



REPORT TO ABERDEENSHIRE COUNCIL - 26 JANUARY, 2017

A REPORT BY THE SCRUTINY AND AUDIT COMMITTEE ON FREEDOM OF INFORMATION

1 Recommendations

Council is recommended:

- 1.1 to consider and agree the recommendations of the Scrutiny and Audit Committee report on Freedom of Information. The summary of recommendations is attached at Appendix 1.**

2 Background / Discussion

- 2.1 The Scrutiny and Audit Committee (SAC) in September 2016 began an investigation into Freedom of Information. The work was undertaken with the awareness that Freedom of Information (Scotland) legislation provides applicants with a right to request information held by Aberdeenshire Council and to be provided with a copy of requested information, subject to any applicable exemptions, within a statutory timeframe of 20 working days. Where an applicant is dissatisfied with a response, or lack of one, they have a right to request an internal review and if they remain dissatisfied following internal review, they have a right of appeal to the Office of the Scottish Information Commissioner. Assurance was sought that Aberdeenshire Council is correctly applying the legislation.

The full SAC report on Freedom of Information is included at Appendix 2.

- 2.2 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report.

3 Equalities, Staffing and Financial Implications

- 3.1 An equalities impact assessment is not required as this report only deals with recommendations made by the Scrutiny and Audit Committee to the Council. Any actions arising from these recommendations in the future, which may impact on individuals or groups with protected characteristics will be subject of such assessment at the appropriate time.
- 3.2 There are no direct staffing or financial implications arising from this report. Recommendation 7 of the SAC report is that consideration is given to an increased resource for the FOI central team. Options around increasing capacity are proposed to be further explored and considered by the Information, Data and Technology Review.

Ritchie Johnson
Director of Business Services

Report prepared by: - Ritchie Johnson, Director of Business Services
Date 09 January 2017

MANAGEMENT RESPONSE TO SCRUTINY AND AUDIT FOI REPORT

	RECOMMENDATION	RESPONSE
1.	The current Information, Data and Technology Review must be prioritised, with all Services participating FULLY in the process.	Agreed. Engagement with Services has already commenced and must continue through to review completion with full participation and co-operation from all Services. The review is expected to conclude in June 2017.
2.	Responsibility for FOI requests should remain within ICT and responsibility for reviews and appeals should sit within Legal and Governance.	Agreed. It is essential to continue to have adequate separation between requests and reviews.
3.	The “hub and spoke” model should continue in this council i.e. a central team allocates FOI requests and designated FOI service reps issue all FOI responses.	Agreed. It would be disadvantageous to distance FOI Service reps from the information held within their respective Services.
4.	Requests should not be allocated down by FOI service reps to FOI service responders who are less likely to have sufficient knowledge of the legislation.	Agreed. Responders, who deal with FOI requests fairly infrequently, generally have less knowledge of FOI legislation and case law than FOI reps. It is important that qualitative responses are issued by the Council in order to prevent unnecessary, costly reviews and potential DPA breaches.
5.	A process for delivering a standard, consistent approach to FOI should be implemented across the council.	Agreed. There should be standard processes in place for FOI across the Council based on good practice. This is within the scope of the Information, Data and Technology Review.
6.	Investigate alert options with Axlr8 to encourage prompt responses.	Agreed. Work has already been scoped to introduce traffic-lighting alerts for all Freedom of Information, Environmental Information Regulation and Data Protection requests.
7.	It is recognised that the central team is currently under-resourced and this needs to be addressed.	Agreed. It is recognised that the central team which deals with Data Protection, Information Security and Information and Records Management as well as Freedom of Information, is under-resourced compared with most if not all other Scottish Local Authorities. This will be addressed within the scope of the Information, Data and Technology Review.

APPENDIX 1

	RECOMMENDATION	RESPONSE
8.	The council must be mindful of difficulties that may arise when dealing with FOI should the Council create any arms-length organisations e.g. Leisure Trusts.	Agreed. All current FOI processes will essentially need to be replicated by the ALEO which will itself be held responsible and accountable by OSIC.
9.	Information must be managed in a way to facilitate fast and accurate identification and retrieval of information in response to FOI requests.	Agreed. This will be taken forward in collaboration with all Services via the Information Management Operational Group.
10.	The council should work through the OSIC self-assessment module on “searching for and locating information”, as has been recommended by the Commissioner.	Agreed. This will be taken forward in collaboration with all Services via the Information Management Operational Group.
11.	All requests for FOI advice, and provision of FOI advice, should be made from within the Axlr8 system, to ensure all advice is automatically captured and logged centrally.	Agreed and complete. The FOI system has been amended to process all requests for advice and all FOI reps have subsequently been informed, and reminded, to ensure that all requests for advice are now requested through Axlr8.
12.	Advice requests should be routed to the FOI team in the first instance, with Legal and Governance advice being sought by the team if required.	Agreed and complete. All FOI reps have been advised that requests for advice must all now be routed to the FOI team in the first instance, via Axlr8 as per item (11).
13.	FOI reps should be empowered to respond to non-contentious requests directly. Only contentious requests and responses should be run past management for approval. Clear guidance around what should be considered as contentious requests and responses in each service should be provided.	Agreed. The FOI team will provide guidance on what types of request would be considered contentious following which all FOI reps will be empowered to respond to non-contentious requests directly and only run contentious requests past management for approval. This should reduce the number of late responses.
14.	FOI service reps should be reminded: a) of the council’s duty to advise and assist, and to be as helpful as possible to applicants in order to potentially avoid costly reviews and appeals and any reputational damage; b) that they must not apply exemptions before first searching for and reviewing the information;	Agreed and complete. All Service reps have been reminded of these requirements.

