

<b>Meeting:</b>	<b>Audit and governance committee</b>
<b>Meeting date:</b>	<b>Tuesday 17 November 2020</b>
<b>Title of report:</b>	<b>Annual review of the council's information access and information governance requirements</b>
<b>Report by:</b>	<b>Information Access and Records Manager</b>

## **Classification**

Open

## **Decision type**

This is not an executive decision

## **Wards affected**

All Wards

## **Purpose**

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 2019/20.

## **Recommendation(s)**

**That:**

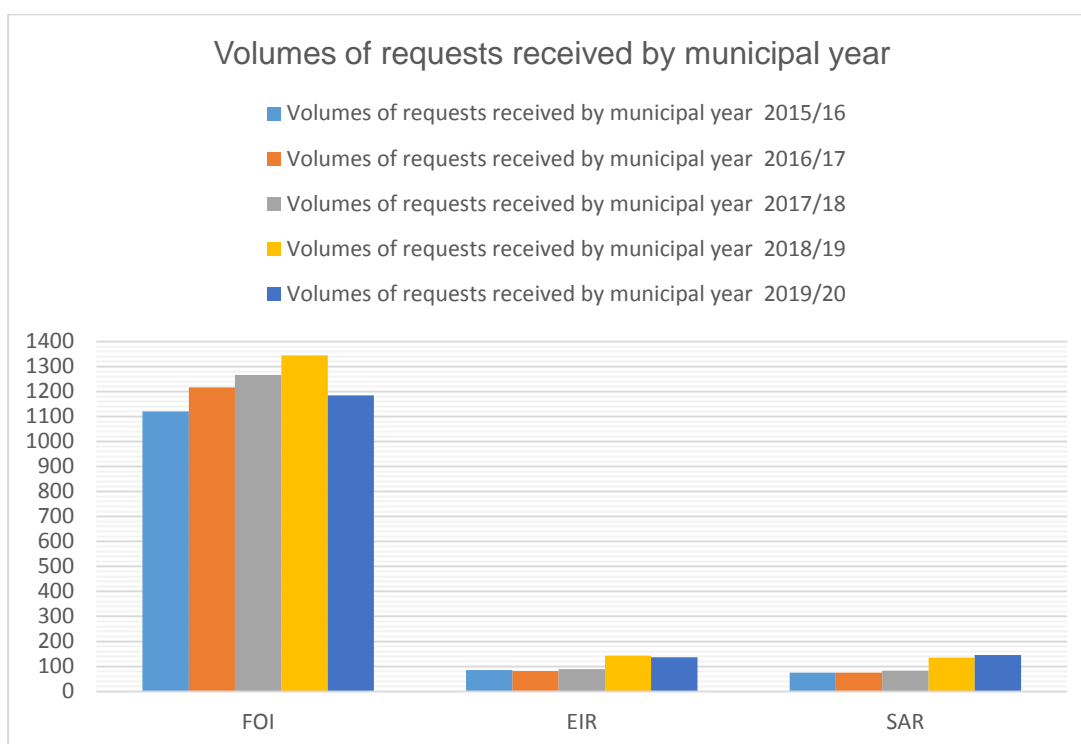
- (a) the information set out in the report regarding requests for information, data protection compliance and complaints over the past year be reviewed with regard to any risks arising and the committee determine any recommendations it wishes to make to improve mitigation of those risks.**

