
Report To:	Policy & Resources Committee	Date:	23 May 2023
Report By:	Head of Legal, Democratic, Digital & Customer Services	Report No:	LS/045/23
Contact Officer:	Carol Craig-McDonald	Contact No:	01475 712725
Subject:	Freedom of Information Annual Report 2022		

1.0 PURPOSE AND SUMMARY

1.1 For Decision For Information/Noting

1.2 This is an agreed routine annual monitoring report to provide the Policy & Resources Committee with details of Freedom of Information (FOI) requests received by the Council during the period 1 January – 31 December 2022.

1.3 The Freedom of Information (Scotland) Act 2002 (FOISA) came into effect on 1 January 2005. Under FOISA, a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority, subject to certain conditions and exemptions which are set out in the FOISA. The Environmental Information (Scotland) Regulations 2004 (the EIRs) also came into force on 1 January 2005 and give the public rights of access to environmental information held by Scottish public authorities.

1.4 The Council has adopted the Model Publication Scheme 2016 which was produced and approved by the Scottish Information Commissioner on 29 March 2016. The Model Publication Scheme (MPS) and the Council's Guide to information available through the MPS are on the Council's website at - <http://www.inverclyde.gov.uk/>

2.0 RECOMMENDATION

2.1 It is recommended that the Committee:

- (1) Notes the information provided in relation to FOI requests received by the Council during 2022.
- (2) Approves the publication of the annual performance report on the Council's website.
- (3) Notes that going forward officers will cease the collection of information on the time spent on, and estimated costs of dealing with, FOI and EIR requests across the Council, which will no longer be reported annually to Committee.

Iain Strachan
Head of Legal, Democratic, Digital & Customer Services

3.0 BACKGROUND AND CONTEXT

- 3.1 FOISA provides a right of access to recorded information held by Scottish public authorities subject to certain conditions and exemptions which are set out in the FOISA.
- 3.2 The Council has adopted the Model Publication Scheme 2016 which was produced and approved by the Scottish Information Commissioner on 29 March 2016. The Model Publication Scheme (MPS) and the Council's Guide to information available through the MPS are on the Council's website at <http://www.inverclyde.gov.uk/> . The Council's Guide provides information on:-
- what information is available (and what is not available) in relation to each class;
 - charges that may be applied;
 - how to find the information easily;
 - contact details for enquiries and help with accessing the information; and
 - how to request information held by the Council that has not been published.
- 3.3 An applicant for information has the right to ask the Council to review its action and/or decisions if they are dissatisfied with the way in which the Council has dealt with the request for information. If still dissatisfied with the review decision, or if the review decision has not been received within 20 working days, an applicant may appeal to the Scottish Information Commissioner.
- 3.4 The Scottish Information Commissioner has since April 2013 asked all Scottish public authorities to provide statistics on FOI requests and requests under the EIRs, the number of Subject Access Requests received, details of reviews dealt with and exemptions/exceptions applied on a quarterly basis. These statistics are available on the Scottish Information Commissioner's website at <http://www.itspublicknowledge.info/>
- 3.5 Although the Scottish Information Commissioner has no locus in relation to Subject Access Requests (SARs), this information is collected to see how the number of FOI and EIR requests authorities receive compares to the number of SARs received.

4.0 PROPOSAL

- 4.1 During 2022, a total of 1044 requests under FOI, 103 under the EIRs and 88 SARs were received. The annual report on performance during 2022 is appended to this report.
- 4.2 Section 2 of the appended report provides a comparison with the number of FOI and EIR requests received by the Council from 2016 to 2022. Members will note that, in comparison with volumes received during 2021, that there has been a 22% increase in the overall number of FOI/EIR requests dealt with by the Council. The volumes of requests being received appears to be normalising post the COVID-19 pandemic, when previous years' numbers are also reviewed, albeit a further increase can also perhaps be anticipated.
- 4.3 Section 2 of the appended report details in full the source of applicants who submitted requests over the course of the year. The top three sources of requestors who submit FOI requests are recorded as Individuals at 37.8%, Media and Newspaper Sources at 15.07% and Parliamentary Assistants 14.02%. Additionally, there were 14.2% of requests associated under the category of Others however this can not be quantified from the source of where these requests came from.
- 4.4 The Council's responses to FOI and EIRs for on time, late and failed to respond rates, as well as percentages of key performance indicators which is used by the SIC when comparing performance of other Scottish local authorities, is detailed in section 4 of the appended report. The Council responded to 91% of information requests on time and had a failure rate of 9% for responding late or failing to

respond to information requests during 2022. This reflects an 11% improvement on both the on-time and failure response rate which is reflective of the increased monitoring, and work by service areas, that has been undertaken throughout 2022. The Council is continuing to work on sustaining the time taken to respond to requests, following the intervention that was opened by SIC earlier in 2022, and reported to the Committee with the 2021 Annual Report, on 15 November 2022.