APPENDIX 1

	RECOMMENDATION	RESPONSE
	<p>c) to follow existing guidance on when and when not to release staff and Councillor personal information.</p>	
15.	<p>All staff should receive basic FOI awareness training, e.g. on ALDO, such that they can quickly identify a request and know what to do with it. All staff must also be cognisant of the importance of assisting FOI reps within requested timescales, and management must recognise that FOI is a council priority.</p>	<p>Agreed. Work is already underway to produce a short video-clip, e.g. of 1 – 2 minutes duration, for all staff which will subsequently be made available via Arcadia and ALDO. This will be complete by April 2017.</p>
16.	<p>Where the volume of an applicant's requests becomes a significant burden to the council, the council should consider charging the applicant as permitted by the legislation to deter such behaviour.</p>	<p>Agreed. Such charging should be considered and if necessary applied following discussion with and obtaining agreement from the FOI team.</p>
17.	<p>The council should take up the Commissioner's offer of providing specific training for FOI reps.</p>	<p>Agreed. The Commissioner's Office has already been contacted in this regard.</p>
18.	<p>In order to be more open and transparent, all services where relevant should focus on proactively publishing information, including open data, instead of implementing an FOI disclosure log.</p>	<p>Agreed. This will be taken forward in collaboration with all Services via the Information Management Operational Group.</p>
19.	<p>The council should review recommendations within the good-practice FOI Governance paper provided by the Commissioner.</p>	<p>Agreed. This will be taken forward in collaboration with all Services via the Information Management Operational Group.</p>
20.	<p>The council should take immediate steps to identify a successor for the retiring FOI Reviews Clerk who is responsible for managing internal FOI reviews to ensure an adequate transition period for knowledge transfer. The council should also ensure there is an appropriate level of back-up cover in place e.g. to cover periods of leave.</p>	<p>Agreed and complete. A successor for the retiring FOI Review Clerk has been appointed.</p>
21.	<p>The Council Review Panel should consist of a relevant Head of Service, Legal Advisor and FOI Review Clerk, with attendance being prioritised as far as possible.</p>	<p>Agreed. Directors and Area Managers will no longer participate in Review Panels.</p>

APPENDIX 1

	RECOMMENDATION	RESPONSE
22.	Legal and Governance should produce a report when an appeal decision is found against the council, summarising the position and including any relevant lessons to be learned and submit the report to the Senior Management Team for any appropriate action.	Agreed. It is important that the Council learns from appeal decisions and does not repeat the same mistakes. It is therefore essential to communicate such findings as appropriate to Senior Management and to FOI reps.



A report by the Scrutiny and Audit Committee

Freedom of Information

December 2016

SAC Report No. 29

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SUMMARY AND RECOMMENDATIONS

In September 2016, the Committee began work on its 29th investigation, Freedom of Information. The work was undertaken with the awareness that Freedom of Information (Scotland) legislation provides applicants with a right to request information held by Aberdeenshire Council and to be provided with a copy of requested information, subject to any applicable exemptions, within a statutory timeframe of 20 working days. Where an applicant is dissatisfied with a response, or lack of one, they have a right to request an internal review and if they remain dissatisfied following internal review, they have a right of appeal to the Office of the Scottish Information Commissioner. Assurance was sought that Aberdeenshire Council is correctly applying the legislation.

It was agreed that the areas covered with witnesses, both internal and external, should include the undernoted:

- Are clear guidelines in place and is there clarity on what needs to be done by whom and by when?
- Are we consistent in how we respond to FOI requests across the Council?
- Are FOI exemptions as set out in the Act applied correctly across all Services?
- Are the charging rules well understood and consistently applied across all Services?
- How does Aberdeenshire deal with instances when we have failed to comply with the requirements of the Act?
- How are Internal Reviews managed and recommendations taken forward?
- How do other public sector organisation manage their Freedom of Information responses and how does Aberdeenshire Council compare to these organisations?
- What is the ICO's view on Aberdeenshire's ability to respond to Freedom of Information requests as per the requirements of the Act?

