

Title of report: Annual review of the council's Information Access and Information Governance requirements 2021/22

Meeting: Audit and Governance Committee

Meeting date: 21 November 2022

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 2021/22.

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;**
- (b) the committee determine any recommendations it wishes to make to improve mitigation of those risks.**

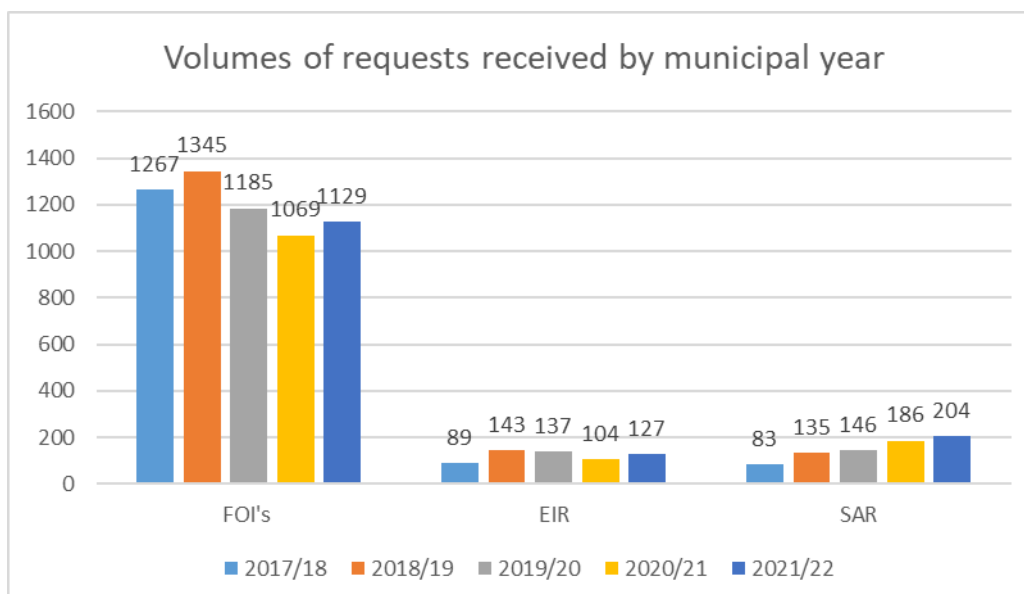
Alternative options

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

Requests for information

1. 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 1 May 2021 to 31 April 2022 the council dealt with 1,129 requests under the Freedom of Information Act (FOI) 2000, and 127 requests under the Environmental Information Regulations (EIR) 2004.
3. There were 54 such requests that were answered outside of the statutory deadlines for responses to be made, meaning that the overall response rate was 95% meeting 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 due to the information being exempt from disclosure and no information was released.
4. The volumes of requests received rose in comparison to the previous municipal year however this included data from the Covid 19 pandemic when the council saw an overall reduction in the number of requests received. We would therefore expect to see a rise to pre-pandemic levels.
5. Three cases were referred to the ICO and in all cases the ICO upheld the council's decision.
6. During the last municipal year there were also 204 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% of requests responded to within the 30 day statutory deadline. This was just below the target for the calendar year, which we set at 95% response rate. The graph below compares volumes of requests received in municipal year 2021/22 with volumes received in previous years.



7. Statistical data on requests processed under FOI and EIR are published and updated quarterly at this web site address:

www.herefordshire.gov.uk/info/200148/your_council/34/our_open_data_principles/13
8. Where other comparable councils to the Council publish their request volume statistics, some informal benchmarking can be made based on requests received in the financial or calendar year, and the council is performing in a similar way amongst other such councils. Wiltshire Council received 1,478 FOI and EIR in 2021, and their compliance rate was 98% compared to the council's 95%. Amongst other local authorities, Gloucestershire County Council received 1,269 requests in 2021 and had a response rate of 81%. Shropshire Council received 1,150 FOI requests and had a compliance rate of 65%.
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 Corporate Leadership Team. 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.
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 previous two years. Police requests have decreased again slightly over the past year and a total of 62 requests were processed, including the locating, proportionate sharing and redaction of records.

