

Internal Audit FINAL Report

Policies & Procedures - FOI

Governance Opinion

Adequacy of System	Good
Compliance	Good
Organisational Impact of findings	Minor

Report Issued	22/06/2021
Audit Committee schedule	

Executive Summary

1. Background

- 1.1 The Freedom of Information (FOI) Act 2000 and Environmental Information Regulations Act of 2004 (EIR) both came into effect on 1 January 2005. Any person can therefore make a request for information held by Milton Keynes Council. The Council is required to meet its obligations under the FOI and EIR and ensure that all requests are treated fairly and consistently and in full compliance with the standards set out in Section 45 FOI Code of Practice.
- 1.2 Overall responsibility for compliance with FOI and EIR sits with the Information Governance Team, the Corporate Information Officer for FOI's (CIO) and the Information Governance Manager (IGM). The CIO is responsible for logging, acknowledging, assigning, monitoring and ensuring responses are within MKC's statutory obligations on a daily basis. The Information Governance Team is responsible for overall oversight and monitoring of Milton Keynes Council's compliance with the Legislation and the escalation of issues. Liaison officers within the service areas are responsible for compiling information from the various teams/officers in their service areas within the statutory timeframe. The response to the requestor falls to the Information Governance Team.
- 1.3 All requests must be received in writing either in hard copy or electronically (by email or by the online form on the Council's website) and are acknowledged within 2 working days of receipt including confirmation of the legislation that the request is processed under, a reference number on the Firmstep system and responded to within 20 working days.

1.4 Volume Indicators

In the period 02/03/2020 to 29/03/2021 there were 1,227 FOI requests received. Response target time is within 20 days.

Response Times	No of FOI Requests	%
Within 20 days -	919	74.9%
21-30days	81	6.6%
31-40days	78	6.4%
41-50days	95	7.7%
51 + days	54	4.4%
	1227	100%

There were a variety of reasons for the response delays in these cases which are reviewed in more detail under the findings section of this report.

- 1.5 The reported reasons for the non-compliance levels are that the extra pressures on Service areas (Covid related) has caused delays in getting information from them and there have been several issues with the system upgrade which have prevented cases being closed on time. The level of non-compliance referred to above (currently 25.1%) could, however, present a legislative compliance risk in that the Information Commissioners Office could investigate the Council for being consistently outside the 20-day target.

2. Scope of Audit and Approach

2.1 Scope

2.1.1 This audit sought to review the Council's Freedom of Information policies and procedures to provide assurance that the Council is processing Freedom of Information requests in compliance with the Freedom of Information Act 2000 and that the Council maintains complete records of all requests. The audit will check robustness of processes for:

- Recording of FOI requests.
- Processing and responding to requests.
- Raising awareness with policies.
- Record management of information held by different services within the Council ensuring that there is compliance to data retention.
- There are effective performance monitoring and reporting arrangements.
- There is an adequate separation of duties.

2.2 Approach

2.2.1 The audit will be undertaken through review of documentation and records and discussion with team members, with testing to verify processes and effectiveness of controls. The audit process involved us: -

- Undertaking video interviews with relevant officers, to ascertain the procedures in place for managing risk;
- Evaluating whether the procedures in place provided for an adequate and effective level of control;
- Testing, where appropriate, that the controls identified were operating in practice;
- Reviewing procedures for efficiency and, where appropriate, identify opportunities to make improvements to processes.

2.3 Acknowledgment

2.3.1 We would like to thank all the members of staff consulted, for their assistance and co-operation during this review.

3. Internal Audit Opinion and Main Conclusions

3.1 Internal Audit Opinion

3.1.1 The assurance given to the system design is **GOOD** because systems operate to a good level with only minor control weaknesses that present low risk to the control environment

3.1.2 The assurance given for compliance is **GOOD** because testing has identified good compliance although some errors have been detected these were exceptional and acceptable.

3.1.3 The organisational impact of the findings is **MINOR** because the weaknesses identified during the review have left the Council open to low risk (minor impact on the organisation as a whole).

3.2 **Main recommendations**

Based upon the information provided and the test results, the number of cases that exceed the 20-day response deadline is relatively high and is often due to the need to seek clarification from the applicant. As a consequence, the KPI regarding responses within the 20-day limit is adversely affected and it is therefore recommended that consideration be given to review the initial assessment of requests regarding:

- a) The criteria for the decision to refuse the request i.e review the likelihood of meeting the timeline within the £450 cost limit especially where the request is unclear. **(MAP 1)**.
- b) Decisions to refuse requests needs to be signed off by a manager and properly recorded on the system **(MAP 2)**.
- c) Increase the KPI for achieving the 20-day timeline to say 90%, given the stricter criteria at a) and b) above, to more accurately reflect the performance of the team. **(MAP 3)**.

