

**Report to:** Management Committee – 5 March 2020

**Prepared by:** Stewart Pattison: Compliance Manager/Data Protection Officer

**Subject:** Freedom of Information and Data Protection Update

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## **1. Background**

1.1 The Management Committee discussed and approved the Association's Freedom of Information Policy at their meeting on 24 October 2019.

1.2 At that Meeting the Chief Executive advised that, although the Association would publish a charging scheme, at least in the interim the Association would not charge fees for requests. This would be until the volume of enquiries was gauged. Committee approved this course of action.

1.3 Committee also agreed that quarterly reports should initially be submitted to full management committee.

## **2. Introduction**

2.1 The purpose of this report is to:

- update committee on the first quarter submission to the Scottish Information Commissioner (SIC);
- provide details of requests received to date and the staff resources expended on these.

## **3. Scottish Information Commission Quarterly Return**

3.1 The Association submitted its first quarterly return to the Scottish Information Commissioner by the due date of 7 February 2020.

The return reported:

Freedom of Information Requests 1  
Environmental Information Requests 3  
Subject Access Requests 2

All requests were answered within the stipulated timescales. (Please note that the return was for 11 November to 31 December 2019 only as required by the SIC.

Also note that although Data Protection is a function of the Information Commissioner's Office (ICO) and not the SIC; statistics for Subject Assess Request under Data Protection are reported to the SIC).

#### **4. Requests and Resource**

4.1 The Data Protection Officer has been completing a template spreadsheet for time spend on responding to information requests. This pertains to the chargeable elements of requests.

4.2 It should be noted however that much of the work required is not chargeable. For example; an authority is not entitled to charge for any costs incurred in determining whether it actually holds the information. This means authorities cannot charge for searching for the information if it turns out they don't hold it.

The Commissioner expects public authorities to carry out a reasonable search to determine whether they hold information. This means taking adequate, proportionate steps to establish whether they hold information falling within the scope of a request and determining whether information should be provided.

Public authorities are not allowed to charge for any costs incurred in determining whether information should or should not be disclosed. This means, for example, that a public authority cannot charge for the time it spends deciding whether to refuse to respond to a request on the basis that it is vexatious or repeated or for the time it spends deciding whether information is exempt.

An authority is not allowed to charge for the time spent deciding whether a report should be disclosed in full or whether parts of the report should be redacted (blacked out).

As well as this, time cannot be allocated in determining the nature of the request. Is it Freedom of Information or Environmental Information and are there data protection issues to be addressed in responses.

4.3 Because of the points noted above, to inform Management Committee, an exercise has been undertaken to produce Appendices 1 and 2 for this report. As can be seen, Subject Access Requests, per request, have been more staff time consuming. However, in normal circumstances these are not chargeable.

Freedom of Information Requests (FOI) and Environmental Information Requests (EIRS) can be charged for.

With Freedom of Information there is no staff time chargeable for the first £100 incurred and a capped rate of £15 per hour maximum is set.

None of the FOIs responded to would be chargeable.

There is no minimum charge for Environmental Information Requests, however, not all staff time for dealing with a request is chargeable there either.

Given the volume of requests received so far and the administrative costs for billing and notification; continuing with the no charging option is recommended.

(Please note that Tables 1, 2 and 3 below do not include for monitoring, staff training, keeping up to date with developments and continual upskilling to ensure compliance with Freedom of Information and Data Protection).

**Table 1 FoI and Data Protection Resource Allocation Oct – Dec 2019**

<b>No.</b>	<b>Response Date</b>	<b>FoI and DP Activity</b>	<b>Time Resource</b>
1.	01/10/19 EIR 002	Receive and consider request and category. Liaise with other staff. Source information. Prepare and issue response. Input form AA/DPS/DPO/GA.	5 hours.
2.	08/10/19 EIR 003	Enquiry to Tenancy Services Assistant. Assess category. Liaise with staff. Source information. Prepare and issue response. Input from DPO/DPS. Liaise with TSA/MO.	5 hours
3.	12/11/19 EIR 004	Window replacement programme enquiry. Customer satisfaction with contractor. Assess category. Source customer satisfaction returns. Companies House check on contractor. Prepare and issue response.	4 hours.
4.	18/12/19 FOI 001	Electrical Safety Certificate process and procedure request. Assess category. Liaise with MO. Complete questionnaire cross check completion with MO. Calls by GA to check receipt. Issue response.	3.5 hours
5.	18/12/19 EIR 005	Assess category. Liaise with DPS (DPO). Source information (DPS). Prepare and issue response (DPO).	3 hours.
6.	20/01/19 EIR 006	Assess enquiry. (Landlord report feedback). Acknowledge by letter as EIR. Check status (Strategic Plan). Confirm status with DPS. Prepare and issue response.	3 hours.
7.	20/01/20 FOI 002 EIR 007	Assess enquiry. (Landlord report feedback). FOI and EIR. Send acknowledgement letter. Liaise with Community Council. Confirm EIR status of Community Councils through SIC portal guidance. Source information and confirm window programme status. Source and confirm training information. Prepare and issue response including cross check with DPS and CE.	4 hours EIR 2 hours FOI
8.	27/06/18 SAR 001	Pre time recording. Subject access on any and all information held.	5 working days total for staff involvement.

