

ORGANISATION AND COMMUNITIES SCRUTINY PANEL	DATE 13 March 2025	ITEM NO 7
SUBJECT Freedom of Information Monitoring	WARD (S) All	
CHIEF OFFICER		
DECISION CLASSIFICATION Scrutiny Report		

SECTION I

1. Recommendations to decision maker:

- 1.1 To consider the Statutory Scrutiny of the Freedom of Information Monitoring Report and make recommendations to the Executive, if necessary.
- 1.2 To agree that where appropriate, the report and any recommendations be submitted to the Chief Executive.
- 1.3 To note that where possible, the report and responses to the recommendations be presented at the next meeting of the Panel.

2. Links to Our Greenwich Missions

- 2.1 This report relates to the Council's agreed missions as follows:

Our Council works in the most efficient and effective ways possible

- 2.2 Dealing with requests for information under the Freedom of Information Act 2000 and responding to requests under Environmental Information Regulations are statutory requirements. This service links to the Council's strong commitment to FOI/EIR and this positive approach enables services to give the work the necessary priority to meet the requirements and provide an excellent service to requestors.

3. Purpose of Report and Executive Summary

3.1 This report was commissioned as part of the Organisation and Communities Scrutiny Panel's 2024-2025 work programme. The report seeks to provide updates on the performance of the Council's response to Freedom of Information requests and requests under Environmental Information Regulations.

3.2 The commissioned brief for the report was as follows:

- To provide an update on Freedom of Information requests and requests under Environmental Information Regulations.

4. The Report

4.1 The Freedom of Information Act 2000 (the Act) requires local and central governmental organisations to disclose information that they hold, subject to the exemptions set out in the Act. Additionally, the Environmental Information Regulations 2004 (EIR) give people a right of access to information about the activities of public authorities that relate to or affect the environment, although these are also subject to a range of exemptions.

4.2 The right to access information under the Act and the EIR does not cover every organisation that receives public money, such as charities that receive grants. Additionally, some Council functions, such as the role of the Returning Officer, fall outside of the provisions of the Act.

4.3 The Act covers all recorded information held by the Council, regardless of whether the Council has created the information or has received it from an external source. It is not limited to official documents and it covers, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings, as well as metadata associated with these documents. This list is not exhaustive and legal advice is available should officers require assistance in determining if something is considered 'information'.

- 4.4 The Freedom of Information Act is limited to recorded information; the Council is not required, under the provisions of the Act, to create information that it does not hold to comply with a request.
- 4.5 Disclosure of information under both FOI and EIR is subject to a number of exemptions or exceptions. Applying exemptions/exceptions can lead to withholding information from a requester and, in some cases, will allow the authority to refuse to confirm or deny whether the information is held. FOI/EIR favours disclosure unless there is a good reason not to disclose. This is sometimes described as a presumption or assumption in favour of disclosure. Many of the exemptions are not absolute, but require the application of a public interest test to determine whether the public interest in releasing the information is greater than the public interest in not releasing the information. For example, in relation to a request for a contract with a service provider, the public interest in disclosing how the Council spends public money must be balanced with the public interest in ensuring that the Council is able to seek the best value for money when negotiating contracts.
- 4.6 Some exemptions/exceptions are based on the harm that would arise or would be likely to arise from disclosure, for example, if disclosure would be likely to prejudice a criminal investigation or prejudice someone's commercial interests.
- 4.7 In order to ensure that all exemptions/exceptions are appropriately used applied, departmental FOI representatives must seek legal clearance when using exemptions/exceptions.
- 4.8 Under section 40(1) of the Act and Regulation 5(3) of the EIR, requesters are not able to make requests for their own personal information under the Act. When requests of this nature are received by the Council, the requester is advised of this restriction and the request passed to the Corporate Data Guardian to respond to under the Right of Access provisions of the Data Protection Act 2018 and General Data Protection Regulations (GDPR).
- 4.9 The Council is required to reply promptly to, and within 20 working days of, receipt of FOI requests although there are some limited circumstances when an extension can be applied, such as to allow consideration of a public interest test when applying an exemption. For requests made under the EIR, there is a similar 20 working day time limit

for responses, with the provision to extend the time limit to 40 working days if the request is complex or requires a large volume of information to be processed.

