

Meeting:	Audit and governance committee
Meeting date:	Tuesday 19 November 2019
Title of report:	Annual review of the council's information access and information governance requirements
Report by:	Information Access 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 2018/19. Volumes of requests for information to the council under legislation including the Freedom of Information Act 2000 and data protection legislation have increased, however the council is exceeding its target for responding within deadline. 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. Processes for complaints, information requests and data incidents are working well and monitoring is in place to anticipate emerging issues and to ensure that learning is embedded within the council. The council can use this to focus on improving people's experiences.

Recommendation(s)

That:

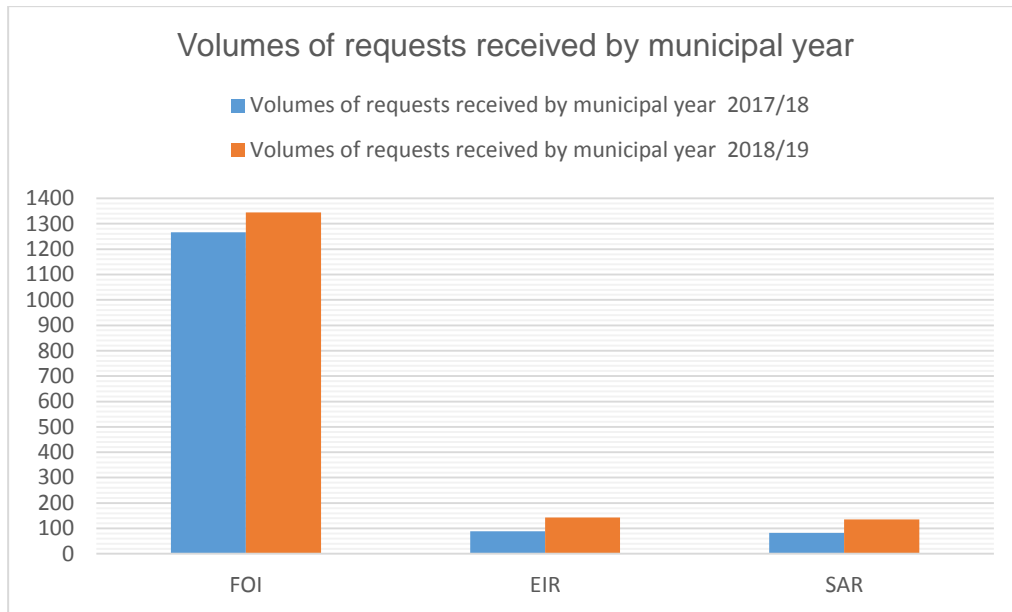
- (a) **the information set out in the report regarding requests for information, data protection compliance and complaints over the past year be reviewed with regard to any risks arising and the committee determine any recommendations it wishes to make to improve mitigation of those risks.**

Alternative options

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

1. **Requests for information:** The council is subject to legislation that requires openness and transparency, providing members of the public with qualified rights of access to information. At the same time, the council is also required by legislation to protect certain information from unauthorised disclosure, and to exempt information from being released. The council therefore makes decisions on disclosure of information based on the law and regulatory guidance, occasionally having to balance the public interest in releasing data with the confidentiality of the information and the harm that release would cause. When the council undertakes this balancing exercise, it still does so taking into account relevant case law and decision notices.
2. From May 2018 to April 2019 the council dealt with 1,345 requests under the Freedom of Information Act (FOI) 2000, and 143 requests under the Environmental Information Regulations (EIR) 2004.
3. There were 59 such requests that were answered outside of the statutory deadlines for responses to be made, meaning that the overall response rate was 96%, which is within the council's target of 95% and well within the Information Commissioner's Office threshold of 90% for responses within deadline.
4. Four council cases were referred to the Information Commissioner's Office where a decision notice was issued, three of which upheld the council's decision on exemption of information.
5. During the last municipal year there were also 135 requests where individuals asked for personal data about themselves under their right of subject access in data protection legislation. There has been a significant rise in the numbers of subject access requests made since the change in legislation in May 2018 when the General Data Protection Regulations (GDPR) abolished charges for such requests and reduced the deadline in which they are processed within from 40 days to a month. The response rate for this period was 92%. A target has been set for this calendar year for a 95% response rate to improve compliance.