Detailed Findings

4. Assurance Area – Policy

Control Objective – To provide assurance that the Council holds an approved FOI policy that is kept up to date and is available to the general public.

- 4.1. The Council's Policy document "FOI and EIR Policy" was approved in March 2020 and it sets out the requirements to meet its obligations under the Freedom of Information Act 2000 (FOI) and Environmental Information Regulations 2004 (EIR) which came into effect on 1 January 2005. Under Section 45 of the FOI Code of Practice, the Council must respond individuals requesting information held.
- 4.2. The policy applies to all requests made under the FOI or EIR legislation and therefore to all information held by, or on behalf of the Council. It does not cover instances where the request is for an individual's own data (handled under the Data Protection Policy) and "business as usual" requests.
- 4.3. The Policy applies to all employees of the Council, elected members and any persons handling data on behalf of the Council including consultants, contractors and suppliers. The Policy is fully accessible to both staff and the public and is available in different accessible formats.
- 4.4. The policy is kept up to date by the Corporate Information Officer and is regularly reviewed by the Information Governance Board.
- 4.5. The policy is supported by two internal guidance documents for MKC employees on the handling of requests under FOI and EIR. Online training is available to all MKC employees at any time, and face to face training is available on request. A refresher training event is planned, to ensure staff are fully aware of the requirements, but at the time of the audit had not taken place.

5. Assurance Area – Governance

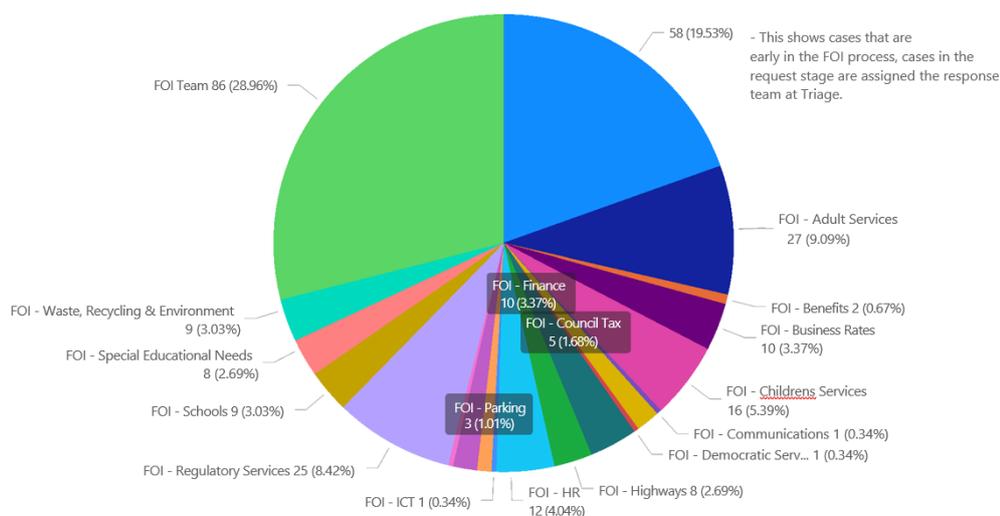
Control Objective – To provide assurance that there is an adequate governance structure in place to manage and monitor FOI requests.

- 5.1. Overall responsibility for compliance with the with FOI and EIR policy and procedures sits with the Information Governance Team; the Corporate Information Officer for FOI's (CIO) and the Information Governance Manager (IGM).
- 5.2. The CIO is responsible for logging, acknowledging, assigning, monitoring and ensuring responses within MKC's statutory obligations on a daily basis.
- 5.3. The IGM is responsible for overall oversight and monitoring of MKC's compliance with the legislation and escalation of issues.
- 5.4. Liaison Officers within the service areas are responsible for compiling the information from the various teams/officers in their service areas within the statutory timeframe. The responses generally fall to the Information Governance team.
- 5.5. Managers track and monitor case progress to ensure deadlines are met. Performance is reported to both the Information Governance Board which meets quarterly and is reported corporately and at SMT on the number of FOI's completed on time.

5.6 The extracts below are taken from the Freedom of Information Quarterly reporting - Information Governance report to CLT Q4 20/21 (FOI demand):

CLT PowerBI Report: Information Governance.

