

Place and Resources Scrutiny Committee

25 January 2022

Information Compliance

For Review and Consultation

Portfolio Holder: Cllr S Flower, Leader of the Council

Executive Director: J Mair, Corporate Director, Legal & Democratic

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Report Status: Public

Recommendation: To note the improved position on Freedom of Information (FOI) request compliance and note the actions being taken to improve compliance with Subject Access Requests (SARs).

Reason for Recommendation: To improve compliance with statutory timescales for information requests.

1. Executive Summary

The Committee received a report to the 25 September 2021 meeting highlighting regular “red” performance in relation to the Council’s response rates for information requests:

- i) Percentage of FOI requests answered on time;
- ii) Percentage of SARs answered on time

Performance on Freedom of Information requests has demonstrated a positive improvement, particularly within Place and Corporate Services, which generate the vast majority of requests.

Compliance within timescales for Subject Access Requests remains challenging, and the report sets out how both the numbers and complexity of cases has increased significantly since the introduction of the General Data Protection Regulations. However, discussions with Children’s Services around supplementing existing staffing levels with an outsourcing of more complex cases have been positive. It is hoped that this will overtime provide a more effective and efficient response, once current backlogs have been resolved. It is however reliant on ongoing funding.

2. Financial Implications

Based on analysis of historic caseloads, the estimated costs associated with managing the SARs process are set out below, and funded from existing budgets:

No FTEs	In-House Cost	Outsourcing Cost	Total Predicted Cost
2	£54,765.86	£52,263.44	£107,029.30

3. Well-being and Health Implications

None

4. Climate implications

None

5. Other Implications

None

6. Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Medium

Residual Risk: Medium

If non compliance issues are escalated to and investigated by the ICO they could take enforcement action, which is shared publicly with reputational ramifications. This would likely involve a short term requirement to comply with all outstanding costs or even a monetary penalty.

7. Equalities Impact Assessment

Information Compliance policies have been subject to EQIA

8. Appendices

None

9. Background Papers

[21 September 21 – Information Compliance – Key Performance Indicators](#)

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

1.0 Background

1.1 The Committee received a report to the 25 September 2021 meeting highlighting regular “red” performance in relation to the Council’s response rates for information requests:

- i) Percentage of FOI requests answered on time;
- ii) Percentage of SARs answered on time

1.2 Following discussion, the Committee requested a further update. The Chair’s address at the 16 November 2021 meeting provided an initial update:

“The information compliance key performance indicators for Freedom of Information and Subject Access Requests were discussed at the September committee meeting. It was noted that there were improvements in the Freedom of Information response rates but that Subject Access Request response compliance remained low. As reported, discussions were underway with Children’s Services to identify how improvements could be made. These discussions are ongoing and there is positive progress, but timings have been delayed due to the recent demands on resources for the Ofsted inspection. An update will therefore be provided at the January meeting. The Committee will be pleased to know that Freedom of Information compliance continues to show improvement. In the meantime, the team are looking at how the KPI can be improved to provide a clearer measurement of significant non-compliance, as requested by members”

1.3 This report provides a further progress report.

2.0 Freedom of Information Requests (% of Freedom of Information Requests Answered on Time - Target 90%)

2.1 The main principle behind freedom of information legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to. FOI requests are subject to statutory timescales (20 working days). Where the requestor is not satisfied, they can refer to the Information Commissioner. The Council receives between 100 and 150 requests per calendar month. Since the September ‘21 report, positive progress has been made in responding to requests within timescale, particularly within the Place and Corporate Directorates, which generate the vast majority of FOIs (approx. three quarters of the requests received):