6. The council's FOI/EIR Officer continues to encourage teams to publish more information and to continue to update it in order to reduce the workload needed for responding to requests made under FOI and EIR. In the past year, for example, the register of houses in multiple occupation has been published on the council web site, as well as public health funeral data:
<https://www.herefordshire.gov.uk/info/200148/your-council/34/our-open-data-principles/12>
<https://www.herefordshire.gov.uk/info/200166/births-deaths-and-marriages/316/when-someone-dies/6>
7. Statistical data on volumes of requests processed under FOI and EIR are also published and updated quarterly:
<https://www.herefordshire.gov.uk/info/200148/your-council/34/our-open-data-principles/13>
8. Where other comparable councils to Herefordshire Council publish their request volume statistics, some informal benchmarking can be made based on requests received in the financial year, and Herefordshire Council is performing in a similar way amongst other such councils. Cornwall Council in 2018/19 received 1,978 FOI and EIR requests and had a compliance rate of 92%. Herefordshire Council, over the same period, received 1,496 FOI and EIR requests and had a compliance rate of 97%. Compared to some other councils of different sizes, in 2018/19 Cambridgeshire County Council received 1,330 FOI & EIR requests and its compliance rate was 81%. Devon County Council had 1,389 requests although its compliance rate was not published.
9. A recent article advised that, on average, Welsh councils receive 1,070 FOI requests each year and their compliance rate is 85.5%. Powys Council for example had dealt with 1,420 FOI / EIR / subject access requests in 2018/19 (1,260 of this total were FOI requests). They had also handled 38 requests for an internal review, and their compliance rate for FOI / EIR was 76%. In comparison, over the same period, Herefordshire Council received 1,362 FOI requests and 19 requests for an internal review, and the FOI / EIR compliance rate was 97%.

10. Although not providing a direct comparison, The Campaign for Freedom of Information published the results of its 'FOI Good Practice Survey' in March 2019, based on findings for 32 councils across London for requests handled between 2016/17 – 2017/18. During that period, Herefordshire Council's response rate was 96%. In comparison, only 3 (City of London, Tower Hamlets and Barnet) of the 32 London councils reported that they responded to requests more than 95% of the time within 20 working days. Three quarters of the council's surveyed answered less than 90% of the time, with some – Hounslow (60%), Croydon (69%) and Enfield (66%) having much lower rates of compliance.
11. Information request data is monitored monthly within the council at the information governance steering group, quarterly at directorate management team meetings, and bi-annually at Management Board.
12. 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 the latter requests have again remained stable over the past year compared with the last two years. Police requests have however risen over the past year and a total of 81 requests were processed, including the locating, proportionate sharing and redaction of records.
13. **Complaints:** The council dealt internally with 583 complaints, of which the council upheld or partially upheld 21%. In addition, 48 complaints were processed under the children's complaints procedure for children's social care. Whilst complaints over the past year have covered a wide range of issues, generally themes of not providing a satisfactory service, and decisions challenged as they are alleged to be unfair or not taking into account all circumstances have been found.
14. Quarterly reports to directorate management teams highlight these areas and recommend action to be taken, so that complaints trend data can be actively used to anticipate problem areas for service users and training needs for council staff. As one example, there had been feedback that assessments for blue badge applications were difficult for people at the existing assessment location at council offices at Blueschool House in Hereford, where there was limited parking. With the change in the law to include hidden disabilities in the eligible criteria for a blue badge, the assessment location has been moved to Plough Lane in Hereford.
15. A further example where the council learnt from a complaint was in adult social care. There was a three-week delay in carrying out a financial assessment for an individual, which was not in line with guidance which states that an assessment should take place before care starts so that people can plan their finances. Also, full information about paying for care was not provided. The council recognised that it was at fault and removed charges before the assessment. In order to ensure that there is no re-occurrence for other people, the council changed its internal processes so that notifications and reminders are sent to staff for carrying out assessments, and customers in such circumstances were no longer advised to set up direct debits with their banks for payments, and instead advised to set up standing orders so that payments can start more quickly. The information provided to customers was reviewed and rewritten, and quality assurance checks were introduced into the process.

