

Briefing Note



Information Governance Briefing Note to Scrutiny Management Committee

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Purpose

To respond to questions raised by Councillors and residents in Scrutiny Management and Audit Committees into the Information Governance (IG) processes in place at Milton Keynes Council, and to assure the Committees that those processes are robust. To provide a high-level action plan of work that is planned in the current financial year.

Background

Data relates to 12 months between April 2020 and April 2021.

Tables A, B and C cover the data and information on Freedom of Information requests (FOI), Environmental Information Requests (EIR) Internal Review (IR) requests, complaints raised to the Information Commissioner's Office (ICO), the outcome of complaints to the ICO and escalated complaints to the General Regulatory Chamber (GRC) First Tier Tribunal judge led review.

It should be noted that 94% of all FOI/ EIR requests made during the 12-month period of April 2020-April 2021 were carried out to the satisfaction of the requester without the need of Internal Review (IR) and less than 1% (0.8%) (actual number 9) of all requests were raised as a complaint by the requester to the ICO. During the 12-month period specified Milton Keynes Council received 1153 requests under the Freedom of Information Act and these were across all services delivered by Milton Keynes Council. For this period Adult Social Care, Regulatory Services and Children's Services are the top three areas for demand.

Of the 9 cases that were taken to the Information Commissioners Office as complaints, five related to Planning, three to Schools and one was Housing Finance related. Several of the complaints processed during the 12-month period this report relates to were processed 12 and 24 months earlier before the current IG team and the current processes and practices were in place.

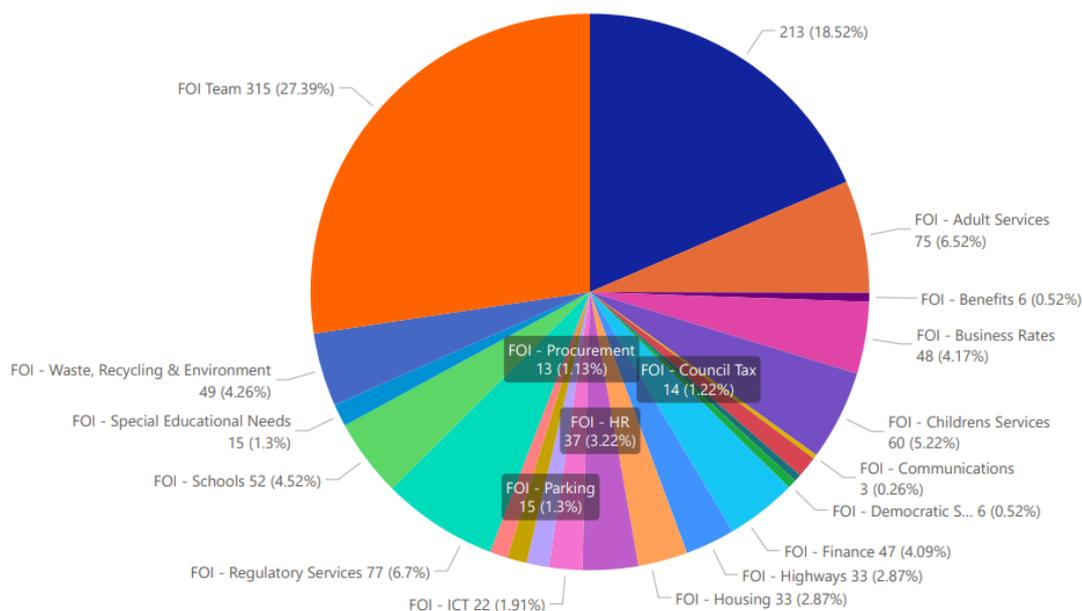
Two cases were brought to Scrutiny Management Committee (SMC) by members of the public requesting scrutiny on the Information Governance process, both cases were following the FOI process for complaints and appeals. One had received a judge led decision from the General Regulatory Chamber (GRC) which found partial fault with the Council and allowed the appeal and the other was awaiting the outcome of an Information Commissioner's decision notice (this has now been published and found partial fault with the Council). Both are appended to this report in Appendix B of the Decision Notice and Appendix H for the GRC appeal decision. The committee will note that policy and procedure have been updated to reflect the findings of the GRC and the ICO as set out in Table B and C and that all action from these Decision notices have been complied with.

Table A (Data over 12 months on Freedom of information requests (FOI))

Total number of FOI received	Number of internal reviews received	Number of ICO complaints raised	Number of ICO complaints upheld (the council found at fault or partially at fault)	Number of ICO complaints Not upheld (the council not at fault)	Number of General regulatory chamber (GRC) tribunal cases	Number of GRC Tribunal cases allowed
1153	61	9	3	6	3	2 (Decision due on 1)

Pie Chart

Breakdown of FOI Requests by Response Team Name Created between April 2020-April 2021 (FOI Demand)



FOIs and EIRs are processed using the Firmstep system. Responses can be sent from either the triage stage (for straightforward requests where the FOI team have the response to hand or where clarifications are required) or the response stage. The above pie chart shows the response teams (also the function) which sent the response. Not all responses come directly from the FOI team. Cases with an unassigned response team had a response sent from the triage stage, which can only be accessed by the FOI team.