- 4.5 FOI/EIR requests are dealt with within existing staff resources and are recorded and co-ordinated centrally by Legal, Democratic, Digital & Customer Services. In addition, Legal, Democratic, Digital & Customer Services deals with any requests which are specific to the service and all of the corporate requests, the preparation and submission of quarterly statistical returns to the SIC and quarterly monitoring reports to the Corporate Management Team (CMT). This is supported by staff within the directorates who deal with service specific requests.
- 4.6 Quarterly reports on progress throughout the year are submitted to the CMT for overall review and any actions on a service specific basis and to ensure awareness of the impact on staff resources.
- 4.7 The information management system Workpro has been in use throughout 2022 for the processing of FOI requests, having been introduced in November 2021. Benefit from the system has been realised in terms of how we are responding to and managing the FOI requests across all services and in particular timescale management using the reports within the suite. Further training was delivered to support the ongoing development of knowledge across all officers who deal with FOI requests.
- 4.8 Monitoring of performance has been undertaken using the Day 15 FOI work progress report, the revised process which was implemented on 15 January 2022. The Information Governance and Complaints Officer continues to issue this report on a weekly basis to the Extended Corporate Management Team (ECMT). The report highlights those cases that may require assistance from and escalation to managers to expedite prompt responses to requests. This is particularly important when a response has not yet been issued and the statutory response deadline is approaching. The implementation of this process is continuing to have a positive effect – in that improved response times generally and for more complicated requests have been noted. Monitoring will continue in the coming year routinely to maintain oversight on performance.
- 4.9 Additionally in January 2022, a new FOI workflow summary was developed to improve officer understanding of the FOI process and to introduce escalation points to assist with improving focus on the response timescales being met and the quality of responses being improved. There are more stringent measurements in place within services to ensure the appropriate timely actions are taken by services when responding to requests. The FOI workflow process summary also clearly defines the roles and responsibilities of officers at key stages of the process timescales. The new stringent measures sit alongside the above-mentioned Day 15 report that is issued weekly to senior managers to highlight cases that may require assistance from managers in order to expedite a prompt response to requests. The CMT along with the Information Governance Team are supporting the focus on key actions that are required each week, which have assisted in the improving performance in subsequent quarterly performance statistics to date.
- 4.10 As noted above, and reported to the Committee last year, in February 2022, the Scottish Information Commissioner (SIC) opened a Level 1 Intervention in respect of the Council's failure to comply with FOISA. Specifically, this action was taken by SIC as a result of concerns with the high levels of both late responses and requests where the Council failed to respond. The Council responded to the Level 1 Intervention providing supporting information and details of actions that were being taken to address non-compliance with the statutory timescales. Ongoing monitoring was also implemented to support the improvements sought by the SIC and the Council. The table below highlights the quarterly trends for the Council's FOI response failure rate. The SIC wrote to the Council on 26 January 2023 noting the positive improvements evident in the submission of statistics since the Level 1 Intervention was

opened. The failure rate statistic finished up at 5.2% for the last quarter of 2022, and 91% of responses were issued on-time over the whole of 2022, which is the best performance achieved since close monitoring was introduced. The SIC have indicated that if the performance remains at this level, they will be looking to close the Level 1 Intervention which the Council are awaiting confirmation of.

