

Title of report: Annual review of the council's information access and information governance requirements

Meeting: Audit and governance committee

Meeting date: Wednesday 24 November 2021

Report by: Head of information compliance and equality

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 2020/21.

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.**

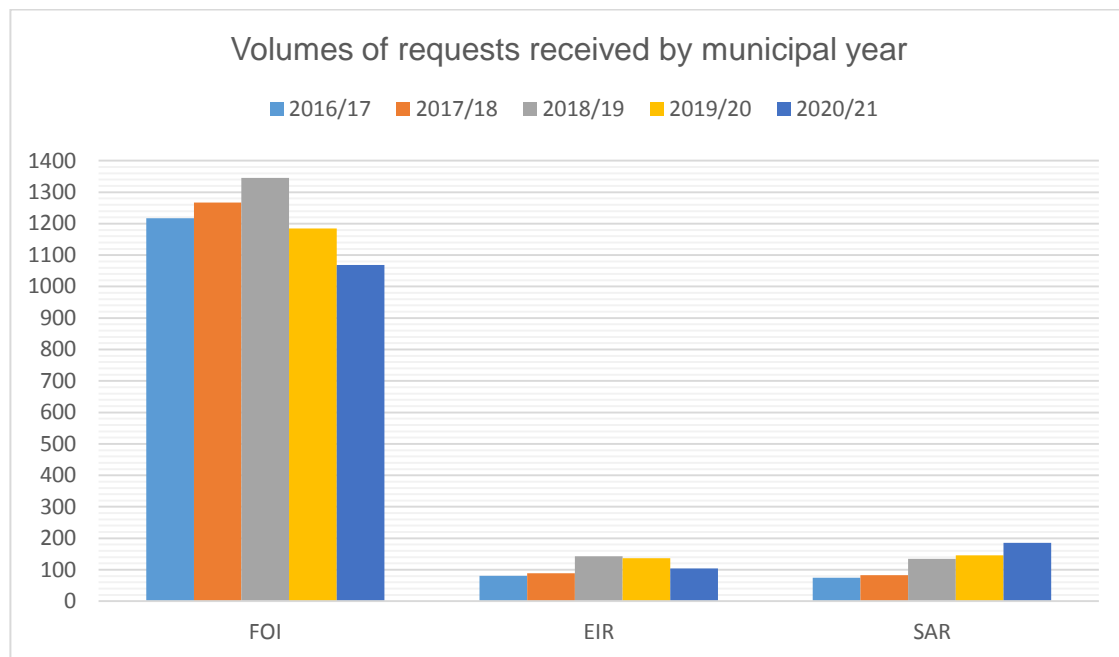
Alternative options

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

Requests for information

2. 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.
3. From May 2020 to April 2021 the council dealt with 1,069 requests under the Freedom of Information Act (FOI) 2000, and 104 requests under the Environmental Information Regulations (EIR) 2004.
4. There were 24 such requests that were answered outside of the statutory deadlines for responses to be made, meaning that the overall response rate was 98%, exceeding the council's target of 95% 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 because some of the information was exempt (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.
5. The volumes of requests received fell as the first lockdown came into force in March 2020, reaching a low in May 2020, after which the volumes started to slowly increase again. The ICO advised all public authorities it would not penalise them if responses were late as a result of the pandemic. Many local authorities suspended their processing of information requests during 2020 because staff were redeployed to work on the response to the pandemic. However, the information access team continued to process requests at the same time as being redeployed.
6. Two cases were referred to the ICO resulting in a decision notice being issued over the past municipal year, in both cases the ICO upheld the council's decision.
7. During the last municipal year there were also 186 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 94%, just below the target for the calendar year, which was a 95% response rate. The graph below compares volumes of requests received in municipal year 2020/21 with volumes received in previous years. In 2020/21 1,069 FOI requests, 104 EIR requests and 186 subject access requests were received. In 2019/20 1,185 FOI requests, 137 EIR requests and 146 subject access requests were received, and in 2018/19, 1,345 FOI requests, 143 EIR requests and 135 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.



