
Report To:	Policy & Resources Committee	Date:	17 September 2024
Report By:	Head of Legal, Democratic, Digital & Customer Services	Report No:	LS/054/24
Contact Officer:	Carol Craig-McDonald	Contact No:	01475 712725
Subject:	Freedom of Information Annual Report 2023		

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 2023.

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 2023.
- (2) Approves the publication of the annual performance report on the Council's website.

Lynsey Brown
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 (SIC) 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 2023, a total of 1151 requests under FOI, 99 under the EIRs and 132 SARs were received. The annual report on performance during 2023 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 2023. Members will note that, in comparison with volumes received during 2022, that there has been an 8.2% increase in the overall number of FOI/EIR requests dealt with by the Council. The volume of requests being received has normalised post the COVID-19 pandemic.
- 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 36.6%, Parliamentary Assistants at 15% and Media and Newspaper Sources at 12.3%. Additionally, there were 11.62% of requests associated under the category of 'Others' however this cannot 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 94% of information requests on time and had a failure rate of 6% for responding late or failing to respond to information requests during 2023. This reflects a 3% improvement on both the on-time

and failure response rate which is reflective of the increased monitoring, and work by service areas, which has been undertaken throughout 2023. The Council is continuing to work on sustaining the time taken to respond to requests, following the intervention that was opened by the SIC in 2022, and reported to Committee with the 2021 Annual Report on 15 November 2022. The intervention was closed by the SIC on 18 May 2023.

- 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 deal 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 2023 for the processing of FOI requests. 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 continues to be undertaken using the Day 15 FOI work progress report which was implemented in January 2022. The Information Governance Team 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 to maintain oversight on performance.
- 4.9 The FOI workflow summary continues to be used by services, the purpose of which is to improve officer understanding of the FOI process, to act as a reminder on the process that should be followed and to remind officers of the escalation points to assist with sustaining focus on the response timescales being met and the quality of responses being improved. These stringent measures remain in place within services to ensure the appropriate timely actions are taken by services when responding to requests. These 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, continue to support the focus on key actions that are required each week, which has assisted in improving performance in subsequent quarterly performance statistics to date.
- 4.10 As reported to Committee last year, 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 elevated 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 continued throughout 2023 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 18 May 2023 to close the Level 1 Intervention noting significant improvements made in response times. The Information Governance Team will continue to work with services to ensure that these improvements are sustained.

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%
Jan - Mar 2023	367	91.6%	28	6	8.4%
Apr - Jun 2023	348	92.3%	21	7	7.7%
July - Sept 2023	346	95.3%	17	0	4.7%
Oct - Dec 2023	407	96.67%	14	0	3.32%

4.11 An internal audit of the FOI process was undertaken between August and October 2022 in accordance with the 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. Update on progress reflected in the undernoted table

Audit Finding	Update on agreed action	Status
Business continuity arrangements involving the Workpro FOI/EIR case system	Training delivered to key officers to strengthen coverage across the key processes.	Completed
Managing quality assurance arrangements for FOI and EIR requests	Sample checks were carried out to ensure appropriate use of exemptions, appropriate use of information not held exemption, reasons for late responses and to review quality of responses. Training and guidance shared with FOI designated officers on areas that required focus.	Completed
Supporting people to easily locate the Council's published information	Finalise the completion of the council's publication scheme. Proactive publication to be promoted to all service areas to support the location of information sought without requirement to submit formal request	Due by 31/12/2024
Allocating FOI and EIR requests to services for processing	Services without a central mailbox for requests were consulted to see if they would introduce a centralised mailbox approach for receipt of receipts to support coverage of key processes. This was introduced by 5 additional Service Area. The remaining Services has stated their preference to retain their current arrangements	Completed

Lack of enforced password change and regular review of access rights to Workpro.	Workpro users will be reminded of the need to occasionally change their passwords which will comply with the ICT recommended practices	Completed
Adequacy of the procedures for managing FOI and EIRs requests	All FOI Guidance ad Workpro Guidance for officers to be reviewed and updated thereafter to ICON.	Drafting of the procedures has been commenced. To be finalised by 31/12/24.

