



Committee and Date

Audit Committee

28th September 2023

10:00am

Item

Public



Freedom of Information (FOI) Management Update

Responsible Officer:	Tim Collard		
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Cabinet Member (Portfolio Holder):	Lezley Picton, Leader of the Council Brian Williams, Chairman of the Audit Committee Gwilym Butler		

1. Synopsis

This report summarises the Council’s compliance with the Freedom of Information Act 2000 (FOIA) and sets out the actions taken since the Information Commissioner (ICO) issued an enforcement notice on the Council in April 2023.

2. Executive Summary

- 2.1. This report provides members with an update of work undertaken by the Information Governance team and officers across the Council including Executive Directors to ensure it is meeting its legal obligations in respect of the FOIA.
- 2.2. A formal action plan was documented and published within the timescales set out in the enforcement notice. This was agreed by the Executive Director of Resources (SIRO) and Assistant Director Legal and Governance.
- 2.3. The Information Governance Team recruitment has taken place and further recruitment will be undertaken to improve the Council’s compliance with the FOIA.

- 2.4. All overdue FOIA cases from 2022 were cleared by the end of June 2023 and the average 20-day compliance rate has increased from 47% in 2022 to 68% to the end of August 2023. Importantly, there has been a sustained month by month improvement with July 2023 recording an 83% response rate.
- 2.5. A follow up meeting with the ICO was held on 6th September 2023 to review progress on the actions set out in the published action plan. The Council was able to report the increase in compliance rates throughout 2023, clearance of the 2022 backlog of requests and that a clear plan was set out to achieve longer term improvements. A formal written response from the council to the ICO is required in early November 2023, when it will be considered whether the enforcement notice has been complied with.

3. Decisions

- 3.1. The Committee is asked to consider and endorse, with appropriate comment the on the Council's response to the ICO enforcement notice.

Report

4. Risk Assessment and Opportunities Appraisal

- 4.1. The consequence of failing to comply with an ICO Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, the Council may be dealt with as if it had committed a contempt of court.

5. Financial Implications

- 5.1. The Information Governance function is delivered within approved budgets. The work of Information Governance contributes to improving the efficiency, effectiveness and management of the wider Council.

6. Climate Change Appraisal

- 6.1. This report does not directly make decisions on energy and fuel consumption; renewable energy generation; carbon offsetting or mitigation; or on climate change adaptation. However, the work of the Committee will look at these aspects relevant to the governance, risk management and the internal control environment.

7. Background

- 7.1. The Freedom of Information Act 2000¹ provides public access to information held by public authorities. FOIA entitles anybody to ask a local authority for any recorded information that they keep. FOIA gives us all greater access to

¹ [What is the Freedom of Information Act? | ICO](#)

information about how decisions are taken in government and how public services are developed and delivered and operates alongside the Data Protection Act 2018 and the Environmental Information Regulations 2004.

- 7.2. Public authorities are obliged to publish certain information about their activities.
- 7.3. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.
- 7.4. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days: "... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt."
- 7.5. Information Governance is a Council wide responsibility. The Shropshire Plan sets out the priority of improving access to information for members of the public.
- 7.6. The Information Governance Team cover the full range of Information Governance activities including:
 - Freedom of Information requests (FOIA)
 - Environmental Regulations Requests (EIR)
 - Data Subject Access Requests (SAR) and other Information Rights
 - Data Protection Compliance including data protection impact assessments and data sharing agreements
 - Responding to, and investigating and reporting data breaches
- 7.7. In 2022 Shropshire Council received 1169 FOI requests. This represents an 19% increase on 2021 and indications in 2023 indicate that this trend will continue with 862 received to 6th September 2023 which would result in approximately 1293 requests received across the whole year. Predictions on actual numbers of requests for information are always difficult as there are several dependencies including the number of public interest activities the Council is involved with during the year.
- 7.8. The Information Governance Team logs FOIA requests using an in-house developed system (Ivanti ticketing). Once logged, the requests are sent to the relevant service area. Responses are coordinated within the service areas. The Information Governance Team provides advice about how to deal with them, considers relevant exemptions and writes refusal notices. It also considers and responds to internal reviews and facilitate the investigation and preparing response to complaints made to the ICO about them.
- 7.9. On 26 April 2023 Shropshire Council was issued with a formal Enforcement Notice from the ICO in respect of its non-compliance with the Act as summarised in para 8.1 below. Compliance with the terms of the enforcement notice is required within six months of the notice being issued, 26th October.

