

## ABERDEEN CITY COUNCIL

---

COMMITTEE	Corporate Policy and Performance
DATE	4 <sup>th</sup> March 2010
DIRECTOR	Stewart Carruth
TITLE OF REPORT	Corporate Freedom of Information Policy
REPORT NUMBER:	CG/10/015

---

### 1. PURPOSE OF REPORT

To seek Committee approval for a Corporate Freedom of Information Policy, and related Procedures as covered in the report.

### 2. RECOMMENDATION(S)

2.1 To approve the Corporate Freedom of Information Policy, and Staff Handling Procedure.

2.2 To note that the City Solicitor will issue further information and guidance documents in support of the Policy and in particular a separate guidance note for Members.

### 3. FINANCIAL IMPLICATIONS

Under the Freedom of Information (Scotland) Act 2002 ("FOISA") the Council is permitted to charge for information in certain (limited) circumstances. A separate paper on the fee structure for requests will be presented to Committee for approval in the near future. However, the Committee needs to be aware that compliance with requests under FOISA, across the Council, has a direct impact on resources in terms of the staff time spent on retrieving, collating, managing requests and advising and communicating with other services, FOI Enquiries, Legal Services and applicants.

This is demonstrated by the level of requests which are being made:

2005 - 603  
2006 - 562  
2007 - 451  
2008 - 720  
2009 - 925

There are 2 members of staff who work in the FOI Enquiries Team. The team deals with approximately 17 enquiries per week per member of staff. Most requests received have multiple questions (20 not being infrequent), and this volume is expected to rise as public awareness of the Act increases. This is in addition to the significant amount of work that is undertaken by Services when responding to requests.

#### 4. SERVICE & COMMUNITY IMPACT

The Council is committed to openness and transparency. This Policy formalises the statutory basis for these qualities, and will provide the public with an expectation against which the Council's performance may be measured. The Council is committed to "advocate and practice honest and open government, and give the public full access to information."

See attached for details of Equality and Human Rights Impact Assessment Form.

#### 5. OTHER IMPLICATIONS

Failure to correctly comply with FOISA and Records Management standards could leave the Council exposed to enforcement by the Scottish Information Commissioner, legal action and/or reputational damage.

The Policy and related procedures should be read with existing ICT Security, Data Protection and Records Management policies.

#### 6. REPORT

In December 2004 and January 2005, a comprehensive draft policy was produced which mirrored the scope of the legislation, which came into effect on 1<sup>st</sup> January 2005. However, that policy was never formally approved. At the same time, a 'How to' procedure, along with a staff handbook was created and put on the Zone. These guidance documents reinforced the content of the draft policy and any training and briefings which were drafted and delivered were also compliant.

A copy of the updated Policy is attached for approval and copies of the Staff Handling Procedures have been placed within the Member's library.

Once approved, the updated Policy will be uploaded to both the Council website and the intranet ("the Zone") and the Procedures will appear on "the Zone". Hard copies of all documents will also be sent to all Heads of Service, Data Protection Liaison Officers and Freedom of Information (Scotland) Act 2002 Liaison Officers for their information. Statements advising that the Policy and Procedures have been updated will be placed into Citylife.


Members should note the Scottish Information Commissioner is to conduct an Assessment (Inspection) of FOISA compliance across the Council on 22<sup>nd</sup> and 23<sup>rd</sup> February 2010. The outcome of that assessment will be presented to a subsequent Committee.