Cases where a function is assigned as the response team relate to straightforward requests where the function responds directly to the requestor. There were 622 (54%) cases responded to by the functions.

The 213 cases with an unassigned response team are made up of cases where clarification of the request has been asked of the requestor and then either the requestor has not responded or the response has been provided within the triage stage, or where a response has been provided directly as a result of a simple request where the information is quickly accessible to the FOI Team. These responses are typically where information is publicly accessible, we don't hold the requested information, the request is for personal data and should be handled as a Subject Access Request in line with UK GDPR or where the request is repeated or vexatious.

Cases in which the “FOI Team” is assigned as the response team typically relate to more complex cases where the FOI team remain involved to ensure quality of responses (where only one function is involved) or where a number of different functions need to input into a response and the FOI team coordinate the response. There were 315 cases assigned to the FOI team to send the response. Approximately 50% of these cases were where the request required input from multiple functions. A further 20% of these were requests for planning data. The FOI team support and process complex requests for planning data as per the process detailed in Appendix E.

Three of the requests received in the period are not included within the above pie chart as the requestor was able to find the information they needed by a search of the disclosure log (the first stage of the process).

Table B (ICO Decision notices issued between April 2020-April 2021)

Specific Faults Identified in Upheld ICO Complaints	Reason	What have we changed/ put in place?
Handling of request using the appropriate regime Environmental Information Regulations (EIR) instead of FOI.	There are two regimes that information can be requested under FOI and EIR we had not handled the request for information under the correct regime.	All requests for information for the Planning service and other environmental related services are managed under the EIR regime in the first instance. Colleagues in the Information Governance team (IG team) have undertaken training on both regimes.
Invalid use of exemption 14(2) repeat request	We had interpreted a request to be the same as an earlier request and applied exemption 14(2). The ICO interpreted the request to be different enough from the earlier request and asked us to re process.	We now have a clarification process in place if colleagues have any questions about the scope of the request or how to interpret the request, we seek clarification from the requester ensuring clarity for the Service and the requester.
Timeliness of disclosure	The information was not disclosed to the requester within the 20 working days allowed in the legislation this was a complex case and a request should have been made to clarify or charge for the information.	When requests for information are received colleagues have a 5 working day deadline to make an assessment on complexity and clarification if either of these elements is flagged during this 5 working day period either clarification should be sought from the requester, the request should be refused under FOI if it is over the “appropriate limit” set in the legislation or an extension requested under EIR.
Interpretation of requests	Too narrow of an interpretation of the request leading to internal review and additional information being provided to the requester	We now have a clarification process in place if colleagues have any questions about the scope of the request or how to interpret the request, we seek clarification from the requester ensuring clarity for the Service and the requester.

Table C

*To note these original cases were handled during the same period so identified weaknesses in our processes are the same or similar.

Specific Faults Found and Requested Action from GRC Tribunal	How Milton Keynes Council (MKC) Responded	What have we changed/put in place?
GRC EA 2020/0138		
Scope of searches conducted looking for information - scope need to be wider to include any and all services that might have been involved in the planning process.	Scope of searches was increased in line with the tribunal request 1 email was found and disclosed.	We now have a clarification process in place if colleagues have any questions about the scope of the request or how to interpret the request, we seek clarification from the requester ensuring clarity for the Service and the requester. For Planning particularly because it is so complex and many services are involved, we have a checklist which the IG team use with the service to ensure searches are undertaken with all possible areas involved and that we have a wide inclusive set of search terms which we capture and share with the requester.
Specific request to disclose a letter from our Legal department in relation to planning application with Agent.	We requested the email from the Legal department.	Clarification process and Planning checklist as above.
Search again and disclose notes of meetings held that had been mentioned in an email chain.	This was searched for in the original request, but no notes were found additional searches were done but as with the original request no meeting minutes or notes were found.	Clarification process and Planning checklist as above.
GRC found that we didn't have a clear Email policy.	Using tools we didn't have previously, we implemented an automated email retention policy and re-drafted the email policy.	We now have an automated email retention policy of 12 months in outlook. Emails that are older than 12 months are deleted. We have an email policy and a records retention policy with clear guidance on what constitutes a record and what to do with records in any document format and particularly how to manage email. Individual email inboxes are not suitable for long term records retention and lead to a single point of failure for important records, if an email is identified as a record, then it should be saved with other records on the case, topic or subject with the appropriate retention and personal data label. Appendix C

GRC EA2020/0311		
Scope of searches conducted looking for information - scope need to be wider to include any and all services that might have been involved in the Planning/Planning Enforcement process.	Scope of searches was increased in line with the tribunal request.	We now have a clarification process in place if colleagues have any questions about the scope of the request or how to interpret the request, we seek clarification from the requester ensuring clarity for the service and the requester. For Planning, particularly because it is so complex and many services are involved, we have a checklist. The IG team use the checklist with the service to ensure searches are undertaken with all possible areas involved and that we have a wide inclusive set of search terms which we capture and share with the requester.