Breakdown of FOI Requests by Response Team Name Created in Q4 20/21 (FOI Demand)



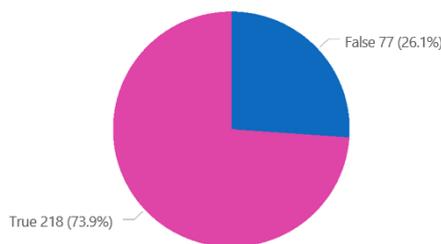
Freedom of Information Request Quarterly Reporting

MKC 473A: FOI Completed: (response sent out to requester) within statutory deadline 20 working days

Breakdown of Completed FOIs by Response Team Name in Q4 20.21

responseteamname	False	True	Total
FOI - Adult Services	16	40	56
FOI - Benefits	5	20	25
FOI - Business Rates	1	2	3
FOI - Childrens Services	10	10	20
FOI - Communications	6	17	23
FOI - Council Tax	2	2	4
FOI - Democratic Services	1	3	4
FOI - Finance	1	6	7
FOI - Highways	3	5	8
FOI - HR	4	13	17
FOI - ICT	2	2	4
FOI - Parking	2	2	4
FOI - Procurement	2	4	6
FOI - Public Health	1	1	2
FOI - Regulatory Services	3	20	23
FOI - Schools	5	11	16
FOI - Special Educational Needs	1	4	5
FOI - Waste, Recycling & Environment	1	6	7
FOI Team	27	48	75
Total	77	218	295

Statutory Requirement Met (Deadline) in Q4 20.21



This data covers Jan-March 2021 for completed FOIs. The statutory requirement is shown (TRUE) when the FOI process has been completed within the ICO deadline of 20 working days. When the statutory requirement has not been met and the process has taken longer than 20 working days FALSE is shown. This gives the percentage of completed on time.

Trending reasons for missed deadlines in Q4:

Due to extra pressures on service areas from COVID and them having to prioritise, it's caused a delay in getting information from them.

System upgrade and several bug issues with FIRMSTEP whereby cases were locked and thus unable to be closed on time. We have also had a time we were unable to process FOIs across the council due to the impact of a system upgrade. Granicus have had a backlog of cases to work through as well.

This data shows the statutory requirement conducted broken down by response team name as stated on Firmstep. This shows which teams typically take longer to complete the process.

The total number of completed FOIs this quarter was 295. Within Statutory deadline = 73.9%

Annual Year on Year Comparisons

Comparison Data from 19.20

% of Requests Responded to on Time	No. Internal Reviews	No. Requests Received	No. ICO complaints	Quarter
73.00%	5	338	0	Q1 19/20
86.00%	4	376	4	Q2 19/20
95.00%	8	280	3	Q3 19/20
78.00%	10	362	6	Q4 19/20
332.00%	27	1356	13	

Comparison Data from 20.21

% of Requests Responded to on Time	No. Internal Reviews	No. Requests Received	No. ICO complaints	Quarter
69.00%	3	212	0	Q1 (20/21)
75.90%	12	333	1	Q2 (20/21)
79.00%	3	311	4	Q3 (20/21)
73.90%	11	297	2	Q4 (20/21)
Total 297.80%	29	1153	7	-

Themes from the ICO Cases in 20.21:

The main theme has been Planning. Correspondences not being disclosed to the customer's satisfaction.

Top Themes from FOI Demand in 20.21:

Planning: disclosure of internal correspondences relating to planning applications. In particular Blakelands.

Covid grants: people want to know who has received and how much has been offered

Adult Social Care: people wanting to know what services are offered, if there are plans to change/upgrade what is offered and what the plan is around fees/charges

Quite a lot of 'sales pitch' intended FOIs.

6. Assurance Area – Procedures

Control Objective – To provide assurance that the Council has robust processes in place to track and record requests to ensure target turnaround times are achieved.

- 6.1. FOI requests are logged, tracked and processed on the Firmstep system irrespective of the source of the FOI request.
- 6.2. New requests are acknowledged within 2 working days of receipt including confirmation of the legislation the request will be processed under and a reference number is generated from the system. There is a robust process to track and monitor the progress of retrieving the information requested via assigned responsible FOI officers across the Council'
- 6.3. Access to the system is adequately controlled with only authorised access granted through username and passworded access. Processes were reviewed and were found to be robust and ensure that the Council meets its legal requirements in responding to FOI requests within the required timescales.
- 6.4. Where a FOI request is deemed vexatious in line with Section 14 of the FOI or an EIR request is deemed manifestly unreasonable as it is vexatious under Regulation 12(4)(b), the request is refused. The applicant is advised within 5 working days and no later than 20 days from receipt of the request. Vexatious requests are reviewed by the team and a joint decision is reached as to whether the request should be refused on the above grounds or not. The team follow the ICO guide and the team discuss and agree vexatious requests and a decision to refuse the request is made.

