

## REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: FREEDOM OF INFORMATION: REVIEW
From: DIRECTOR OF ADMINISTRATION		
Date: 12 March 2007	Ref: JAF/IL	

1. **Purpose of Report**

- 1.1 The report advises the Committee of the findings following a review of the operation of the procedures adopted by the Council with regard to Freedom of Information.

2. **Background**

- 2.1 The Council, at its meeting on 26 June 2003, agreed, *inter alia*

- (a) that responsibility for formally dealing with and responding to statutory Freedom of Information requests should rest with the Department of Administration;
- (b) that 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 in terms of the Act;

and

- (c) that the statutory review procedure 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.

- 2.2 The Policy and Resources Committee, at its meeting on 15 June 2004, agreed the responsibilities of, respectively, Corporate Freedom of Information staff and Departmental Freedom of Information staff and authorised the Director of Administration to review the structure of his Department to establish appropriate corporate posts. Following that decision, the Policy and Resources Committee at its meeting on 23 September 2004 approved the establishment of two posts within the Central Services Division of the Department of Administration.

- 2.3 At that time it was acknowledged that, as it was not possible to predict the volume of Freedom of Information requests and the extent of work required, it would be necessary to keep matters under review and the General Purposes Committee, at its meeting on 17 May 2006, noted that the number of information requests received by the Council in the preceding year had exceeded the level anticipated. The Committee noted, further, that due to the number of requests received and the complexity of many of those requests, it had been possible to respond within the statutory timescale to only half of the requests received. The Committee then agreed that the matter be kept under review and, at its meeting on 23 August 2006, noted that the trend for the period from January to 31 July 2006 showed an increase of over 50% relative to the corresponding period of the preceding year.

- 2.4 Against that background it was considered appropriate to review the operation of the Council's Freedom of Information procedures in light of the experience of the first two years of operation and to give consideration to the staffing resources available.

### 3. **Review**

- 3.1 In calendar year 2005 a total of 458 Freedom of Information requests were received. It was possible to issue responses to 227 of those requests within the statutory 20 day period. Responses to a further 119 were made within 7 working days thereafter, and in 102 instances the responses were issued 8 or more days after the expiry of the statutory period.
- 3.2 In 2006 the number of requests increased to 616. Of those 315, received a full response within the 20 day statutory period and a further 159 within 7 days thereafter. Again, in a significant number of cases – 142 – it was possible to issue a response only 8 or more days following the expiry of the statutory period.
- 3.3 In 2007 the number of requests received in January and February was, respectively, 64 and 54. This compares with 21 and 23 for the corresponding months in 2005 and 41 and 85 for the correspondence periods in 2006.
- 3.4 A major concern in anticipation of the Act was the possibility that Freedom of Information requests, which can be submitted to any office or officer of the Council, might not be correctly identified to be dealt with in terms of the Act – and in the first ten months of 2005, a total of 14 requests were identified by Departments only following the 20 day statutory period. While staff awareness raising exercises were undertaken prior to the commencement of the Act, it had been acknowledge at that time that these exercises would require to be repeated periodically – and this has been done. In the subsequent fourteen months there has been only one occasion on which a request has been identified only following the statutory period.

### 4. **Statutory Reviews**

- 4.1 The Freedom of Information (Scotland) Act makes provision for two stages of review of the initial determination of a request – an internal review and, thereafter, a right to require review by the Scottish Information Commissioner.
- 4.2 Of the 458 requests received during 2005, 19 progressed to internal reviews and 5 to the stage of review by the Scottish Information Commissioner. Of the 616 requests received during 2006, 10 progressed to internal review and 1 to review by the Scottish Information Commissioner.

### 5. **Outcomes**

- 5.1 Of the 616 requests received during 2006, 278 resulted in the provision of all information sought and only 12 resulted in a refusal to provide that information under one of the grounds of exemption contained in the Act. In the remaining cases it was possible to provide the information in part.

Of the 29 cases which progressed to internal review 4 were withdrawn before review, 7 resulted in the provision of information and, in the remaining cases, the original decision was upheld. Of the 6 cases which progressed to review by the Scottish Information Commissioner, in 5 the decision of the Council has been substantially upheld and in the

sixth, in which the Information Commissioner has ordered release of information, there is a basic issue which requires judicial interpretation and which is the subject of a Court of Session appeal at the instance of another Council.

## 6. Audit

6.1 The Council's Freedom of Information arrangements have had the benefit, also, of consideration both by the Council's external auditors and by the Council's internal auditors.

6.2 As part of an information management review, Audit Scotland examined how the Council was implementing, *inter alia*, the Freedom of Information (Scotland) Act. At that time Audit Scotland found that

- the Council had demonstrated a willingness to prepare for Freedom of Information legislation. A corporate working group was established during early 2003 comprising representatives from all Council Departments. However further work is required to develop and implement detailed written guidance;

and

- a general awareness of Freedom of Information was created within the Council. The respective Directors explained in e-mails to departmental staff the detailed procedures for handling requests for information. Managers and Freedom of Information officers received training on the Freedom of Information Act. Suitable provision will require to be made for ensuring ongoing training to staff as necessary.