## **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 2019 to April 2020 the council dealt with 1,185 requests under the Freedom of Information Act (FOI) 2000, and 137 requests under the Environmental Information Regulations (EIR) 2004.
3. There were 42 such requests that were answered outside of the statutory deadlines for responses to be made, meaning that the overall response rate was 97%, exceeding the council's target and well within the Information Commissioner's Office (ICO) threshold of 90% for responses within deadline. Where information was not provided in full this was mostly where responses gave out some of the information with the remainder exempted (for reasons such as the information being personal data). In a small number of cases the information was not held, or refused in full and no information was released.
4. The volumes of requests received fell as the lockdown came into force in March. The ICO advised all public authorities it would not penalise them if responses were late as a result of the pandemic.
5. No council cases were referred to the ICO resulting in a decision notice being issued over the past municipal year, though one case was looked at informally by the ICO and withdrawn by the requester after the ICO agreed with the council's decision.
6. During the last municipal year there were also 146 requests where individuals asked for personal data about themselves under their right of subject access in data protection legislation. The response rate for this period was 97%. The target for this calendar year was a 95% response rate to improve compliance from last year's rate of 92%, and this has been achieved. The graph below compares volumes of requests received in municipal year 2019/20 with volumes received in previous years. In 2018/19, 1,345 FOI requests, 143 EIR requests and 135 subject access requests were received, and in 2019/20 1,185 FOI requests, 137 EIR requests and 146 subject access requests were received. In 2017/18, 1,267 FOI requests, 89 EIR requests and 83 subject access requests were received, and in 2016/17 1,217 FOI requests, 81 EIR requests and 75 subject access requests were received. In 2015/16, 1,121 FOI requests, 85 EIR requests and 75 subject access requests were received.



7. Statistical data on volumes of requests processed under FOI and EIR are published and updated quarterly at this web site address:  
[https://www.herefordshire.gov.uk/info/200148/your\\_council/34/our\\_open\\_data\\_principles/13](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. Somerset Council received 1,129 requests in the last municipal year with a compliance rate of answering within deadline of 88%. Wiltshire Council has published figures from January to 31 March 2020 which showed they had received 372 requests under FOI and EIR. As with Herefordshire Council, the number received as lockdown began fell by a half of the first month of the year. The response rate for Wiltshire was 97%. Over the same period, Herefordshire Council received 366 requests and the response rate was 96%.
9. 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. Policies including the Requests Charging Policy, Internal Review Policy and Publication Scheme, have all been reviewed, updated and published on the council web site, along with a newly written FOI / EIR Procedure. There is a section on processes for staff to follow regarding information requests within the mandatory training completed by all council staff annually.
10. 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 risen again slightly over the past year and a total of 86 requests were processed, including the locating, proportionate sharing and redaction of records.

11. **Complaints:** The council dealt internally with 601 complaints, a slight increase from last year, of which the council upheld or partially upheld 19%. In addition, 21 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 prevail, and decisions being challenged as they are alleged to be unfair or not taking into account all circumstances have been found. As with information requests, there was a sharp decrease in complaints from when lockdown began.
12. 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, a complaint was made by a person who did not receive an additional social care financial entitlement. The investigation into the complaint found that the financial assessment officer wasn't aware that the Department of Work and Pensions would back date such awards. As a result, updated guidance was provided to financial assessment officers about how to treat benefit awards in financial assessments when a service user lives with a family member who is also a social care service user.
13. A further example concerned a complaint about the time taken to consider a hardship application for Business Rates. Following investigation the hardship procedure was reviewed and changed with a dedicated timeline for completion being introduced.
14. 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.
15. The LGSCO themselves publish statistics by financial year. The LGSCO review of complaints received by the LGSCO covering April 2019 to March 2020 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, 15 were upheld by the LGSCO which is 2% of all complaints for the period April 2018 - March 2019. Nevertheless, there has been an increase since last year in the number of upheld complaints, which means that Herefordshire has more upheld cases than almost all other comparative authorities, and work is being carried out with teams to address this, including the provision of training in complaint investigation and

attendance at management team meetings to feedback on learning from complaints.