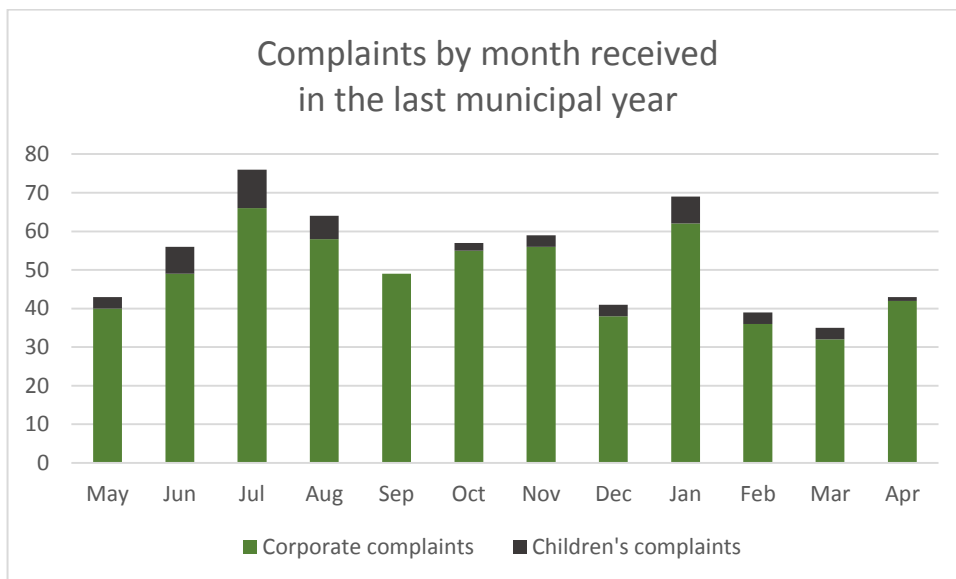
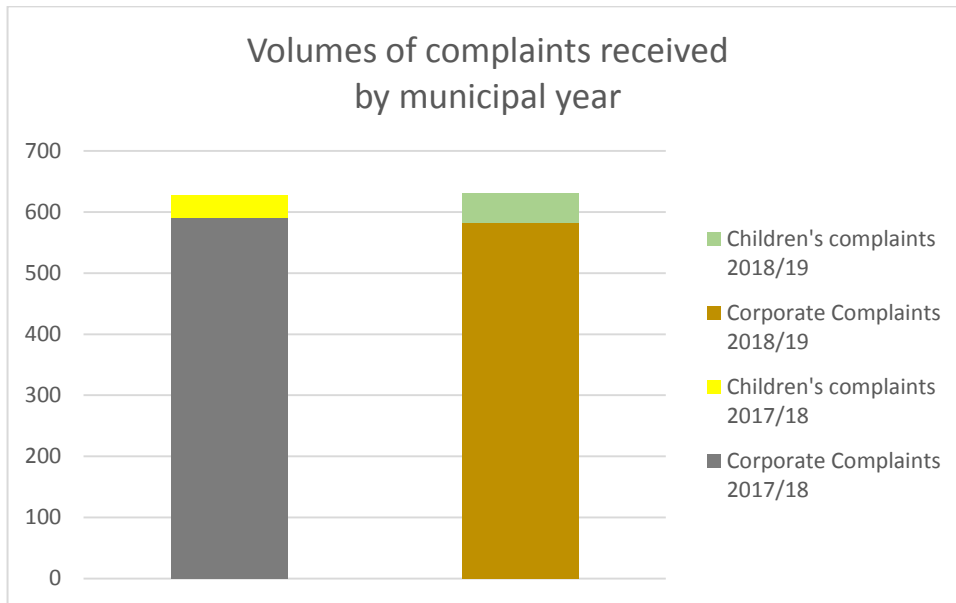
16. When a complaint has exhausted the Herefordshire Council complaints procedure administered by the information access team and the children’s complaints team, complainants can approach the Local Government and Social Care Ombudsman (LGSCO) for an independent investigation. For findings by the LGSCO 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.
17. The LGSCO themselves publish statistics by financial year. The LGSCO review of complaints received by LGSCO covering April 2018 to March 2019 provides figures for comparative authorities which are given in the table below. The percentage “uphold rating” can be misleading – it is the percentage of complaints considered by the LGSCO, not the total of complaints received by the council. Considering all complaints received by the council, 8 upheld is 1% of all complaints for the period April 2018 - March 2019.

