

# Item 4

## REPORT TO CABINET

2ND FEBRUARY 2006

## REPORT OF CHIEF EXECUTIVE OFFICER AND SOLICITOR TO THE COUNCIL

### **FREEDOM OF INFORMATION ACT 2000 & RE-USE OF PUBLIC SECTOR INFORMATION REGULATIONS 2005**

#### **1. SUMMARY**

- 1.1 This Report is intended to advise/update Members on the implementation of the Freedom of Information Act 2000 (FOIA) since the date of commencement on 1st January 2005 both in relation to the procedures set up to handle and deal with requests and also the number of requests dealt with.
- 1.2 The Re-Use of Public Sector Information Regulations 2005 (RPS) came into force on 1st July 2005 and as required by the Office of Public Sector Information (OPSI), Senior Management and Cabinet should be on notice of the requirements of the Legislation.

#### **2. RECOMMENDATIONS**

- 2.1 That Cabinet consider this Report.
- 2.2 That the contents of Part A of this Report in relation to FOIA be noted and that further similar reports be made annually to Cabinet.
- 2.3 That responsibility for the operation of the RPS Regulations (Part B) be delegated to the Customer Services Manager and the Solicitor to the Council as more fully set out in Paragraph 4.11 and that the Constitution be amended accordingly.

#### **DETAIL**

#### **3. PART A – FOIA**

- 3.1 The FOIA received Royal Assent in November 2000, the provisions of the Act being phased in over a four year period. The final phase granting the public right of access to information came into force on 1st January 2005.
- 3.2 Responsibility for compliance with the Act rests with the Customer Services Manager in consultation with the Solicitor to the Council.
- 3.3 Cabinet and Council were presented with a Report on 29th June 2005 outlining the processes to deal with the Council's requirements under the FOIA. These recommendations were formulated by the Corporate Working Group set up to provide a structure to assist with implementation of the FOIA.

- 3.4 The processes and systems implemented to cover requests, application of exemptions, the public interest test and complaints have now been in use for 11 months.
- 3.5 As agreed by the Corporate Working Group, all requests are logged centrally by the Customer Services Manager and responses to such requests, required within 20 working days, are agreed between the Customer Services Manager and Assistant Solicitor. In addition, the Assistant Solicitor provides guidance in relation to exemptions which may be attached to certain classes of information and may result in them not being disclosable.
- 3.6 The Council had received 89 requests for information up to Monday 19th December 2005. Some requests have been complex and covered information held in more than one department and have taken several days to deal with. Appendix 1 to this report is a schedule setting out the requests received and responses to them.
- 3.7 In 55 requests the information was released in full and in only 14 requests was a refusal issued. In four instances this was as a result of the information already being available to the public (exemption under the FOIA) and in another four this was as a result of information not being held by the Council.
- 3.8 In three situations a refusal was issued as a result of information already being covered under the Data Protection Act (an exemption applied under the FOIA).
- 3.9 In the remaining three cases of refusal this was as a result of the information being seen as useable in criminal activities or as a result of pending Litigation.
- 3.10 Section 16 of the FOIA requires the Council to give as much assistance as possible however to a Requestor even if an exemption applies by explaining the reason for the exemption being applicable and referring the Requestor to any other organisation which may be able to assist.
- 3.11 There have been a further 19 requests for information which have resulted in a partial release of that information requested as where a request covers some disclosable information and some subject to exemptions then that which is disclosable has been provided. A full explanation was given in each situation for attaching any exemptions to requests and refusals. Requestors are also advised on each occasion of their rights of appeal.
- 3.12 Of the requests received, the most received for a single issue were four in respect of the LSVT vote concerning the Council's housing stock which raised questions about the cost of the advertising campaign.
- 3.13 In one case the Council sought clarification from the applicant, which was not forthcoming, so the case was closed and a letter sent confirming this course of action.
- 3.14 Of the 89 requests dealt with so far only 3 have not been answered within the timescale of 20 working days. Two of these were missed by one day and the other by 7 Days. The failures to respond within the timescale were because of the complex nature of the request and the work entailed in formulating the responses. The average time the Council takes to reply to requests is 9.40 working days

- 3.15 Since January 2005 there has only been one occasion when a Requestor was unhappy with the response the Council provided when that Requestor used the Internal Complaints Procedure (which is a requirement before reference to the Information Commissioners Office). The internal procedure was dealt with within the prescribed procedures and the information regarding the Council's vehicle fleet was released. No complaints have been referred to the Office of the Information Commissioner concerning requests made to this Council.
- 3.16 The Council is receiving an average of less than two requests per week and it does appear that the systems set up to help monitor the progress of individual cases work well. In 63% of cases the information requested by applicants has been released.
- 3.17 The Council on 29th June 2005 approved the incorporation of FOIA training into the training regime for members as it is of vital importance that members realise when a request has been made. Training has already taken place and will be an ongoing process.