Authority	Number of complaints considered	Complaints upheld
Northumberland	26	35%
Shropshire	27	41%
Isle of Wight	15	47%
Bath and North East Somerset	12	50%
Bedford Borough	6	50%
Wiltshire	37	51%
Cheshire West and Chester	16	56%
Solihull	9	56%
Cheshire East	29	59%
Cornwall	56	59%
East Riding of Yorkshire	22	59%
North Somerset	13	62%
Central Bedfordshire	9	67%
<b>Herefordshire</b>	<b>21</b>	<b>71%</b>
Rutland	1	100%

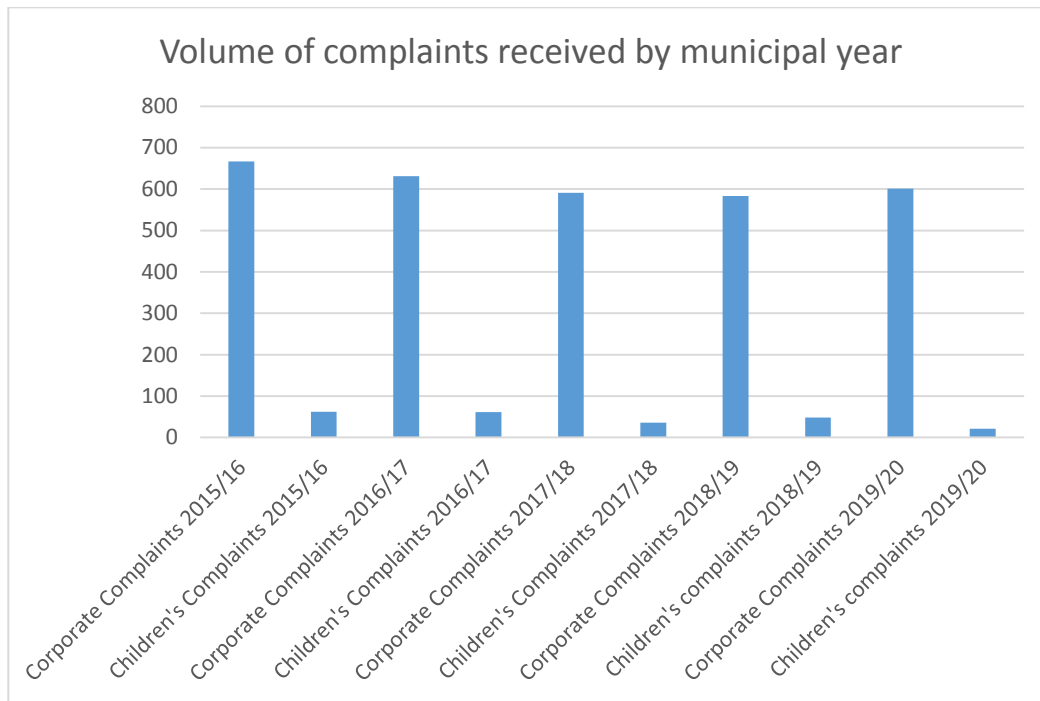
16. The LGSCO cases that were upheld against Herefordshire are set out on the LGSCO website which is at <https://www.lgo.org.uk/decisions>. They are summarised below along with the lessons that the council learnt from these cases:
17. First upheld case: The council delayed authorising a Deprivation of Liberty Safeguards referral for a person from their care home due to administrative errors. The council had already apologised to the complainant and carried out several actions to prevent reoccurrence of the fault.
18. Second upheld case: The Council failed to properly investigate a complaint through the statutory children's complaints procedure. There was fault in the

stage 3 panel's decision not to allow the complainant's nominated representative to speak on her behalf. This is because the chair of the panel had previous dealings with her representative when working for the Council and the panel should be independent of the council. The council arranged for a new stage 3 panel to consider the complaint.

