



<b>REPORT TO:</b>	Audit and Governance Committee
<b>DATE:</b>	22 <sup>nd</sup> November 2023
<b>SUBJECT:</b>	Information Governance Annual Update
<b>PURPOSE:</b>	To advise members in respect to the Council's activity and compliance with Data Protection, Environmental Information Regulation and Freedom of Information requirements.
<b>KEY DECISION:</b>	No
<b>PORTFOLIO HOLDER:</b>	Councillor Leyland
<b>REPORT OF:</b>	Richard Steele – Group Information Manager and Data Protection Officer.
<b>REPORT AUTHOR:</b>	Richard Steele
<b>WARD(S) AFFECTED:</b>	N/A
<b>EXEMPT REPORT?</b>	N/A

#### **SUMMARY**

The purpose of this report is to provide the Audit and Governance Committee with an update on the Council's activities and compliance in respect of the Data Protection Act 2018, Environmental Information Regulation and Freedom of Information requirements during the previous 12 months.

#### **RECOMMENDATIONS**

That the Audit and Governance Committee considers and notes the report.

#### **REASONS FOR RECOMMENDATIONS**

To ensure the Committee is informed about Information Governance activity and for members to take assurance that the Council has demonstrated good governance and an organisational commitment to comply with its statutory obligations.

## OTHER OPTIONS CONSIDERED

N/A

### 1. BACKGROUND

- 1.1 The Council's Information Governance framework supports the Council to comply with the General Data Protection Regulations GDPR (UK GDPR), Data Protection Act (DPA) 2018, Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations (EIR). The Council has a statutory obligation to comply with the IG framework by responding appropriately to requests and managing personal data lawfully.
- 1.2 The Data Protection Officer and Information Governance Team provides guidance and support to the organisation by monitoring internal compliance, informing and advising on data protection obligations, providing advice and guidance and raising awareness on data protection matters.

### 2. REPORT

#### 2.1 Freedom of Information and Environmental Information Regulation

- 2.1.1 During the year the Council's Freedom of Information and Environmental Information Regulation Policy has been redeveloped in alignment with South Holland and Boston Borough Councils. This is due for imminent sign off by each Council.
- 2.1.2 FOIA/EIR impose a statutory obligation on the Council to respond to requests for information within 20 working days, subject to relevant exemptions.
- 2.1.3 The Council's performance in response to the Freedom of Information Act and Environmental Information Regulation **exceeds** the ICO "good" target consistently throughout the period. (October 2021/2022 to October 2022/2023). Performance is reported corporately as part of the Council's quarterly performance management arrangements.
- 2.1.4 There has been a **10% increase** in the number of Information Requests at ELDC between – between October 2021/2022 and October 2022/2023. This is consistent with both the other Councils in the South East Lincolnshire Councils Partnership.
- 2.1.5 The total number of requests made between October 2022 until October 2023 was **733**. Of these, **131** were for information covered by the Environmental Information Regulation and 29 requests were either withdrawn, or were requests that were not valid under the Act.
- 2.1.6 The **693** validated Freedom of Information Request within statutory deadline are displayed in the next chart:

	Late	number of requests (validated)	On time
Oct		51	100%
Nov		54	100%
Dec	1	37	97%
Jan	3	67	96%
Feb	1	61	97%
Mar	1	44	98%
Apr	1	54	98%
May	1	65	98%
Jun	1	60	98%
Jul		48	100%
Aug	1	63	98%
Sep		46	98%
Oct		43	100%

2.1.7 The Council applied redactions and exemptions in accordance with the legislation in respect to 148 requests, in some cases multiple exemptions were applied to a single request:

- 47 requests had elements redacted due to containing personal data.
- 9 requests redacted for Law enforcement
- 1 redacted due to it containing Trade Secrets
- 2 were withheld/redacted due to Health and Safety concerns
- 1 was redacted due to containing Legal Advice
- 42 exemptions were applied to EIR requests

2.1.8 There was 75 refused because the information requested was already published or due to publication of the information in the near future. In most cases the team provided links to the relevant information under our obligation to provide assistance under section 16 of the Freedom of Information Act

2.1.9 The Code of Practice, issued by the Secretary of State for Constitutional Affairs under Section 45 of the FOIA, requires public authorities to have a procedure in place to deal with complaints in regard to how their requests have been handled. This process is handled by the Information Governance Team as an FOI/EIR internal review.

2.1.10 The Council received 4 requests for internal reviews. The Council responded to these with the following outcomes:

- 3 were not upheld
- 1 in ongoing

2.1.11 After an internal review has been completed an applicant has a right to complain to the Information Commissioner's Office (ICO) for an independent ruling on the outcome. Based on the findings of their investigations, the ICO may issue a Decision Notice. The ICO may

also monitor public authorities that do not respond to at least 90% of FOI/EIR requests they receive within 20 working days.

2.1.12 2 complaints were referred to the ICO. The reasons and outcomes for these were:

- 1 was not upheld by the ICO – the application of Section 42 of the FOIA Legal Privilege.
- 1 has not had a formal response.

2.1.13 The Council can demonstrate a good level of transparency and engagement with its citizens through the Access to Information regulations and our publications under the Transparency agenda on the website.

## 2.2 DATA PROTECTION

2.2.1 The Data Protection Policy is due for renewal in 2024. There is currently legislation passing through parliament called The Data Protection and Digital Information (No. 2) Bill – after which there will be a requirement to update the Council’s Policy and this work will be co-ordinated across the Partnership.