A summary of the formal notice:

Taking into account the significant volume of unanswered FOI requests, their age profile including many requests subject to severe delay, and the need for significant and sustained improvement in timely FOI responses, the

Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice to Shropshire Council. This Notice requires the Council to comply with section 1(1) of FOIA in respect of each FOI request, where the response is outside of 20 working days at the date of this Notice, and where a permitted extension of a maximum of a further 20 working days has not been applied. It is essential that the improvements that the Council has already achieved since the initial contact with the ICO are sustained.

The notice requires:

(i) In respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, to comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:

(ii) communicate it pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

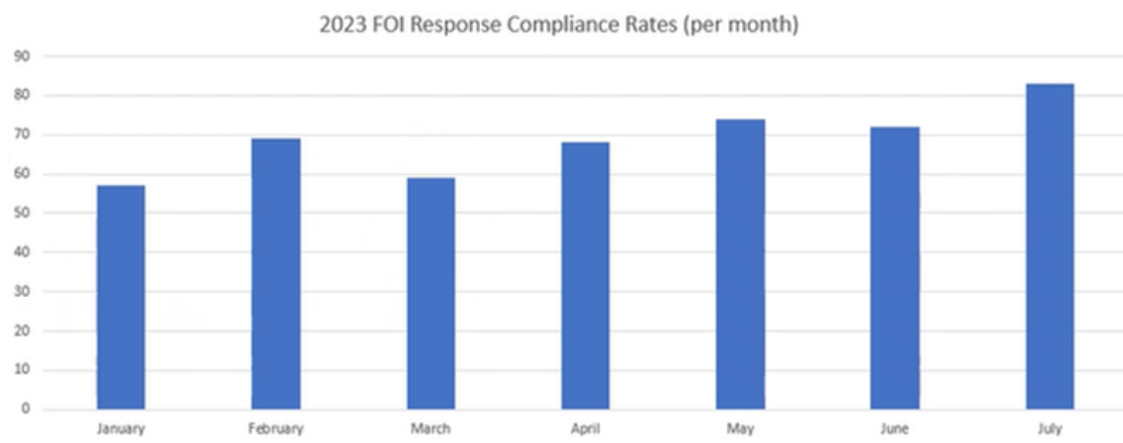
(iii) Devise and publish an action plan formalising the measures it will take to ensure it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion, while also clearing its backlog of late requests as required by this notice.

8. Response to ICO enforcement notice

8.1. Over the last two years the Council's response rates on FOI requests have fallen short of the requirements of the legislation. 100% compliance rate should be achieved although the ICO accepts that more than 95% is a realistic target. Actual performance for the last two years:

Year	FOI Compliance rate
2021	51%
2022	47%
2023 January to August	68%

8.2. Month by month compliance for 2023 shows a clear upward trajectory in compliance rates with July peaking at 83%.



8.3. For context, the total number of FOIA requests received by the Council is increasing. There was a 18.5% increase in FOIs received from 2021 to 2022. Indications are that this trend is set to continue in 2023.

Year	Total FOIs Received
2021	986
2022	1169
2023 – 1 January to 6 September	862

8.4. The Head of Policy and Governance was appointed from 1st April 2023. Responsibility for overseeing the central Information Governance Team is included within remit of the role.

8.5. A recruitment process was completed during May 2023 to appoint a permanent Information Governance Team Leader. The post holder took up this position on 1 June 2023. Further recruitment process has been completed for a permanent Information Governance Officer who is due to commence the role in early October 2023. In addition, two further temporary posts are currently being considered to help embed the Council's Information Governance Framework and improve legislative compliance.

8.6. Additional legal support is also available within Legal and Governance from the Solicitor, Standards and Ethics. He has completed FOIA specific training and will act as a legal advisor, providing additional support on complex cases and provide internal reviews further enhancing the Council's approach.