2020/21	Mar 21	Apr 21	May 21	Jun 21	Jul 21	Aug 21	Sep 21	Oct 21	Nov 21
Children's	80.00% Amber	70.59% Red	46.67% Red	56.25% Red	69.23% Red	58.33% Red	91.67% Green	78.57% Red	72.22% Red
Adults & Housing	90.91% Green	86.36% Amber	71.43% Red	88.89% Amber	100% Green	66.67% Red	84.62% Amber	88.24% Amber	87.50% Amber
Place	82.46% Amber	85.71% Amber	86.84% Amber	77.27% Red	90.70% Green	87.18% Amber	84.00% Amber	72.31% Red	96.49% Green
Corporate	76.47% Red	64.81% Red	81.58% Amber	79.07% Red	88.46% Amber	89.74% Amber	80.95% Amber	82.05% Amber	95.00% Green
Overall	83.57% Amber	76.62% Red	77.12% Red	78.20% Red	88.89% Amber	82.69% Amber	83.76% Amber	78.26% Red	91.67% Green

2.2 The table above provides a summary of each Directorate's performance for meeting compliance timescales. Green means that the 90% target of responding to FOIs in 20 working days has been met. Amber indicates between 80 to 89% compliance, and Red shows compliance under 80%. Pressures on services, particularly during the Covid response, has made compliance challenging. More recent months have however demonstrated an increased "Green" reporting, and indeed a number identified as Amber are close to meeting the 90% target.

2.3 The Committee queried whether the current FOI key performance indicator was the most effective way to measure compliance performance, as it does not differentiate between missing the deadline by one day and those that have been outstanding for an excessive period. Whilst the KPI has not been changed at this stage, reporting to Directorates is highlighting individual requests and the extent that each FOI is overdue. We will continue to review how this KPI is reported.

2.4 Further action being taken: A disclosure log module will shortly go live, ensuring that the council's responses to past FOI requests are transparently available to the public. Details of outstanding requests continue to be presented to Directorate Management Teams. The Information Compliance Team continue track FOI responses and issue reminders. Children's Services have identified a lead officer to track all FOI requests to improve compliance and are analysing frequently requested information to determine whether more information can be published from the outset.

3.0 Subject Access Requests

(% of Subject Access Requests Answered on Time -Target 90%)

3.1 Individuals have a number of rights that they can enact, which requires action/a response from an organisation. Most of these rights are completed as business as usual with only advice/guidance required from Information Compliance. The main pressure however for the council is the Right of Access, also referred to as Subject Access or SAR. This allows an

individual to request copies of any personal information, that relates to them, verbally or in writing. The vast majority of these relate to children's services, and as has been reported previously, compliance timescales are consistently red. The majority of these requests relate to care experienced people asking for their records when they have left our care and want to make sense of their experiences.

- 3.2 Gathering the requested information to answer a SAR can be very time consuming, and there needs to be a thorough redaction process due to the sensitivity of the files and legal requirements the council must adhere to. Therefore, in addition to the initial SARs collation and redaction process, a second officer in the Directorate undertakes a quality assurance role. SARs can regularly involve reviewing over 1,000 pages, with the largest in the current calendar year requiring reviewing and redacting some 13,000 plus pages (approx. 440 hours work).

2020/21	Mar 21	Apr 21	May 21	Jun 21	Jul 21	Aug 21	Sep 21	Oct 21	Nov 21
DC	46.67% Red	55.56% Red	55.56% Red	57.14% Red	89.47% Amber	82.35% Amber	47.06% Red	64.29% Red	41.18% Red

- 3.3 Compliance rates vary depending on the complexity of the case:

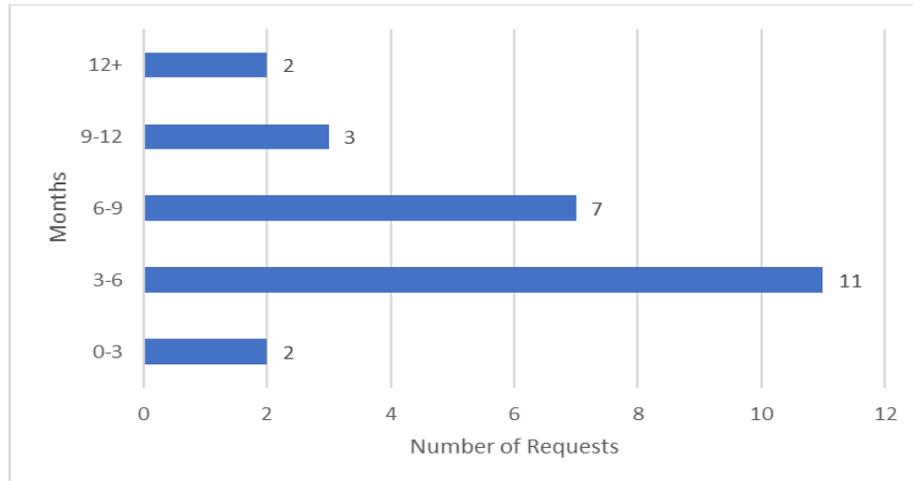
2021 SARs (Complexity)	No SARS	Ongoing	Completed on time	Completed but exceeded timescales	Compliance
Standard	88	3	53	32	62%
Complex	21	3	9	9	50%
Very Complex	35	10	5	20	25%
	144				

- 3.4 The number of SARs per annum has shown a steady increase over recent years, doubling from 2017. There is also evidence that the requests being submitted are larger and more complex. This perhaps demonstrates increased publicity and awareness, which will have been accelerated by the changes to the data protection legislation in 2018:

Year	Childrens	Dorset Council (Total)
2017	72	101
2018	89	135
2019	108	168

2020	109	163
2021	144	197

3.5 The following chart summarises overdue requests, based on the number of months overdue:



3.6 **Further action being taken:** Children’s Services has increased SARs capacity from 0.5FTE (full time equivalent) to 1.5FTE, with agreement to increase this to 2 FTEs. Modelling of current caseloads suggest that this level of resourcing will still not enable us to meet all request within timescales. Subject Access Requests vary in complexity and in volume and having a fixed workforce does not allow for these peaks and troughs in demand.

3.7 We have therefore piloted outsourcing of larger/more complex SARs to a specialist provider which has proved successful and is enabling us to have increased capacity to match demand and have assured ourselves of the quality.

3.8 Financial modelling indicates that this is slightly lower cost than increasing head count in the team which based on caseload modelling would require 3.2FTE combined with a level of outsourcing to address demand. A comparison is provided below. Although the cost is not significantly lower it has the advantage of offering a greater degree of flexibility:

No FTEs	In-House Cost	Outsourcing Cost	Total Predicted Cost
2	£54,765.86	£52,263.44	£107,029.30
2.5	£68,457.33	£41,955.71	£110,413.03
3	£82,148.79	£31,647.98	£113,796.77
3.2	£87,625.38	£27,524.88	£115,150.26

- 3.9 Agreement is in place to transfer the 2FTEs assigned to undertaking SARs to the Assurance Service's Information Compliance team, to embed closer working and improved skills transfer.
- 3.10 A service level agreement has been drafted, setting out the level of SARs that can be delivered by the internal team, with a request issued to Children's Services to sign off outsourcing of individual cases that exceed capacity.
- 3.11 Early indications suggest that this model will be more effective longer term, but during transition compliance levels will remain low as the focus for outsourcing in the pilot has been on the significant number of overdue requests. However, early outsourcing will improve compliance rates once this backlog has been managed down and it is used instead to support new complex requests. Regular meetings will take place between Assurance and Children's staff during the early transition, to ensure that this hybrid model is working effectively. It is noted however, that SAR requests have continued to increase in recent years, and this continuing upward trend would result in additional costs which would need to be considered during future budget planning cycles.
- 3.12 It is also worth noting that there is improved work within children's services to help children in care understand their experiences through 'Life Story' work. This will help children in care have a better understanding of decisions that have been taken throughout their time in care reducing reliance on access to case records for answers. In addition work has been undertaken with the Care Leaver service to help support those accessing their records make sense of what they are requesting and reading when it is received.

Marc Eyre, Service Manager for Assurance
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