- 4.10 Should a requester be dissatisfied with the response that they have received to their request under FOI or EIR, they can request an Internal Review of the decision. The Internal Review process is carried out by an appropriate chief officer, typically the director of the service to which the request relates, who reconsiders the request in the light of the concerns raised by the requester, for example that not all information has been provided, or that an exemption/exception has been incorrectly applied. The chief officer will then make a decision as to whether to uphold the original response, partially uphold the response and release additional information, or to not uphold the response and release additional information.
- 4.11 If a requester remains dissatisfied following the Internal Review of their request, he/she has the right to complain to the Information Commissioner’s Office (ICO), which will investigate. The ICO may issue a Decision Notice confirming that there is no action to be taken or that additional information should be disclosed. Not all ICO complaints result in a Decision Notice, particularly where the complaint is not significant and the complaint can be resolved informally. In line with best practice, the Council informs all requesters of their right to an Internal Review, as part of the response to their request, and informs all requesters of their right to complain to the ICO as part of the response to both their initial request and their request for an Internal Review.

5. **FOI and EIR Performance**

- 5.1 The following table sets out the number of FOI and EIR requests received between 1st January 2022 and 31st December 2023.

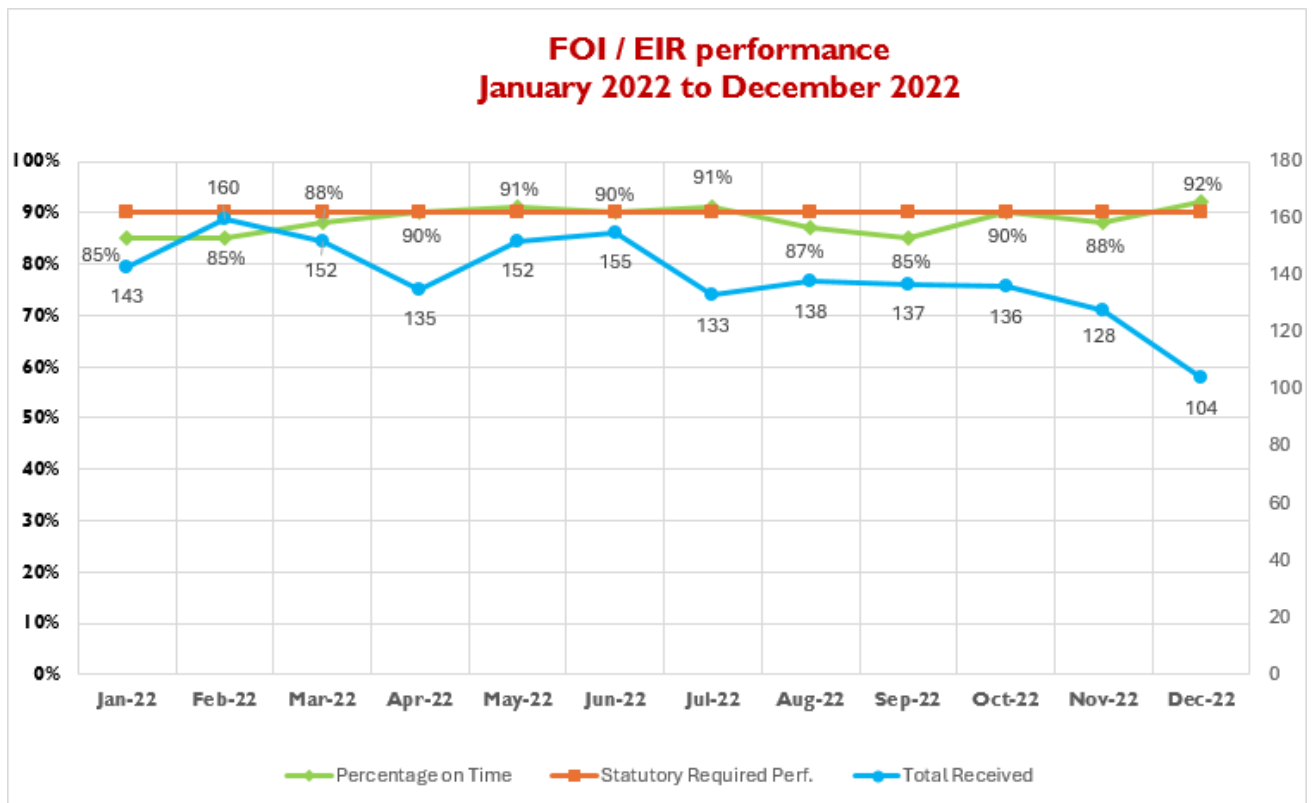
Request Type	Number of Requests Received In 2022	Percentage answered within Statutory Timescales	Number of Requests received in 2023	Percentage answered within Statutory Timescales