4.12 As noted by Committee in May 2023, information on the time spent and estimated costs of dealing with FOI and EIR requests across the Council is no longer collated or reported annually to Committee. Officers considered that there is no tangible benefit from the collection of this information, and no statutory requirement for local authorities to report on it.

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 (Partnership Plan/Council Plan)	x		
Equalities & Fairer Scotland Duty & 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.

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.

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 services are provided, giving value for money.

5.6 Equalities, Fairer Scotland Duty & Children/Young People

(a) Equalities

This report has been considered under the Corporate Equalities Impact Assessment (EqIA) process with the following outcome:

	YES – Assessed as relevant and an EqIA is required.
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, assessed as not relevant and no EqIA is required. Provide any other relevant reasons why an EqIA is not necessary/screening statement.

(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 – Assessed as not relevant under the Fairer Scotland Duty for the following reasons: Provide reasons why the report has been assessed as not relevant.

(c) Children and Young People

Has a Children's Rights and Wellbeing Impact Assessment been carried out?

	YES – Assessed as relevant and a CRWIA is required.
x	NO – Assessed as not relevant as this report does not involve a new policy, function or strategy or recommends a substantive change to an existing policy, function or strategy which will have an impact on children’s rights.

5.7 Environmental/Sustainability

Has a Strategic Environmental Assessment been carried out?

	YES – assessed as relevant and a Strategic Environmental Assessment is required.
x	NO – This report does not propose or seek approval for a plan, policy, programme, strategy, or document which is like to have significant environmental effects, if implemented.

5.8 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 – Assessed as not relevant as this report does not involve data processing which may result in a high risk to the rights and freedoms of individuals.

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 2023 to 31 December 2023

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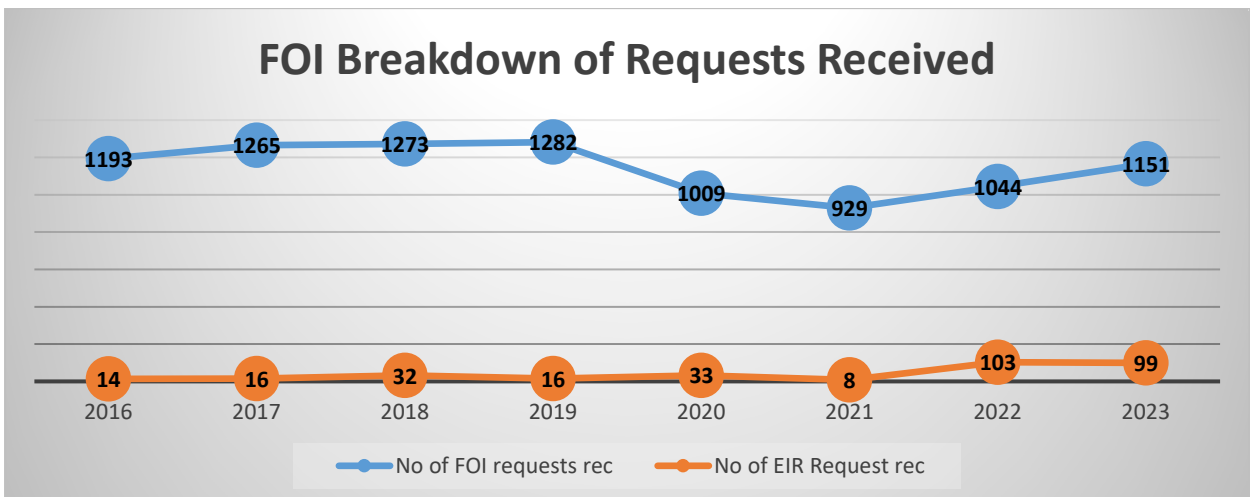
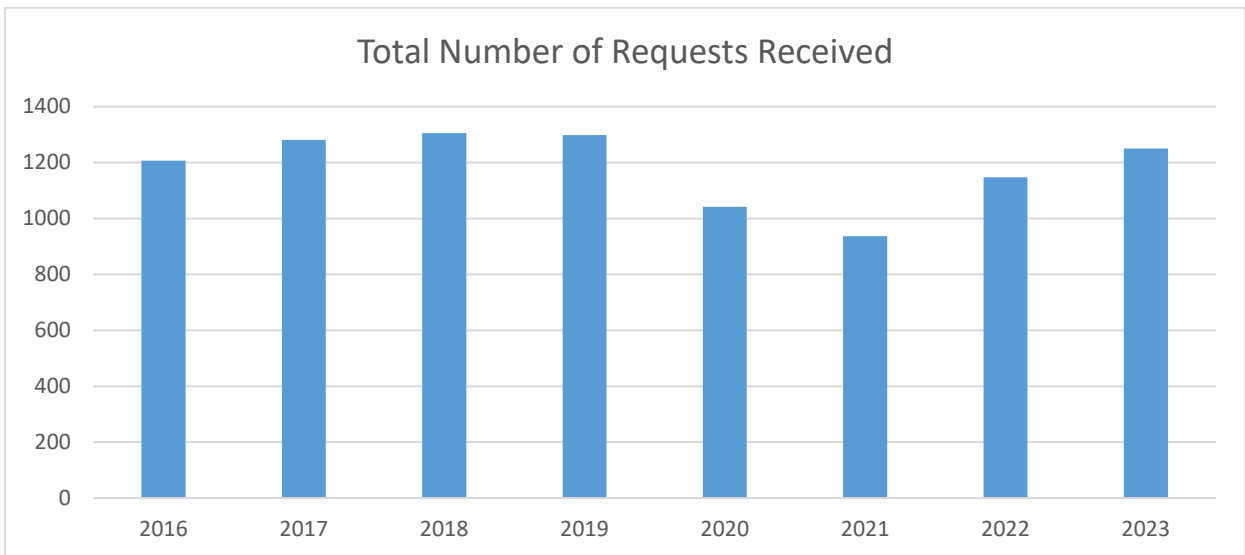
1. Introduction