Period	FOI/EIRs responded to within Statutory Timescale	% On time	FOI/EIRs responded to out with Statutory Timescale	Requests not responded to	% of failed to respond within statutory timescale rate
Jan - Mar 2021	152	82.6%	32	0	17.4%
Apr - Jun 2021	155	68.9%	70	0	31.1%
Jul - Sept 2021	180	79.6%	43	3	20.4%
Oct - Dec 2021	269	85.4%	43	3	14.6%
Jan - Mar 2022	324	90%	33	3	10%
Apr - Jun 2022	344	91%	29	2	9%
July - Sept 2022	280	89.2%	32	2	10.8%
Oct - Dec 2022	395	94.7%	22	0	5.3%

- 4.11 An internal audit of the FOI process was undertaken between August and October 2022 in accordance with 2022/23 Internal Audit Plan. The audit identified 6 green issues which if implemented by management would enhance the control environment. The overall control environment opinion for this audit review was Satisfactory. The Legal, Democratic, Digital & Customer Service are implementing the agreed actions in the action plan, which it is hoped will further improve the Council's performance.
- 4.12 As noted below, information on the time spent and estimated costs of dealing with FOI and EIR requests across the Council has been collated from May 2016. Officers now consider that there is no tangible benefit from the collection of this information, and no statutory requirement for local authorities to report on it. Given this, and considering other operational priorities, it is intended that this collation will cease, and this information will not be reported to Committee in future years.

5.0 IMPLICATIONS

- 5.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

SUBJECT	YES	NO	N/A
Financial	x		
Legal/Risk	x		
Human Resources		x	
Strategic (LOIP/Corporate Plan)	x		
Equalities & Fairer Scotland Duty			x
Children & Young People's Rights & Wellbeing			x
Environmental & Sustainability			x
Data Protection			x

5.2 Finance

All costs associated with dealing with FOI and EIR requests, reviews and appeals and SARs are contained within existing budgets. Information on the time spent and estimated costs (based on the mid-point of the relative salary grade) of dealing with FOI and EIR requests across the Council has been collated from May 2016. Services are conscious of the need to accurately record the costs incurred and guidance and support are offered to assist in ensuring the Council has a clear view of

the resources utilised. The time spent on and estimated cost of dealing with FOI and EIR requests during January-December 2022 is set out in the table below and shows an increase in time and costs associated with dealing with FOIs. Throughout the year there has been anomalies in the capturing of this information by services in real time although this has been remedied by service areas. Reminders of the importance of completing this information at time of responding to the request has been reiterated to support the timely preparation of reporting.

Period	No of Requests	Time Spent	Estimated Cost
January - December 2017	1281	1814.4 hours	£30,112.93
January – December 2018	1305	1412.20 hours	£23,953.28
January – December 2019	1298	1934.95 hours	£39,122.34
January – December 2020	1042	1398.02hours	£29,553.44
January – December 2021	937	1222.34 hours	£24,919.80
January – December 2022	1142	2576.00 hours	£39,574.00

The Freedom of Information (Scotland) Act 2002 makes a limited provision for refusing requests which incur an excessive cost, and partially for recharging those that would cost the authority more than £100 to process. The Environmental Information Regulations allows for full recharge of the cost of dealing with requests. During the period of this report 2 requests were refused on the grounds that answering them would exceed the statutory cost limit and 1 fees notice was issued, however did not progress as payment was not received.

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

5.3 Legal/Risk

The Council is legally bound to comply with FOISA and the 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.

5.4 Human Resources

There are no human resource implications directly arising from this report.

5.5 Strategic

This report helps deliver Council Plan Theme 3 Outcome: Performance – high quality and innovative service are provided, giving value for money.