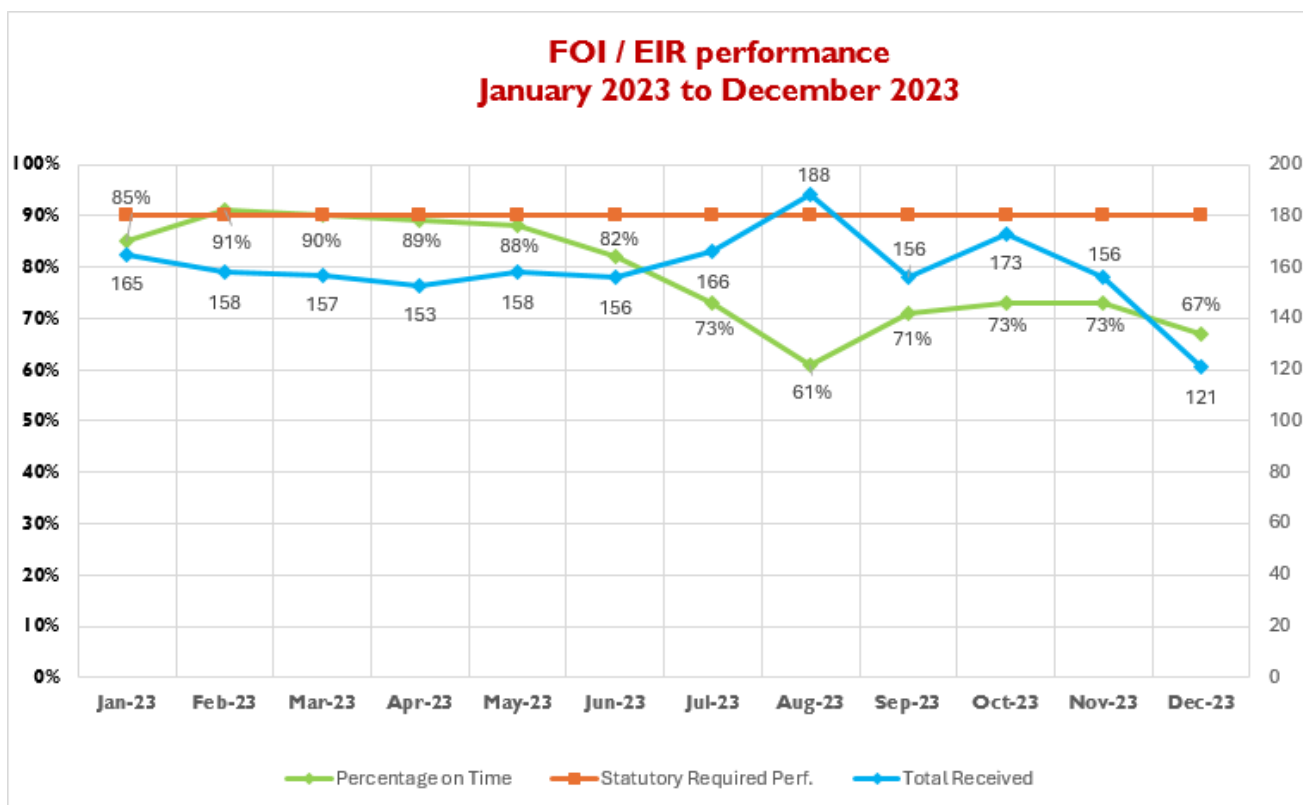
FOI	1,547	89%	1,660	78%
EIR	128	89%	261	74%
Total	1,675	89% <i>(Council's Overall Figure)</i>	1,921	77% <i>(Council's Overall Figure)</i>