This report outlines the volume of information requests received during the period 1 January to 31 December 2023 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 1250 requests for information in 2023 compared to 1147 received in the previous year. This figure represents an 8.2% increase in the number of information requests received during 2023. This total comprised of 1151 requests under FOISA (1044 in 2022) and 99 under the EIRs (103 in 2022). This is an increased number of EIRs which is largely down to more accurate categorisation of these requests. The Council also received 132 Data Subject Access Request (SARs) which is a 50% increase when comparing to last year's SARs of 88 requests.



3. The Nature of requests

The requests for information have been received from a variety of sources as noted in the table below. The top three sources of requests have been received from individuals – 36.6%, parliamentary assistants - 14.02% and media and newspaper sources – 12.3%. Additionally, there were 11.6% of requests associated under the category of Others however this cannot be quantified from the source of where these requests came from. The information was not recorded in 40 requests which we received and responded to.

Source of request	% of requests 2023	% Of requests 2022	% Of requests - 2021
Individual	36.6%	37.80%	42.9%
Commercial Firm	8.3%	9.41%	18.3%
Media / Newspaper	12.3%	15.07%	15.7%
Parliamentary Assistant	15%	14.02%	9.28%
Charity / Third Sector	2.7%	3.31%	4.2%
Legal Firm	1.3%	2.44%	2.5%
Other	11.6%	14.20%	1.3%
Students	0.6%	0.44%	1.28%
Trade Union	0.88%	0.44%	1.17%
Researchers	5.36%	1.48%	1.06%
Client	0.88%	0.52%	0.4%
Employee	0.0007%	0.44%	0.3%
Political Party MSP	0.96%	0.44%	0.1%

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 94% of information requests on time and had a failure rate of 5% for responding late or failing to respond to information requests during 2023. 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 8 requests, which were not responded to, and 56 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	2023
No of FOIs rec in calendar year	1193	1265	1273	1282	1009	929	1044	1151
No of EIRs rec in calendar year	14	16	32	16	33	8	103	99
Total requests rec in the year	1207	1281	1305	1298	1042	937	1147	1250

