

FALKIRK COUNCIL

**Subject: FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**  
**Meeting: SCRUTINY COMMITTEE**  
**Date: 31 OCTOBER 2014**  
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**1. INTRODUCTION**

1.1 The Council is subject to the Freedom of Information (Scotland) Act 2002 (**FOISA**) and the Environmental Information (Scotland) Regulations 2004 (**EIRs**). Services report to the Performance Panel periodically on their Freedom of Information (**FOI**) key performance indicators, but decision of this Committee to request a report on FOI provides a useful opportunity to provide an overview of Council-wide FOI performance, along with information as to recent FOI developments.

1.2 This report covers:

- FOI statistical information;
- Commissioner's decisions involving Falkirk Council; and
- an update on other FOI matters.

**2. FOI STATISTICAL INFORMATION**

2.1 The Scottish Ministers have guidance in place under section 60 of FOISA and regulation 18 of the EIRs, as to best practice for public authorities in discharging their duties under these regimes (**the Section 60 Code**). Until 1 April 2013, the Council maintained statistical information in line with the Section 60 Code but was not required to report that information to any central body. However, as of 1 April 2013, the Scottish Information Commissioner (**the Commissioner**) requested statistics on a quarterly basis from all Scottish public authorities. These are now available on the Commissioner's website and the Council's FOI webpage provides a link to this.

2.2 Council-wide statistics were last provided to the Best Value Forum in February 2012. This report therefore covers the calendar years 2012 and 2013, along with the first half of 2014.

2.3 Information is provided below on:

- total number of requests received;
- the numbers of requests which have been refused (in whole or in part);
- the numbers of fees which have been charged;
- the numbers of reviews which have been carried out;
- instances when the time limit for reply has been exceeded; and
- the number of appeals to the Commissioner.

### *Statistics for 2012*

2.4 The following table shows, in summary, the statistical information collated for 2012.

	Requests Received	No. of responses Outwith Time Limit	% Response Outwith Time Limit	No. of Refusals	No. of Fees Notices	No. of Reviews	% Reviews Outwith Time Limit
<b>TOTAL</b>	930	74	8.0%	123	4	12	17%

2.5 Additionally, 112 requests were received in 2012 which were dealt with under the EIRs (as compared to 73 in 2010 and 86 in 2011).

2.6 There was one application to the Commissioner in 2012 (comparable to 2010 and 2011) - see section 3 below.

### *Statistics for 2013*

2.7 From 1 April 2013, the Council's statistics have been collated in line with the Commissioner's requirements. She asks public authorities to provide data so that it relates to *activity* in the quarter when the event/action took place, which has meant a change of practice for some authorities, including ourselves; she has also asked for outcomes to be reported in a different way (instead of refusals, she looks at full release, part release, and no release). As a result, the statistics from April-December are not recorded in line with January-March, and so are shown separately in the following table.

	Requests Received	No. of responses Outwith Time Limit	% Responses Outwith Time Limit	No. of Refusals	No. of Fees Notices	No. of Reviews	% Reviews Outwith Time Limit
<b>Jan-March</b>	276	15	5.4	29	1	5	20
<b>April-Dec</b>	712	27	3.8	97 <sup>1</sup>	8	8	25
<b>Total</b>	<b>988</b>	<b>42</b>	<b>4.6%</b>	<b>126</b>	<b>9</b>	<b>13</b>	<b>22.5%</b>

2.8 Additionally, 146 requests were received in 2013 which were dealt with under the EIRs. It is intended that, going forward, the Council keep fuller statistics on the EIRs and a new EIR "add-on" to the Customer First system is being developed.

2.9 There were 3 applications to the Commissioner in 2013 - see section 3 below.

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<sup>1</sup> Instead of "refusals", we have recorded 42 as "no release", 48 as "part release", and 7 as "cost refusals".

*Statistics for first half of 2014*

2.10 Statistics for the first half of 2014 have been reported to the Commissioner. The third quarter (July to September) has not yet been submitted. The statistics for the first 6 months are shown in the table below.

