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<b>Report To:</b>	<b>Policy &amp; Resources Committee</b>	<b>Date:</b>	<b>16 November 2021</b>
<b>Report By:</b>	<b>Interim Director, Finance &amp; Corporate Governance</b>	<b>Report No:</b>	<b>LS/089/21</b>
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<b>Subject:</b>	<b>Freedom of Information Annual Report - 2020</b>		

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## 1.0 PURPOSE

- 1.1 The purpose of this report is 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 2020.

## 2.0 SUMMARY

- 2.1 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.
- 2.2 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 [www.inverclyde.gov.uk](http://www.inverclyde.gov.uk).

## 3.0 RECOMMENDATION

- 3.1 The Policy & Resources Committee is asked to note the information provided in relation to FOI requests received by the Council during 2020.

**Anne Sinclair**  
**Interim Head of Legal Services**

## 4.0 BACKGROUND

- 4.1 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.
- 4.2 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 [www.inverclyde.gov.uk](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.
- 4.3 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.
- 4.4 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 [www.itspublicknowledge.info](http://www.itspublicknowledge.info).
- 4.5 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.

## 5.0 REQUESTS RECEIVED

- 5.1 During 2020, 1009 FOI requests, 33 requests under the EIRs and 66 SARs were received.
- 5.2 A comparison with the number of FOI and EIR requests received from 2016 is set out in the table below.

Year	FOIs	EIRs	Total	FOI/EIRs Responses Within Statutory Timescale	FOI/EIRs Responses Outwith Statutory Timescale	Withdrawn/Carried Forward (clarification/fees)	No of requests not responded too
2016	1193	14	1207	1010	151	46	0
2017	1265	16	1281	1063	95	123	0
2018	1273	32	1305	1042	197	46	0
2019	1282	16	1298	1144	119	25	0
2020	1009	33	1042	820	187	17	15

- 5.3 Members will note from the table above that, in comparison with 2019, there has been a decrease in the overall number of FOI/EIR requests dealt with by the Council. This was attributable to the second quarter of the year when the pandemic saw the UK move into a national lockdown. A lower number of FOI requests was received during the months of March to July 2020 inclusive. The number of requests received in subsequent quarters normalised, although the numbers were marginally lower than the averages previously received each quarter. It should also be noted that there was a 51% increase in the number of EIRs received in 2020 due to correct categorisation

upon receipt. The number of SARs received also showed a very slight increase when compared against the 2019 figures. This is largely attributable to individuals being more aware of their rights of access under the Data Protection Act 2018.

- 5.4 The Covid-19 pandemic had an impact on performance in terms of ensuring that statutory timescales were met, especially during the first few months of the pandemic. The number of FOIs/EIRs which were responded to out-with the statutory timescale increased by 63% in 2020. The Council reported 15 requests that were not responded to over the course of the year, although this position was higher when reported in the respective quarterly performance reports. These numbers reduced over the year and were later reflected as FOIs that were responded to late, rather than not responded to at all, once services had responded to these requests.
- 5.5 Temporary changes to FOISA were brought in by the Coronavirus (Scotland) No.2 Act which allowed the Scottish Information Commissioner to decide that the Council did not fail to comply with its FOI duties by not responding to a request within 20 working days if he was satisfied that the failure to respond on time was:
1. Due to either the effect of the coronavirus on the Council or the Council acting under the 60 working day timescale when it was in force (7 April to 26 May inclusive); AND
  2. Reasonable in the circumstances, with primary consideration being given to public interest in the Council responding promptly to requests.

This temporary legislation expired at the end of September.

Information and guidance was provided to all FOI representatives within services to assist with managing and responding to requests during the pandemic. The continued duty to respond to requests promptly and to proactively publish information was emphasised.

- 5.6 During 2020, the Council received 9 FOISA requests for review and 3 EIR requests for review. Two cases were referred to the Scottish Information Commissioner for a decision. The Scottish Information Commissioner upheld the Council's decision on one appeal and the other was later withdrawn by the applicant once further information was disclosed.
- 5.7 FOI/EIR requests are dealt with within existing staff resources and are recorded and co-ordinated centrally by Legal Services. In addition, Legal Services deals with any requests which are specific to the service, all of the corporate requests, the preparation and submission of quarterly statistical returns to the Scottish Information Commissioner and quarterly monitoring reports to the CMT. This is supported by staff within the directorates who deal with service specific requests.
- 5.8 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. Moving forward reports will be submitted to the CMT on a 6 monthly basis.

## **6.0 REVIEW OF POLICY AND PROCEDURE**

- 6.1 In order to improve response times and the quality of FOI responses, a specific Corporate Development Improvement Plan (CDIP) improvement action is being progressed. It is recognised that the Council's FOI policy and guidance needs updated, a training programme requires to be established and an information management system to better manage FOI requests needs to be implemented. Covid-19 and unplanned staff absences has further delayed the progress that was planned.
- 6.2 The Workpro system will be cascade to all Services during the month of November. This will be following with training which is being organised to increase knowledge across all officers who deal with FOIs. Refreshed guidance will be issued to officers completing all of this by December 2021.

## **7.0 IMPLICATIONS**

### **Financial**

7.1 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 2020 is set out in the table below and show a decrease in estimated hours and costs. It is recognised that services have improved the accuracy of providing time and cost recording for reporting purposes.

Period	Time Spent	Estimated Cost
January - December 2017	1814.4 hours	£30,112.93
January – December 2018	1412.20 hours	£23,953.28
January – December 2019	1934.95 hours	£39,122.34
January – December 2020	1398.02hours	£29,553.44

One off Costs:

Cost Centre	Budget Heading	Budget Year	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 £'000	Virement From (If Applicable)	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

## Legal

7.2 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.

## Human Resources

7.3 None.

## Equalities

7.4 Equalities

(a) Has an Equality Impact Assessment been carried out?

YES	
X	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of

outcome?

	YES – A written statement showing how this report’s recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
X	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
X	NO

**7.5 Repopulation**

None.

**8.0 CONSULTATIONS**

8.1 None.

**9.0 BACKGROUND PAPERS**

9.1 None.