

CENTRAL SCOTLAND VALUATION JOINT BOARD

Subject: 2018/19 Internal Audit Review – Arrangements for Recording, Monitoring, and Responding to Freedom of Information (FOI) Requests
Meeting: Central Scotland Valuation Joint Board
Date: 01 February 2019
Author: Internal Audit Manager

1. Introduction

1.1 This paper provides details of the findings arising from the 2018/19 Internal Audit review of the Board's Arrangements for Recording, Monitoring, and Responding to FOI Requests.

2. Internal Audit Review of Arrangements for Recording, Monitoring, and Responding to FOI Requests

2.1 The Internal Audit Plan for 2018/19 was agreed by the Board on 29 June 2018. The Plan comprised reviews of:

- Business Continuity Management Arrangements;
- Arrangements for Recording, Monitoring, and Responding to FOI Requests; and
- Input to the Annual Governance Statement of Assurance Questionnaire process.

2.2 The report arising from work on the Arrangements for Recording, Monitoring, and Responding to FOI Requests is attached at **Appendix 1**.

2.3 We were able to provide Substantial Assurance in relation to the adequacy of Arrangements for Recording, Monitoring, and Responding to FOI Requests.

2.4 We did, however, make a number of recommendations aimed at further improving the framework of control, all of which were agreed with the Assistant Assessor. Implementation of these recommendations will be followed up by Internal Audit during 2018/19.

3. RECOMMENDATIONS

3.1 The Board is asked to:

- 3.1.1 Note the findings arising from the 2018/19 Internal Audit review of the Arrangements for Recording, Monitoring, and Responding to FOI Requests.**

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Internal Audit Manager

Date: 24 January 2019

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Appendices:

Appendix 1 – Internal Audit Report – Arrangements for Recording, Monitoring, and Responding to Freedom of Information Requests

List of Background Papers:

No papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973.

Arrangements for Recording, Monitoring, and Responding to Freedom of Information Requests

2018/19 Internal Audit Review

Substantial Assurance

IAA

Report Recipients:

Assessor and Electoral Registration Officer

1. INTRODUCTION AND SCOPE

- 1.1 This review of arrangements for recording, monitoring, and responding to requests received under the Freedom of Information (Scotland) Act 2002 forms part of our 2018/19 coverage of Central Scotland Valuation Joint Board (CSVJB), agreed by the Valuation Joint Board in June 2018.
- 1.2 Internal Audit, in conjunction with the Assessor and Electoral Registration Officer, identified key risks relating to the processing of Freedom of Information (FOI) requests, and agreed a Terms of Reference for the review (**Annex 1**).
- 1.3 The FOI (Scotland) Act 2002 (the Act) gives the public a right of access to recorded information of any age held by Scottish public authorities.
- 1.4 The Act clearly defines the organisations which are to be considered as public authorities, with Assessors and Joint Boards falling within the auspices of the Act. Electoral Registration Officers are not, however, considered to be a public authority under the Act and, as such, are exempt from the disclosure requirements imposed by the legislation.
- 1.5 For a request to be valid under the Act, it must:
- be submitted in writing (eg, letter, fax, or email) or in another permanent form which is capable of being used for subsequent reference (eg, voice mail message);
 - state the name of the applicant and an address for correspondence; and
 - clearly describe the information requested.

Applicants do not, however, have to specifically mention the Act or direct their request to a designated member of staff.

- 1.6 As a general rule, any person who requests information is entitled to receive it within 20 working days.
- 1.7 Certain types of information may, however, be regarded as exempt from disclosure, and a refusal of request issued instead to the applicant. This includes, for example:
- personal data;
 - commercially sensitive information;
 - legal documents and court proceeding records;
 - information otherwise accessible via the CSVJB and Assessor for Central Scotland (Assessor) Publication Scheme¹; and
 - information which may endanger the health and safety of an individual if disclosed.
- 1.8 During the period April 2017 to August 2018, the Assessor and CSVJB received 40 FOI requests. Responses to these requests generated an additional 4 reviews of the way in which the request was handled and / or review of the response provided.