Having considered the evidence, in oral witness sessions, background papers, and a demonstration of the Axlr8 FOI management system, the Committee recommends:

- 1) The current Information, Data and Technology Review must be prioritised, with **all Services** participating **FULLY** in the process.
- 2) Responsibility for FOI requests should remain within ICT and responsibility for reviews and appeals should sit within Legal and Governance.
- 3) The "hub and spoke" model should continue in this council i.e. a central team allocates FOI requests and designated FOI service reps issue all FOI responses.
- 4) Requests should not be allocated down by FOI service reps to FOI service responders who are less likely to have sufficient knowledge of the legislation.
- 5) A process for delivering a standard, consistent approach to FOI should be implemented across the council.
- 6) Investigate alert options with Axlr8 to encourage prompt responses.
- 7) It is recognised that the central team is currently under-resourced and this needs to be addressed.
- 8) The council must be mindful of difficulties that may arise when dealing with FOI should the Council create any arms-length organisations e.g. Leisure Trusts.
- 9) Information must be managed in a way to facilitate fast and accurate identification and retrieval of information in response to FOI requests.
- 10) The council should work through the OSIC self-assessment module on "searching for and locating information", as has been recommended by the Commissioner.

- 11) All requests for FOI advice, and provision of FOI advice, should be made from within the Axlr8 system, to ensure all advice is automatically captured and logged centrally.
- 12) Advice requests should be routed to the FOI team in the first instance, with Legal and Governance advice being sought by the team if required.
- 13) FOI reps should be empowered to respond to non-contentious requests directly. Only contentious requests and responses should be run past management for approval. Clear guidance around what should be considered as contentious requests and responses in each service should be provided.
- 14) FOI service reps should be reminded:
 - a) of the council's duty to advise and assist, and to be as helpful as possible to applicants in order to potentially avoid costly reviews and appeals and any reputational damage;
 - b) that they must not apply exemptions before first searching for and reviewing the information;
 - c) to follow existing guidance on when and when not to release staff and Councillor personal information.
- 15) All staff should receive basic FOI awareness training, e.g. on ALDO, such that they can quickly identify a request and know what to do with it. All staff must also be cognisant of the importance of assisting FOI reps within requested timescales, and management must recognise that FOI is a council priority.
- 16) Where the volume of an applicant's requests becomes a significant burden to the council, the council should consider charging the applicant as permitted by the legislation to deter such behaviour.
- 17) The council should take up the Commissioner's offer of providing specific training for FOI reps.
- 18) In order to be more open and transparent, all services where relevant should focus on proactively publishing information, including open data, instead of implementing an FOI disclosure log.
- 19) The council should review recommendations within the good-practice FOI Governance paper provided by the Commissioner.
- 20) The council should take immediate steps to identify a successor for the retiring FOI Reviews Clerk who is responsible for managing internal FOI reviews to ensure an adequate transition period for knowledge transfer. The council should also ensure there is an appropriate level of back-up cover in place e.g. to cover periods of leave.
- 21) The council Review Panel should consist of a relevant Head of Service, Legal Advisor and FOI Review clerk, with attendance being prioritised as far as possible.
- 22) Legal and Governance should produce a report when an appeal decision is found against the council, summarising the position and including any relevant lessons to be learned and submit the report to the Senior Management Team for any appropriate action.

1 This investigation

The Scrutiny and Audit Committee began its investigation into Freedom of Information on 21 September 2016, with a lead service briefing, led by the Head of ICT. The external expert, Rosemary Agnew, Scottish Information Commissioner, gave evidence to the Committee on 26 October 2016. A series of evidence sessions with council officers and external witnesses also took place, concluding on 17 November 2016. Consideration of the evidence and the drafting of this report continued into December 2016, including wrap up sessions with the lead service.

Members who took part in this investigation are listed in Appendix II.

The Committee chose to consider the topic as it recognised compliance with Freedom of Information legislation to be a key process for the Council and felt there was sufficient evidence of concerns about the consistent implementation of the Councils' procedures and the impact of affected individuals to justify examination through an investigation.

At the outset, it was agreed that the purpose and objectives of the investigation should be to gain assurance that the council is correctly and consistently applying the legislation recognising the fact that case law is constantly being updated with each and every new FOI decision.

The detailed brief for the Committee's investigation is available in Appendix I.

2 How the investigation was progressed

The Committee undertook a range of different activities to enable it to carry out this investigation.

2.1.1 Documentation

A range of background documentation was provided to the Committee at the commencement of the investigation. This included information from both within and outwith Aberdeenshire Council:

External papers (and links)

1. Link to Office of Scottish Information Commissioner webpage - <http://bit.ly/2garKC3>
2. Scottish Minister's Code of Practice on the discharge of functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations (2004) - <http://bit.ly/2fjx7hc>
3. Link to OSIC FOI(S)A Decisions - <http://bit.ly/2guwUtg>

Internal papers (and links)

1. Link to Aberdeenshire Council internal FOI guidance on Arcadia - <http://bit.ly/2guCcoL>

2. Link to Aberdeenshire Council public-facing FOI webpage - <http://bit.ly/2gcT9S2>
3. FOI(S)A Training Workbook - <http://bit.ly/2fgvygL>
4. Responder Manual on use of Axlr8 - <http://bit.ly/2fgykTn>
5. Guidance on when and when not to release personal data - <http://bit.ly/2qe36OD>
6. FOI paper to Strategic Leadership Team – Aberdeenshire Council procedure for dealing with Freedom of Information requests (July 2016).