- 6.5. Where the information requested is not held by the Council the applicant is advised within 20 days of receipt of the request.
- 6.6. Where a FOI request is too large to comply with within the appropriate cost limits set out in the Freedom of Information and Data Protection (Limit and Fees Regulations) 2004 or an EIR request is deemed to place manifestly unreasonable burden on the Council under Regulation 12(4)(b) the Council will advise the applicant, including an explanation of why this decision has been made and the ways in which the request can be refined, within 10 working days and no later than 20 working days from receipt of the request.
- 6.7. Where the request is unclear the Council can seek clarification within 5 working days and no later than 20 working days from receipt of the request. Applicants then have 40 working days in which to provide clarification before a request is closed.
- 6.8. In line with the FOI Act 2004 there are no charges for requests that are estimated to cost less than £450.
- 6.9. Requests for personal data of the applicant are refused and they are directed to make a Subject Access Request in line with the Data Protection Act 2018 and the General Data Protection Regulations of 2018.
- 6.10. Checks were applied on the system to ensure that only relevant members of staff have access to the system and to the Freedom of Information requests. The checks showed that only the FOI team and responsible manager have access to FOI records.
- 6.11. Audit testing confirmed that robust procedures are in place and procedures had been followed in all cases tested. From a sample of 20 cases (taken from 1,227 cases in the period March 2020 to April 2021) the complex cases (i.e multi service cases) were checked and were assigned to one member of the FOI team in all cases. All cases are assigned to individual members of the FOI team although non-complex cases are coordinated through the relevant liaison officer. The results from Audit testing are shown in tables 1-4 below.

Table 1. FOI requests 2/3/2020 to 29/3/2021 shows compliance with the 20-day deadline for FOI request responses. 919 requests (74.9%) were responded to within the 20-day limit, 308 requests (25.1%) were responded to outside the 20-day limit.

Number of FOI requests.	Requests responded to within the 20-day deadline	% target met	Requests responded to outside the 20-day deadline	% target not met
1,227	919	74.9%	308	25.1%

Table 2. Of the 20 cases sampled, 10 were selected that were responded to within the 20-day timeline and in full compliance with Procedures and the Policy as follows:

Liaison Team assigned to the request.	Number of cases in the sample.	Number of days from the request being received and the response being issued.
FOI Team	2	15+18 days
Regulatory Services	2	17+18 days
Finance	1	19 days
Procurement	2	12+18 days
Benefits	1	16 days
Children's Services	1	17 days
Parking	1	13 days

All requests had been submitted in writing and all cases had been processed in accordance with the Policy and Procedures in good time, being responded to between 12-19 days from the date of the request.

Table 3. Of the 20 cases sampled, 10 were selected that were responded outside the 20-day timeline, but in every other respect were completed in compliance with Procedures and the Policy, as follows:

Liaison Team	Number of cases tested	Test Case	Days taken to respond from request date	Days outside the 20-day time deadline	Reasons given for delayed response	Extension of timeline agreed with customer Y/N
FOI Team	3	1	68	48	Public Interest	Y
		1	82	62	Clarification sought	N
		1	65	45	Pandemic	N
Planning	3	1	81	61	Clarification sought	N
		1	67	47	Clarification sought	N
		1	63	43	System glitch	N
Housing	2	1	103	83	Clarification sought	N
		1	85	65	Clarification sought	N
Children's Services	1	1	67	47	Clarification sought	N
Schools	1	1	106	86	Pandemic	Y

All requests had been made in writing. In 2 cases the customer had agreed to the deadline extension, 8 customers neither agreed nor disagreed to the extension (did not respond). The cases tested were responded to between 63 and 106 days.

Table 4. In the period 2/3/2020 to 29/3/2021 there were 1,227 reported FOI requests of which 308 cases were responded to outside the 20 days limit (25.1%) as follows:

Number of cases	Days in excess of the 20 days limit.	% of the total
81	1-10 days over	26%
78	11-20 days over	25%
95	21-30 days over	31%
54	Over 31 days over	18%
Total 308		100%

In the same period 919 cases met the 20-day timeline (74.9%).