2. AUDIT ASSURANCE AND EXECUTIVE SUMMARY

- 2.1 We can provide **SUBSTANTIAL ASSURANCE** in relation to the adequacy of arrangements for recording, monitoring, and responding to requests received under the FOI (Scotland) Act 2002 (see **Annex 2** for assurance category definitions).
- 2.2 All staff consulted during the review were clear about their roles and responsibilities, with an FOI Policy established to control the request handling process. Training is available to staff on the requirements of the FOI Policy and FOI (Scotland) Act 2002, albeit not all staff have completed the eLearning module.

¹ Note: The Publication Scheme sets out: the classes of information routinely made available by the Assessor and CSVJB (eg, policies and procedures, minutes of meetings, and annual reports); how the public can access this information; and any costs associated with obtaining the information.

- 2.3 In general, we found that staff are complying with legislative and Policy responsibilities. There does, however, remain some scope for further improvement.
- 2.4 In particular, there is a need to ensure that all FOI requests (including requests for reviews) are answered within the statutory 20 working day deadline, and that applicants are fully advised of their rights to complain to the Scottish Information Commissioner (SIC) if they are unhappy with the outcome of any FOI review.
- 2.5 There is also some scope for improving performance monitoring and reporting arrangements. This should include the accurate input of all FOI request and review details to the FOI Log, and the independent review of all statistical information prior to its submission to the SIC.
- 2.6 A summary of our recommendations is set out at **Section 4**, with more detail provided at **Section 3**.

3. AUDIT FINDINGS

Roles and Responsibilities

- 3.1 Responsibility for the strategic monitoring of FOI arrangements rests with the Operational Management Team (OMT). The OMT, which meets on a monthly basis, includes Senior Managers and representation from each business area. FOI is a standing item on every OMT meeting agenda.
- 3.2 The Assistant Assessor acts as FOI Officer for the Assessor and CSVJB, and is responsible for the day to day administration of FOI requests². This includes: co-ordinating the answering of requests for information that front line staff are unable to deal with in the normal course of their duties; calculating the fees to be levied on requests for information; and overseeing the transfer of requests from the Assessor and CSVJB to other Scottish public authorities.

² Note: The Principal Administration Officer has been assigned the role of Depute FOI Officer to ensure that adequate cover is in place should the FOI Officer be on leave (eg, annual or sick).

- 3.3 Roles and responsibilities are formalised in staff job descriptions and the FOI Policy, with all staff consulted during the review aware of their duties.

Policies, Procedures, and Guidance

- 3.4 A written FOI Policy has been developed by the FOI Officer to address all requirements of the Act. We found this policy to be comprehensive, clear, and an accurate reflection of legislation and best practice.

Training

- 3.5 When new employees are appointed they are required to participate in an Induction Programme, which consists of a series of online training modules, handouts, and the opportunity to shadow experienced members of staff until they are fully conversant and comfortable with the requirements of the role.
- 3.6 As part of the process, new employees are issued with the Assessor's FOI Policy and asked to complete an online 'Clacks Academy' FOI training module³. This approach ensures that new employees are provided with a variety of information, including how to recognise, evaluate, and respond to an FOI request.
- 3.7 Additional training and development opportunities are also available to allow the FOI Officer to familiarise herself (and consequently the Assessor and CSVJB) with any changes to FOI legislation and best practice. These include attendance at externally hosted FOI Practitioner Conferences and participation in Governance Committees held by the Scottish Assessors Association.
- 3.8 From review of the training and awareness arrangements in place, we noted the following issues, which we **recommend** are addressed:

³ Note: Clacks Academy is a series of eLearning courses developed by Clackmannanshire Council. Although elements of the FOI module are tailored specifically for Clackmannanshire Council (eg, Council system for processing FOI requests), the module does contain helpful information on the legislative requirements imposed by the FOI (Scotland) Act 2002.

3.8.1 the Induction Programme checklist does not include a requirement for new employees to complete the 'Clacks Academy' FOI training module. The format of the checklist should be amended to provide confirmation that the module has been completed;

3.8.2 the majority of staff have not completed the Clacks Academy FOI training module⁴. To enhance staff knowledge and understanding of FOI requirements, all staff should be required to complete the module on an annual basis; and

3.8.3 no reports are generated from the Clacks Academy system setting out all staff who have completed the FOI module and the date on which the module was completed. The FOI Officer should request these reports on an annual basis from the Organisation Development Manager at Clackmannanshire Council to confirm that staff are fully complying with the FOI training requirements.