- 5.2 In December 2022 the Council replaced its current casework system Pentana, with Microsoft Dynamics, a customer relationship management system. The Dynamics Casework App is being used for Cllrs, Leaders, Mayors and MP enquiries. Complaints, Freedom of Information/Environmental Information Regulation requests as well as Right of Access/SAR requests.
- 5.3 FOI and EIR request numbers for 2022 remained at relatively normal levels, down by 23 compared to 2021, when a total of 1,698 requests were received. Despite the difficulties presented by the Covid Pandemic and the challenges experienced by officers through the closure of premises, limited access to systems and information and staff absences, the Council maintained a notable performance rate of 89% in responding to requests within 20 working days. Only marginally below the ICO statutory timescales of 90%.
- 5.4 The number of FOI and EIR's received in 2023 significantly increased by 246 requests (15%) compared to 2022. The timeliness compliance rate however fell considerably short on the previous year, with only 77% of responses achieved within the 20 working day time limit, well below the ICO statutory timescales of 90%. This was mainly due to underperformance in handling FOI/EIR requests within Housing & Safer Communities and Communities & Environment, including a combination of other factors such as administrative problems with the migration of FOI function to Dynamics, capacity related issues and a number of complex cases.
- 5.5 Whilst acknowledging the important role that people's information rights continue to have in regard to transparency of decision making by public bodies, The Information Commissioner recognised that the pandemic created unprecedented operational challenges for public authorities and in particular the pressure on resources and staff.

Although they were unable to extend statutory timescales, they modified their approaches to enforcement of response timeliness. The regulatory approach taken by the ICO has now returned to pre-Covid arrangements.

5.6 The graphs below set out the Council’s overall, monthly performance as well as the number of requests received on a month-by-month basis for calendar years 2022 and 2023:





5.7 The following table sets out FOI and EIR performance by directorate. Where requests have been received jointly, it is included in both directorates' figures. As such, the number of requests shown on these tables is higher than the total number of requests received by the Council.

Directorate	Requests Received 2022	Percentage Completed within Statutory Timescales	Requests Received 2023	Percentage Completed within Statutory Timescales
Children's Services	247	99%	455	94%
Communities and Environment - (Overall)	398	89%	583	81%
Housing and Safer Communities	450	82%	563	65%

Finance & Legal Services - (Overall)	476	89%	421	90%
Health and Adults	192	100%	225	100%
Regeneration, Enterprise and Skills	228	96%	289	99%

6. Internal Reviews

6.1 The table below sets out the number of FOI and EIR Internal Reviews received by the Council in 2022 and 2023:

Internal Review Type	Number Received 2022	Percentage of Cases Resulting in Internal Review	Number Received 2023	Percentage of Cases Resulting in Internal Review
FOI	47	3%	48	3%
EIR	10	8%	20	8%
Total	57	3%	68	4%

6.3 These figures represent both increase in the number of Internal Reviews received compared to 2020/2021, when 51 and 53 Internal Reviews were received respectively.

6.5 The reasons for these Internal Reviews, as well as the outcomes of these cases, are set out in the tables below:

FOI/EIR Internal Reviews 2022				
	Reason for Internal Review			
Outcome	Insufficient Information	Non-Disclosure (Exemption)	Lateness	Multiple Reasons

	FOI	EIR	FOI	EIR	FOI	EIR	FOI	EIR
Response Upheld	18	3	15	6	1	0	1	0
Response Part Upheld	2	0	1	0	0	0	1	0
Response Not Upheld	4	0	4	1	0	0	0	0
Review Ongoing	0	0	0	0	0	0	0	0
Total	24	3	20	7	1	0	2	0

FOI/EIR Internal Reviews 2023								
	Reason for Internal Review							
Outcome	Insufficient Information		Non-Disclosure (Exemption)		Lateness		Multiple Reasons	
	FOI	EIR	FOI	EIR	FOI	EIR	FOI	EIR
Response Upheld	20	10	11	5	0	0	2	0
Response Part Upheld	4	1	2	0	0	0	0	0
Response Not Upheld	3	2	1	0	0	0	0	0
Review Ongoing	1	0	4	2	0	0	0	0
Total	28	13	18	7	0	0	2	0

6.2 The following table sets out the number of FOI and EIR Internal Review cases by directorate. As with the breakdown of directorate FOI and EIR performance above, where an Internal Review has been conducted jointly, it is included in both directorates' figures, resulting in a higher total than the tables above.