2.1.2 Witnesses and evidence gathering

Members of the Committee met with a wide range of witnesses, as undernoted:

Internal Witnesses:

The Head of ICT; ICT Service Development Manager; Principal Information Security Officer; Principal Committee Services Officer; Senior Solicitors (x2); FOI representatives for Education & Children's Services, Health & Social Care Partnership, Infrastructure Services and Business Services (Finance).

External Witnesses:

Rosemary Agnew, Scottish Information Commissioner; Martin Friedrich and Anne Garness, Angus Council; Donald Henderson, Perth and Kinross Council.

Witnesses shared their experiences in working with Freedom of Information. The Committee sought witnesses' views on the processes surrounding FOI including receipt of requests, allocation of requests, responding to requests, use of exemptions, provision of advice, management approval, use of the Axlr8 system, statistics (including late responses), and requests for reviews and appeals.

A full list of the evidence sessions is attached at Appendix 1.

Full details of the evidence given to the Committee by witnesses is available on the Committee's webpage at <http://www.aberdeenshire.gov.uk/about/scrutiny.asp>

3 Freedom of Information - Requests

Members heard from Nicola Graham, Head of ICT, who provided the Committee with an overview of where responsibility for FOI currently sits within the council. Responsibility for FOI requests as a whole currently sits within ICT under Andrew Lawson; responsibility for FOI reviews currently sits within Legal and Governance under Alastair Nicol. Joanna Shirriffs, ICT Service Development Manager, and Andrew Lawson, Principal Information Security Officer, then provided the Committee with a brief overview of Freedom of Information (Scotland) legislation and of the council's FOI processes i.e. from receipt of a request through to the issuing of a response.

Joanna Shirriffs advised the Committee that she is lead officer for scoping the 2nd stage of the Information, Data and Technology Review and that she hoped the findings of this Committee would be beneficial to the review.

Andrew Lawson advised the Committee of the importance of logging and allocating requests quickly in order to maximise the time available to respond. In this regard, it is important for all staff to be able to quickly recognise an FOI request on receipt of one and for all staff to know to immediately forward a request to foi@aberdeenshire.gov.uk. All requests, without exception, must be responded to by the council within a 20 working day statutory timeframe.

Once a request has been logged, the request is then assigned to an FOI rep within the most relevant service/department. Once assigned to the FOI rep, the FOI rep then ascertains if the requested information is held, and if so, will collate the information, redact any exempt information and provide a response directly to the applicant. Andrew Lawson informed the Committee that while FOI reps within Business Services and Education and Children's Services issue responses directly, responses from Infrastructure Services and Health and Social Care Partnership can be allocated down one level further to any one of numerous FOI responders. As part of the project to implement Axlr8 in 2015, Andrew Lawson advised that he had already negotiated down, with services, the overall number of responders from circa 300 to circa 30.

Andrew Lawson advised the Committee that while some FOI reps are empowered to issue responses directly to applicants, others are not. FOI reps within Finance and within Education & Children's Services must seek management approval prior to issuing an FOI response. This requirement for management approval frequently results in delays in issuing responses, often tipping a response over the statutory timeframe. The Committee enquired as to why different services do things differently. Since FOI came into being in 2005, it has been left up to each individual service as to how they wish to manage FOI. As such, different services have adopted different ways of doing things. This has given rise to some services performing better than others e.g. FOI responders who infrequently deal with FOI are unlikely to have and ever gain detailed knowledge of the legislation. As such, responses issued by responders are not likely to be as qualitative as those issued by dedicated FOI reps. Fiona Stewart advised the Committee that she felt there should be a unified, consistent approach to FOI across the council; Andrew Lawson agreed.

The Committee asked if the council currently charges for responding to FOI requests. Andrew Lawson explained to the Committee that under FOI, staff rates are capped at £15 per hour. The first £100 of costs incurred are not chargeable. Where a request incurs a cost of between £100 and £600, the council is entitled to charge 10% only, and where a request incurs a cost of >£600 it can be refused on grounds of excessive cost. Thus if charging for FOI requests, anything up to a maximum of £50 can potentially be recouped. This potential income is however offset by the cost of calculating and producing a fees notice, the financial cost of processing the payment, a potential increase in communications between the applicant and the council to discuss fees and a potential increase in costly reviews and appeals should the applicant contest the amount being charged. Andrew Lawson advised the Committee that he was unaware of any Scottish Local Authority currently charging for responding to FOI requests. Rosemary Agnew advised the Committee that she didn't know specific numbers of organisations who issue fee notices but the number was "pretty-low". OSIC do not charge for requests as they prefer a customer-focused approach. Rosemary Agnew advised that where an applicant is causing a significant burden to the organisation, the organisation could however use fees and costs rather than relying on use of the high-threshold vexatious exemption.

The Committee sought views on how information concerning Councillors would be dealt with under FOI. Andrew Lawson advised the Committee that Councillors have three different roles as far as Data Protection is concerned. Where Councillors serve on council committees processing council personal data, they would in this capacity effectively be treated the same as staff. With regard to seniority, the council considers Councillors to be at a senior level i.e. equivalent to Head of Service level or above. Councillors are also in a public-facing role.