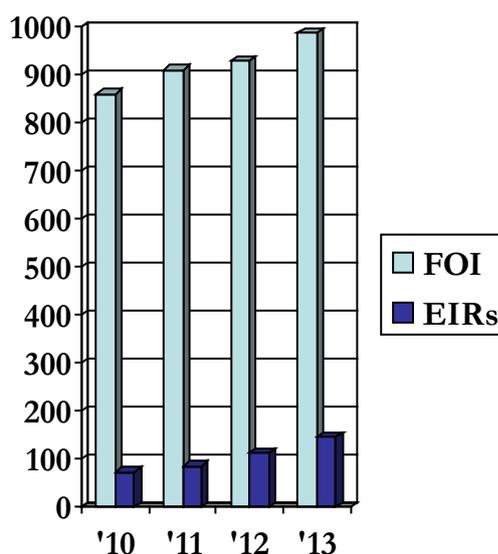
	Requests Received	No. of responses Outwith Time Limit	% Response Outwith Time Limit	No. of Refusals (in whole or part) <sup>2</sup>	No. of Fees Notices	No. of Reviews	% Reviews Outwith Time Limit
<b>TOTAL</b>	607	36	6%	88	11	9	22%

2.11 Additionally, 51 requests were received in the first half of 2014 which were dealt with under the EIRs.

2.12 There were 3 applications to the Commissioner in 2014 - see section 3 below.

*Comment on the statistics*

2.13 The number of requests under both FOI and the EIRs has increased year on year, with a combined total of 1,042 for 2012, 1,134 for 2013 and a projected total of over 1,200 for 2014 based on the year to date figure. The bar chart shows the increasing number of requests for the period from 2010 to 2013.



2.14 The number of reviews continues to be fairly low which would suggest that the majority of requesters are happy with the information provided in response to their request. The number of review responses which are sent out late is high (17% in 2012, 22.5% in 2013 and 22% for first half of 2014) which is due in part to the amount of work required to respond to some of the more complicated requests.

<sup>2</sup> “Refusals” encompasses responses where there is no or partial release of information, and refusals on cost grounds.

### *Information on time spent and fees/charging*

2.15 In the past, Services have been asked to keep a note of time spent and reproduction costs in responding to both FOI and EIR requests. This is not done in every case, so it is difficult to assess overall costs. Currently, the CRM system shows that an average of 2 hours is spent per FOI request, but it is considered that this probably reflects more of a “best guess” by officers rather than an accurate calculation.

2.16 FOI charges are restricted by statutory regulations. There is more flexibility for charging for EIRs and this is dealt with in paragraphs 2.21 and 2.22 below. In summary, for FOI:

- There is no charge for the first £100 of information (based on actual hourly salary rate for officer time, to a maximum of £15 per hour, equating to approximately 6.5 hours of officer time).
- Requests to which it would cost over £600 to respond can be refused (although it is good practice to offer to give out as much information within the “free” band as possible). This equates to approximately 40 hours of officer time.
- For requests which fall in the £100-£600 band, the Council can charge 10% of the estimated cost, up to a maximum charge of £50.
- Notice of any charge has to be given to the requester (by way of a fees notice) and, if paid within 3 months, the Council must provide the requested information.

2.17 The high level of “free” information, and the relatively low level of cost recovery, means that it is quite unusual for the Council to either issue fees notices or refuse requests on the basis of cost. There can be no charge for reviews or appeals, which are frequently cost-intensive to the Council, involving senior management and solicitors, and extensive correspondence with the Commissioner’s office. As an example, all the appeals to the Commissioner in 2013 (see paragraph 3.2 below) necessitated many hours of management and legal time.

