

ABERDEEN CITY COUNCIL

| | |
|-----------------|------------------------------------|
| COMMITTEE | Audit, Risk and Scrutiny Committee |
| DATE | 22 February 2018 |
| TITLE OF REPORT | Freedom of Information |
| REPORT NUMBER | IA/18/004 |
| LEAD OFFICER | David Hughes |
| AUTHOR | David Hughes |

1. PURPOSE OF REPORT

- 1.1 This report advises the Committee of the outcome from work that the Committee requested Internal Audit undertake relating to Freedom of Information processes in place for determining what information can be released to the public.

2. RECOMMENDATION

- 2.1 The Committee is requested to review, discuss and comment on the issues raised within this report.

3. BACKGROUND / MAIN ISSUES

- 3.1 At its meeting on 26 September 2017, the Audit, Risk and Scrutiny Committee requested that Internal Audit undertake a review of the Council's Freedom of Information processes in place for determining what information can be released to the public.
- 3.2 Compliance with the requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and Environmental Information (Scotland) Regulations 2004 (EIR) is managed centrally by the Information Compliance Team which is located within Corporate Governance. Each Directorate has at least one Information Management Liaison Officer who support the Team in their role.
- 3.3 The Council has a well-documented procedure and guidance notes for those involved in handling requests. All FOISA and EIR requests received by the Council must be referred to the Information Compliance Team. Requests are checked, to ensure that they are valid, logged and allocated a unique reference number, and then allocated to the appropriate Information Management Liaison Officer, without details of the applicant. Responses have to be compiled and returned to the Information Compliance Team within set timescales so that they can be checked and issued to the

applicant.

- 3.4 The detailed procedures held on the Council's Intranet include various FOISA Exemption Checklists which provide information, and detail considerations, for officers in determining whether information should be released. The Information Management Liaison Officers all receive training and attend quarterly meetings with the Information Compliance Team to discuss general issues that have arisen in providing responses and the outcome of reviews / appeals. These meetings have recently been expanded to include Data Protection and Information Governance matters.
- 3.5 Responses to FOISA and EIR requests are approved either by a Director or Head of Service and, through a quality assurance check by the Information Compliance Team, advice can be given if responses are not clear, don't address the request, exemptions are applied that are not appropriate, etc. However, the Team does not have the authority to instruct certain action in relation to compliance, they can only advise.
- 3.6 The Team monitors progress with each request to ensure that the Council meets the requirement to respond within 20 working days. Whilst this is a largely manual process, the Team is looking at automation.
- 3.7 The procedures do not, at present, provide guidance on particularly high profile or sensitive requests. However, as responses are approved by Chief Officers, and advice is given by the Information Compliance Team where appropriate, this may not be necessary. There is evidence of discussion amongst appropriate senior officers where such requests have been identified.
- 3.8 Should an applicant be unhappy with a response provided, either because it doesn't address the issue raised or the Council has decided to withhold information, then the applicant can appeal to the Council. If the appeal is competent, an Internal Review Panel would usually be convened and the detail of the particular instance would be reviewed. The Panel, comprising two Council officers at third tier manager level or above, is supported by the Information Compliance Team and would make a decision, either to uphold the original response or to overturn / amend it, and the applicant would be advised accordingly. There may be some cases where it would not be appropriate for a Review Panel to deal with the internal review – in such cases, the Information Compliance Team is responsible for deciding on how the review should be handled.
- 3.9 If the Council fails to respond to a request within the required timescale, the applicant can appeal to the Council. In these cases there would be a "review based on lateness" which would be considered by approving officers (usually Director / Head of Service). The outcome of this would be to effectively overturn / amend the initial failure to respond by providing a response (which may be to provide or withhold the information requested).
- 3.10 If the applicant remains unhappy with the outcome, they would appeal to the Scottish Information Commissioner who would review the case as required and issue a Decision Notice. This could either instruct the Council to release the requested information to the applicant, with or without

exemptions / exceptions, instruct the Council to review internal procedures and improve practice, or uphold the Council’s original response.

- 3.11 The Information Compliance Team was able to provide Internal Audit with data relating to FOISA and EIR requests dealt with for 2016/17 which shows the following:

| | 2016/17 | Percentage |
|--|---------|-------------------------------------|
| Number of Requests | 1785 | 100.00% |
| Disclosure provided in full | 879 | 49.24% |
| Partially Refused | 613 | 34.34% |
| Fully Refused | 293 | 16.42% |
| Internal Reviews Requested / Held | | |
| Internal Reviews Requested / Held | 25 | 2.76% of Partially or Fully Refused |
| Initial Response Upheld | 11 | 44.00% |
| Initial Response Partially Upheld | 1 | 4.00% |
| Initial Response Overturned | 13 | 52.00% |
| Appeals | | |
| Appeals | 7 | 58.33% of Partially or Fully Upheld |
| Initial Response Upheld | 3 | 42.86% |
| Initial Response Partially Upheld | 1 | 14.28% |
| Initial Response Overturned | 3 | 42.86% |

Similar data was reported to the Audit, Risk and Scrutiny Committee in September 2017 in relation to the twelve months to June 2016 and 2017.

- 3.12 The above data shows that the Council is performing well. There were 25 internal reviews requested in relation to 906 cases where data was either fully or partially refused in the first instance. This would indicate that, in most cases, those making requests were satisfied with the Council’s response, even where that was to not release the information requested. At review, 13 of these cases were overturned and this includes those cases where data had not been provided and was subject to a “review based on lateness”. 7 cases went to appeal and the outcome of these was evenly split.
- 3.13 Data for the other City Councils in Scotland for the same period show that they have higher numbers and percentages of Internal Reviews indicating that the Council is performing well, in comparison, with its initial responses. The number of appeals is not significant in any of the four City Councils.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from the recommendations of this report.

5. LEGAL IMPLICATIONS

- 5.1 There are no direct legal implications arising from the recommendations of this report.

6. MANAGEMENT OF RISK

- 6.1 The Internal Audit process considers risks involved in the areas subject to review. Any risk implications identified through the Internal Audit process are detailed in the resultant Internal Audit reports. The purpose of this report is to address concerns raised by the Audit, Risk and Scrutiny Committee.

7. IMPACT SECTION

- 7.1 **Economy** – The proposals in this report have no direct impact on the local economy.
- 7.2 **People** – There will be no differential impact, as a result of the proposals in this report, on people with protected characteristics. An equality impact assessment is not required because the reason for this report is for Committee to review, discuss and comment on the outcomes of a review that the Committee requested Internal Audit undertake. The proposals in this report will have no impact on improving the staff experience.
- 7.3 **Place** – The proposals in this report have no direct impact on the environment or how people friendly the place is.
- 7.4 **Technology** – The proposals in this report do not further advance technology for the improvement of public services and / or the City as a whole.

8. BACKGROUND PAPERS

- 8.1 Report to Audit, Risk and Scrutiny Committee on 26 September 2017 – Information Governance Report & the General Data Protection Regulation (CG/17/109).

9. REPORT AUTHOR DETAILS

David Hughes, Chief Internal Auditor
David.Hughes@aberdeenshire.gov.uk
(01224) 664184