Generally speaking, the council would release personal data relating to Councillors, including any opinions, if disclosing the information was in the public interest. Fiona Stewart advised the Committee that there is a presumption under FOI to provide all requested information unless a valid exemption applies. Andrew Lawson advised that this presumption does not however apply to personal data and that the default position for personal data should be to not provide such information under FOI. It was noted that FOI reps should let Councillors know in advance if any information about them is to be released. FOI reps have been provided with a procedure concerning release of staff personal data and Councillor personal data. This procedure has also been published on Arcadia. Rosemary Agnew advised that while it is good practice to contact a 3rd party prior to releasing their information, there is no requirement in law to do so.

Andrew Lawson advised the Committee that where FOI reps require advice, they can seek FOI specialist advice from the Information Management team, within ICT, or FOI legal advice from Fiona Stewart within Legal and Governance. It was noted that an estimated 90% of advice requests currently go to ICT, with 10% of advice requests going to Legal. All four FOI reps interviewed advised that the Information Management Team and Legal and Governance were helpful in providing timely advice. In discussing provision of advice with Fiona Stewart, it was noted that some FOI reps may not be inputting advice received into Axlr8.

The Committee asked Fiona Stewart if she felt FOI reps had sufficient knowledge of the legislation and what could be done to further improve FOI awareness and knowledge across all services. Fiona advised the Committee that she felt FOI reps did have sufficient knowledge and that reps had received FOI training. Robin Taylor advised the Committee that given so few requests come to the review panel this would seem to indicate that services are mostly getting things right. Alastair Nicol advised the Committee that he felt some FOI reps may not have sufficient knowledge. Alastair advised that it is a difficult situation because many FOI reps are not full-time FOI reps so it can be difficult for FOI reps to devote sufficient time to dealing with FOI. On being asked the same question, all four FOI reps interviewed advised that they had "quite good knowledge" of the legislation. Fiona Stewart advised that she felt it would be beneficial for all council staff to receive basic training on FOI in order to be able to recognise a request on receipt of one and to know what to do with it. Andrew Lawson advised the Committee that only 6-8 weeks ago, an Arcadia article had been published for all staff outlining what to do on receipt of a request. A copy of the awareness article was subsequently provided to the Committee. Rosemary Agnew advised that currently there are no online video tutorials available from OSIC due to a lack of resources within OSIC, however, OSIC would be willing to provide specific training if approached.

All staff interviewed felt Axlr8 was an improvement to the previous Lotus Notes system. All four FOI reps felt Axlr8's ability to issue responses via email, as well as written letter, was useful and time-saving.

On being asked if it would be useful to proactively publish previous responses in a disclosure log, it was recognised that there are pros and cons to having a disclosure log. Nicola Graham advised the Committee that there is clear evidence that councils who have disclosure logs receive an increased number of FOI requests. Rosemary Agnew advised that OSIC does not have a disclosure log and that it is perhaps better to focus on proactively publishing information rather than rely on a disclosure log.

On reviewing FOI statistics for period 2011 – 2015, it was noted that the number of requests received by the council has been increasing year on year from 790 in 2011 to 1,313 in 2015. It was also noted that the level of resource for processing an increasing number of requests has not increased. Staff are being expected to do more with the same or even less staff. The

Committee noted there has been an increasing volume of requests from parliamentary researchers and from students e.g. seeking information to assist with completion of dissertations.

During the past five year period, it was noted that the percentage of late responses has improved from 24.2% in 2011 to 14.1% in 2015. However, in comparison with how other Scottish local authorities are performing, there is still considerable room for improvement. In financial year 2015/16, Aberdeenshire Council was ranked 23rd out of 32 councils with regard to percentage of late responses. While most council services issue responses on time, Infrastructure Services and Business Services (Finance) have been performing poorly, resulting in an overall poor performance for the council as a whole. Infrastructure Services have already taken steps to improve their percentage of late responses e.g. by designating a new FOI rep. The position within Finance continues to deteriorate with the Committee noting 38% late responses in September 2016 and 50% late responses in October 2016. Alastair Nicol advised the Committee that deadlines are the most crucial part of FOI and that anything that gets in the way of deadlines was distressing to him and needs to be addressed. Alastair advised that where managerial approval is required there should always be more than one person available to avoid unnecessary delays. On being asked about reasons for responses going out late, as well as management approval resulting in delays, FOI reps advised that getting information back from colleagues on time was also a key issue. On being asked how the council could do FOI better, all four FOI reps advised that they felt it would be beneficial to increase FOI awareness across all council staff. All FOI reps also advised that management need to comprehend the importance of responding to requests on time and treat FOI with sufficient priority. On asking Rosemary Agnew about late responses, Rosemary suggested that councils should focus on the term “promptly” and in no more than 20 working days.

On being asked about how FOI legislation may develop in the future, Rosemary Agnew advised of recent changes to bring arms-length organisations within the Act, the potential for the likes of Housing Associations to come under the Act in the future, and deeper debate to be had around proactive publication and open data with an emphasis on a duty to publish rather than a right to ask.