Operational Controls

3.9 Requests for information are primarily received from applicants through the submission of emails to the Assessor's generic email address (assessor@centralscotland-vjb.gov.uk), or letters to the Assessor's headquarters at Hillside House, Stirling. Emails and / or letters are also occasionally sent directly to frontline staff who have had previous dealings with the applicant.

3.10 The 'Receiving Officer' assesses each request to determine whether it is an FOI request or a request for information which can be satisfied within the course of their everyday duties (eg, provision of details on office opening hours). Key criteria used to distinguish an FOI request includes:

- it is in a permanent form capable of being used for subsequent reference (eg, email or letter);
- it is accompanied by the applicant's name and correspondence address;
- it contains a clear description of the information being requested; and
- the information requested is not already available in the Assessor and CSVJB's Publication Scheme.

3.11 On identification that an FOI request has been received, the request is transferred to the FOI Officer as soon as possible. The FOI Officer is subsequently responsible for undertaking each stage of the response process, with key stages including:

- updating an excel based FOI Log with all request details. For example: applicant's name; summary of information requested; and statutory deadline for responding to applicant;
- assessment of the Assessor's obligation to disclose the requested information. The Act sets out several types of information which is exempt from disclosure. For example: court records of proceedings or other relevant legal documents; information that, if disclosed, would constitute a breach of confidence; personal data (as defined by the Data Protection Act 2018); and information that may endanger the health and safety of an individual if disclosed;
- calculation of the fees to be levied on applicants for the provision of requested information. The costs for which fees may be charged, and the limits associated with these fees, are set out in the FOI (Fees for Required Disclosure) (Scotland) Regulations 2004. Fees are not payable where projected costs do not exceed £100, with the Assessor under no obligation to provide the requested information if projected costs are estimated to exceed £600;

⁴ Note: The FOI Officer advised that the Clacks Academy training module was introduced c3 years ago. There have been a limited number of new starts during this period and, consequently, very few members of staff have been asked to complete the module.

- retrieval and collation of information for all eligible FOI requests. The FOI Officer is primarily responsible for searching paper-based and electronic systems to locate the requested information, however, assistance is occasionally required from the Divisional Valuers for complex and lengthy enquiries;
- notifying applicants of the outcome of their request within 20 working days of receiving the request. Responses are provided, where possible, in the format requested by the applicant. A standard template has, however, been developed for completion when the Assessor decides not to release the requested information; and
- updating the FOI Register with the outcome of each request. For example: date response provided; level of information provided (full, partial, or none); and, where applicable, reasons for the refusal to provide information (including exemption reference).

3.12 We reviewed a sample of 6 FOI requests to assess compliance with the Act and established procedures⁵. Our review identified the following issues, which we **recommend** are addressed:

3.12.1 on two occasions, FOI requests were not fully answered within the statutory 20 working day deadline. To minimise applicant dissatisfaction, and the risk of reprimand or fine by the Scottish Information Commissioner (SIC), all staff should be reminded of the criteria for distinguishing FOI requests from 'business as usual' requests, and the need to forward all FOI requests to the FOI Officer without delay. The FOI Officer should, thereafter, set aside sufficient time to respond to the FOI request within the statutory timescales; and

⁵ Note: A total of 40 FOI requests were received by the Assessor and CSVJB between 01 April 2017 and 31 August 2018. Our sample therefore represented 15% of the total number of FOI requests received during this period.

3.12.2 an acknowledgement email / letter is not always sent to the applicant by the FOI Officer on receipt of the FOI request. To ensure compliance with good practice guidance⁶, all applicants should be advised of the following information: confirmation that request received; name of Officer handling the request; and date by which a response will be provided.

3.13 Should an applicant be dissatisfied with the decision to withhold information, or the way in which their request has been dealt with, they are entitled to request a formal review of the decision and / or decision making process.

3.14 For the request for a review to be valid, applicants must make a written submission to the Assessor within 40 working days of receiving the response to their initial FOI request. This submission must set out: a description of the original FOI request; explanation of why they are dissatisfied; and address for correspondence.

