

## REPORT

**SUBJECT:** Freedom of Information (FOI) and Data Protection Act (DPA) Breaches & Subject Access Request (SARS) Report

**MEETING:** AUDIT COMMITTEE

**DATE:** 15th October 2020

### 1. PURPOSE:

- 1.1 The purpose of this report is to both describe the council's responsibilities when responding to information requests, and to present statistics on our performance under the Freedom of Information (FOI) and Data Protection Act (DPA) breaches and Subject Access Requests.
- 1.2 That Audit Committee scrutinize the report and request any further clarification of the information within it. We also invite members to discuss how we could improve the layout of the data provided or any level of detail that might make the information more useful and meaningful in future reports.

### 2. KEY ISSUES:

- 2.1 Legislation exists through the Freedom of Information Act, GDPR and the Data Protection Act to lay out the councils responsibilities towards information governance and management. The Acts enable people to request information relating to council activities (FOI), personal records held by the council (SARS) and to report data breaches. This report explains how the council has performed in the discharge of its legal responsibilities, as well as describes the changes in its administration processes for recording data.
- 2.2 In January 2019, responsibility for the administration of Freedom of Information and Data Protection relocated into the Digital Programme Office (DPO) from the Customer Relations Team. This was to strengthen the link between the digitisation of information and the increased risk of data loss from cyber-crime or human error. The Digital programme Office manages the transition from paper to digital storage, and ensures that digital storage is organised and managed so that it can be easily available to the right person, in the right format and at the right time.
- 2.3 Since the move, the DPO have digitised the administration of Data Protection and FOI to make it easier to manage requests and extract

relevant data. This change is constantly reviewed and improved to make sure it adds value and makes administration easier. This report will include performance data over time for comparison purposes.

- 2.3 Information Governance is reported to the Information Governance Group (IGG) on a bi-monthly basis. The group is chaired by the councils SIRO and is attended by representatives from the service areas to consult on their compliance with information management as well as performance in managing FOI requests and data breaches. IGG is also responsible for encouraging the take-up of mandatory training.
- 2.4 The statistical data included in this report isn't just for information, but is actively used by the Information Team to target changes in the way we record information to make it easier to extract relevant data on request. It is also used to assess the training needs in the organisation and focus training to the areas of higher risk. This targeted training supplements the 'blanket' electronic training and is far more effective in training in the context of the service areas working day.

### 3. FREEDOM OF INFORMATION

- 3.1 The Freedom of Information Act allows anyone to request any data and information held by the Council, whether stored electronically or in paper. The Act imposes certain timescales and conditions around the format and supply of information. The Council employs a Business Support Officer for 2.5 days a week to manage and co-ordinate FOI requests, though the information must be collated and supplied by service areas within the statutory deadlines.
- 3.2 An internal review is conducted where the requestor is not satisfied that a full response has been given. The review covers internal processes used to uncover the information, as well as deciding whether the statutory regulations have been met.
- 3.3 The statistics relating to FOI's are as follows:

	<b>2019/20</b>	<b>2017/18</b>
Requests received:	931	1005
Requests closed:	924	949
Requests closed on time:	69%	82%
Internal reviews:	3	0

The target is for a percentage of FOI's closed within 20 Working Days. The target of 90% closed requests has not been achieved for the financial year 2019/20. This is for several reasons as follows –

- A change of responsibility for FOI administration during the year which has resulted in a need for rapid upskilling of administrative staff
- The digitisation of the former manual process and the initial teething problems with the change
- An increase in the complexity of FOI's resulting in more time resource being required within the service area to respond to requests.

N.B. For comparison purposes in April-Aug 2020 74% of FOI's were closed during the Covid 19 restrictions. This indicates an upward trend in performance.

3.4 The number of requests received by Monmouthshire in recent years is as follows:

2012-13	780
2013-14	918
2014-15	1002
2015-16	1061
2016-17	1045
2017-18	1005
2018-19	No statistics available
2019-20	931
2020 (April – August)	282

3.5 The Digital Programme Office have split the FOI requests into the service areas that 'own' the response by the statutory deadlines. This is to help Members identify where the FOI requests are targeted, and where we may store information differently to help people to self-serve. For this reason, the statistics are split into service areas whilst recognizing that the collation of this information started in June 2019 only.

