

POLICY & FINANCE COMMITTEE
24 SEPTEMBER 2020

INFORMATION REQUESTS, COMPLAINTS AND RIPA UPDATE

1.0 Purpose of Report

- 1.1 To inform Members of the activity in relation to requests made to the Council during the 2019/20 financial year under the General Data Protection Regulation, Data Protection Act 2018, Freedom of Information Act 2000 and Environmental Information Regulations 2004.
- 1.2 To inform Members of the complaints made to the Local Government Ombudsman during 2019/20.
- 1.3 To inform Members of the use by the Council of the Regulation of Investigatory Powers Act 2000 (RIPA) during 2018/19.

2.0 Background Information

- 2.1 Formal requests for information can be made to the Council in accordance with the following pieces of legislation, General Data Protection Regulation (GDPR), Data Protection Act 2018 (DPA), Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and the Re-Use of Public Sector Information Regulations 2015(RPSI). These legislative areas are all regulated by the information Commissioner who has powers to fine organisations if they breach any of the provisions.
- 2.2 The Local Government Ombudsman (LGO) earlier this year published its annual review statistics for the year ending 31 March 2020. The LGO is the final stage for complaints - the person affected must have gone through the Council's complaints process before escalating their complaint to the LGO. In some cases it is very clear to the LGO that the customer has not taken their complaint to the Council and will advise the customer that they must do so before the LGO can assess their complaint. The Council is not always notified of such cases.

3.0 Information Governance Activity

- 3.1 The total number of information requests received during 2019/20 was 1,198 representing a decrease of 32% from the 1,763 received in the previous financial year. Of these, 716 requests were made under FOIA compared with 820 in the previous year, 390 under EIR compared with 856 in the previous year and 92 under GDPR compared with 87 in the previous year.
- 3.2 All responses continue to be made within the statutory timescales. FOIA and EIR requests have to be responded to within 20 working days and during the year the average response times were 7.76 working days and 6.56 working days respectively. Requests made under GDPR must be responded to within one month and the average response time was 7.8 calendar days.
- 3.3 63 % of requests related to three areas of the Council's activity – planning development, revenues and public protection issues:

- 394 requests were referred to the Planning Development business unit. This is 484 less than the previous year and reflects a significant reduction in requests from Land and Property Search companies under EIR and a small reduction in the number of general planning enquiries.
- 202 requests were referred to Revenues and Benefits, mainly from a small number of businesses wishing to identify companies and charitable organisations liable for business rates within the district so that they could offer assistance in obtaining reliefs.
- 147 requests were referred to Public Protection covering a range of issues from domestic violence to public health funerals.

3.4 Although requests have been received from 24 different sectors 78.8% fall within four categories:

- 358 received from individual members of the public
- 334 received from Land and Property Search companies
- 153 received from businesses
- 98 received from the media

4.0 **Ombudsman**

4.1 The LGO made decisions on 12 complaints and enquiries against the Council in the financial year 2019/20. This compares to 10 received in 2018/19. The outcomes were as follows:

Upheld – maladministration and injustice.	1
Closed after initial enquiries	8
Referred back for local resolution	2
Advice given	1
Total	12

These figures are from the figures that the LGO hold which do not align with the figures the Council hold. This is because the LGO numbers include enquires from people who the LGO signpost back to the Council but never contact us. These are captured in the “closed after initial enquires” figures. There is no way of identifying who these customers are.

4.2 The upheld complaint relates to a complaint regarding the calculation of benefit and how self-employed earnings and business expense were taken into consideration. The Ombudsman found maladministration and error in this matter despite the Council objecting to this classification particularly that of maladministration. The Ombudsman did not recommend any further action to rectify the error as the Council as already recalculated the claim and apologised.

4.3 The table below details the type of enquiries received by the LGO. The logged figures do not match the decided figures as the decided figures are based on the decisions made during 2019/2020. Some of these decisions will relate to enquiries logged in a previous year and likewise the LGO will not have reached a decision during 2019/20 on all of the enquiries logged during the year.

Ombudsman Category	Logged by Ombudsman
Benefits and Council Tax	3
Corporate/Other Services	2
Environmental Services	1
Housing	1
Planning and Development	4
Total	11

4.4 The LGO annual review letter is attached to this report as **Appendix 1**. There is a dedicated section on their website which contains a host of information to assist elected Members and the Ombudsman encourages elected members to make use of these resources. This can be found at www.lgo.org.uk/scrutiny

5.0 Regulation of Investigatory Powers Act

5.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is the law governing the use of covert surveillance techniques by public authorities. Local authorities are empowered to carry out covert surveillance only for the purposes of preventing or detecting crime, or preventing disorder and only where such action is necessary, proportionate, justified and compatible with human rights. The Council endeavours to keep such surveillance to a minimum.

5.2 Since 1 November 2012 local authorities have been required to obtain judicial approval prior to using covert techniques. Additionally, since this date local authority use of directed surveillance under RIPA has been limited to the investigation of crimes, which attract a six month or more custodial sentence, with the exception of offences relating to the underage sale of alcohol and tobacco.

5.3 Under the legislation it is the responsibility of the designated Senior Responsible Officer, which for the Council is currently the Director – Governance and Organisational Development, to ensure regular reports to Members on the Council’s use of RIPA powers.

5.4 The Council’s usage of RIPA has always been low and it should be noted that there have been **NO** authorisations of covert surveillance by the Council for the last 6 years. The last inspection of the Council’s use of RIPA took place on 20 April 2016. The outcome of that inspection, which was very positive, was reported to the Committee on 1 December 2016. Inspections are undertaken by the Office of Surveillance Commissioner every 3 years and the Council has been contacted by the OSC to undertake an inspection this Autumn. There are a number of reasons for the Council’s low usage of RIPA, which reflect similar findings with other local authorities, namely:

- The transfer of benefit fraud investigation from local authorities to the DWP;
- The constraints introduced by the change in the legislation now requiring judicial authorisation for surveillance;
- Reduced resources;
- A concentration on deterrence rather than prosecution;
- Adverse reporting in the national media affecting attitudes of both elected Members and officers to covert surveillance; and

- A concentration on using overt as opposed to covert surveillance as a means of investigation.

6.0 Equalities Implications

6.1 Any customer comments received that highlight a possible equality issue are specifically referred to the Council's Equalities Working Group for review and appropriate action to be taken.

7.0 Financial Implications

7.1 There are no financial implications arising from this report.

8.0 RECOMMENDATION

That the report be noted.

Reasons for Recommendation

To update the Council's RIPA Policy and inform Members of activities in relation to information requests, complaints made to the Local Government Ombudsman and the use of RIPA in 2019/20.

Background Papers

Nil

For further information please contact: Karen White regarding RIPA on ext. 5240, Jill Baker regarding Ombudsman enquiries on ext. 5810 and Sue Bearman on ext. 5935 for Information Governance.

Karen White
Director – Governance & Organisational Development