8. Statistical data on 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
9. 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 or calendar year, and Herefordshire Council is performing in a similar way amongst other such councils. Wiltshire Council received 1,279 FOI and EIR in 2020, however Wiltshire's compliance rate was 95% compared to Herefordshire's 97%. Amongst other local authorities, Leicestershire County Council received 897 requests in 2020 and had a response rate of 88%. Exeter City Council received 738 FOI requests and had a compliance rate of 81%. Herefordshire Council received 1,055 FOI and had 98% compliance.
10. 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. There is a section on processes for staff to follow regarding information requests within the mandatory training completed by all council staff annually.
11. 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 decreased slightly over the past year and a total of 69 requests were processed, including the locating, proportionate sharing and redaction of records.

Complaints

12. The council dealt internally with 769 corporate complaints, an increase from last year in part due to the council receiving 154 complaints in June 2020 regarding parking charges being reintroduced as lockdown eased and 33 complaints in August 2020 regarding the council's

decision to implement covid-19 highway measures in Bromyard. Of the total amount of complaints, the council upheld or partially upheld 13%. In addition, 12 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 first began.

13. 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, complaints about children’s services have been used to inform the care concerns process for more active listening to the issues experienced by people receiving children’s social care services.
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 2020 to March 2021 provides figures for comparative authorities which are given in the table below. To allow authorities to respond to the Covid-19 pandemic, the LGSCO did not accept new complaints and stopped investigating existing cases between March and June 2020. This reduced the number of complaints that they received and decided in the 20-21 year. Nonetheless, Herefordshire has improved the number of cases not upheld against it. The percentage “uphold rating” can be misleading – it is the percentage of complaints considered by the LCSCO, not the total of complaints received by the council. Considering all complaints received by the council, 3 were upheld by the LGSCO which is less than 0.5% of all complaints for the period April 2020 - March 2021.

Authority	Number of complaints considered	Complaints upheld
Isle of Wight	18	39%
Rutland	5	40%
Cheshire West and Chester	17	41%
Northumberland	22	45%
East Riding of Yorkshire	12	50%
Herefordshire	6	50%
Shropshire	16	50%
Cornwall	33	55%
Wiltshire	16	56%
Bedford Borough	8	63%
North Somerset	8	63%
Cheshire East	33	64%
Bath and North East Somerset	3	67%
Solihull	10	80%
Central Bedfordshire	11	91%

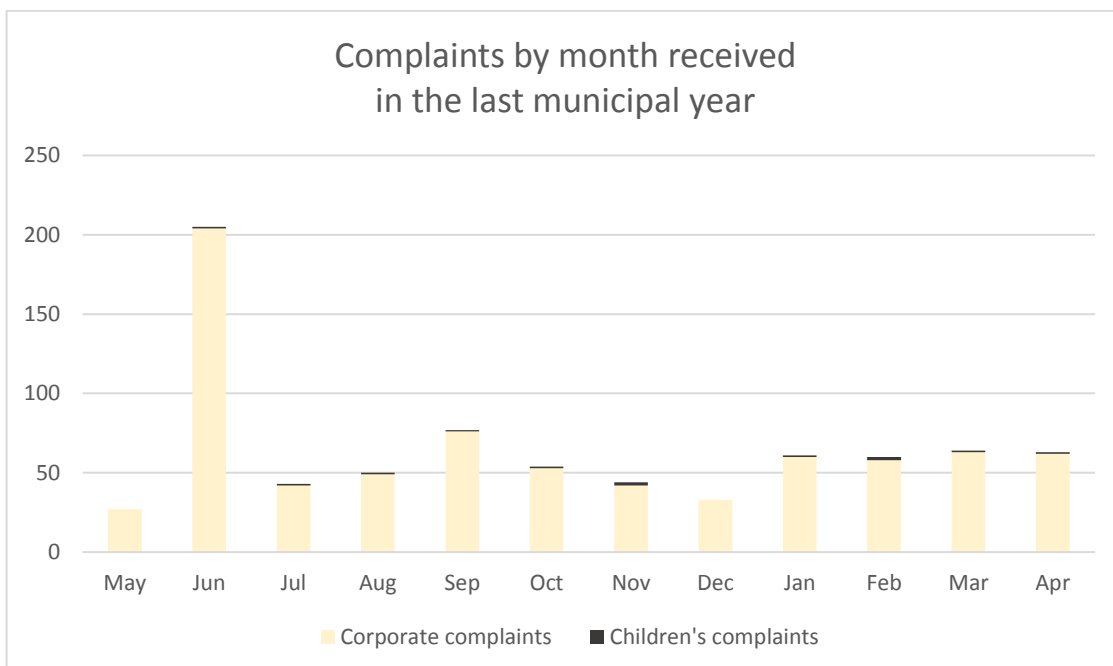
16. The LGSCO cases that were upheld against Herefordshire are set out on the LGSCO website which is at <https://www.lgo.org.uk/decisions>. They are summarised below along with the lessons that the council learnt from these cases:

17. First upheld case: The complaint concerned the council failing to consider the impact of a neighbour's extension on a property and failing to consult on amended plans. The council was at fault for not recording its decision not to conduct further consultation and for lack of transparency in its decision making. The Council apologised to the complainant and took action to improve its service.
18. Second upheld case: The complaint concerned the council's handling of a child's placement into her care. The council failed to correctly assess the needs of the child and did not put the child's needs first. The council also did not adequately address the impact of its actions on the complainant, their family and the child. The council's actions caused avoidable distress and financial loss.
19. Third upheld case: The council failed to prevent unlawful encroachments on roadside verges, which made the verges unsafe.
20. 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 £4,000.
21. 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 2020/21 there were 769 corporate complaints and 12 children's complaints, contrasted with other municipal years: 2019/20 there were 601 corporate complaints and 21 children's complaints, 2018/19 where there were 583 complaints and 48 children's complaints, 2017/18 where there were 591 complaints and 36 children's complaints, and 2016/17 where there were 631 complaints and 61 children's complaints.

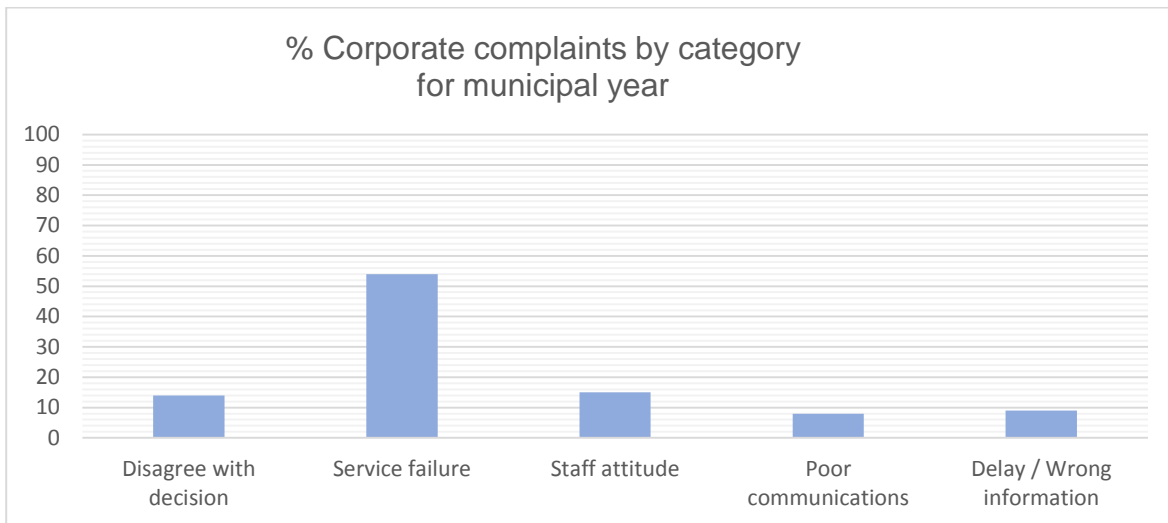


22. The second graph breaks down complaints received by month with the data set out in the following table:

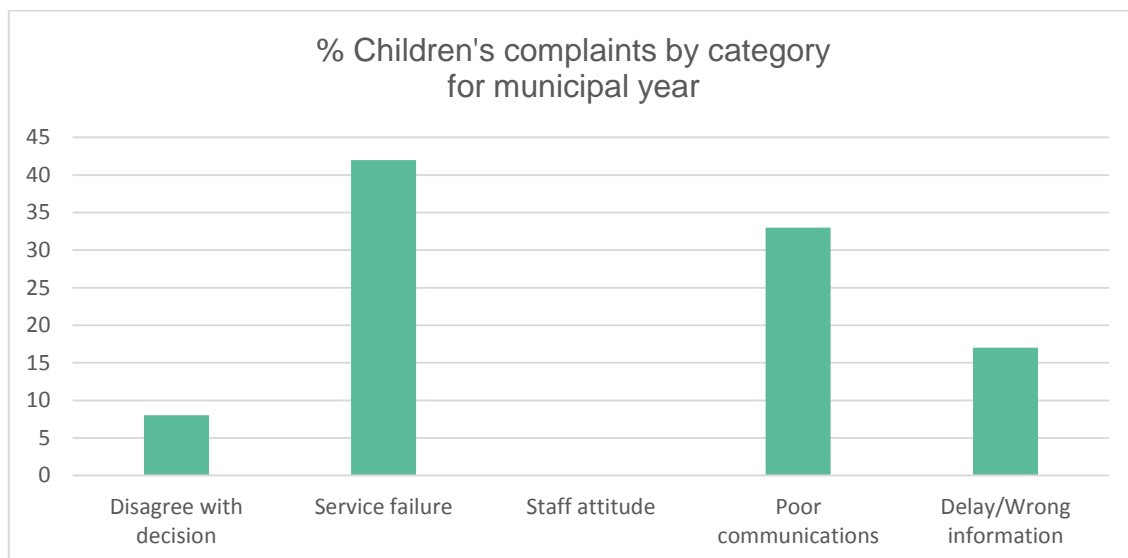
Month	Volume of complaints
May 2020	27 corporate complaints and 0 children's complaint
June 2020	204 corporate complaints and 1 children's complaints
July 2020	42 corporate complaints and 1 children's complaints
August 2020	49 corporate complaints and 1 children's complaints
September 2020	76 corporate complaints and 1 children's complaints
October 2020	53 corporate complaints and 1 children's complaints
November 2020	42 corporate complaints and 2 children's complaints
December 2020	33 corporate complaints and 0 children's complaints
January 2021	60 corporate complaints and 1 children's complaints
February 2021	58 corporate complaints and 2 children's complaints
March 2021	63 corporate complaints and 1 children's complaint