- 6.12. Based upon the information provided and the test results the number of cases that exceed the 20-day response deadline is relatively high and is substantially due to the need to seek clarification from the applicant. As a consequence, the KPI regarding responses within the 20-day limit is adversely affected and it is therefore recommended that consideration be given to review the initial assessment of requests regarding:
- a) The criteria for the decision to refuse the request i.e review the likelihood of meeting the timeline within the £450 cost limit especially where the request is unclear. **(MAP 1).**
 - b) Decisions to refuse requests needs to be signed off by a manager and properly recorded on the system **(MAP 2).**
 - c) Increase the performance indicator target for achieving the 20-day timeline to say 90% (from the currently acceptable level of c.75%) given the stricter criteria at a) and b) above to more accurately reflect the performance of the team. **(MAP 3).**

7. Assurance Area – Records

Control Objective – To provide assurance that the Council’s data retention processes are robust and all information held by different services is up to date, accurate and correct.

- 7.1. Audit testing of a sample of 20 cases confirmed that information was available and provided generally in good time to meet the 20-day deadline for the FOI response.
- 7.2. The Council has a Records Retention policy which is the subject of a separate audit review, to assess compliance with the policy.
- 7.3. FOI officers, Liaison Officers and each service officer involved has a responsibility under the Council’s own data retention policy to manage their data retention to facilitate FOI requests.
- 7.4. The 20 cases reviewed showed evidence that information flow was good and there was evidence of documents being retained and produced, suggesting there is compliance with the policies on record retention. Testing showed that delays were caused mainly due to the need

for further clarification from the applicant rather than the information not being available or not provided in good time.

- 7.5. Assurance on broader compliance with the record retention policy of the Council is not part of this audit and was not tested although Information Governance managers are of the view that data retention guidelines are being complied with across the Council and that the ability to produce information when requested is in place. No assurance can be given in this respect within the scope of this audit.

Management Action Plan

Likelihood	H	S	I	E	The Agreed Actions are categorised on the following basis:	
	M	S	I	E		Essential
	L	S	I	E		Important
		L	M	H		Standard
		Impact			Action is imperative to ensure that the objectives for the area under review are met.	
					Requires action to avoid exposure to significant risks in achieving objectives for the area under review.	
					Action recommended enhancing control or improving operational efficiency.	

Ref	Issue	Recommendation	Management Comments	Priority	Officer Responsible	Due Date
1	25.1% of FOI requests in the period 2/3/2020 to 29/3/2021 were responded to outside the 20-day limit substantially due to the need to seek further clarification from the applicant. Risk Non - compliance with legislation – potential for fines	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.		Standard	Corporate Information Officer for FOI's (CIO) and the Head of Service.	31/07/2021

Internal Audit & Risk delivering for

Ref	Issue	Recommendation	Management Comments	Priority	Officer Responsible	Due Date
2	<p>Decisions to refuse an FOI request is not formally recorded and signed off by a manager</p> <p>Risk</p> <p>Financial loss and impact on resources in reviewing all cases that have been refused.</p>	<p>Management to review the process for approval to refuse an FOI request and formally record the decision.</p>		Standard	<p>Corporate Information Officer for FOI's (CIO) and the Head of Service.</p>	31/07/2021
3	<p>The target performance indicator for responding within 20 day is low (c.75% compliance) as a consequence of 1 and 2 above.</p> <p>Risk</p> <p>Financial loss, breach of legislative requirements.</p>	<p>On implementation of recommendations 1 and 2 review the KPI for responses compliant with the 20-day time limit to 90%.</p>		Standard	<p>Corporate Information Officer for FOI's (CIO) and the Head of Service.</p>	31/07/2021

Audit reference number

Distribution List

CLIENT: **Director of Policy, Insight and Communication.**

Full Report Issued for Action: Lisa Beckett – Head of Customer Data and Insight.
Yvonne Okonjo – Corporate Information Officer.

Full Report Issued for Information: Sarah Gonsalves – Director of Policy, Insight and Communication
Natasha Hutchin – Deputy S151 Officer.

Issue Date: 2/6/2021

Audit Committee Date: tbc

This audit and report has been prepared in line with the LGSS Internal Audit Manual and has been subject to appropriate review.

LGSS Chief Internal Auditor Approval: Duncan Wilkinson
Quality Reviewed: Jacinta Fru/David Lamb
Lead Auditor: Alan Bacon/Shannon Sopol