The Milton Keynes Council Information Governance Team work within a framework of information legislation.

The Freedom of Information Act 2000 provides public access to information held by public authorities:

- Public authorities are obliged to publish certain information about their activities; and
- Members of the public are entitled to request information from public authorities.
- The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland.
- Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.
- The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a data protection subject access request.

UK GDPR

Covering the collection, processing and protection of personal data ensuring that we only collect the personal data we need to deliver services, process it within lawful processing limits and that it is stored and disposed of securely and within legal limits (we cannot hold information about an individual for longer than they give permission for or we have a legal right to).

Freedom of Information Act Process Overview

Within the Freedom Of Information Act (FOIA) individuals have a right to request information from public bodies, if they are unhappy with the disclosed information, they can request an Internal Review (IR) which is a review of how the request was handled and the lawful application of any exemptions applied see Appendix J. We also process information requests under the Environmental Information Regulations (EIR) Regime our internal processes are covered in Appendix K.

If the requester is still unhappy with the disclosure at the internal review point, they can complain to the ICO. The ICO as the regulator then considers the complaint and whether they will take it on and investigate.

Once an ICO investigation has completed they produce a decision notice and explain why a complaint is upheld or not upheld and any actions they require the Council to undertake (see Table A and Table B for how we manage complaints and decision notices). If the requester is unhappy with the decision notice produced by the ICO, the requestor can challenge the ICO at the General Regulatory Chamber (GRC) First Tier Tribunal. This is an investigation of the decision notice by a Judge led Tribunal Panel.

Milton Keynes Council and the ICO have been subject to three GRC Tribunals in 2020/2021 two Planning related and one Schools related. We have received two GRC Tribunal decisions and are awaiting the third. Table C outlines decision and actions Appendix G & H are the full GRC decision's it is worth noting that both cases which ended at the GRC started circa 2017/2018 and much has changed since that time.

Information Governance Procedures and Processes

Robust Governance Structure

There is a strategic level Information Governance Board in place, chaired by Director of Partnerships and Community. All services have a representative at Head of Service level and the board meets quarterly to discuss policy, procedure, opportunities and risks and takes decisions on matters of governance. FOI Liaison Officers have been identified in all services. There is a clear feedback loop and colleagues understand the processes to access help and support.

The Information Governance Team

Since 2020 the information governance team has been strengthened with a Head of Customer, Data and Insight in post, an officer leading and supporting on data protection (including Subject Access Requests), an officer leading and supporting on FOI and an Information Governance officer post.

The team triage and support services with the administration and processing of FOI requests, SAR and other data protection issues including data protection impact assessments (DPIA), data sharing agreements, data breach management and reporting, FOI internal reviews, responding to ICO investigations and complaints. The team provide training on legislation, procedure and processes, support and advise colleagues on changes or risks and create and maintain policies and procedures for Information Governance across the organisation. Colleagues in all services have access to training either face to face via teams or online on the legislation and information regimes, training has been delivered in the last 12 months on the legislation as well as the FOI business system. All colleagues undergoing mandatory Data Protection training at least every two years Information governance training including FOI, Data protection and records management is planned throughout September to April 2022.

Policies, Procedures, and Documentation

We have an up-to-date document retention schedule that reflects the requirements set out by legislation and business driven retention. This is modelled on the Local Government Association (LGA) retention schedule. We are currently in the process of refreshing that retention schedule to reflect the Function Activities and Transactions of the organisation. The IG team are issuing an enhanced template capturing more detailed information about records and applying the correct treatments for storage retention and disposal. We will be working with Services and assuming a risk-based approach to the prioritisation of that work, an example of the new template can be found in Appendix D. We are on a maturity journey with IG to ensure that it is embedded within the organisation through technology, understanding and clearly defined roles and responsibilities. The team work closely with IT to ensure that new technology meets the rigorous requirements of information legislation and that new tools within systems are used to make information governance and the protection of data a default priority for all colleagues.

Part of the work we are doing with IT is that our retention schedule will no longer be a document stored on the intranet. It will be built into our Office 365 file plan and deliver a living retention and deletion schedule. The schedule will include personal information labelling at the document level to ensure compliance with GDPR legislation. We are following best practice from the Institute of Records Management (IRMS) and are following other councils like Somerset West and Taunton, Bexley and Bracknell Forest on this journey. Appendix D is an example of the enhanced Retention and Deletions Schedule.