Rosemary Agnew advised that management of FOI has to suit the individual organisation. Some models work well and some do not e.g. a hub and spoke model, where there is a centralised FOI team with expertise with specific people within each department who can seek advice from the central team, works well for many organisations. Rosemary advised that the model which works least well in her experience is large organisations having a central FOI team to answer all requests. Ultimately, the structure which gets the information to people quickest, and the most efficiently for the organisation, is best. Rosemary Agnew provided the Committee with a paper containing a set of 12 good-practice FOI Governance questions for review and consideration by the council.

4 Freedom of Information – Reviews and Appeals

Alastair Nicol briefed the Committee on his role, specifically in relation to the internal review process and thereafter appeals which go to the Office of the Scottish Information Commissioner (OSIC). Applicants are entitled to an internal review and have to go through this process before they can lodge an appeal with the Commissioner. Alastair advised the Committee that his and Robin Taylor’s involvement with reviews commenced in 2005 when the Act came into force.

Alastair advised the Committee that he had received no formal training from the council but had learned from reading the Commissioner’s website and picking it up as he went along.

Alastair advised that training would be useful for his successor. Alastair also advised that he has a huge wealth of knowledge that needs to be passed on and hopes for a transition period to share his knowledge. Alastair advised that the review panel does not have someone to write-up reports.

It was noted that the council is currently fully-reliant on Alastair Nicol to manage reviews and appeals; there is currently no holiday cover for this process. Andrew Lawson advised the Committee that this reliance on Alastair had already been flagged-up to senior management in the FOI briefing of July 2016. Alastair advised the Committee that full and detailed written procedures are already available within Legal and Governance.

Robin Taylor advised the Committee that he is the legal advisor on FOI for the council's review panel, and that he had attended a number of training sessions on FOI. Robin explained that on occasion, e.g. in the absence of Fiona Stewart, he has provided FOI legal advice at the request stage but in doing so he has always subsequently excluded himself from being legal advisor on any associated review panel should that request go to review.

It was noted that the number of questions being asked by the Commissioner in relation to appeals has been growing. On average there are now 15 – 20 questions to be answered per appeal, with the highest number of questions to date being 44. Each appeal is time-consuming and therefore costly to the council. Alastair advised that he could not quantify time spent dealing with reviews and appeals.

The Committee asked Alastair Nicol if he felt anything more could be done to avoid requests for reviews. Alastair advised that the simple answer is to always give applicants what they want, however, this cannot always be the case due to exemptions. Alastair advised that the council needs to do everything possible to avoid appeals to the Commissioner as the appeals process is very time-consuming. Andrew Lawson also advised the Committee that the best way to reduce costly reviews and appeals is to be helpful and where possible provide the relevant information at the request stage. The council has to be cognisant of its duty to advise and assist. Sometimes services could be more helpful to applicants instead of interpreting requests too literally. Services can sometimes adopt a siege mentality when being bombarded with requests.

Rosemary Agnew advised that while the council's review rate has remained constant, the number of appeals has been increasing. Rosemary advised of 19 appeals to the Commissioner in 2015/16. On subsequently checking with Alastair Nicol, Alastair advised of only 9 appeals for this period. Clarification was sought subsequent to the meeting which confirmed different ways of working out statistics e.g. Alastair was not including invalid appeals received by the Commissioner within his total. The Commissioner advised that OSIC does have powers of assessment but can only undertake a limited number per year due to staff resources. OSIC can instead suggest that an organisation self-assesses its compliance using a self-assessment toolkit. On being asked about any current issues, Rosemary Agnew advised that she had been critical of the authority for carrying out inadequate searches for information and that exemptions were on occasion being applied before searching for and locating the information. Rosemary recommended that the council works through the self-assessment module on searching and locating information.

Alastair Nicol advised the Committee that he felt the current review panel process works well and that he can currently select from a pool of Directors, Area Managers and Heads of Service. Alastair advised however that the number of available staff within this pool has been decreasing with time so the council may need to expand its review panel membership.

On being asked if appeal numbers have improved year on year, Alastair advised the Committee that the number of reviews and appeals fluctuates with no apparent pattern.

The Committee suggested that it doesn't look good if the review panel does not get it right. Robin Taylor advised that the review panel is there to give its interpretation of the legislation. Often judgements have to be made e.g. around public interest. The Commissioner could have a different view from the review panel but as long as the council can justify its decisions and what is done, that is fine.

All FOI reps interviewed advised that they receive sufficient feedback following any reviews or appeals from Alastair Nicol.

Rosemary Agnew advised of differences in the way different organisations manage reviews e.g. Audit Scotland have a review panel for every review comprised of members who have had no dealings with the original request. Other organisations escalate up the line management structure, and others have a central team for carrying out reviews. OSIC use the model of having a central review team.

5 Other Councils

Martin Friedrich, provided the Committee with an overview of how FOI is currently managed within Angus Council. FOI requests are currently allocated by a small central team out to individual departments who then process and respond to the requests directly. The management of FOI requests is very similar to the current set up within Aberdeenshire Council.