		Request information from HM, Maintenance, and Admin. Collate, index and redact all information. Initial acknowledgement, response, copying and filing.	
9.	12/11/19 SAR 002	Assess, request information from all staff. Acknowledge. Review all electronic and hard copy information. Collate all materials, read and redact. Index and respond.	6 working days staff time total.
10.	28/11/19 SAR 003	Assess, acknowledge, request information from Housing Management. Liaise with legal. Check ICO guidance. Check all electronic and hard copy information. Read and redact correspondence. Issue response.	2 days total staff time.
11.	24/12/20	Assess, acknowledge, request information from Maintenance. Check all electronic and hard copy files. Read and redact. Prepare and issue response. Monitor receipt. Contacting posts. Issuing then re-issuing response.	4 days total staff time.

**Table 2 FoI and Data Protection Resource Allocation Jan-Feb 2020**

No.	Date	FOI and DP Activity	Time Resource
1.	20/01/2020	<p>Discussion with Chief Executive on current FOI and DPA position. Current risk and recordable incidents. SIC v ICO. Considering two of drafted responses. Discussing FOI and EIR outcome publication.</p> <p>Updating monitoring database.</p> <p>SIC return requirement.</p> <p>Governance and Finance Assistant on what needs to be updated and monitored.</p> <p>Finalising and making two of responses.</p> <p>Distribution of information for SMT.</p>	4 hours.
2.	21/01/2020	<p>Preparation for reporting on FOI, EI and DP and SIC return.</p> <p>Scanning for Business as usual requests and filing same.</p>	5 hours.
3.	27/01/2010	<p>EIR request. Third party letter. Reviewing requested report. Discussions with CE.</p>	4 hours.

4.	<b>28/01/2020</b> <b>Includes</b> <b>FOI 003</b>	EIR request. Updating DPS on position regarding EIR and related progress on sound test report requested and third party requirements. Updating historic request information. FOI request. Information not held. Letter to requester. Spoke to admin support regarding nature of request and also updating FM on same. To complete response contacted health board for contact details to provide advice and assistance to requester. Checking training records for time spend learning and upskilling. Clearing emails (data minimisation and fit for purpose).	6 hours.
5.	<b>06/02/2020</b>	Updating historic information. Updating master spreadsheet. Training records. Preparation for reporting – Fee information and so on.	2 hours.
6.	<b>07/02/2020</b>	Data Breach – Consider breach. Email with personal data sent to wrong person. Should have been internal and sent externally. Contacted recipient (email followed up by telephone call). Spoke to member of staff involved and advised to contact recipient. Consider reportable or recordable. Decided recordable based on previous ICO/DPO discussion. Contacted IT support to investigate IT solution to mitigate re-occurrence. Emailed all staff to be vigilant and to avoid string emails and check automatic name memory. Looked at Outlook for possible solution.	2 hours.
7.	<b>10/02/2020</b>	Update CEO and DPS on event and proposed solution. Emailed all staff to disable name memory function.  Complaint regarding contractor and method of waste disposal. Contaminating recycling bin. Reviewed and not EIR.	0.75 hours.
8.	<b>14/02/2020</b>	Check complaints for Information requirement. Monitoring/updating/rationalise Information filing.	0.5 hours.
9.	<b>19/02/2020</b>	Customer Complaint including enquiry when windows are getting replaced. Answered as business as usual within the complaint response but advised that environmental information provided and used response provided	0.5 hours.

		previously to ensure consistency of information provided to residents.	
<b>10.</b>	<b>20/02/2020</b>	Cross referencing Section 60 Code of practice. Transferring requests.	0.5 hours.

**Table 3 All staff hours Oct 2019 – Feb 2020**

<b>Freedom of Information (2)</b>	5.5 hours
<b>Environmental Information Regulations (8)</b>	34 hours
<b>Data Protection (4)</b>	111 hours
<b>General compliance activity</b>	15.25 hours

## **5. Recommendation**

- 5.1 It is recommended that Committee note the content of this report and approve the continuation of the no fee approach.

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