Directorate	FOI Internal Reviews		EIR Internal Reviews	
	2022	2023	2022	2023
Children's Services	11	3	-	-
Communities and Environment	4	10	2	23
Finance & Legal	5	1	-	-
Health and Adults	-	1	-	-
Housing and Safer Communities	13	19	1	1
Regeneration, Enterprise and Skills	12	1	3	8

7. ICO Complaints

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7.1 Before reaching the Information Commissioner Office (ICO) complaint stage, a requester must exhaust the Council's internal FOI/EIR procedure. This consists of receiving a response to the original request and internal review. If the requester does not agree with the outcome of the Internal Review, they may apply directly to the ICO for a decision. Generally, the ICO cannot make a decision unless the requester has exhausted the Internal Review procedure provided by the Council.

7.2 The following tables sets out the number of ICO complaints received between 1st January 2022 and 31st December 2023 in relation to FOI/EIR, Internal Reviews requests and the types of ICO complaints received during this period – whether it was for non-compliance or challenging the Council's use of an exemption/exception.

	Total ICO Complaints	As a Percentage of All FOI/EIR Requests	As a Percentage of all Internal Reviews
2022	11	0.65%	19%

2023	16	0.57%	16%
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	Total ICO complaints for <u>non-compliance with statutory deadline</u>	Total ICO complaints <u>challenging use of exemptions/exceptions</u>	Total ICO Complaints
2022	0	11	11
2023	11	5	16

7.3 Throughout 2023, the Council experienced a notable increase in the number of ICO complaints related to non-compliance with statutory compliance. These complaints were primarily concentrated within the Housing and Safer Communities (HSC) and Communities, Environment, and Central (CEC) directorates. Of the 11 complaints received for non-compliance with statutory deadlines, 6 pertained to HSC and 3 to Transport (CEC).

7.4 These figures above are significant because they demonstrate how non-compliance with statutory deadlines can form a basis on which the ICO can exercise its regulatory powers. This enables the ICO to monitor public authorities either formally or informally. In response to the Council's high figures for non-compliance, the ICO raised its concerns with the Council informally and arranged a meeting in August 2024 with the Council's DPO, FOI Team and Legal Services. After this meeting, the Council has implemented measures to address these concerns, resulting in significant improvements in compliance.

7.5 Following an investigation of a complaint, the ICO will reach a decision about the case. There is a range of potential outcomes that the ICO can reach in relation to a complaint. The tables below set out what the potential outcomes are, as well as the outcomes of the ICO complaints received by the Council.

Outcome	Meaning
No Decision Notice issued	The ICO has closed the case and declined to issue a Decision Notice.
No Decision Notice issued – Informal Resolution	The ICO has requested that the Council and the requester resolve

	the case informally, without issuing a Decision Notice.
Decision Notice – No Further Action Required	Decision Notices requiring no further action are typically issued where the ICO have found partially or fully in favour of the Council. This would include cases where the ICO has concluded that the Council has correctly applied an exemption or exception or is correct in stating that it does not hold information.
Decision Notice – Disclosure of Information Required	Following consideration of the case, the ICO has ordered the Council to release additional information to the requester.