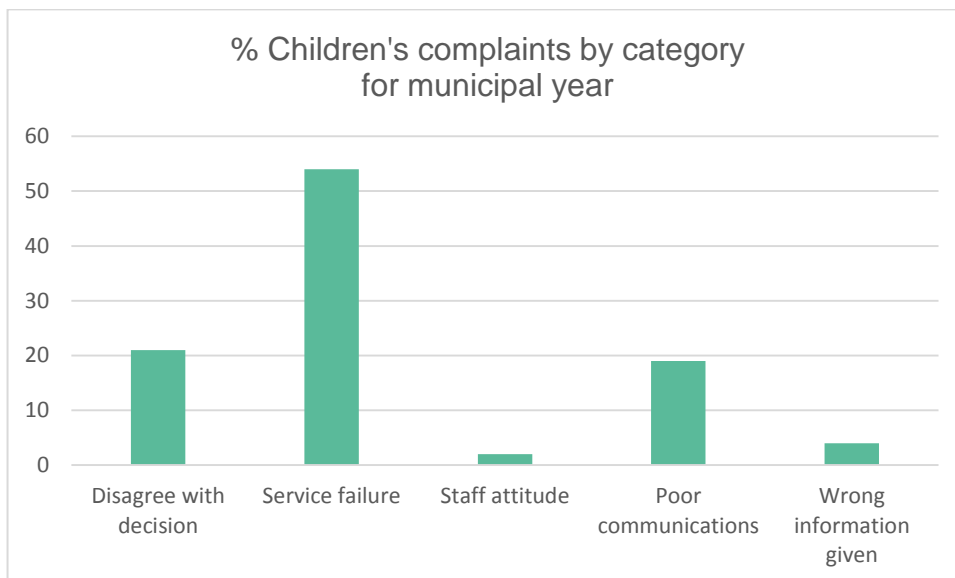
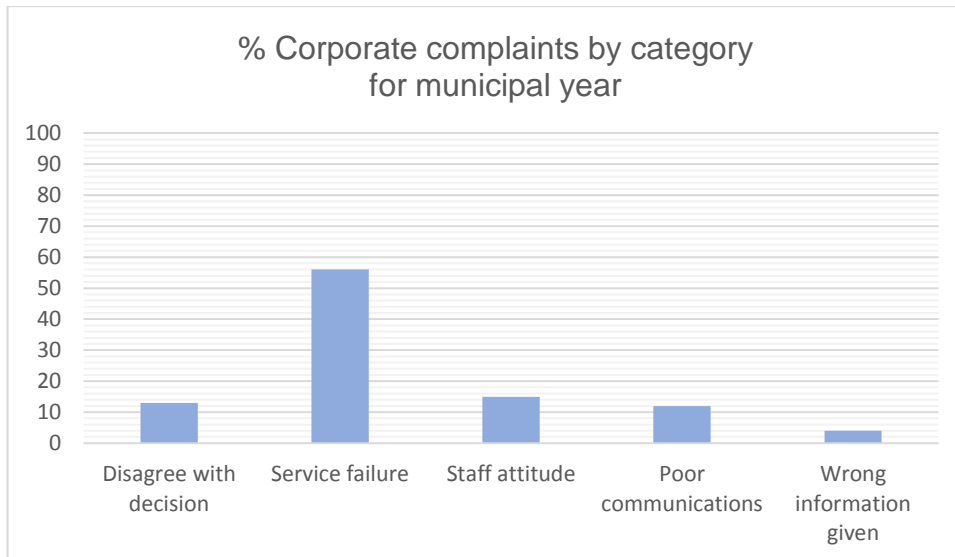
Authority	Complaints not upheld	Complaints upheld	Uphold rate – best performing rate to worst
Isle of Wight	11	5	32%
Bath and North East Somerset	7	5	42%
Herefordshire	9	8	47%
Cheshire East	14	14	50%
Wiltshire	9	10	53%
Cornwall	34	38	53%
Bedford Borough	3	4	57%
Shropshire	13	20	61%
North Somerset	9	14	61%
East Riding of Yorkshire	10	21	68%
Cheshire West and Chester	5	11	69%
Solihull	2	5	71%
Central Bedfordshire	4	12	75%
Northumberland	3	15	83%
Rutland	0	1	100%

18. The LGSCO cases that were upheld against Herefordshire are set out on the LGSCO website <https://www.lgo.org.uk/decisions>. They are summarised below along with the lessons that the council learnt from these cases:

19. First upheld case: An individual entered into an agreement with the council's home improvement agency (HIA) to help provide improvements to his home for his father. There was fault in the information provided by the council to the individual about the role of the HIA in the building works. As a result of this case, the HIA now provides clarity over the role of the HIA in building works in its information provided to individuals before they enter into agreements for improvements to be made to homes.
20. Second upheld case: An individual complained about the way the council dealt with safeguarding issues in relation to her child. The council's own complaint investigation found the council had taken a mistaken approach. The council fed the learning from this case into training on safeguarding procedures for social workers.
21. Third upheld case: The council failed to properly plan for a young person's education and care over a long period of time and failed to consider the impact of this on his mother, his main carer. It failed to carry out a timely safeguarding investigation of an event which impacted significantly on the young person's mental health, with resultant impacts on his close family. The council also reached decisions on the young person's care status outside the correct procedures. These faults caused the young person and his family significant injustice over a prolonged period. Following this case, the council carried out a full review of its children's safeguarding and assessment practices and procedures, and provided appropriate training to relevant staff.
22. Fourth upheld case: An individual complained that the council has not taken enforcement action against his neighbour for unauthorised works. The council revised procedures to ensure that conservation officers were consulted on relevant cases, and that enforcement decisions are properly recorded
23. Fifth upheld case: The council disclosed the identity of an individual to the parent of a child about whom she made a safeguarding referral. The council put measures in place to ensure that the individual was protected from any reprisals as a result of this, and has used the learning from this case to update training on information sharing to social workers.
24. Sixth upheld case: The council failed to respond to two emails from an individual about changes to housing benefit entitlement and an overpayment of housing benefit. As a result of this, a new procedure was implemented in the housing benefits team for carrying out this service for responding to emails.
25. Seventh upheld case: There was fault in the way the council carried out a review of an individual's Care and Support Plan because it did not support him to be involved in the process and it did not clearly explain the reasons for some proposed changes when it met his father and carer.
26. Eighth upheld case: There was fault by the council in how it dealt with a safeguarding review meeting. The council updated its procedures to ensure that communication in relation to such meetings was clearer.
27. 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 just under £17,000.

28. The graphs below show the volume of complaints processed under the corporate complaints procedure over the municipal year by volume, month and category, alongside those processed under the separate statutory children’s complaints procedure:





29. **Information governance:** The council's information governance team monitors low-level data security incidents, near misses, and allegations of breaches of data protection legislation, of which 159 such cases were reported and dealt with over the past municipal year. Out of these, 11 met the threshold for reporting to the Information Commissioner's Office (ICO), however no action was taken against the council and the ICO was satisfied as to how the council had dealt with the breaches in all cases. The figures reflect that the council has sound processes in place for reporting data incidents, and that there is a high level of awareness from the mandatory training given to all council staff regarding data protection. It also indicates a more open culture around reporting things that have gone wrong. Incidents are reviewed at the information governance steering group and learning from incidents is fed back through staff training and changes in processes and procedures.
30. The information governance team also assesses the mandatory data protection impact assessments that are completed for new programmes, projects or systems that involve processing of personal data, advise on information sharing agreements, implement

information security policies and procedures, and ensure that teams make information available on how the council processes personal data.

31. In addition to providing the council with a service, 46 of the county's schools are signed up to a self-funding school's data protection officer service level agreement. A high level service and support to schools is provided whether on the end of the telephone or via a face to face visit. Very positive feedback has been received from schools and the team looks to grow the service further by aiming to have 50 schools in Herefordshire signed up by March 2020.
32. **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, 3 RIPA applications were made.
33. **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 3 such instances over the past municipal year.

Community impact

34. 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. The 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.
35. 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. It also provides information about the measures taken to protect personal data under the General Data Protection Regulations and the Data Protection Act 2018.

Equality duty

36. 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.
37. This report is for information only and therefore there are no equality duty implications arising directly from this report.

Resource implications

38. 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. The council has however had to make some compensation payments following complaints and hence learning from complaints is being fed back into strategic planning.

Legal implications

39. There are no direct legal implications arising from the report as it is a factual summary provided for information purposes.

Risk management

40. 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

41. Not applicable.

Appendices

None

Background papers

None identified