6.0 CONSULTATION

6.1 None

7.0 BACKGROUND PAPERS

7.1 None

Inverclyde Council

Freedom of Information

Report on information requests received from
1 January 2022 to 31 December 2022

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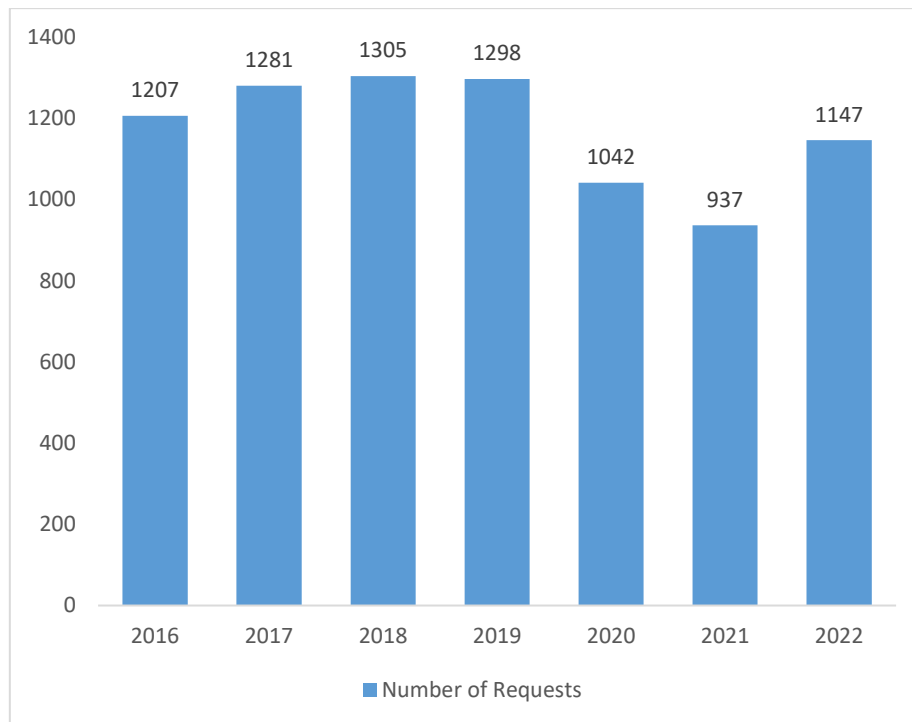
1. Introduction

This report outlines the volume of information requests received during the period 1 January to 31 December 2022 and provides a performance review across the Council's processing of these requests. It also considers the use of exemptions, fees, reviews, and appeals.

The Freedom of Information (Scotland) Act 2002 (FOISA) and the associated Environmental Information Regulations 2004 (EIRs) provide a statutory right to access information that is held by Scottish Public Authorities. FOISA encourages openness and accountability and helps to build trust between the Council and the public it serves.

2. Volume of requests received

Inverclyde Council (including the HSCP) received 1147 requests for information in 2022 compared to 937 received in the previous year. This figure represents a 22% increase in the number of information requests received during 2022. This total comprised of 1044 requests under FOISA (929 in 2021) and 103 under the EIRs (8 in 2021). This is an increased number of EIRs which is largely down to more accurate categorisation of these requests. The Council also received 88 Data Subject Access Request (SARs) which is a 60% increase when comparing to last year's SARs of 55 requests. The Council responds to more requests than are received in the year, which is due to the natural carry over from each quarterly period and the legacy of requests which were not responded to in 2021 which were responded to in 2022. The carry over requests can, however, still be responded to within the statutory response time, where there is time available.



3. The Nature of requests

The requests for information have been received from a variety range of sources as noted in the table below. The top three sources of requests have been received from individuals – 37.8%, media and newspaper sources - 15.07% and parliamentary assistants - 14.02%. Additionally, there were 14.2% of requests associated under the category of Others however this cannot be quantified from the source of where these requests came from.

Source of request	% Of requests - 2021	% Of requests 2022
Individual	42.9%	37.80%
Commercial Firm	18.3%	9.41%
Media / Newspaper	15.7%	15.07%
Parliamentary Assistant	9.28%	14.02%
Charity / Third Sector	4.2%	3.31%
Legal Firm	2.5%	2.44%
Other	1.3%	14.20%
Students	1.28%	0.44%
Trade Union	1.17%	0.44%
Researchers	1.06%	1.48%
Client	0.4%	0.52%
Employee	0.3%	0.44%
Political Party MSP	0.1%	0.44%

4. Performance

The table below compares the Council's responses to FOIs and EIRs for on time, late and failure to respond rates as well as percentages of key performance indicators which are used by the Scottish Information Commissioner (SIC) when comparing performance with other Scottish local authorities. The statistics reflect what was reported to the SIC at the time of submitting the Council's statistical return. The Council responded to 91% of information requests on time and had a failure rate of 9.1% for responding late or failing to respond to information requests during 2022. A decrease is evident in the number of FOIs/EIRs failure rate when comparing the key performance indicators in 2022 to the previous year. The Council ended the year with 7 requests, which were not responded to, and 116 requests which were responded to late. Those FOIs which were not responded to now have FOIs been, which reflects the position as noted as part of the quarterly provision of the Council's statistical updates to the SIC.