Donald Henderson, provided the Committee with an overview of how FOI is currently managed within Perth and Kinross Council. FOI requests are fully-managed by a central team who log requests and write all responses. Perth and Kinross also have reps within departments who collate and provide information to the central team. Donald advised of having defined timescales in place to ensure each stage of the process is dealt with timeously, resulting in the response being issued on time. Target is to issue 95% of responses within 20 working days. Donald advised the Committee that year-to-date for 2016, 5% are late and in the previous three years the percentage late was 3.2%, 3.8% and 3.8% respectively.

Martin Friedrich advised that Angus Council currently has an issue with responses going out late primarily due to ongoing re-organisation and restructure. Martin advised that the recent creation of arms-length organisations, e.g. Leisure Trusts, is also giving rise to problems as while the council may hold historic information, recent information is now held by the Leisure Trust. Martin advised that Angus Council also has an issue with some departments issuing late responses, confirming that while the number of requests year on year is increasing, staff resource has not been increasing.

Martin Friedrich and Donald Henderson both advised the Committee that their respective councils do not currently have an information request management system in place and currently rely on Microsoft Access/Excel. Donald Henderson advised that their Excel spreadsheet was "creaking slightly". Andrew Lawson recommended that they take a look at Axl8.

Martin Friedrich advised that Angus Council currently has 1.5 WTE staff dealing solely with FOI within their central team and also a number of Information Officers within various departments who deal with FOI full/part time. It was noted that Aberdeenshire Council also have 1.5 WTE staff dealing with FOI but this same resource also has to manage Data Protection and Information Security. Donald Henderson advised that Perth and Kinross Council currently have 4.5 WTE, high-calibre, mostly FOI-qualified professionals, dealing

solely with FOI plus a percentage of Donald's time. Donald also manages Data Protection and Information Management.

Martin Friedrich informed the Committee that Angus Council use a review panel for reviews comprised of the Chief Executive and the Head of Legal and Democratic Services. Martin Friedrich and a relevant Information Officer also attend the review panel. Martin advised of increasing difficulties around review panel availability. Donald Henderson advised the Committee that Perth and Kinross Council does not use a review panel. A single officer, at Head of Service level, is responsible and this has always been the case.

Neither Angus Council nor Perth and Kinross Council currently have a disclosure log in place. Both Councils felt a disclosure log to be of limited value.

Neither Angus Council nor Perth and Kinross Council currently charge for FOI requests for the same reasons as described previously by Andrew Lawson. Donald advised that the cost of processing a payment within Perth & Kinross Council is approximately £32 and the cost of working out costs and issuing a fees notice ranges from £50-£60. The maximum fee that can be recouped is £50 thus it is not cost effective to charge. Donald also advised that in order to be open and transparent charging for FOI is not in the spirit of the legislation.

Both Angus Council and Perth and Kinross Council include an element of FOI training within their corporate induction. Both Councils also advised of providing FOI training to staff e.g. as part of a combined Data Protection / Freedom of Information awareness course.

Both Angus Council and Perth and Kinross Council advised that they would release the likes of salary information for Chief Officers i.e. Head of Service level and above.

Martin Friedrich advised that some council services require management approval prior to issuing requests and some do not e.g. the Finance department requires management approval.

Donald Henderson advised that for decisions against the council, a report is written which goes to a Policy and Resources Group chaired by the Head of Legal and Governance outlining lessons to be learned.

6 Thanks and Invitation for Feedback

The Scrutiny and Audit Committee would like to record its appreciation of the cooperation and assistance it received from internal and external witnesses in the course of this investigation.

Each investigation undertaken is a learning experience for the Committee. It would welcome any feedback or comments from participants or interested individuals on the investigation process and this report.

A handwritten signature in blue ink, appearing to read "Gillian Owen".

Cllr Gillian Owen
Chair, Scrutiny and Audit

A handwritten signature in black ink, appearing to read "Ross Cassie".

Cllr Ross Cassie
Vice-Chair, Scrutiny and Audit

APPENDIX I

Subject to be reviewed. – FOI(S)A	Investigation No	
Scrutiny and Audit Committee – Investigation Brief FREEDOM OF INFORMATION		
Purpose and objectives of investigation		
<p>The Freedom of Information (Scotland) Act (FOISA) provides applicants with a right to request information held by Aberdeenshire Council and to be provided with a copy of requested information, subject to any applicable exemptions, within a statutory timeframe of 20 working days.</p> <p>If an applicant is dissatisfied with a response, or lack of one, they have a right to request an internal review and if they remain dissatisfied following internal review, they have a right of appeal to the Office of the Scottish Information Commissioner (OSIC). In responding to requests under FOISA, it is important for the council to provide the information that needs to be provided (or the council can be found at fault under FOISA) and to withhold the information that needs to be withheld (or the council can be found at fault e.g. breach of DPA, breach of confidence, etc.).</p> <p>Assurance is sought that Aberdeenshire Council is correctly applying the legislation recognising the fact that case law is constantly being updated with each and every new OSIC decision. SAC may wish to track a sample of FOI requests through the system from initial receipt through to issue of response.</p> <p>Are clear guidelines in place and is there clarity on what need to be done by whom and by when?</p> <p>Are we consistent in how we respond to FOI requests across the Council?</p> <p>Are FOI exemptions as set out in the Act applied correctly across all Services?</p> <p>Are the charging rules well understood and consistently applied across all Services?</p> <p>How does Aberdeenshire deal with instances when we have failed to comply with the requirements of the Act?</p> <p>How are Internal Reviews managed and recommendations taken forward?</p> <p>How do other public sector organisation manage their Freedom of Information responses and how does Aberdeenshire Council compare to these organisations?</p> <p>What is the ICO’s view on Aberdeenshire’s ability to respond to Freedom of Information requests as per the requirements of the Act?</p>		