8.7. Following receipt of the enforcement notice, in response to point three, an action plan (**Appendix A**) was developed and published within the timescale of 30 days set out in the notice. The actions were defined following completion of the ICO Self-Assessment FOIA Toolkit. The plan was approved by the Executive Director of Resources (SIRO / chair of the Information Governance, Leadership and Oversight Group) and the Monitoring Officer, Assistant Director Legal and Governance. The action plan was published on the Shropshire Council website² in May 2023 and was reviewed and updated in July 2023.

8.8. A meeting was held with the ICO on 5 June 2023 to review progress and comment on the documented action plan. The ICO commented during the meeting that the plan was appropriate but stressed the importance of both clearing the backlog of overdue requests, reducing the time taken to respond to FOIs and enabling sustainable improvement in the Council's response rate.

8.9. A PowerBI dashboard has been created and made available to Executive Directors and Assistant Directors which details the current status of all FOIA requests across the council. This includes details of overdue cases for them to be monitored and prioritised.

8.10. The Council has made good progress on clearing the backlog of overdue requests. By the end of June 2023, all 2022 cases that were overdue had been

² [shropshire-council-foi-improvement-plan-v10-may-2023.pdf](#)

cleared and the number of overdue cases (over 30 days) has reduced. The number of overdue cases the end of December 2022 was 198. The number as at 30 August is 14 overdue by more than 30 days.

- 8.11. An average compliance rate of 68% to the end of August. This represents an 21% improvement on the 2022 rate, but further work is required to ensure that the Council complies with legislation by the October 26th deadline.
- 8.12. Regular communication with those responsible for the collation of information and response to FOIA requests has been undertaken. Messages have been cascaded to all staff via the CEO weekly update email. In addition, the Executive Director of Resources (SIRO) has separately communicated with members of the Information Governance, Leadership and Oversight Group.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Freedom of Information Act 2000 (FOIA)

[What is the Freedom of Information Act? | ICO](#)

Local Member: All

Appendices

Appendix A

FOI Improvement Plan

Appendix B

ICO Enforcement Notice

Appendix C

[Freedom of information requests | Shropshire Council](#)

Shropshire Council FOI Improvement Plan - Review July 2023

Topic	Statement	Action	Priority High/med/low	Owner responsible for the action	Target implementation date	Completed
Governance Structure	There is governance oversight in place to ensure compliance with FOI/EIR	Information Governance Leadership and Organisational Oversight (Executive Directors - Quarterly Meetings)	n/a	ED Resources	n/a	Completed
	Responsibility has been assigned to ensure compliance with FOI/EIR	Responsibilities have been assigned	n/a	ED Resources	n/a	Completed
	Sufficient resources are assigned to the handling of requests for information to ensure response within the statutory timescales	Information Governance Team structure has been reviewed. Resources identified across directorates.	High	ED Resources	October 2023	Completed
Policies and Procedures	Policies and procedures are in place which explain the organisation's approach to, and responsibilities for, FOI and EIR	FOI handling procedure has been reviewed. This will continue to be monitored.	High	HP&G	September 2023	Completed
	Policies and procedures are easily accessible by staff	Updated and approved procedures are available to all staff via the corporate Intranet.	High	IGTL	September 2023	Completed

	The organisation ensures that staff are informed of any changes to policies and procedures regarding FOI/EIR	Communications are cascaded via the Leadership Group and additional communication via ED Resources.	High	IGTL	September 2023	Completed
	Staff know who to contact for advice or assistance regarding policies and procedures for FOI/EIR	This information is published on the Intranet and Council website. Any changes will be communicated in a timely manner.	n/a	IGTL	n/a	Completed
	Policies and procedures for FOI/EIR account for personal information and how it should be dealt with	FOI handling procedure has been reviewed. This will continue to be monitored.	High	HP&G	September 2023	Completed
Compliance and Assurance	There are reporting mechanisms in place to provide oversight of requests and ensure that statutory deadlines are met	Real time compliance reporting is now available for monitoring by Directors.	n/a	HP&G	n/a	Completed
	There are mechanisms to monitor the quality of responses to requests and ensure that any reasons for refusal/application of exceptions are valid.	Procedures are in place to ensure that exceptions are managed.	n/a	HP&G	n/a	Completed
	Contracts with third parties do not restrict the release of information that should be available to the public and provide for access to information, by the public authority, when needed.	Contracts and agreements include appropriate clauses that mean third parties must support the council when responding to requests for information.	n/a	IGTL	n/a	Completed