19. Third upheld case: Complaint regarding the council's decision not to take enforcement action against a neighbour for allegedly blocking a known route of surface and flood water. The Ombudsman found no evidence of procedural fault in the council's actions, however, there was some delay in the council's early correspondence with the complainant, which the council apologised for.
20. Fourth upheld case: The complaint was about charges for a person's care. There was fault in the council's financial assessment and invoicing. To remedy the injustice, the council waived some of the charge and apologised.
21. Fifth upheld case: The council was alleged to have failed to properly test samples taken from a private water supply so the results were inaccurate, causing the complainant to waste time and money in trying to improve the water quality unnecessarily. The Ombudsman found that the council was at fault because the laboratory acting on its behalf failed to test the samples within the recommended timescale, however this did not cause an injustice because the delay did not affect the results.
22. Sixth upheld case: There was fault in the way the council considered an application for discretionary school transport. The council considered the application again, apologised, reviewed its processes.
23. Seventh upheld case: The complaint concerned the council's advice on the colour to paint a field shelter and then changing its mind after it was painted in the requested colour. The council confirmed the colour is acceptable, and while the failure to properly communicate its decision to the complainant was at fault, the situation is now resolved and no further action was required.
24. Eighth upheld case: A complaint that the council failed to take action about unauthorised development by a neighbour. The council's decision not to take action was found to be flawed, and the council reviewed the decision.
25. Ninth upheld case: The council was unable to show it discussed the funding for domiciliary care with the complainant before they were discharged from hospital. The council reimbursed the charges incurred.
26. Tenth upheld case: The council failed to provide a care leaver with appropriate support whilst they completed their educational programme. The council was found to be at fault because it delayed providing them with appropriate support. The council apologised and confirmed its duty to support them until the end of the educational programme, and reviewed its procedures.
27. Eleventh upheld case: A complainant alleging that the council did not provide the complainant with adequate information, prior to placing a child with them on an

emergency foster placement. The council was found to have provided the complainant with enough information before placing the child, however there was a one-month delay in providing them with the placement specific risk assessment. This was fault but the delay did not impact on the course of events. The council agreed to remind its staff of the need to provide foster carers with a comprehensive risk assessment at the start of an emergency placement and to document that it has provided carers with this information.

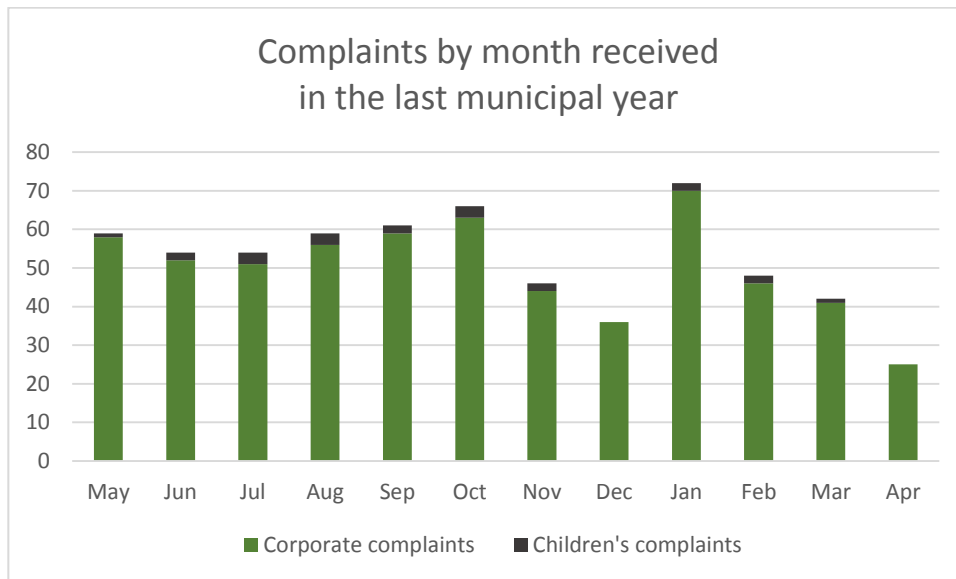
28. Twelfth upheld case: The council failed to provide a person with appropriate levels of care and support whilst they was in the council's care. The council identified this during its investigation of the complaint but failed to provide a remedy for the injustice this caused. The council agreed to do this.
29. Thirteenth upheld case: The complaint was about the council's involvement in the sale of some housing. The Ombudsman did not investigate the complaint because it had been resolved.
30. Fourteenth upheld case: The council was at fault for backdating a special guardianship allowance to the date it completed a delayed financial assessment, rather than the date that the complainant asked for support five months before the assessment. It was also at fault for a delay in applying for therapeutic funding for the complainant's niece. The council apologised for the delay, and agreed to backdate the special guardianship allowance to the date the person first asked for support.
31. Fifteenth upheld case: The complaint concerned the council's handling of complaints that did not properly address issues about safeguarding. The council was at fault for not acting fully upon the recommendations made at various stages of the children's statutory complaint process. The council arranged independently chaired mediation with the complainant so it could work with them to rebuild the relationship with the family.
32. 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 £3,600.
33. The following four graphs show volumes of complaints processed under the corporate complaints procedure alongside those processed under the separate statutory children's complaints procedure. The first graph shows that in the municipal year 2019/20 there were 601 corporate complaints and 21 children's complaints, contrasted with other municipal years: 2018/19 where there were 583 complaints and 48 children's complaints, 2017/18 where there were 591 complaints and 36 children's complaints, 2016/17 where there were 631 complaints and 61 children's complaints, and 2015/16 where there were 667 complaints and 62 children's complaints.