Complaints

11. The council dealt internally with 635 corporate complaints, a decrease from last year. Of the total number of complaints, the council upheld or partially upheld 175. In addition, 28 complaints were processed under the children's complaints procedure for children's social care of which 17 were upheld. Complaints that fall under the children's complaints and representations policy are those that have a demonstrable impact on the child or young person and come from a person who is deemed able to complain on behalf of the child or come from the child or young person themselves. 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. Links to both complaints policies are provided below:

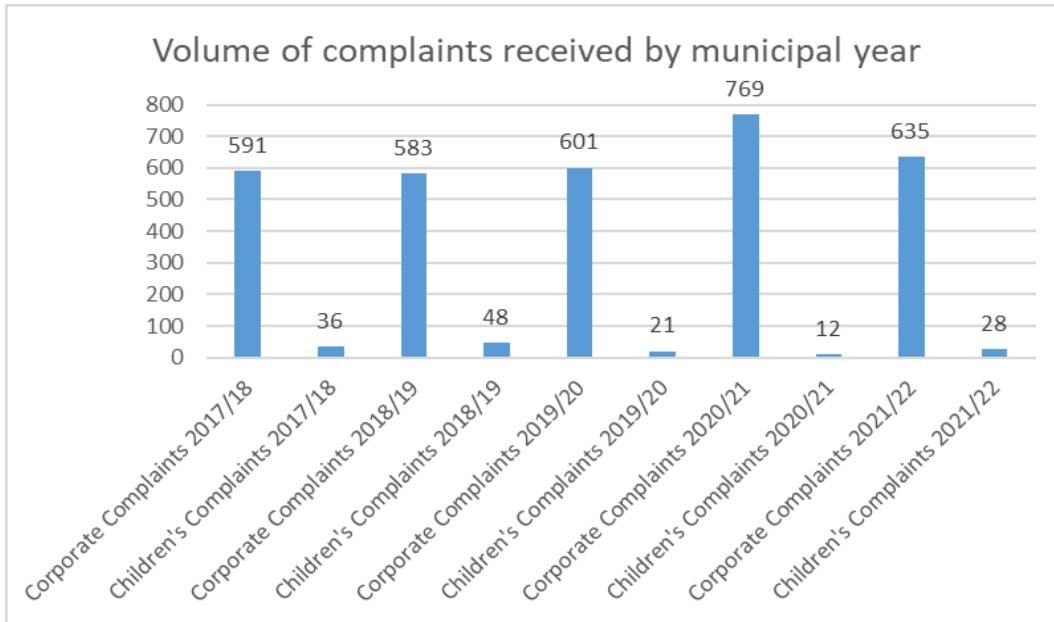
www.herefordshire.gov.uk/social-care-support/complaints-feedback-childrens-young-peoples-services

www.herefordshire.gov.uk/downloads/file/1334/corporate-complaints-policy
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, 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.
13. When a complaint has exhausted the council's 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.

14. The LGSCO themselves publish statistics by financial year. The LGSCO review of complaints received by the LGSCO covering 1 April 2021 to 31 March 2022 provides figures for comparative authorities which are given in the table below. The council has seen a reduction in the number of cases not upheld against it, however this needs to be considered in line with a large increase in the number of complaints considered by the LGSCO from 2020/21 when only 6 were considered and 3 upheld. The percentage “uphold rating” can be misleading – it is the percentage of complaints considered by the LGSCO, not the total number of complaints received by the council. Considering all complaints received by the council, 68 complaints were referred to the LGSCO of which they considered 24 and upheld 15 which is less than 0.5% of all complaints for the period 1 April 2021 – 31 March 2022.