Documented governance arrangements exist where the authority works in partnership with other organisations in relation to the handling of requests and/or the management of records.	Information Sharing Agreements are in place and include relevant clauses about supporting the council when responding to requests for information.	n/a	IGTL	n/a	Completed
The organisation is complying with statutory timescales for FOI/EIR	Corporate priority that timescales are adhered to. Response rates have shown improvement through 2023. Backlog has been reduced.	High	ED Resources	October 2023	
	Standing item on agenda Item on Senior Leadership Meetings: Live monitoring via Management Dashboards. Focused targetting at areas continuing to not meet necessary timescales.	High	ED Resources	26 November 2023	
Internal review procedures comply with the relevant Codes of Practice and ensure that timely responses are provided to complaints.	Procedures for internal review are being reviewed to ensure the council follows best practice.	High	HP&G	October 2023	
Exemptions/Exceptions should be applied on a case-by-case basis, by appropriately trained staff, with no evidence of the use of blanket exemptions.	Information Governance Team undertake refresher training as overall specialists. Continue to keep skills up to date and undertake	High	IGTL	n/a	Completed

		refresher training where gaps are identified.				
	There is evidence of an oversight or approval process for the use of exemptions.	Service Areas given awareness training to apply exemptions relevant to their information. Obtaining further advice from the Information Governance Team when required.	High	IGTL	August 2023	
		Arrangements will be reviewed as part of review of Information Governance Team and Training/Awareness.	High	IGTL	December 2023	
		Review of Information Governance Team Structure and Procedures will address this gap.	High	IGTL	December 2023	
	Redactions should be applied on a case-by-case basis, by appropriately trained staff, and records should be maintained of what has been redacted.	Redaction software and procedures for using it, is available to teams requiring them.	n/a	IGTL	n/a	Completed

Training and Awareness	There is an induction training programme, with input from Information Governance or equivalent, which includes general training on how FOI/EIR applies to the organisation, what they currently do to comply, and how to recognise an FOI/EIR request.	Review training materials and training requirements and ensure this is included in the Induction Package.	High	IGTL	September 2023	
	Staff receive refresher training in the requirements of FOI/EIR, including, where appropriate, updates from the relevant decisions of the ICO and the Information Tribunal.	Link to guidance included with all requests. Guidance and specific advice provided by Information Governance Team with all new requests.	n/a	IGTL	n/a	Completed
	There is specific training for staff with responsibility for handling requests for information, on FOI, EIR and Codes of Practice.	Information Governance Team have refreshed skills and continue to do so where gaps are identified.	High	IGTL	n/a	Completed
		Training gaps identified during Information Governance Team restructure and appropriate training provided with ongoing mentoring.	High	IGTL	October 2023	
		Guidance is supplied to Service Areas for all requests they deal. To be updated when new structure and procedures are in place.	High	IGTL	October 2023	

	Records are maintained, either centrally or by local management, of the FOI/EIR training received by staff. These records are monitored to ensure that all staff receive or attend all relevant training.	Review of training material will include modules on a platform that allows training to be monitored.	High	IGTL	December 2023	
	Staff receive regular reminders of how to recognise FOI/EIR requests	Review of procedures will include a requirement for Information Governance Team to arrange for regular communications about recognising request.	High	IGTL	December 2023	

ED Resources Executive Director Resources
 (Senior Information Risk Owner)
 HP&G Head of Policy and Governance
 IGTL Information Governance Team Leader

Key:

Action completed - solution in place
Solution in place but improvements are required
No solution is in place

Reference: ENF0987656

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 26 April 2023

To: Shropshire Council

Of: Shirehall

Abbey Foregate

Shrewsbury

SY2 6ND

1. Shropshire Council (The “**Council**”) is a “public authority” listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 (“**FOIA**”).
FOIA provides public access to information held by public authorities.