3.15 Responsibility for carrying out all reviews rests with the Assessor and Electoral Registration Officer (AERO). This ensures that independent consideration is given to the merits of the complaint, as the original FOI request is assessed and responded to by the FOI Officer.

3.16 As part of the review process, the AERO assesses the original FOI request against all disclosure exemptions set out in the Act, and analyses the response provided to the applicant. Consideration is also given to any other documented interactions with the applicant during the request stage (eg, provision of advice and assistance to applicant on how to submit eligible FOI requests).

3.17 On conclusion of the review, a written response is provided to the applicant. The response, which must be issued within 20 working days of receiving the request for a review, contains details of: the AERO's decision; reasons for this decision; and the applicant's right to appeal to the Scottish Information Commissioner within 6 months if they remain dissatisfied with the decision.

⁶ Note: s4.8.1 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the FOI (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

3.18 We reviewed a sample of 2 requests for an FOI review to assess compliance with the Act and established procedures⁷. Our review identified the following issues, which we **recommend** are addressed:

3.18.1 an acknowledgement email / letter is not always sent to the applicant by the AERO on receipt of the request to review the actions and decisions relating to a previous FOI request. To ensure compliance with good practice guidance⁸, all applicants should be advised of the following information: confirmation that review request received; name of Officer handling the request; and date by which a response will be provided;

3.18.2 on one occasion, the requested review was not completed and fully answered within the statutory 20 working day deadline. To minimise applicant dissatisfaction, and the risk of reprimand or fine by the SIC, all reviews should be finalised in accordance with the timescales set out in the Act;

3.18.3 on one occasion, the applicant was not advised of their right to appeal to the SIC if they were unhappy with the outcome of the review, and the timescales and process for submitting such an appeal. Consequently, there has been non compliance with section 21 of the Act; and

3.18.4 on one occasion, the FOI Log was not fully completed (eg, response deadline, outcome from review, and date response issued). Consequently, the FOI Log is not an accurate source of information for compiling statistical returns to the SIC (as per paragraph 3.21).

Management Information

3.19 The FOI Officer provides the OMT with monthly verbal updates on a range of areas, including: number of FOI

requests received since the previous meeting; nature of these requests; and number of FOI requests for which a response remains outstanding. This information guides decision making on the content of the CSVJB and Assessor Publication Scheme, and provides comfort to senior management on the level of compliance with statutory response deadlines.

3.20 In addition to providing verbal updates to the OMT, the FOI Officer prepares and submits a statistical return to the SIC on a quarterly basis. This return, which has been designed by the SIC, sets out a variety of information, for example the number of:

- FOI requests received;
- requests which received a response within the statutory timescale;
- requests which received a late response;
- requests which required a response, but which did not receive one;
- requests refused, including reason for refusal (eg, excessive costs or repeated requests); and
- requests for which information was provided in full.

3.21 Our review of the information submitted to the SIC for the first two quarters of 2018 did, however, highlight inconsistencies with the information recorded within the FOI Log⁹. To ensure the integrity of all reported information, we **recommend** that these anomalies are investigated and addressed, with arrangements put in place to ensure that the accuracy of all future returns are checked prior to their submission to the SIC.

⁷ Note: A total of 4 requests for an FOI review were received by the Assessor and CSVJB between 01 April 2017 and 31 August 2018. Our sample, therefore, represented 50% of the total number of FOI review requests received during this period.

⁸ Note: s4.8.1 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the FOI (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

⁹ Note: Inconsistencies related, for example, to the number of: requests for review received (Quarter 1); requests for which all of the information was not held (Quarter 1); and FOI requests received (Quarter 2).