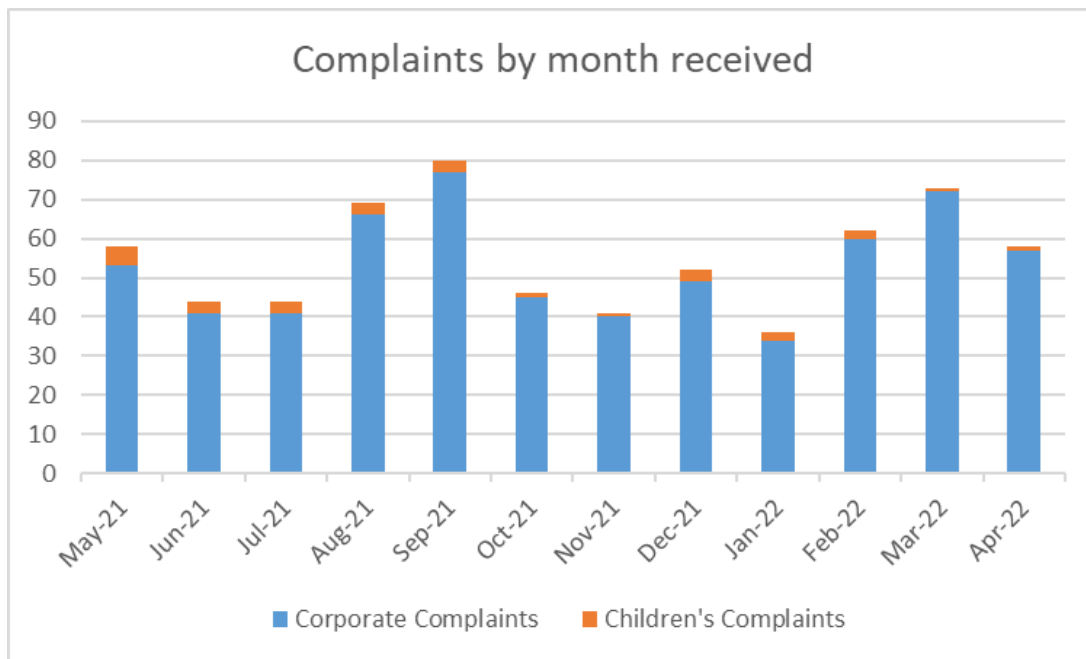
Authority	Number of complaints considered	Complaints upheld
Isle of Wight	12	67%
Rutland	2	100%
Cheshire West and Chester	23	74%
Northumberland	29	52%
East Riding of Yorkshire	25	60%
Herefordshire	24	63%
Shropshire	19	42%
Cornwall	39	51%
Wiltshire	35	60%
North Somerset	9	56%
Cheshire East	29	62%
Bath and North East Somerset	7	43%
Solihull	15	73%
Central Bedfordshire	15	53%

15. The LGSCO cases that were upheld against the council are set out on the LGSCO website which is at www.lgo.org.uk/decisions
16. 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 £500 as advised by the LGSCO for the period of 1 April 2021 to 31 March 2022.
17. The following graphs show volumes of complaints processed under the council’s corporate complaints procedure alongside those processed under the separate statutory children’s complaints procedure.



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

Month	Volume of complaints
May 2021	53 corporate complaints and 5 children's complaints
June 2021	41 corporate complaints and 3 children's complaints
July 2021	41 corporate complaints and 3 children's complaints
August 2021	66 corporate complaints and 3 children's complaints
September 2021	77 corporate complaints and 3 children's complaints
October 2021	45 corporate complaints and 1 children's complaint
November 2021	40 corporate complaints and 1 children's complaint
December 2021	49 corporate complaints and 3 children's complaints
January 2022	34 corporate complaints and 2 children's complaints
February 2022	60 corporate complaints and 2 children's complaints
March 2022	72 corporate complaints and 1 children's complaint
April 2022	57 corporate complaints and 1 children's complaint



Information governance

19. The council's information governance team monitors low-level data security incidents, near misses, and allegations of breaches of data protection legislation, of which 176 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: 71 incidents in 2016/17, 73 incidents in 2017/18, 159 incidents in 2018/19, 184 incidents in 2019/20 and 172 incidents in 2020/21. 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.
20. 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.
21. In addition to providing the council with a service, as of April 2022, 51 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.

Community trigger

22. 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 6 such instances over the past municipal year. 5 were in relation to anti-social behaviour and 1 in relation to a number of

break-ins. Each case was reviewed by the Community Safety Partnership and in all instances it was determined that sufficient action had been taken by all agencies involved to address the matters raised.

Community impact

23. In accordance with the adopted code of corporate governance, the 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.
24. 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

25. The 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.
26. 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

27. 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.
28. This report is for information only and therefore there are no equality duty implications arising directly from this report.

Resource implications

29. 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

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

Risk management

31. 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

32. Not applicable.

Appendices

None.

Background papers

None identified.