2.18 By way of example, the following requests were dealt with relatively easily, with a small amount of officer time:

- Number of public health funerals
- Number of registered tattoo artists and studios
- Amount spent on fireworks
- Number of disabled parking space applications
- Treatment of food waste
- Fostering and kinship care allowances
- Amount of parking fines
- Cost of overseas school trips

2.19 The following requests for information were refused on grounds of excessive cost:

- The Council received a request for information on foetal alcohol spectrum disorders relating to children in the Council area, for the financial years 2009 to 2013. The information was not recorded centrally and the only way to provide the information would have been to undertake a manual trawl of both open and closed Social Work

cases over the last 5 years. It was estimated that this work would exceed the statutory cost limit of £600 and the request was refused.

- The Council was asked for a breakdown of claims for damage caused to third party vehicles (ie property, personal injury, legal fees) by Council refuse vehicles from 2008 to 2013. It would have been necessary to look at each individual claim file and so the request was refused on the basis of cost.
- A researcher asked for detailed information for each year from 1980 about social housing stock, including amount of stock, number of tenants exercising the right to buy, annual revenue from this, annual investment in new stock, number of new social homes and number of applications for Council houses. It was estimated that it would take over 53 hours to collate the information and the request was refused.
- The Council was asked for the total number of contracts put out for tender during 2010 and 2013, and asked how many of these contracts were awarded after a tendering process in which only one contractor submitted a bid. It would have been necessary to look at each tender process to determine whether there was a sole bidder and it was estimated that it would take over 54 hours to do this. This part of the request was refused on grounds of cost, but information as to total number of tenders in 2010 and 2013 was released.

2.20 Fees notices were issued for the following requests:

- A journalist submitted 2 separate requests for information about authorised and unauthorised gypsy traveller sites in the Council area for the period 2004 to 2014, including a breakdown of number of travellers and costs to the Council of running the sites and in relation to supporting travellers more generally. The Council was also asked for eviction numbers and costs, and the number of complaints about anti-social behaviour by gypsy travellers. In both cases, it was estimated that the information could be provided within the statutory limit of £600 but that a fees notices was required. The journalist paid both fees and the information was then provided.

### *Charging for EIRs*

2.21 There is more flexibility for public authorities to charge for EIR requests. The EIRs allow public authorities to charge a "reasonable amount" for access to environmental information, although any fee charged must not exceed the costs to the authority of producing the information requested. No charge can be made for inspection of information or for access to any public register.

2.22 Currently, the Council charges for EIR requests on the same basis as for FOI requests. Until recently, most Councils have done likewise. However, there has been a shift in approach to this issue recently by some Councils and work is now being done within the Council to assess whether it should join this shift. Responses to EIRs tend to be more complex and time-consuming, given the level of technical detail and paperwork involved. Any decision to charge for EIR requests on a different basis to FOI requests will be brought to Members.

### 3. COMMISSIONER'S DECISIONS

3.1 There was only one application in 2012 to the Commissioner against a decision of Falkirk Council. The Council was asked for information about a former councillor's annual pension and tax-free lump sum on retirement. The Council withheld this information on the basis that this was personal data. This was upheld by the Commissioner.

3.2 There were 3 decisions in 2013:

- Two applications were from the same elected member, who submitted 2 separate requests seeking information about an employee's mobile device. Work emails were released by the Council under FOI, but personal emails were withheld. The first application was partially upheld, on the basis of a failure by the Council to comply with FOISA timescales. The Commissioner found in favour of the Council in respect of the second application (request for personal emails). The Commissioner placed reliance on the Council's acceptable use policy, which permits reasonable personal use of Council equipment.
- A member of the public asked for information about historical maps and contaminated land reports. Reliance was placed by the Council (erroneously) on the Re-use of Public Sector Information Regulations 2005, which led both to an application to the Commissioner (who found in favour of the applicant) and a complaint to OPSI. The Council has updated its Re-use procedures in light of this.