2.2.2 Under the General Data Protection Regulations there is a requirement for the statutory Data Protection Officer to report to the highest level within the organisation. The Leadership Team receives a monthly Information Governance update from its Data Protection Officer on a monthly basis as part of the partnership

2.2.3 The Council’s Management of data protection security incidents is undertaken by the Data Protection Officer, who records, investigates and where necessary, recommends actions to be taken based on the impact risk level.

2.2.4 The level of Data Breach reporting shows a good understanding of roles/responsibilities in respect to the legal requirement to notify the Data Protection Officer. There has been 1 self-report to the Information Commissioner during the last year. This has now been concluded, and no additional action required by the Commissioner’s Office

2.2.5 There has been a total 53 of Data incidents reported to the Data Protection Team since October 2022. Given the number of transactions that ELDC undertake throughout all its services, this is a small incidence of issue. None have resulted in any claim, or harm to an individual. All breaches have been assessed for the impact on the data subject, the risk to the Council and for any learning opportunities.

2.2.6 The GDPR introduced requirements for personal data breaches that meet certain thresholds to be reported to the ICO. No self-reports were made to the ICO during the last year.

2.2.7 The DPA 2018 provides individuals with the right to ask for information that the Council holds about them. These are also known as Subject Access Requests (SARs). The Council should be satisfied about the individual’s identity and have enough information about the request. The timescale for responding to these requests is one month, starting on the day of receipt. Authorities can extend the time taken to respond by a further two months if the

request is complex or a number of requests have been received from the individual, e.g. other types of requests relating to individuals' rights.

2.2.8 There has been 13 SARs requested from the Council. 2 have been rejected due to failure to supply proof of identity.

2.2.9 There is no requirement for the Council to have an internal review process for SARs. However, it is considered good practice to do so. Therefore, the Council informs applicants of the Council's internal review process. However, individuals may complain directly to the ICO if they feel their rights have not been upheld.

2.2.10 The Council also receives one-off requests for personal information from third parties including the police and other government agencies. The IG Team maintains a central log that includes exemptions relied on when personal data is shared with third parties. They provide advice and assess whether the Council can lawfully disclose the information or not.

2.2.11 The Data Protection Officer supports the Council in understanding the impact of plans, projects and activities on data protection through a process of impact assessments to support decision-making. The Council also has arrangements in place to support the sharing of data where appropriate and the team provide support in the preparation and sign off of on-going and one-off data sharing agreements.

### **3. CONCLUSION**

3.1 It is essential that the Council continues to monitor and report on its performance in relation to its information governance statutory obligations in order to promote best practice and drive continuous improvement in the Council's ability to comply with the laws relating to information.

#### **3.1 EXPECTED BENEFITS TO THE PARTNERSHIP**

N/A

### **4. IMPLICATIONS**

#### **5.1 SOUTH AND EAST LINCOLNSHIRE COUNCILS PARTNERSHIP**

5.1.1 Information governance requirements are based upon both statute and best practice. The similarities between each Council does allow consolidation of process, skill sharing and in some cases consistency of approach. Information forms a key part of the service delivery, and in some cases understanding of that information is paramount in driving efficiencies and improvement.

#### **5.2 CORPORATE PRIORITIES**

none

#### **5.3 STAFFING**

none

#### **5.4 CONSTITUTIONAL AND LEGAL IMPLICATIONS**

There are no specific legal implications arising out of the recommendations. However, the Council's performance is subject to external scrutiny by the ICO, who have the authority to impose sanctions upon the Council for non-compliance. The monitoring and reporting on the outcomes of ICO complaints represents good practice and promotes good governance and service improvement.

#### **5.5 DATA PROTECTION**

As above

#### **5.6 FINANCIAL**

No instances of liability have been incurred through non adherence to statutory requirements.

#### **5.7 RISK MANAGEMENT**

Identified risks through the Data Protection Impact Assessments are passed to operational risk registers.

#### **5.8 STAKEHOLDER / CONSULTATION / TIMESCALES**

none

#### **5.9 REPUTATION**

none

#### **5.10 CONTRACTS**

none

#### **5.11 CRIME AND DISORDER**

Assurance of our support for other lawful agencies in the sharing of information by managing the information effectively.

#### **5.12 EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING**

Data Protection legislation is intrinsically linked with the convention on Human Rights.

#### **5.13 HEALTH AND WELL BEING**

none

#### **5.14 CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

Take assurance that the delivery of Environmental Information supports the transparency of this Council in respect of the wider climate change agenda.

#### **5.15 LINKS TO 12 MISSIONS IN THE LEVELLING UP WHITE PAPER**

none

## 5. ACRONYMS

ICO	Information Commissioners Office
DSAR or SAR,	(Data) Subject Access Request
DPA 2018	Data Protection Act 2018
EIR	Environmental Information Regulation 2004
GDPR	General Data Protection Regulations
FOI or FOIA	Freedom of Information Act 2000

### APPENDICES

none

### BACKGROUND PAPERS

No background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report

### CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.

### REPORT APPROVAL

Report author:	Richard Steele, Group Information Governance Manager and Data Protection Officer
Signed off by:	John Medler, Assistant Director for Governance and Monitoring Officer
Approved for publication:	Councillor Leyland