No of requests received	2016	2017	2018	2019	2020	2021	2022
No of FOIs rec in calendar year	1193	1265	1273	1282	1009	929	1044
No of EIRs rec in calendar year	14	16	32	16	33	8	103
Total requests rec in the year	1207	1281	1305	1298	1042	937	1147

On time Response Performance numbers and %	2016	2017	2018	2019	2020	2021	2022
No of responses issued within timescales during the year	1010	1063	1042	1144	820	748	1049
Percentage of requests answered within timescale	86%	92%	84%	91%	80%	80%	91%

FOI not responded to failure rate numbers & %	2016	2017	2018	2019	2020	2021	2022
No of request where we failed to respond during the year	0	0	0	0	15	4	7
No of responses issued late during the year	151	95	197	119	187	188	116
Failure rate for responses issued during the year%	14%	8%	16%	9%	20%	20%	9%

During 2022, there was an increased focus on the Council's performance when responding to FOIs as it recognised the number of responses being issued late was too high. In January 2022, a new FOI workflow summary was developed to improve officer understanding of the FOI process and to introduce escalation points to assist with improving focus on the response timescales being met and the quality of responses being improved. The summary also clearly defined the roles and responsibilities of officers at key stages of the process timescales. There are more stringent measurements in place within services to ensure the appropriate timely actions are taken when responding to requests. The more stringent measures sit alongside a new Day 15 report that is issued weekly to senior managers to highlight cases that may require assistance from managers to expedite a prompt response to requests. The Corporate Management Team along with the Information Governance Team supporting the focus on key actions required each week have assisted in the improving performance in subsequent statistics seen to date.

In February 2022, a Level 1 Intervention was opened by SIC with the Council in connection with its 2021 submitted statistics. This action was taken by SIC because of concerns with the Council's recording for both late responses and requests where the Council failed to respond, which was at a rate of 29% or more in quarter 1 and 20% or more in quarter 2 of 2021. The aim of the intervention is to support the Council to improve its performance with regard to providing timely responses to information requests. In replying to this intervention, the Council provided SIC with a written response, along with supporting information, including details of actions taken to address non-compliance with the statutory timescales required under FOISA.

The SIC noted that the Council's response was comprehensive and noted that the Council's quarter 3 submission in 2021 for both late responses and failures to respond was at a rate of 20%, therefore demonstrating a continued improvement in response rates. The SIC sought a continuing downward trend for both late and failure to respond rates in the next couple of quarterly submissions to match the significant steps the Council has taken to improve performance. The table below shows the continued reduction over 2022 in the number of late and not responded to requests each quarter, as well as the noted increase in the number of on time responses issued up to the most current period's statistics. This shows the continuing improvement desired for these performance indicators.

Period	FOI/EIRs responded to within Statutory Timescale	% On time	FOI/EIRs responded to out with Statutory Timescale	Requests not responded to	% of failed to respond within statutory timescale rate
Jan - Mar 2021	152	82.6%	32	0	17.4%

Apr - Jun 2021	155	68.9%	70	0	31.1%
Jul - Sept 2021	180	79.6%	43	3	20.4%
Oct - Dec 2021	269	85.4%	43	3	14.6%
Jan - Mar 2022	324	90.0%	33	3	10.0%
Apr - Jun 2022	344	91.0%	29	2	9.0%
July - Sept 2022	280	89.2%	32	2	10.8%
Oct - Dec 2022	395	94.7%	22	0	5.3%

5. Exemptions

Most requests which have been responded to have resulted in full disclosure of all the requested information in 1023 (89%) of information requests. However, for some requests some information is exempt from disclosure in terms of FOISA or the EIRs. In such instances, FOI or EIR exemptions and exceptions are applied. The table below provides further information as to the use of these exemptions and exceptions. Partial disclosures, where some but not all information was released, accounts for 77 (6%) of information requests. The Council relied on exemptions or exceptions for all requested information in 47 (4%) of information requests received although this is largely attributable to information sought not being held by the Council or being otherwise accessible through other sources such as already published on the Council's website or on the Scottish Government website as part of statutory duties to report data.

