

REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: FREEDOM OF INFORMATION (SCOTLAND) ACT 2002
From: DIRECTOR OF ADMINISTRATION		
Date: 27 May 2003	Ref: JAF/IL	

1. **Purpose of Report**

- 1.1 The report submits, for consideration, proposals to address the Council's obligations under the Freedom of Information (Scotland) Act 2002.

2. **Background**

- 2.1 Following a presentation on the Freedom of Information (Scotland) Act 2002, the Corporate Management Team agreed that a Working Group be established, with representation from all departments of the Council, to develop proposals to deal with the obligations which will be placed on the Council as soon as the provisions of the Act are brought into force.
- 2.2 Details of the composition of the Group are attached as an Appendix to this report.
- 2.3 The Act received Royal Assent in May of last year and, in the period since the establishment of the Working Group, Kevin Dunion, formerly Chief Executive of Friends of the Earth (Scotland) has been appointed as Scottish Information Commissioner. It is to be anticipated that, early in the life of the new Parliament, the remaining provisions of the Act will be brought into force with, probably, an early requirement on local authorities to submit for the approval of the Commissioner a Publication Scheme. Section 60 of the Act provides that Scottish Ministers will provide advice to all Scottish public authorities on discharging their functions under the Act and Section 61 of the Act provides that Scottish Ministers will produce guidance on desirable practice in connection with the keeping, management and destruction of records. In each case, a draft code of practice has now been produced. Against that background, the Corporate Management Team, having considered the recommendations of the Working Group, have agreed that the following interim proposals be recommended.

3. **Basic Obligation**

- 3.1 The Act is extremely wide-ranging – basically it gives a right to any individual to require the Council to provide any information in its possession, with few, tightly prescribed, exemptions. The exemptions fall into two categories – those which are absolute, the principal of which relate to information otherwise accessible, information the authority is prohibited by law from disclosing, information held for the purpose of litigation and personal information, and public interest exemptions: in the latter case, the Council is required to disclose the information unless the public interest in disclosing that information is outweighed by the public interest in maintaining the exemption.
- 3.2 There are two main dangers for the Council – the danger of not identifying – and thus not supplying – all information held by the Council and the danger of inadvertently supplying information which falls within an exempt category and which, on full consideration, the Council would have taken the view should not have been disclosed.

4. **Identification of Information**

4.1 Crucial to the identification of information is a records management strategy – this has been confirmed by the draft Scottish Ministers' Code of Practice on Records Management. An exercise is currently underway – at the instigation of the Archives Section of the Community Services Department – to identify all records held by all departments of the Council. When this has been done, it will be possible to adopt, for each of those categories of records, a retention schedule. This will enable departments to identify those records which need to be retained – and as a corollary those which should be destroyed. Only with the benefit of that information will the Council be in a position to identify the information it holds and this will be fundamental for the purposes of the Act. Against that background the Corporate Management Team have agreed that this exercise be concluded before the end of May.

5. **Consideration of Statutory Requests**

5.1 In considering statutory Freedom of Information requests, having had regard to the draft Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities, the following component steps have been identified.

- **Identifying Requests –**

There is no statutory form required to invoke the provisions of the Freedom of Information legislation – even very informal communications are sufficient. Similarly, requests can be lodged at any of the Council's offices or other premises – they do not need to be lodged at the Council headquarters or, even, at departmental headquarters. For that reason it will be essential that all frontline staff are given clear instructions as to how to deal with any request for information other than a request for information which, as part of their day-to-day work, they provide.

- **Clarification of Requests –**

There will be cases in which the description given in the request is insufficiently clear to identify the information. Both the Act – and interim guidance issued by Scottish Ministers – stresses that a Council will require to contact the person making the request to help as much as possible in clarifying the information sought.

- **Identifying the Information Requested –**

The request is to the Council: the Council's response will, accordingly, require to cover all information covered by the request irrespective of whether it is held by one or several departments of the Council.