#### 7. REPORT AUTHOR DETAILS

Caroline Anderson

Records Manager

 canderson@aberdeencity.gov.uk

 01224 (52)2521

## 8. BACKGROUND PAPERS

Corporate Freedom of Information Policy

Equalities and Human Rights Impact Assessment Form

Staff Handling Procedure

Vibrant, Dynamic & Forward Looking



## CORPORATE POLICY

## FREEDOM OF INFORMATION

<b>Date Created:</b>	January 2010
<b>Version:</b>	1
<b>Review Date:</b>	January 2013
<b>Author (s) of Document:</b>	Caroline Anderson, Records Manager
<b>Changes:</b>	Reviewed, amended – January 2010 Submitted to Corporate Policy and Resources Committee 4 <sup>th</sup> March 2010

## **INTRODUCTION**

Aberdeen City Council (“the Council”) is required by The Freedom of Information Scotland Act 2002 (“FOISA”) to provide the public with a legal right to access any recorded information held by the Council subject to certain exemptions. This policy is designed to provide the policy framework through which the Council can embrace a culture of openness and accountability in line with the provisions and requirements of FOISA. Failure to comply may result in punitive action by the Scottish Information Commissioner and reputational damage to the Council.

## **SCOPE**

Overall responsibility within the Council for ensuring adherence to the FOISA lies with the Chief Executive and is devolved to Directors, Heads of Service, Managers and individual members of staff. All Line Managers should ensure that staff clearly understand FOISA responsibilities and follow all guidance and procedures relating to its legal adherence. The City Solicitor monitors compliance with FOISA in her capacity as Monitoring Officer.

This Policy applies to all staff in relation to:

- the records they create (whether electronic or manual), receive or maintain on behalf of the Council
- all recorded information held by the Council regardless of format
- all council services including those contracted out to 3<sup>rd</sup> parties.

## **POLICY STATEMENT**

This Policy represents a statement of intent that will:

- Form the basis of the Council’s FOISA Strategy
- Define FOISA as a specific corporate function
- Describe the framework for the management of all FOISA requests throughout their lifecycle; through to their legal conclusion
- Provide all staff with clear guidelines and procedures to implement the FOISA Policy.

## **GOVERNANCE**

This policy will demonstrate the Council's commitment to work within the spirit of FOISA, its related Regulations and Codes of Practice. This policy should be interpreted in conjunction with the Records Management, Data Protection, Environmental Information Regulations and ICT Security Policies that together provide the framework for governing recorded information. The Council will:

- Ensure that, where appropriate, more information will be published through its publication scheme and on its website;
- Handle all requests promptly and within the legal timeframe;
- Fairly apply the public interest test in cases where a qualified exemption applies;
- Make employees and contractors aware that it is an offence to prevent disclosure by altering, defacing, blocking, erasing, destroying or concealing any record.

Where valid exemptions apply to an FOISA request i.e. Data Protection, confidentiality, protection of commercial interests, the Council will state the reasons why it has withheld all or part of the information.

## **Directorates**

Directors are responsible for:

- Assigning an FOISA Liaison Officer ("FOILO") to provide advice and assistance to their Service and work alongside the FOI Enquiries Team in implementing and maintaining FOISA compliance as appropriate for each Service area,
- Ensuring that all FOISA procedures and guidance are adhered to and FOISA compliance is monitored.
- A FOILO representing a Head of Service and their related areas of work
- Retaining executive authority within their business area with respect to FOISA compliance
- Monitoring and evaluating quarterly statistical reports on FOISA request compliance activities
- Addressing non-adherence to this Policy by their staff. Where non-adherence by ACC staff or elected Members is as a result of insufficient training in Data Protection matters, training needs must be addressed on an urgent basis.

## **FOILO's**

All FOILO's should:

- Work with the FOI Enquiries Team and their Service to ensure the information requested is provided and,
- Participate in regular training, planning and corporate FOISA meetings to monitor and evaluate FOISA compliance.

## **Staff**

All staff and elected members should ensure that they are aware of this Policy, any Procedures or guidance documents made under it and who their Service FOILO contact is.

## **Training**

The FOI Enquiries Team will, in consultation with Employee Development, establish an effective FOISA Training Programme for all staff. This will include:

- General awareness training at Induction level,
- Specialist tiered training for those involved in more complex FOISA requests e.g. FOISA Liaison Officers.
- Online training modules delivered via OIL on the Council's intranet.