3.3 There have been 3 decisions so far in 2014:

- An elected member asked for information relating to the preparation or execution of the changes in the Council decision-making structures from Committee to Executive model. The Council provided some information but withheld information about the briefing of senior councillors, a group leader and a political group. This was on the basis that disclosure would inhibit both the free and frank giving of advice and the free and frank exchange of views, and so be prejudicial to the effective conduct of public affairs. The Commissioner agreed with the Council.
- The Livingstone Terrace Residents Action Group asked the Council for information about exact timescales for responding to an elected member's email or written request. The Council said it did not hold this information and the applicant asked the Commissioner to investigate this. The Commissioner found that the Council did not record this information and it was therefore correct to say it did not hold this information.
- A pupil's parents complained about the Council's failure to respond to their query about examination grades. The Council admitted its failure to respond within statutory timescales to both the original request and the request for a review, and apologised to the applicants. Education Services has arranged for refresher training for senior management at all schools to remind them of their FOI obligations.

3.4 There are no current investigations pending.

3.5 The small number of applications to the Commissioner demonstrates that, in the main, the practical arrangements for dealing with FOI within the Council work well, and the legal advice given is reliable.

#### **4. UPDATE ON OTHER FOI MATTERS**

##### *Scottish Information Commissioner*

4.1 The Commissioner released her annual report for 2013/14 in September 2014. It is worth noting that:

- Scottish public authorities reported that they had received over 60,000 requests.
- Appeals fell slightly, with 578 appeals received compared to 594 in 2012/13.
- The largest proportion of appeals (41%) was about requests made to local government.
- 62% of appeals were from members of the public; the remainder were made up of:- 14% media, 8% prisoner, 5% solicitor on behalf of client, 3% elected representatives and 8% other.
- In 67% decisions, the Commissioner found wholly or partly in favour of the requester.

4.2 The annual report highlighted that the number of appeals made because authorities had failed to respond to a request (or a request for review) continues to concern the Commissioner. Her concern around these failures led the Commissioner to lay her first special report before the Scottish Parliament earlier this year, exploring the issues and trends arising from “failure to respond” cases. The Council’s “failure to respond” rate is fairly low, although the target is of course to respond to 100% of requests (and reviews) within the statutory timescale.

4.3 In a short regional fact file section, the annual report notes for Central region that:

- There is 75% public awareness of FOI (based on Ipsos Mori research in October 2013).
- There were 3,939 requests reported by the 8 public authorities in the region.
- The region saw the highest proportion of invalid appeals, 48% compared to the Scottish average of 33%.
- Of the 16 valid appeals, 9 related to Stirling Council, with 5 of these concerning a failure to respond.

4.4 It is of note that for Falkirk Council, only one of the 7 decisions by the Commissioner from 2012 to date is in relation to failure to respond within timescales.

4.5 In the past year, the Commissioner’s Office has commenced a programme of roadshows across Scotland, both to support public authorities in the effective and efficient delivery of their FOI function, while also supporting key users of FOI to make more targeted, effective and considered requests. The next roadshow is in Stirling on 14 November 2014 and Council staff will attend

*Publication Scheme*

4.6 Under FOISA, every public authority is obliged to have a guide to the information which it makes publicly available. The Council adopted the Commissioner’s model publication scheme for local authorities as of 31 May 2013 and this has approval until 1 June 2017. This is based in information found on the Council’s website.

*Training and development*

4.7 The following training relevant to FOI took place in 2013:

- April/May - service unit managers’ training (3 sessions) on information requests;
- October - Members’ briefing on access to information; and
- October - introduction to information governance training for new Customer First officers.

4.8 An introductory online FOI training package is now available to all staff. This is more accessible for those staff who do not require to work through the fuller online package developed some time ago by the Scottish Executive (as it was at the time) and which is somewhat out-of-date.

4.9 The Council’s FOI manual is in the process of being replaced by updated information, guidance and template letters on the intranet, which will make it more accessible and easier to keep up-to-date. Service-specific guidance notes for frontline staff are also available for those who do not have access to the intranet.

**5. RECOMMENDATIONS**

**It is recommended that the Committee:**

**5.1 Considers the information provided and determines whether the subject matter of the report is suitable for inclusion in the Council’s Scrutiny Plan.**

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**CHIEF GOVERNANCE OFFICER**

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