Outcome*	2022	2023
No Decision Notice issued	2	0
No Decision Notice issued – Informal Resolution	2	8
Decision Notice – No Further Action Required	5	6
Decision Notice – Disclosure of Information Required	2	1
Case Ongoing	0	1

**This data has been cross-checked against the ICO's records.*

- 7.6 When the ICO determines a complaint through a formal decision notice, both parties have the right to appeal the decision to the First Tier Tribunal.
- 7.7 Since 2022, the Council had three First Tier Tribunal hearings. In two cases, the Council acted as a second respondent under the vexatious request exemption - section 14(1) of the Freedom of Information Act 2000. The outcome of both appeals is the appeals were dismissed.
- In the third appeal the Council acted as the appellant under Regulation 12(5)(b) - legal professional privilege exception under the Environmental Information Regulations 2004. The Council is currently awaiting the Tribunal's decision.

8. Service Delivery and Improvement

8.1 Since the previous report to this Scrutiny Panel, the Council's FOI service has continued to manage FOI and EIR requests efficiently. A range of measures has been implemented to monitor and maintain good FOI and EIR performance across the organisation. This includes:

- Raising Staff Awareness of the obligations placed on the authority by the Act, the Codes of Practice and Guidance, in respect of the rights of persons making requests and the application of any exemptions.
- Refresher training to departmental Freedom of information representatives on exemptions under Freedom of information and Environmental Information Regulations.
- Quarterly meetings with FOI representatives and ad-hoc meetings with Senior Management to discuss poor performance.
- Circulating weekly monitoring reports on FOI and EIR performance to FOI representatives and Service Managers informing them of cases that are approaching the deadline for response.
- Circulating monthly performance reports to directors and FOI representatives, providing information on the performance of their service for that month. Finally, annual FOI performance data is published on the Councils web site.
- Briefing new members on information governance (FOI, EIR and Data Protection) as part of their induction programme.
- Reducing the number of frequently asked requests by encouraging departments to proactively publish more information and datasets on the Council Website in response to hot topics, and signposting requesters to this to provide the information they have requested.

9. Next Steps

9.1 The Chair will set out closing remarks and make recommendations to the relevant decision maker as required at the meeting and these will be published as an appendix. The Relevant decision maker will respond to the recommendations in a separate published appendix and both will be brought back to the next meeting of the Committee/Panel.

10. Cross-Cutting Issues and Implications

Issue	Implications	Sign-off
<p>Legal including Human Rights Act</p>	<p>The law in relation to the Freedom of Information Act 2000, Environmental Information Regulations 2004, General Data Protection Regulations (GDPR) and the Data Protection Act 2018 (DPA 2018), is set out in the body of the report.</p> <p>There are no legal implications arising from this report.</p>	<p><i>Andre De Freitas,</i> <i>Assistant Head of Legal & Democratic Services</i> 27/12/2024</p>
<p>Finance and other resources</p>	<p>This report requests the decision maker:</p> <ul style="list-style-type: none"> - To consider the Statutory Scrutiny of the Freedom of Information Monitoring Report and make recommendations to the Executive, if necessary. - To agree that where appropriate, the report and any recommendations be submitted to the Chief Executive. - To note that where possible, the report and responses to the recommendations be presented at the next meeting of the Panel. 	<p>Joanne Stark Head of Accounting & Business Change 6th January 2025</p>

	<p>The report is for information purposes only and as such there are no financial implications arising from it.</p>	
<p>Equalities</p>	<p>The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.</p> <p>The Council is committed to promoting equality and diversity in all we do and want to eliminate barriers that prevent people accessing our services.</p> <p>The Freedom of Information Act contributes to the Council's Equality and Equity Charter and the Council's Equality Objectives 2020-2024 by enabling anyone, anywhere, to request any recorded information that Royal Greenwich hold.</p>	<p>David White- Head of Information, Safety and Community 13/12/2024</p>
<p>Climate change</p>	<p>This report does not affect the Greenwich Carbon Neutral Plan agreed by Cabinet on 18 November 2020.</p>	<p>David White- Head of Information, Safety and Community 13/12/2024</p>
<p>Community Engagement</p>	<p>The Freedom of Information Act 2000 aims to increase openness and accountability in local government by ensuring people have the right to access information.</p>	<p>David White - Head of Information, Safety and Community 13/12/2024</p>

	<p>The Council enables this transparency through the handling of FOI cases and engaging with the public.</p> <p>We also maintain a Publications Scheme that provides information which is readily accessible to the public through the Council's website.</p>	
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