The FOI Enquiries Team will also produce guidance notes, procedures, advice and support to assist the compliance and development of FOISA and Records Management systems in line with this Policy. The FOISA Staff Handling Procedures Handbook provides full details of the Act and the Council's obligations in adhering to it and this is available on the Office of the City Solicitor's homepage on the Zone.

The FOISA procedures will compliment and support the Records Management and Data Protection Policies and associated procedures.

## **APPROVAL OF POLICY**

This policy will be reviewed annually to take account of any changes in the law and subsequent procedure, or immediately following any substantial legislative amendments, in the event of the Scottish Information Commissioner issuing further guidance or court decisions affecting FOISA legislation.

# Equality and Human Rights Impact Assessment - the Form

There are separate guidance notes to accompany this form – “Equality and Human Rights Impact Assessment – the Guide.” Please use these guidance notes as you complete this form. Throughout the form, proposal refers to policy, strategy, plan, procedure or report.

## STEP 1: Identify essential information

1. Name of proposal.

Corporate Freedom of Information Policy

2. Officers completing this form.

Name	Designation	Service	Directorate
Caroline Anderson	Records Manager	City Solicitor	Corporate Governance

3. Date of Impact Assessment.

4<sup>th</sup> March 2010

4. When is the proposal next due for review?

4<sup>th</sup> March 2013

5. Identify the Lead Council Service and who else is involved in the delivery of this proposal. (for example other Council services or partner agencies)

The Archives and Records Management Service, Office of the City Solicitor, are leading this proposal, along with Freedom of Information Liaison Officers (FOILOs) representing all Heads of Service across the Council.



6. Please summarise this Equality and Human Rights Impact Assessment, (EHRIA). This must include any practical actions you intend to take / have taken to reduce, justify or remove any adverse negative impacts (if necessary continue on blank sheet of paper). **Please return to this question after completing EHRIA.**

As part of the statutory obligation on the Council to provide a 'right of access' to information to anyone requesting it under the Freedom of Information (Scotland) 2002 Act (FOISA), this policy will:

- Ensure that all staff across the organisation are aware and implement the policy and procedures to ensure consistency of delivery
- Ensure there are no breaches of this legal duty reducing the likelihood of technical breach, investigation by the Information Commissioner, legal action against the council and reputational damage
- Ensure that any individual is supported to access the information they require in the format requested, by reviewing the marketing strategy of FOISA and provide information that accessible to all communities.

7. Where will you publish the results of the Equality and Human Rights Impact Assessment? Tick all that apply.

- Summary of EHRIA will be published in committee report under section "Equality Impact Assessment"
- Full EHRIA will be attached to the committee report as an appendix
- Summary of EHRIA to be published on Council website within relevant service pages

## **STEP 2: Outline the aims of the proposal**

8. What are the main aims of the proposal?

This policy will provide a robust framework for all council staff and elected members to ensure compliance with the Freedom of Information (Scotland) 2002 Act (FOISA) so that a person who requests it has the 'right to access' information held by the Council.

9. Who will benefit most from the proposal?

All individuals who make a request for information under FOISA.

10. Tell us if and how the proposal will increase equality of opportunity by permitting positive action to redress disadvantage?

FOISA specifically states that individuals be supported to access information. By implementing this policy and complying with the procedures which support it, the Council can ensure it complies with its legal obligations under FOISA.

11. What impact will the proposal have on promoting good relations and wider community cohesion?

The Council's duty to provide information under FOISA provides the opportunity for council staff to work collaboratively across Service areas, promoting cohesion across the organisation as well as promoting business transparency and openness across the wider public community.

**STEP 3: Gather and consider evidence**

12. What evidence is there to identify any potential positive or negative impacts in terms of consultation, research officer knowledge and experience, equality monitoring data, user feedback and other?