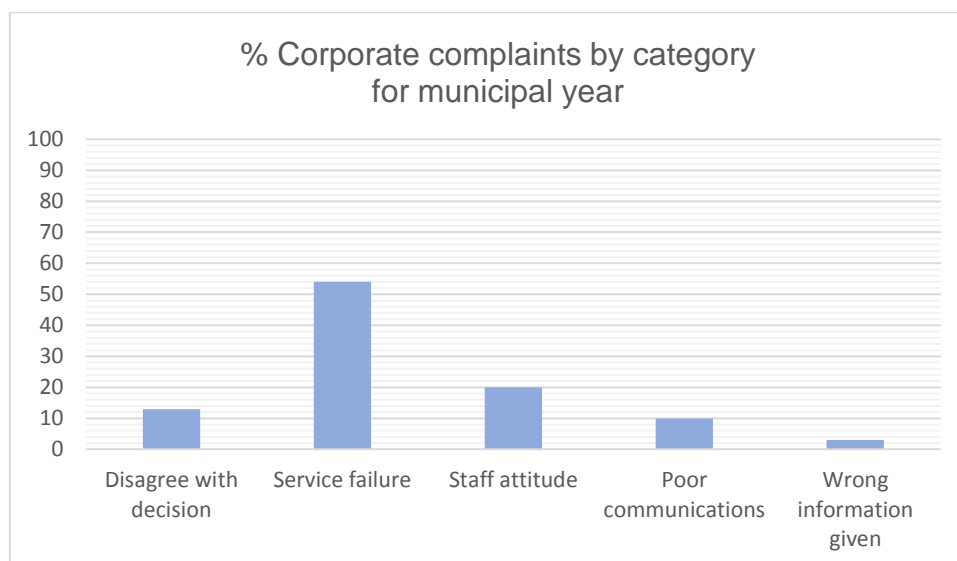
34. The second graph breaks down complaints received by month with the data set out in the following table:

Month	Volume of complaints
May 2019	58 corporate complaints and 1 children's complaint
June 2019	52 corporate complaints and 2 children's complaints
July 2019	51 corporate complaints and 3 children's complaints
August 2019	56 corporate complaints and 3 children's complaints
September 2019	59 corporate complaints and 2 children's complaints
October 2019	63 corporate complaints and 3 children's complaints
November 2019	44 corporate complaints and 2 children's complaints
December 2019	36 corporate complaints and 0 children's complaints
January 2020	70 corporate complaints and 2 children's complaints
February 2020	46 corporate complaints and 2 children's complaints
March 2020	31 corporate complaints and 1 children's complaint
April 2020	25 corporate complaints and 0 children's complaints