We have a robust automated email retention policy; we retain email in outlook for 12 months. If an email is identified as a record – it needs to be kept as a record –, as illustrated by this comment from National Records of Scotland: “...Email needs to be managed just like any other record. Many business transactions and decisions are commonly recorded in email messages, and it is important that these are managed appropriately and captured as records at an appropriate stage”. Records of any type should be stored in a shared drive appropriately named dated and labelled; Inboxes are not a suitable storage solution for records; they will often lead to a single point of failure. See Appendix C for our email retention policy and Appendix L Identification, and management of records guide.

Guides are provided on the intranet and via training on identification of records and good record management, Appendix L Identification, and management of records guide. The IG team have an agreed process in place for the clarification of scope for FOI requests and a specific process for the planning service, Appendix E, to ensure that the complexity of the service is captured and the scope of the request is agreed with the requester. We have also developed some public facing guidance published on the website, to help members of the public requesting information, to make the most successful request to the Council.

Since 2020 we also have an online requesting and processing system in place this allows requestors to make the requests online and for the IG team to manage requests and complete them within deadline, it also has a disclosure log feature, so data released is made publicly available online. The system and policy and process for FOI and Records Retention where audited this year outcomes are shared below and can be found in Appendix F and G.

Audit Opinion

We have been audited in two areas by internal audit this year for freedom of information and records management. The full reports are Appendix F and G main outcomes.

Freedom of Information report issued 22/6/2021

Adequacy of system - Good

Compliance - Good

Organisational impact of findings - Minor

Records Management report issued 3/8/2021

Adequacy of system - Satisfactory

Compliance - Satisfactory

Organisational impact of findings - Minor

Proactive Work

Work is in progress with ICT and colleagues across the Council to exploit tools and technology within the Office 365 environment, to build an effective, living automated retention schedule. All documents saved on service area drives will have to have an appropriate retention and deletion schedule attached to them as well as being labelled to indicate if they contain Personal Identifiable Information (PII) or Sensitive Personal Identifiable Information (SPII) e.g., health or financial information. This project will deliver greater oversight and a robust embedded records management system over the next 8 months.

Table D

Action Plan Including Audit Actions

Activity	Responsible Officers/Team	Completion By
Refresh the Council's retention schedule. Strengthen the overarching governance. This is to ensure compliance and consistency across Council Services. By developing a robust and embedded living automated records management system within the Office 365 environment.	Lisa Beckett - IG team	Financial year end 2021 - 22
Update FOI/EIR system and legislative user guides.	Lisa Beckett - IG team	Financial year end 2021 - 22
Records management cleansing in preparation for migration to Office 365.	Hazel Lewis and Lisa Beckett -ICT team and IG team	Financial year end 2021 - 22
DPIA Information sharing agreements refresh.	Lisa Beckett - IG team	Financial year end 2021 - 22
Increase manager awareness of the Record Retention requirements and their responsibilities and consider introducing periodic Record Retention specific training and introduce the record retention requirements of all staff at induction training.	Lisa Beckett - IG team	Financial year end 2021 - 22
Monitor corporate compliance and take appropriate corrective action where the policy and/or procedures are not being followed by Service managers, particularly in managing the destruction of records that are no longer required.	Lisa Beckett - IG team	Ongoing reporting by Financial year end 2021 - 22
Consider implementing stricter criteria for refusing requests that are assessed as "not possible to supply a response within 20-days" or would cost more than £450, or that require further clarification.	Lisa Beckett - IG team	Ongoing Clarification process in place Reporting by Financial year end 2021 - 22
Quality control process for consistent application of refusals or exemption Management to review the process for approval to refuse an FOI request and formally record the decision.	Lisa Beckett - IG team	Ongoing reporting by Financial year end 2021 - 22
review the KPI for responses compliant with the 20-day time limit to 90%.	Lisa Beckett - IG team	Ongoing reporting by Financial year end 2021- 22

Appendices

Appendix A CLT Freedom of Information (FOI) Report Q4 2020/2021

Appendix B Links to decision notices on ICO website

Appendix C Email Policy

Appendix D Draft Retention Template

Appendix E Planning Environmental Information Regulations (EIR) Process

Appendix F Audit report FOI

Appendix G Audit report Records management

Appendix H GRC decision notice EA 2020/0138

Appendix I GRC decision notice EA 2020/0311

Appendix J FOIA internal guidance including exemptions

Appendix K EIR Internal guidance including exceptions

Appendix L Identifying and managing records

Background Papers

Public submissions in respect of deferred Information Governance item (8 June meeting - Item 6):

[Submission 1](#)

[Submission 2](#)

[Submission 3](#)