<p>Background papers/links</p>	<p>Aberdeenshire Council internal FOI guidance on Arcadia: http://arcadia3.aberdeenshire.gov.uk/?p=23820</p> <p>Aberdeenshire Council public-facing FOI webpage: https://www.aberdeenshire.gov.uk/council-and-democracy/foi/</p> <p>Office of Scottish Information Commissioner webpage: http://www.itspublicknowledge.info/YourRights/YourRights.aspx</p> <p>Scottish Minister’s Code of Practice: http://www.gov.scot/Resource/Doc/933/0109425.pdf</p> <p>OSIC FOI(S)A Decisions (search on “Aberdeenshire Council”): http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/Decision_Listing.aspx</p> <p>FOI(S)A Training Workbook: http://arcadia3.aberdeenshire.gov.uk/?p=23795</p> <p>Responder Manual on use of Axlr8 (produced by council): http://arcadia3.aberdeenshire.gov.uk/wp-content/uploads/2016/07/Freedom-of-Information-Management-System-AXLR8-Responder-Manual.pdf</p> <p>Guidance for staff on when and when not to release personal data: http://arcadia3.aberdeenshire.gov.uk/wp-content/uploads/2016/05/FOISA-Guidance-Personal-Data.docx</p> <p>FOI paper to SLT (July 2016): copy can be provided</p>
<p>Witnesses to be invited to provide evidence</p>	<p>6.1.1.1 External OSIC – Paul Mutch,</p> <p>2 Other Local Authorities – TBC (Provisional Perth & Kinross and Angus Councils)</p> <p>Internal Chief Officers – Nicola Graham;</p> <p>Key FOI Staff – Andrew Lawson (responses), Alastair Nicol (reviews); FOI Legal Advice – Fiona Stewart (responses), Robin Taylor (reviews); Sample FOI reps – Anne Henderson (ECS), Caroline Morrison (HSC), Maureen Cooper (IS), Amanda Watson (BUS)</p> <p>Internal Audit – David Hughes</p>

Site Visits	n/a
Consultation process	n/a.
Trade Unions Contribution	n/a
Project Team (officers)	
Other estimated costs	TBC.
External expert	
Investigation Timetable	

APPENDIX II

INVESTIGATION PROGRAMME AND WITNESSES HEARD

DATE	ACTIVITY	PRESENT
21 September 2016	Lead Service Briefing – Session with Nicola Graham, Head of ICT, Joanna Shirriffs, ICT Service Development Manager, Andrew Lawson, Principal Information Security Officer	Councillors Owen (Chair), Cassie (Vice-Chair), Bellarby, Cullinane, Farquhar, Ingram, Petrie, Shand and Tait
6 October 2016	Fiona Stewart, Senior Solicitor	Councillors Owen (Chair), Cassie (Vice-Chair), Cullinane, Ingram, Petrie, Shand and Tait
6 October 2016	Robin Taylor, Senior Solicitor	Councillors Owen (Chair), Cassie (Vice-Chair), Cullinane, Ingram, Petrie, Shand and Tait
6 October 2016	Alastair Nicol, Principal Committee Services Officer	Councillors Owen (Chair), Cassie (Vice-Chair), Ingram, Petrie, Shand and Tait
24 October 2016	FOI Rep Workshop – Session with Anne Henderson, ICRM Officer, Education & Children's Services, Maureen Cooper, Admin Officer, Infrastructure Services, Natalie Coutts, Assistant Accountant, Finance, Caroline Morrison, Senior Information Officer, Health & Social Care Partnership	Councillors Owen (Chair), Bellarby, Cullinane, Farquhar, Ingram, Latham, Petrie, Shand and Tait
26 October 2016	External Expert Briefing – Rosemary Agnew, Scottish Information Commissioner	Councillors Owen (Chair), Cassie (Vice-Chair), Bellarby, Ingram, Petrie, Shand and Tait
17 November 2016	Martin Friedrich, Paralegal, Anne Garness, Senior Solicitor, Angus Council	Councillors Cassie (Chair), Bellarby, Cullinane, Ingram, Latham, Petrie, Shand, Tait

DATE	ACTIVITY	PRESENT
17 November 2016	Donald Henderson, Information Compliance Manager, Perth & Kinross Council	Councillors Cassie (Chair), Bellarby, Cullinane, Ingram, Latham, Petrie, Shand, Tait
1 December 2016	Consideration of draft report	Councillors Owen (Chair), Cassie (Vice-Chair), Bellarby, Cullinane, Tait, Petrie