April 2021	62 corporate complaints and 1 children's complaints



23. The third graph breaks down corporate complaints by category over the municipal year: 14% were a disagreement with a council decision, 54% for a service failure, 15% regarding staff attitude, 8% for poor communications, and 9% for delay or being given incorrect information.



24. The final graph breaks down children's complaints by category over the municipal year: 8% were a disagreement with a council decision, 42% for a service failure, 0% regarding staff attitude, 33% for poor communications, and 17% for delay or being given incorrect information.



Information governance

25. The council's information governance team monitors low-level data security incidents, near misses, and allegations of breaches of data protection legislation, of which 172 such cases were reported and dealt with over the past municipal year. Out of these, 3 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, 159 incidents in 2018/19, and 184 incidents in 2019/20. 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.

26. 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.
27. In addition to providing the council with a service, as of April 2020 53 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.

RIPA

28. 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, one RIPA application was made.

Community trigger

29. 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 7 such instances over the past municipal year.

Community impact

30. 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.
31. 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 UK General Data Protection Regulations and the Data Protection Act 2018.

Environmental impact

32. 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.

33. 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

34. 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.

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

Resource implications

36. 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

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

Risk management

38. The risks to the council are of non-compliance with legislation including the UK 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

39. Not applicable.

Appendices

None.

Background papers

None identified.