#### **4. PART B - RPS**

- 4.1 RPS was implemented by Statutory Instrument on 1st July 2005.
- 4.2 The Regulations promote the Re-use of Public Sector Information and allow public bodies to investigate commercial opportunities in licensing the re-use of this information. The intention of the regulations is:
- i) To create a European framework for making the process easier and consistent across the EU Member States in order that they can realise the full economic value and benefits to customers of Public Sector Information; and
  - ii) To ensure the application is fair, consistent and non-discriminatory processes are in place.
- 4.3 The Regulations do not impose an obligation to re-use documents but provide a framework to make documents that are available more accessible (ie where Authority's Licence, sell, disseminate, exchange or give out information). The Regulations do not affect the intellectual property rights of third parties, nor do they affect the existence or ownership of intellectual property rights of public sector bodies. The Regulations encourage public sector bodies to exercise their copyright in a way that facilitates and encourages re-use.
- 4.4 The Regulations do not amend any existing Law or Regulation relating to the release and use of public information.
- 4.5 The Office of Public Sector Information (OPSI) oversees the new Regulations by setting standards and providing advice and guidance.

- 4.6 The Regulations encourage public bodies to take advantage of developing technologies such as Electronic Document and Records Management Systems, to make information easier to find, use and share.
- 4.7 The FOIA confers a general right of access to information held by public authorities and the RPS do not amend this regime. Access does not, however, give the recipient the right to re-use the information and copyright restrictions remain in place.
- 4.8 The Regulations encourage the use of standard and specific licences to allow the re-use of public sector information.
- 4.9 There is no obligation to permit re-use of information although where any instance of re-use exists for purposes outside the “public task” (even if it is the public sector organisation that owns the information) then the public body will need to consider requests from other parties to re-use this information. If the information is re-used by any external party it must be on an equitable basis as a private commercial company would need to be treated in the same manner as a registered charity if the intended re-use was the same.
- 4.10 The main obligations of the Regulations are:
- i) Standardisation of Licence terms – where information is provided for re-use public sector bodies have an obligation to publish licence terms.
  - ii) To publish a list of standard charges (where charges are applicable).
  - iii) To deal with requests for re-use within 20 working days.
  - iv) To produce a list of material available (published and unpublished) for re-use called an Information Asset Register.
  - v) To ensure a complaints procedure compatible with guidelines issued by OPSI.
- 4.11 The following measures should be implemented to ensure the Council is compliant with the new Regulations:-
- a) Responsibility for the operation of the Regulations be delegated to the Customer Services Manager in consultation with the Solicitor to the Council.
  - b) Standard Licences be developed by the Solicitor to the Council based upon the model licences produced by OPSI.
  - c) Establishment of an approval process be the responsibility of the Customer Services Manager (for granting licences for re-use to ensure that issue of licences is fair, transparent and non-discriminatory).
  - d) The Customer Services Manager establish and publish a scale of charges.
  - e) The existing FOIA complaints procedure to include complaints received about PSI Regulations.
  - f) The Customer Services Manager develop an Information Asset Register to be made publicly available through the Sedgefield Borough Council web site.

## 5. FINANCIAL & OTHER IMPLICATIONS

- 5.1 Failure to meet the requirements of the RPS Regulations as a result of operating discriminatory procedures in respect of re-use of public information or failing to realise income for the re-use of Council copyright information can result in OPSI dealing with a complaint if the complainant is dissatisfied with the Council's internal complaints handling procedures. A further appeal by either the Council or Requestor can be made by application for review to the Advisory Panel on Public Sector Information if there is further dissatisfaction with the recommendation of OPSI.
- 5.2 No guidance has yet been issued in relation to the sanctions which OPSI or the Advisory Panel on Public Sector Information can impose.
- 5.3 The fees/scale of charges to be established and published will be a source of income yet to be quantified. Any applicable charges should not exceed the cost of collection, production, re-production and dissemination of the documents requested plus a reasonable return on investment.

### Background Papers

Freedom of Information Act 2000

Report to Council – 20th December 2002

Report to Council – 29th June 2005

Directive 2003/98/EC of the European Parliament

Regulations on the Re-Use of Public Sector Information from OPSI

Statutory Instrument 2005 No.1515 – The Re-Use of Public Sector Information Regulations 2005

### ADDITIONAL INFORMATION SOURCES

Information Commissioners Web Site – [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

Department of Constitutional Affairs Web Site – [www.dca.gov.uk](http://www.dca.gov.uk)

Office of Public Sector Information Web Site – [www.opsi.gov.uk](http://www.opsi.gov.uk)

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## Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>