively and derives learning from them to improve experiences for those who receive services from the council.

Equality duty

- 19 Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
- A public authority must, in the exercise of its functions, have due regard to the need to -
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 20 This report is for information only and therefore there are no equality duty implications arising directly from this report.

Resource implications

- 21 There are no financial implications arising directly from this report, which is for information. As outlined above however, there are risks of fines from the Information Commissioner's Office for breaches of data protection legislation, and compensation payments if the council has acted in a way that results in maladministration and injustice. The council has sufficiently protected the personal data it holds to not incur fines so far, it has however had to make some compensation payments following complaints and hence learning from complaints is being fed back into strategic planning.

Legal implications

- 22 There are no legal implications arising directly from this report, which is for information.
- 23 It is a function of this committee to annually review the council's information governance requirements.

Risk management

- 24 Effective operational and governance processes mitigate the risk of non-compliance with information legislation and standards, and maintaining high standards of conduct mitigates risks to the reputation of the council

Consultees

- 25 Not applicable

Appendices

None

Background papers

None identified