NUMBER OF FOI REQUESTS	SERVICE AREA
208	Requests where the service area has not been identified within the digital system (pre-June 2019)
95	Social services (29-Adult Services, 41-Childrens Services, 25-General)
86	FOI team (Where responses are collated by the FOI team from across all service areas)
71	Highways (including Traffic)

61	Council Tax and Benefits
50	Housing
41	Schools
37	Environmental Health
30	Planning
25	People Services
23	Digital Programme Office
20	The remainder are split over Estates, Finance, Comms, Animal Health, Democratic Services, & cemeteries

- 3.6 It should be noted that though the administration of FOI's rests within the Digital Programme Office it is the responsibility of the service departments to collate the information required by the FOI. With the increase in complexity of requests coupled with resource pressures in the service areas the time taken to respond has increased.
- 3.7 In 2020 Covid-19 had a considerable impact on the ability of the Council to respond to FOI requests and queries within the legislative timescales, and the Information Commissioner recognised this so allowed us scope to extend timescales without incurring penalties. This is common across all of the public sector as resources were diverted to react to the emergency.
- 3.8 Considerable effort is being made to 'signpost' people to readily available information rather than respond in detail to an FOI request. This is linked to opening up our data on our website in order for people to self-serve.

#### 4. DATA PROTECTION ACT BREACHES

- 4.1 The Data Protection Act is there to ensure we secure our data from theft, loss or mismanagement. From time to time data breaches may occur which could have a harmful effect on an individual and these breaches must be managed to ensure they can't re-occur and to minimise any damage that has occurred. The 'more serious' breaches are reported to the Information Commissioners Office (ICO), and these will be included in this report for analysis.

#### **Total number of Data Breaches recorded 2019/20 – 78**

##### **Directorates:**

Chief Execs	2
Children & Young People	7
Enterprise	7
Resources	2
Schools	28

Social Care, Health & Safeguarding	13
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**Type of data breach:**

Cyber Security Issue	2
Email	38
Paper Records	5
Laptop & Paper Records	1
Other*	13

\*Other includes breaches such as information shared on Twitter or photographs being shared without consent

- 4.2 Of the 78 data breaches recorded in 2019/20 only three cases were reported to the ICO. These were reported on a precautionary basis and only because it was felt that they could have been interpreted as being contentious. All other data breaches have been dealt with internally and were not considered serious.
- 4.3 The data above sets out the number of breaches split into directorates and type. It is useful to note that the whole council is classed as a single 'data controller', whilst each school is its own 'data controller' so is responsible for its own data protection management.
- 4.4 You will notice that schools have a high number of breaches in relative terms, though that may be a positive effect of appointing an education Data Protection Officer covering our schools and raising awareness of the importance of data management and what constitutes a breach. The new appointee has been in post since July 2019 and is providing GDPR and information management advice to schools, which has resulted in our ability to accurately record data breaches within schools. We have also introduced mandatory online GDPR training for all School staff and to date over 850 members of staff have been trained and 33 Schools have actively engaged with discussions and guidance on GDPR issues. As a result, we will be introducing more targeted information management training to address the most common issues of data breaches e.g. email miscommunication.
- 4.5 On the appointment of a new corporate Data Protection Officer in March 2019 a review of GDPR training was undertaken, which focuses training and management advice on the high-risk areas where departments are dealing with personal and sensitive data. In addition to this, we have developed mandatory online training for both GDPR and Cyber Security. A new process has been introduced for Data Protection Impact Assessments to be drawn up when services adopt new systems to ensure we are considering the implications of the data protection principles. The take up of mandatory online training is reported to the councils Information Governance Group and is as follows:

<b>Directorate</b>	<b>Count</b>
Chief Executives	51
Children and Young People	71
Enterprise	193
Resources	80

Social Care, Health and Safeguarding	153
Grand Total	548

## **5. SUBJECT ACCESS REQUESTS**

- 5.1 Individuals have the right to request to see any personal information that's held on them by the council. These SAR's require the council to search for any records they may hold, and make sure anyone else's personal information is redacted. The vast majority of SARS relate to Social Care, and because these records can go back many years responding to SARS is quite an undertaking. The number of SAR's therefore may not reflect the resources needed to collate the information, so it may be useful in future to split the SAR's into small, medium and large.
- 5.2 As SAR's are resource intensive to administer, it is important for the Digital Programme Office to assist Service Areas with data management processes to enable easy extraction and redaction of relevant data.
- 5.3 The statistics below are split into financial years, and future stats will enable Members to see the trends more clearly.
- 5.2 April to March 2019/20 - 51 SAR's  
April to September 2020 - 29 SAR's

## **6. CONSULTEES:**

Digital Programme Office  
Chief Officer Resources

## **7. BACKGROUND PAPERS:**

FOI requests, DPA breach notifications & SAR's records

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