2. The Information Commissioner (the “**Commissioner**”) hereby issues the Council with an Enforcement Notice (the “**Notice**”) under section 52 FOIA. The Notice is in relation to the Council’s
 - a. Continuing non-compliance with section 1(1) FOIA;

 - b. Continuing breach of section 10(1) FOIA.

3. This Notice explains the Commissioner’s decision to take enforcement action. The specific steps that the Council is required to take are set out in **Annex 1**

Legal Framework for this Notice

4. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in section 1(1) FOIA–

“(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

5. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:

“... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt.”

6. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain limited circumstances. The code of practice issued under section 45 of the FOIA recommends that, where those limited circumstances apply, an extension should be for a maximum of a further 20 working days¹. In all cases, the public authority must give the requester a written response within the

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

standard time limit for compliance advising of reliance on the permitted extension.

7. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states –

“If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an “enforcement notice”) requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements.”

Background

8. The Commissioner became aware of the Council’s poor FOI compliance performance when his representative made contact with it in late 2022. The Council provided the Commissioner with initial statistics which raised concerns about its timeliness rate for responding to requests.
9. In subsequent correspondence the Council experienced some difficulty in providing the Commissioner with accurate statistics regarding the number of requests which remained outstanding. The Council confirmed that this was due to a weakness in its system, with individual service areas being responsible for recording and collating their own FOI requests.
10. The Council confirmed that, prior to Christmas 2022, it had completed the Self-Assessment FOI Toolkit and that this was used as the basis for developing a Draft Recovery Plan. It also confirmed its intention to appoint a new post of Head of Policy and Governance with responsibility for overseeing the FOI processes and addressing the Commissioner’s concerns going forward. The Commissioner has since been contacted by the newly appointed post holder. The Council confirmed that it had

directed service areas to ensure that outstanding requests were cleared by the end of March 2023.

11. At the time of writing the Council still has a backlog of 143 overdue requests. The oldest unanswered request dates back to April 2021, with remaining requests dating from January 2022 and every subsequent month to the present day.

The Contravention and Reasons for this Notice

12. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request.
13. Taking into account the significant volume of unanswered FOI requests, their age profile including many requests subject to severe delay, and the need for significant and sustained improvement in timely FOI responses, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice to Shropshire Council. This Notice requires the Council to comply with section 1(1) of FOIA in respect of each FOI request, where the response is outside of 20 working days at the date of this Notice, and where a permitted extension of a maximum of a further 20 working days has not been applied. It is essential that the improvements that the Council has already achieved since the initial contact with the ICO are sustained.
14. The Commissioner also considers it a proportionate regulatory step to require the Council to finalise and publish an action plan which formalises measures to mitigate delays in responding to the requests it receives, in line with statutory requirements. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays in responding to FOI requests, with mitigations for any recurring problems addressed specifically in the plan. The Commissioner has produced a range of resources², including a template Action Plan, which should support the Council in complying with this step.

Terms of this Notice

15. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring the Council to take specified steps to comply with the requirements of Part 1 of FOIA. The specified steps are set out in **Annex 1** of this Notice.

16. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, the Council may be dealt with as if it had committed a contempt of court.

Right of Appeal

17. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

18. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 9368963

Email: GRC@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Enforcement Notice is sent.



Phillip Angell
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/resources-toolkits-and-training/>

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES SHROPSHIRE COUNCIL TO TAKE THE FOLLOWING STEPS BY NO LATER THAN SIX MONTHS FROM THE DATE OF THIS NOTICE:

- (i) In respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, to comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:
- (ii) communicate it pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

THIS NOTICE FURTHER REQUIRES SHROPSHIRE COUNCIL TO TAKE THE FOLLOWING STEP BY NO LATER THAN 35 CALENDAR DAYS FROM THE DATE OF THIS NOTICE:

- (iii) Devise and publish an action plan formalising the measures it will take to ensure it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion, while also clearing its backlog of late requests as required by this notice.