- Monthly/annual monitoring and evaluation of FOISA requests
- Year on year increase of FOISA requests 2005 – 603, 2009 – 925
- Quarterly meetings with all FOI Liaison Officers
- FOISA Reviews
- Specialised development of FOISA delivery – supporting those where appropriate to access the information they require, by telephone, face-to-face and email.

**STEP 4: Assess likely impacts on equality strands**

13. Which, if any, equality target groups and others could be affected positively or negatively by this proposal? Place the symbol in the relevant box.

(Positive +, neutral 0, - negative)

Equality Target Group					
Race*	+	Disability	+	Gender**	0
LGB***	0	Belief	0	Younger	+
Older	+	Others e.g. poverty	+		

\* Race includes Gypsies/Travellers

\*\* Gender includes women, men, Transgender

\*\*\* LGB: Lesbian, Gay and Bisexual

14. Please detail the potential positive and/or negative impacts on the groups you have highlighted above? Detail the impacts and describe the groups affected.

Positive impacts (describe groups affected)	Negative Impacts (describe groups affected)
<p>Overall, this will have a positive impact on all groups as the aim of the policy is to make information more readily and easily accessible to the public.</p>	<p>There may still be negative impacts for some equality groups as they try to follow this procedure, for example, people with literacy challenges including Gypsies/Travellers, people with sensory, physical and learning disabilities and people whose first language is not English.</p> <p>Actions will be put in place to overcome these barriers, for example, use of Plain English, and if / when producing publicity material will include community languages.</p>

### STEP 5: Apply the three key assessment tests for compliance assurance

15. Does this policy/procedure have the potential to interfere with an individual's rights as set out in the Human Rights Act 1998? State which rights might be affected by ticking the appropriate box(es) and how. **If you answer "no", go to question 19.**

- Article 3 – Right not to be subjected to torture, inhumane or degrading treatment or punishment
- Article 6 – Right to a fair and public hearing
- Article 8 – Right to respect for private and family life, home and correspondence
- Article 10 – freedom of expression
- Other article not listed above

How?

Article 10 of the HRA provides 'a qualified right 'to receive information and recognises that in some situations the right to receive information may be restricted. FOISA sets out the general right to access information however, information may be withheld by a public authority under FOISA where an exemption applies.

### Legality

16. Where there is a potential negative impact is there a legal basis in the relevant domestic law?

Yes, FOISA sets out the right to access information which is balanced against the need, in certain circumstances for information to be withheld.

## Legitimate aim

17. Is the aim of the policy a legitimate aim being served in terms of the relevant equality legislation or the Human Rights Act?

Yes, the policy reinforces the Council's duties and obligations under FOISA at a corporate level.

## Proportionality

18. Is the impact of the policy proportionate to the legitimate aim being pursued? Is it the minimum necessary interference to achieve the legitimate aim?

Yes, the policy applies to all staff and elected members (in certain situations).

## STEP 6: Monitor and review

19. How will you monitor the implementation of the proposal? (For example, customer satisfaction questionnaires)

- Monthly monitoring and evaluation of FOISA statistics
- Quarterly meetings with all FOI Liaison Officers
- FOISA Reviews
- Office of Scottish Information Commissioner Assessments (Inspection)

20. How will the results of this impact assessment and any further monitoring be used to develop the proposal?

All results will be used to inform the FOI Strategy and annual FOISA Action plan/future developments.

## STEP 7 SIGN OFF

The final stage of the EHRIA is formally to sign off the document as being a complete, rigorous and robust assessment.

Person(s) completing the impact assessment.

Name	Date	Signature

Quality check: document has been checked by

Name	Date	Signature

Head of Service (Sign-off)

Name	Date	Signature

### Now –

Please send a copy of your completed EHRIA together with the proposal to:

Head of Service  
Community Planning and Regeneration,  
Housing and Environment  
Aberdeen City Council  
St. Nicholas House  
Broad Street  
Aberdeen  
AB10 1GZ