Following those findings, the audit recommendation was that the Council should periodically review the adequacy of ongoing information sharing and training available to frontline staff on Freedom of Information.

6.3 Subsequently the Council's internal auditors undertook a review of the adequacy and effectiveness of the arrangements the Council had put in place for ensuring compliance with the Freedom of Information (Scotland) Act. The significant findings of that review were as follows:

No significant control weaknesses were noted during the review. There were, however, a small number of issues which internal audit considers worth highlighting:

- The level of staff awareness of the Freedom of Information Act varied across Departments and there was uncertainty regarding how to identify a request, a lack of understanding amongst staff of the urgency imposed by the 20 working day timescale and a lack of knowledge and awareness of the Council's Publication Scheme;
- Approximately one-third of requests received by the Council at the date of the review had not been responded to within the 20 working day timescale imposed by the Act;

and

- There were currently no written procedures detailing how staff should deal with Freedom of Information requests in order to comply with the Act.

6.4 Following those findings, the audit report contained the following recommendations:

- The Corporate Freedom of Information Working Group should consider whether further methods of raising and maintaining staff awareness should be pursued to ensure an appropriate level of awareness about the Act is achieved across all

Departments. The timescale of 20 working days imposed by the Freedom of Information Act should be emphasised in all awareness-raising activities to ensure that staff appreciate the urgency of dealing with all requests received. The Group should consider, also, whether managers and other staff who are more likely to be involved in gathering information to meet, and responding to, Freedom of Information requests should receive more in-depth training and/or detailed guidance to ensure that they are fully informed of the Act and its implications.

- Corporate and Departmental Freedom of Information Officers should be reminded of the need to carefully consider Freedom of Information requests prior to setting the information gathering process in motion in order to ensure that, where appropriate, the specific information requested is gathered and provided. Staff should be reminded that, where a request is not clear, further clarification should be sought prior to processing the request. Staff should be reminded, also, of the need to ensure that information being provided is clear and accurate and has been checked prior to being issued.
- All staff should be reminded of the need to ensure that every effort is made to respond to all Freedom of Information requests within the 20 working day timescale imposed by the Act. Consideration should be given as to whether, from a customer service perspective, it would be appropriate to prepare and issue holding letters where it is clear that the 20 working day timescale will not be met due to the work involved in gathering and collating the requested information. Where issued, a copy of such letters should be held in the relevant file.
- Written guidance on Freedom of Information issues should be prepared and issued to key and relevant staff as soon as practical. The guidance should cover how to identify, process and respond to Freedom of Information requests and include details of the Council's charging policy and information exempted from the Act.
- The current format and use made of the Freedom of Information tracking history document should be reviewed to ensure that it contains clear, complete and up-to-date details of the progress of each request. All Freedom of Information requests should be allocated a unique reference number and a file checklist should be set up on receipt and maintained thereafter.

6.5 The recommendations relating to staff awareness and training, of the need to ensure that information sourced met the detailed request and of the importance of the 20 working day timescale were fully accepted and appropriate action was taken – and, in that connection, it will be noted that in 2006 only one request was not timeously identified. The recommendation regarding detailed written guidance was not, however, accepted. It was indicated that clear written procedures already existed and were contained in the guidance sent and repeated to all staff – that those procedures were short and succinct was considered to be a matter for congratulation rather than criticism. The aim of those procedures is to achieve the dual purpose of enabling staff to readily identify a potential Freedom of Information request and to apply a simple test to determine whether the request can be dealt with by the recipient or requires to be dealt with as a statutory Freedom of Information request. Against that background there was no intention to develop more extensive written procedures.

Finally it was accepted that there was merit in further refining the tracking history document and consideration requires to be given to the resources necessary to do so.

6.6 In light of subsequent experience, while it is confirmed that the need for periodic staff awareness raising exercises remains, no evidence has emerged of significant shortcomings in the identification of Freedom of Information requests.

- 6.7 Similarly, from the evidence available, no issues of concern emerge regarding the quality of the decision-making process. The number of internal reviews is proportionately lower than could have been expected given the volume of requests and, while the detail of every review finding is fully considered with the aim of identifying lessons and improving processes, neither the outcome of reviews at internal nor at Information Commissioner level has revealed any deficiency in the request determination process.
- 6.8 A clear deficiency which does exist is the inability to meet the statutory deadlines for response to requests – and the fact that this has not led to a very significantly higher number of review requests would appear to be a reflection of the quality of the work which is being done albeit not within the statutory timescale.
- 6.9 From the outset it was accepted that the resources required to meet the Council's obligations under the Freedom of Information legislation could be determined in detail only following experience of the operation of the legislation. In light of that experience it is clear that additional resources require to be devoted to the Corporate Freedom of Information function – and elsewhere in the agenda for this meeting is contained a report with proposals for additional resources.

## 7. Recommendation

- 7.1 It is recommended that the Committee note the outcome of and recommendations following the review of the operation of the Council's Freedom of Information procedures.

*John Fleming*

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.*