On time Response Performance numbers and %	2016	2017	2018	2019	2020	2021	2022	2023
No of responses issued within timescales during the year	1010	1063	1042	1144	820	748	1049	1174
Percentage of requests answered within timescale	86%	92%	84%	91%	80%	80%	91%	94%

FOI not responded to failure rate numbers & %	2016	2017	2018	2019	2020	2021	2022	2023
No of request where we failed to respond during the year	0	0	0	0	15	4	7	8
No of responses issued late during the year	151	95	197	119	187	188	116	56
Failure rate for responses issued during the year%	14%	8%	16%	9%	20%	20%	9%	5%

During 2023, there was a continued 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 previous years. The Council continued to apply more stringent measures within services to ensure the appropriate timely actions are taken when responding to requests. These measures sit alongside a 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, supports the focus on key actions required each week and this has assisted with the improved performance seen in the 2023 statistics, which show the best performance for a number of years.

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. The aim of the intervention was to support the Council to improve its performance with regard to providing timely responses to information requests.

An action plan was put in place and the SIC continued to monitor the Council's FOI statistics until they were satisfied with the Council's performance. The SIC closed the Level 1 Intervention on 18 May 2023 due to the continued and sustained improvement in the Council's response times to Freedom of Information Requests.

5. Exemptions

Most requests which have been responded to have resulted in full disclosure of all the requested information in 1013 (81%) 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 63 (5%) of information requests. The Council relied on exemptions or exceptions for all requested information in 121 (9.68%) 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 being 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	1
Section (17) Regulation 10(4)a	Information not held	71
Section (25) Regulation 6(1)b	Information otherwise accessible	12
Section (26)	Statutory Prohibition	0
Section (27)	Future Publication	1
Section (30)	Substantial prejudice	2
Section (33), Regulation 10(5)e	Commercial interests and the economy	3
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 2023	0	0	0
Apr to Jun 2023	0	0	0
Jul to Sept 2023	0	0	0
Oct to Dec 2023	0	0	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. The Policy and Resources Committee agreed to the cessation of collation of the time and grade information that was being collated for FOIs that were dealt with by the Council. This was communicated to FOI designated officers to alleviate the pressures that collating this information was putting on Service.

8. Reviews and Appeals

Of the 1250 information requests received in 2023, applicants formally asked the Council to review its decisions on 14 FOIs and 20 EIR requests. The table below outlines the outcome of the reviews. Applicants submitted appeals to the SIC in 14 cases (1 FOI, 13 EIRs). The SIC published a decision notice in connection with 4 requests following the Council's original failure to respond to these requests. Substantive review responses were provided and as a result, 3 further appeals have been submitted following the issue of the substantive response. 13 appeals are currently ongoing. There is a substantial increase in the number of appeals being submitted to the SIC, the majority of which are from one applicant.

Type of review	Number of reviews
No of requests for internal reviews	14 FOIs & 20 EIRs
Outcome of internal reviews:	
- upheld the Council's decision	14
- partially upheld the Council's decision	10
- did not uphold the Council's decision	10
- internal review submitted outside of timescale	0
Appeals to Scottish Information Commissioner (SIC)	
- Awaiting request for submissions from SIC	0
- Notification of application and the Council has supplied submissions as requested	13
Outcome of SIC Appeal:	
-upheld the Council's decision	0
-did not uphold the Council's decision	4*
-withdrawn by applicant	0

*Decision notices issued on the basis of the Council's failure to respond to the original FOI/EIR requests with a requirement to issue a substantive response.

9. Conclusion

The Council's performance during 2023 improved steadily each quarter. This follows the close monitoring process that was implemented in early 2022 to support the improvements 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 the application of exemptions and exceptions. The 2023 statistics demonstrate that the actions put in place to improve performance have been successful. This work will continue to ensure that these improvements are sustained.

Ongoing work on policy, procedures and training will continue in order to support continuous improvement of the Council's performance in meeting its statutory obligations.