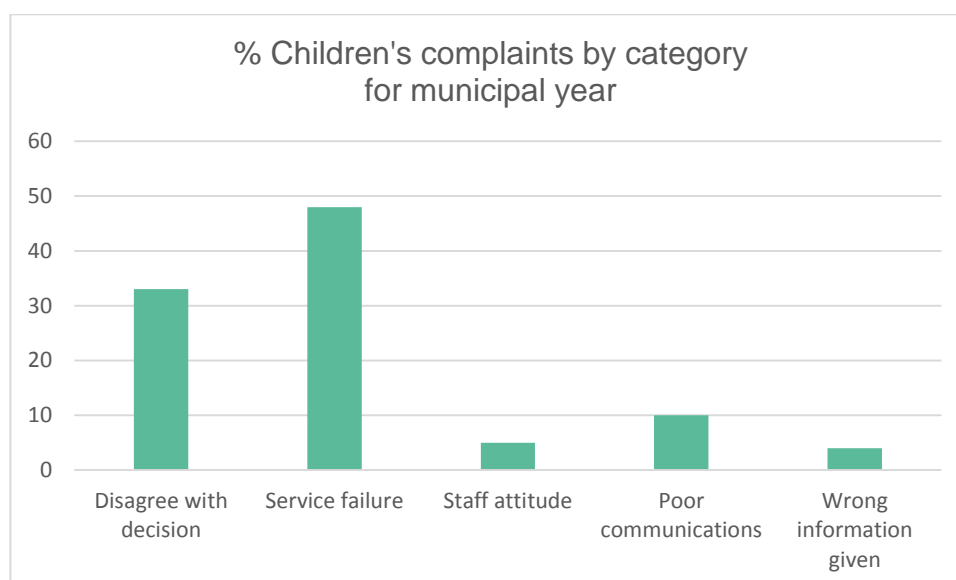




35. The third graph breaks down corporate complaints by category over the municipal year: 13% were a disagreement with a council decision, 54% for a service failure, 20% regarding staff attitude, 10% for poor communications, and 3% for being given incorrect information.



36. The final graph breaks down children's complaints by category over the municipal year: 33% were a disagreement with a council decision, 48% for a service failure, 5% regarding staff attitude, 10% for poor communications, and 1% for being given incorrect information.



37. **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 184 such cases were reported and dealt with over the past municipal year. Out of these, 5 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. Numbers of incidents reported over the past 5 years demonstrate that reporting has improved considerably: 91 incidents in 2015/16, 71 incidents in 2016/17, 73 incidents in 2017/18, and 159 incidents in 2018/19. 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.
38. 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.
39. In addition to providing the council with a service, as of April 2020 47 of the county's schools were 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.
40. **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, 1 RIPA application was made.

41. **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 2 such instances over the past municipal year.

## Community impact

42. 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.
43. 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.

## Environmental impact

44. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
45. Whilst this is a decision on back office functions and will have minimal environmental impacts, consideration has been made to minimise waste and resource use in line with the Council's Environmental Policy, including through encouraging complaints and requests for information to be submitted electronically to the council.

## Equality duty

46. 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.

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

## **Resource implications**

48. 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, hence learning from complaints is being fed back into strategic planning.

## **Legal implications**

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

## **Risk management**

50. The risks to the council are of non-compliance with legislation including the General Data Protection Regulations, the Data Protection Act 2018, the Freedom of Information Act 2000, the Environmental Information Regulations 2004, and the Local Government Act 1974. Effective operational and governance processes mitigate these risks of non-compliance with information legislation and standards, and maintaining high standards of compliance mitigates risks to the reputation of the council.

## **Consultees**

51. Not applicable.

## **Appendices**

None.

## **Background papers**

None identified.