

The Highland Council
Audit and Scrutiny Committee
20th November 2013

Agenda Item	5
Report No	AS/35/13

Scottish Information Commissioner's Annual Report 2012/13 - Freedom of Information Compliance

Report by Assistant Chief Executive

Summary

The Scottish Information Commissioner (SIC) published her annual report for 2012/13 on 1st October 2013. This report summarises information published by the SIC with regard to The Highland Council and reports on the completion of the FOI action plan agreed with the SIC in 2011. It also provides a summary of the Council's compliance with the legislation and provides details of appeals taken up with the SIC.

1. Background

- 1.1 On 1st October 2013 the Scottish Information Commissioner published her annual report entitled "Upholding the right to know - Scottish Information Commissioner's Annual Report". This contains statistics about the use of The Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) by the public as well as details of the appeals received by her office.
- 1.2 FOISA, the EIRs and associated codes of practice came into effect on 1st January 2005 and introduced a general right of access to information held by public authorities, including The Highland Council. Subject to certain conditions and exemptions, any person who makes a request in writing (or some other permanent form) to a public authority will be entitled to receive it. The legislation is promoted and enforced by a fully independent Scottish Information Commissioner. The legislation entitles the public to receive information within 20 working days of the Council receiving the request.
- 1.3 On 28/29 June, 2011, The Scottish Information Commissioner conducted an assessment of the Council's handling of information requests and compliance with the legislation. This resulted in an action plan intended to improve the Council's performance in relation to FOISA and the EIRs.
- 1.4 Key aspects of the action plan included: setting up an officers' working group to improve the knowledge of the legislation; redesigning the FOI process to include earlier escalation and standardise across all Services; and providing resilience in terms of staff support for the FOI process.
- 1.5 The Council has completed these actions and has implemented a new FOI process through the Council's Customer Relationship Management System. Services have staff with specific roles in relation to FOI and these staff attend the officers' working group on a quarterly basis. An Assistant FOI Officer has

also been recruited to provide support and continuity.

- 1.6 On the 25th April 2013, the SIC wrote to the Council to state that she agreed to close the assessment on the basis of the information provided by the Council. She also highlighted her intention to monitor compliance through quarterly performance returns to her office which began this year.

2. Compliance with FOISA and EIRs

2.1 Table 1. - FOISA / EIRs Compliance

Financial Year	Requests Received	% Compliance
FY 05/06	386	88%
FY 06/07	505	88%
FY 07/08	496	88%
FY 08/09	765	84%
FY 09/10	928	81%
FY 10/11	1,032	82%
FY 11/12	1,066	83%
FY 12/13	1,052	79%
FY 13/14 - to 31st Sept	626	86%

- 2.2 Table 1 shows the Council's corporate performance in complying with the 20 working day deadline set by FOISA and the EIRs since the legislation came into force. The number of requests has increased over the years while percentage compliance has reduced as a result.
- 2.3 The poor performance during 2012/13 is thought to be down to the number of staff changes which occurred during this year along with other staffing issues. Now that the Action plan has been implemented, the benefits of the staff and process changes appear to be having a positive impact.
- 2.4 The first half of 2013/14 has seen another increase in the number of requests received however, the Council's compliance rate is currently at its highest since 2007/08. It is hoped that, as staff become more familiar with their roles and the legislation, that this compliance rate can be further improved.

3. Appeals to the Scottish Information Commissioner

- 3.1 The Commissioner publishes an annual report which includes the numbers of appeals against public authorities and the outcomes. Her most recent report, published on 1st October 2013 covers the period up to the end of the financial year 2012/13. If the Council refuses to provide information requested under FOISA or the EIRs, the applicant has the right to appeal to the Scottish Information Commissioner. The Commissioner publishes all of her decisions on her web site: <http://www.itspublicknowledge.info/>.
- 3.2 Table 2 provides a breakdown of the appeals received by the Commissioner in relation to The Highland Council's handling of requests since the legislation came into force in January 2005.

Table 2 – Appeals to the Scottish Information Commissioner

Total applications received	58
Cases closed without investigation	15
Cases closed during investigation	
Settled	14
Withdrawn/ abandoned	4
Vexatious / frivolous	0
Other	0
Cases closed with decision	
For applicant	5
For authority	12
Partially upheld	5
Not decided	3

- 3.3 Between January 1st 2005 and the 31st March 2013 the Council recorded 6,371 requests under the legislation. Therefore only 0.86% of the requests received by the Council resulted in appeals, 0.35% resulted in decisions by the Commissioner and only 0.08% resulted in decisions against the Council.

4. Summary of decision notices - 2011/12

Two decision notices were issued regarding The Highland Council during 2011/12:

4.1 201100343 – Antisocial behaviour investigation

The Council was asked for reports and related information on investigations carried out by the Council into the behaviour of named individuals. The Council withheld the information on the basis that it was subject to legal professional privilege, or that it was personal data (some being the applicant's own personal data and some being the personal data of others, the disclosure of which would breach the data protection principles). The Commissioner found in favour of the Council.

4.2 201101642 – Contractual delay payments claimed

This request was for information relating to payments claimed for delays in the provision of computer equipment to schools. The Council disclosed some elements of the requested information, but withheld others under section 33(1)(b) of FOISA (on the basis that disclosure would be likely to prejudice substantially the contractor's commercial interests) and section 36(2) (confidentiality). The Commissioner found in favour of the Council on the basis that section 36(2) applied.

5. Summary of decision notices – 2012/13

Three decision notices were issued regarding The Highland Council during 2012/13:

5.1 201200798 – Details of complaints

The applicant asked The Council for details of complaints made about activities at Ledgowan Estate in Wester Ross. The Council provided details of the complaints, but withheld certain information that identified complainants on the basis that this was personal data, disclosure of which would breach the first data protection principle. The Commissioner agreed with the approach taken by the Council, having concluded that the information withheld by the Council was exempt under section 38(1)(b) of FOISA (third party personal data).

5.2 201201664 – Failure to respond to a request for a review

The Commissioner found in favour of the applicant, on the basis that the Council did not respond appropriately to a request for a review of its lack of a full response to an initial request.

5.3 201201731 – Development Plan information

The Council was asked for information relating to the Highland-wide Local Development Plan (HWLDP), in respect of a specific site. The Commissioner carried out an investigation and accepted that the Council did not hold the information requested.

6. Implications arising from the report

6.1 Resource Implications

There are no resource implications as a result of this report.

6.2 Equalities implications

There are no implications for equality issues.

6.3 Climate Change, Legal and Risk implications

There are no climate change implications.

6.4 Legal implications

The Council is legally bound to comply with FOISA and EIRs. The Scottish Information Commissioner has powers of enforcement which can be used where a public authority is consistently failing to comply with the legislation.

6.5 Risk implications

There is a risk that failure to comply with the legislation could lead to action by the Scottish Information Commissioner.

Recommendation

Members are asked to note:

- That the Scottish Information Commissioner has closed her assessment of the Council.
- The Council has completed the Action Plan resulting from the Commissioner's audit.
- The Council's performance in complying with the legislation and the steps taken to continue to improve this.
- The statistics in relation to appeals to the Scottish Information Commissioner regarding the Council's handling of requests.
- The details of the decision notices issued by the Scottish Information Commissioner regarding the Council's responses to requests during 2011/12 and 2012/13.

Signature:

Designation: Assistant Chief Executive

Date: 10th November 2013

Author: Miles Watters, Freedom of Information Officer