- **Assessing Response and, if appropriate, Obtaining Legal Advice –**

Having identified the information, it will be necessary to ascertain if the information falls within an exempt category. If it does so – and if the exempt category is a public interest category – it will then be necessary to decide if the information should be provided or should be withheld. In this process legal advice may be required.

- **Formally Reaching Decisions –**

It will be necessary to formally reach a decision on the provision of information and to formally record that decision.

- **Providing a Response within the Timescale –**

The timescale for response is very tight – twenty working days. The Council's arrangements will require to include arrangements for responding within that limited timescale – and, in cases in which the information is to be withheld – providing a response which complies in full with the Act.

Where information can be provided, it will be necessary to provide that information in the form sought by the person requesting the information.

Where only some of the information can be provided, it will be necessary to provide both the information which can be provided in the appropriate form and a full statutory response in relation to the information which cannot be provided.

- **Provision of Advice and Assistance –**
The Draft Code of Practice strongly encourages Councils to provide such advice and assistance as is required by the person seeking the information.
- **Transfer of Request –**
There is no statutory provision for transfer of request, but there will be instances in which the Council identifies that the information is not in the possession of the Council but could be in possession of another body – including, possibly, a partner agency with whom the Council works closely. In such cases it would at least be appropriate to indicate this in the Council's formal response and it may, possibly, be appropriate to offer the facility of transferring the request. Good practice would, however, involve prior checking with the other agency.
- **Consultation –**
Given the terms of the exemption in relation to breach of confidence, there can be instances in which there requires to be consultation with a third party to determine if information can be provided. The draft guidance issued by Scottish Ministers stresses that this should be kept to the minimum – and that the Council should be slow to enter into any contractual arrangement which involves a duty of confidence to a third party.

6. **Proposals**

6.1 Following consideration by the Corporate Management Team, it is proposed that responsibility for formally dealing with and responding to statutory Freedom of Information requests should be allocated to an identified individual or group of individuals within the Department of Administration with very close links to the Records Management/Archive Section of the Community Services Department. There will require, also, to be one – or more than one – central point of responsibility within each of the other departments of the Council: it is accepted that, in some cases, departments' divisional organisation may make a divisional arrangement appropriate. In either case, these departmental officers will

- provide a point to which frontline staff within the individual departments can, without delay, transmit any statutory request;
- provide the central Freedom of Information officer(s) with a point of contact within each department for the identification and sourcing of information;

and

- provide a swift channel to the senior management of the relevant department for consideration of issues of public interest.

6.2 There will require, also, to be provision for review of the initial decision. Given the limited discretion under the Act, it is not considered that this is a stage which requires consideration by a Committee or Sub-Committee of the Council. It is accordingly suggested that the review provision should be undertaken within the department responsible for the formal response, but by an officer who is senior to the officer who makes – and who is not involved in – the original decision.

7. Publication Scheme

7.1 The Publication Scheme is also of very great importance – not only because one of the first parts of the Act to be brought into force is likely to be the statutory requirement on the Council to produce a Publication Scheme – but also because any information available under the Publication Scheme falls outwith the Freedom of Information regime. This means that the Council can include, under the Publication Scheme, current arrangements for the provision of information – including arrangements whereby information is provided only on payment of fee or information is provided through inspection at Council offices. Additionally, information provided under the Publication Scheme will not require to adhere to the very strict timescales which apply to statutory Freedom of Information requests.

7.2 It is the recommendation of the Group that early action be taken to determine the contents of the Council's Publication Scheme. As part of a pilot exercise, a limited number of English local authority Publication Schemes are now available and, drawing from that experience, the Group are of the view that a profitable starting point would be the contents of North Lanarkshire Council's web site. Building on that, it would be possible for each department to review its component part of the web site with a view to identifying any further information which should be included in the Council's Publication Scheme – and, thus, excluded from the Freedom of Information regime. If this is done, the volume of statutory Freedom of Information requests will be lower.