Section	Exemption / Exception Cited	No of times cited
Section (12)	Excessive cost of compliance	3
Section (17) Regulation 10(4)a	Information not held	67
Section (25) Regulation 6(1)b	Information otherwise accessible	11
Section (26)	Statutory Prohibition	0
Section (27)	Future Publication	2
Section (30)	Substantial prejudice	5
Section (33), Regulation 10(5)e	Commercial interests and the economy	5
Section (34)	Investigations	0
Section 35 Regulation 10(5)b	Law Enforcement	0
Section (36) Regulation 10(5)d	Confidentiality	5
Section (39)	Health and Safety	0
Section (38) Regulation 11	Personal Information	9
Regulation 10(5)f	Interests of the supplier of information	0
Regulation 10 (4)c	Request formulated in too general a manner	0

6. Fees

FOISA makes limited provision for refusing requests, which incur an excessive cost and for partially recharging those that would cost the authority more than £100.00 to process. The EIRs allow for the full recharge of the cost of dealing with requests. The table below sets out the number of requests where fees notices were issued. If the applicant does not pay the fees notices within a certain period of time, the request will not be progressed. The Council tends to release the information in most cases without a fee. In relation to EIRs, services are encouraged to charge for information particularly when a significant amount of information is required. The Council has a charging schedule on the Council's website to assist officers with this.

Quarterly Period	No of Requests where fees notices issued	No of requests fee notice not paid	No of Requests where fees notice paid
Jan to Mar 2022	0	0	0
Apr to Jun 2022	0	0	0
Jul to Sept 2022	0	0	0
Oct to Dec 2022	1	1	0

7. Time and Cost Involved in Responding to FOIs

All costs associated with dealing with FOI/EIR requests, reviews, and appeals and Data Subject Access Requests are contained within existing budgets. However, information on the time spent and estimated cost (based on the mid-point of the relative salary grade) of dealing with FOI and EIR requests across the Council has been collated since May 2016.

The time spent and the estimated cost of dealing with FOI and EIR requests during 1 January to 31 December 2022 is set out in the table below with comparison data for the same period in previous years. A noted improvement in the level of detail recorded for time and costs is evident in the recorded detail across all services. This is the first year where we have seen the new Workpro process embed, which has seen the FOI designated officers recording this information directly to each case real time. Whilst there have been anomalies in capturing of this detail real time each quarter, all corrective work has been actioned by all services to close of recording gaps. This is the most accurate view seen over recent years for the time and cost detail and represents officer involvement at all grades which was evidenced during the compilation of the data. Reminders has been issued to officers involved in the process to remind them of the importance of inputting this information at time of responding to the FOI requests to support prompt reporting.

Period	Time spent in hours	Estimated costs
1 January – 31 December 2017	1814.4 hours	£30,112.93
1 January – 31 December 2018	1412.20 hours	£23,953.28
1 January – 31 December 2019	1934.95 hours	£39,122.34
1 January – 31 December 2020	1398.02 hours	£29,553.44
1 January – 31 December 2021	1222.34 hours	£24,919.80
1 January - 31 December 2022	2576.00 hours	£39,574.00

8. Reviews and Appeals

During 2022 of the 1147 information requests received, the applicants formally asked the Council to review its decisions on 12 FOIs and 1 EIR requests. The table below outlines the outcome of the reviews. Applicants submitted appeals to the SIC in 4 cases. The SIC have notified the Council of receipt of requests for an appeal in 2 cases, the Council await the formal request for submissions from the SIC on these 2 cases. The Council have also received

notification of application for appeal on 2 further cases and the Council have provided further comments to the SIC to consider these further for both cases.

Type of review	Number of reviews
No of requests for internal reviews	12 FOIs & 1 EIR
Outcome of internal reviews:	
- upheld the Council's decision	4
- partially upheld the Council's decision	5
- did not uphold the Council's decision	4
- internal review submitted outside of timescale	0
Appeals to Scottish Information Commissioner (SIC)	
- Awaiting request for submissions from SIC	2
- Notification of application and the Council has supplied comments requested	2
Outcome of SIC Appeal:	
-upheld the Council's decision	0
-did not uphold the Council's decision	0
-withdrawn by applicant	0

9. Conclusion

The Council's performance during 2022 improved following the close monitoring process that was implemented early in the 2022 to support improvement required in statutory response timescales. During the year, training has been delivered to support FOI designated officers and those officers involved in responding to requests to refresh knowledge and support confidence in application of exemptions and exceptions.

The Workpro System which is the case management system used to support the end-to-end process has made difference to the way in which the process requests and how we monitor performance. The recent audit of the Freedom of Information process has also identified that the process is working well and the Legal, Democratic, Digital and Customer Services are working on the action plan to further strengthen the process. It is anticipated that the recently implemented system Workpro together with ongoing work on policy, procedures and training will continue to support the improvements required in the coming year's performance.