7.3 Having regard to the work already done to compile the content of the Council's web site, it is proposed that the experience thereby gained be extended to co-ordinating the production of the Council's Publication Scheme.

8. Charging

8.1 The Act makes provision for a charge to be levied by a local authority for the production of information. It further makes provision, as a ground of exemption, for refusal to supply information if the cost of supplying that information exceeds a level to be specified. For that reason it will be important to identify not only a retrospective but, also, a prospective means of identifying costs. Given the fact that similar legislation has been in place in Ireland for a number of years – and is imminently coming into force in England – it was to be anticipated that some work on this would already have been done. It has, however, not as yet been possible to identify an appropriate charging scheme: it is accordingly proposed that enquiries continue with a view to capitalising on experience gained elsewhere.

9. Resources Implications

9.1 Having regard to the Irish experience – and, in particular, to the volume of requests – it is to be anticipated that there will be resource implications in

- provision of central and departmental Freedom of Information contact points;
- the training both of those principally concerned with Freedom of Information requests and, also, of frontline staff, possibly as a component part of the customer care package;
- development of the Council's archive and record management system: the monies allocated in the 2003/2004 budget will be expended almost exclusively in extending the storage capacity of the Lenziemill Archive premises. This is both prudent and necessary – but it is not in itself sufficient to furnish the Council with that necessary component of a records management system;

- legal resources – it will be necessary to ensure that there is the capacity to provide legal advice and assistance within the very limited timescales prescribed by the Act.

These implications will be quantified with a view to consideration as part of the Council's budgetary processes.

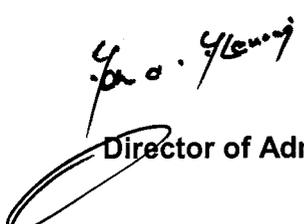
10. Further Action

- 10.1 The Corporate Management Team have agreed that the Working Group should continue in existence to provide guidance on the co-ordination of the production of the Council's Publication Scheme, to quantify the resource implications for the Council and, in the meantime, to have an overview of the funds allocated in the current financial year for overall Freedom of Information provision.

11. Recommendations

- 11.1 It is recommended that

- (a) It be agreed that responsibility for formally dealing with and responding to statutory Freedom of Information requests rest with the Department of Administration;
- (b) There be one or more central points of responsibility within each of the other Departments of the Council to provide a resource to which frontline staff can transmit statutory requests, a point of contact for the identification and sourcing of information and a swift channel to the senior management of the relevant Department for consideration of issues of public interest;
- (c) The statutory review provision be undertaken at officer level by an officer, within the Department of Administration, who is senior to the officer who makes – and who is not involved in – the original decision; and
- (d) The strategy detailed above for the production of the Council's Publication Scheme be agreed with the co-ordination of the production of that Scheme being undertaken by officers who co-ordinate the compilation and maintenance of the Council's web site with guidance from the Working Group who will retain responsibility for the Scheme.


Director of Administration

Members seeking further information on the contents of this report are asked to contact John Fleming, Head of Central Services on Extension 2228.

COMPOSITION OF WORKING GROUP

The initial composition of the Working Group was as follows:

Lesley Bone	-	Finance
Carol Cluggie	-	Administration
John Coleman	-	Planning and Environment
Jack Daly	-	Community Services
Tommy Docherty	-	Education
John Fleming	-	Administration
Robert Hall	-	Planning and Environment
Mike McKeever	-	Social Work
Stephen Rankin	-	Housing and Property Services
Graham Reid	-	Chief Executive's

The Group at the outset invited Gordon Brown and John MacKenzie of the Archives Section of the Community Services Department to join, and are indebted to them for their very full and active contribution.

For the final two meetings of the Group, Julie Irwine of the Chief Executive's Department joined and assisted fully with her experience of development of the Council's web site.

The Group were grateful, also, for the assistance of Alan Stewart, Social Work, and Lynn Kenyon, Claire Reynolds and Susan Robertson, Housing and Property Services.