4. RECOMMENDATIONS AND ACTION PLAN

Rec. No.	Recommendation	Reason for Recommendation	Agreed Management Action	Responsible Owner	Action Due
1.	<p>The format of the Induction Programme checklist should be amended to include reference to the completion of the 'Clacks Academy' Freedom of Information (FOI) training module.</p> <p>In addition, all staff should be required to complete the 'Clacks Academy' FOI training module on an annual basis.</p> <p>Finally, the FOI Officer should request an annual report from the Organisation Development Manager at Clackmannanshire Council setting out staff who have completed the FOI training module, and the date on which the module was completed. Reminders should subsequently be issued to all staff who are found not to have completed the module in a timely manner.</p> <p>Report Paragraph: 3.8.1 to 3.8.3</p>	To refresh staff knowledge and understanding of FOI requirements, and to confirm that staff are fully complying with the training requirements.	<p>Recommendation Accepted Induction Programme checklist will be amended to include completion of the 'Clacks Academy' Freedom of Information training module.</p> <p>The Appraisal Policy will be amended to insert a check box on the annual appraisal form to ensure training completed annually.</p> <p>Annual reports will be requested in April each year.</p>	<p>Assistant Assessor</p> <p>Assistant Assessor</p> <p>Assistant Assessor</p>	<p>Completed November 2018</p> <p>February 2019</p> <p>April 2019</p>
2.	<p>All staff should be reminded of the criteria for distinguishing Freedom of Information (FOI) requests from 'business as usual' requests, and the need to forward all FOI requests to the FOI Officer without delay.</p> <p>On receipt of the FOI request, the FOI Officer should set aside sufficient time to respond within the statutory timescales.</p> <p>Report Paragraph: 3.12.1</p>	To ensure compliance with statutory FOI response timescales, thereby minimising the risk of applicant dissatisfaction and reprimand or fine by the Scottish Information Commissioner.	<p>Recommendation Accepted An email will be sent to all staff highlighting the relevant area in the Freedom of Information Policy.</p> <p>Freedom of Information Officer to respond to requests as soon as possible following receipt of FOI request.</p>	<p>Assistant Assessor</p> <p>Assistant Assessor</p>	<p>February 2019</p> <p>January 2019</p>
3.	<p>An acknowledgement should be sent to applicants on receipt of either a Freedom of Information (FOI) request or request for review.</p> <p>Report Paragraphs: 3.12.2 and 3.18.1</p>	To ensure compliance with section 4.8.1 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the FOI (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004.	<p>Recommendation Accepted Freedom of Information Policy to be reviewed to include requirement to issue acknowledgement letter as soon as possible following receipt of FOI request.</p>	Assistant Assessor	February 2019
4.	<p>All Freedom of Information (FOI) reviews must be completed and fully answered within 20 working days.</p> <p>In addition, responses to FOI reviews must include details of the applicant's right to appeal to the Scottish Information Commissioner if they are unhappy with the outcome of the review.</p> <p>Report Paragraphs: 3.18.2 and 3.18.3</p>	To ensure compliance with statutory requirements, thereby minimising the risk of applicant dissatisfaction and reprimand or fine by the Scottish Information Commissioner.	<p>Recommendation Accepted An email will be issued to all staff reminding them of the need to forward relevant requests for information to the Freedom of Information Officer as soon as possible.</p> <p>Template letters will be added to the intranet.</p>	<p>Assistant Assessor</p> <p>Assistant Assessor</p>	<p>February 2019</p> <p>February 2019</p>

Rec. No.	Recommendation	Reason for Recommendation	Agreed Management Action	Responsible Owner	Action Due
5.	<p>The Freedom of Information (FOI) Log should be fully and accurately updated with the details of all FOI requests and reviews, including: date request received; statutory response deadline; outcome of request / review; and date response issued.</p> <p>Report Paragraph: 3.18.4</p>	<p>To facilitate the production of accurate statistical returns to the Scottish Information Commissioner.</p>	<p>Recommendation Accepted The format of the FOI Log will be reviewed, and a column inserted for the date review response issued. It will also be ensured that the FOI Log is accurately updated with FOI request and review details.</p>	<p>Assistant Assessor</p>	<p>February 2019</p>
6.	<p>Anomalies with the statistical returns submitted to the Scottish Information Commissioner (SIC) for the current calendar year (Quarters 1 and 2) should be investigated and addressed. Thereafter, arrangements should be put in place to ensure that the accuracy of all future returns is checked prior to their submission to the SIC.</p> <p>Report Paragraph: 3.21</p>	<p>To ensure the integrity of all information reported to the SIC.</p>	<p>Recommendation Accepted Checks to be put in place ahead of statistical returns.</p>	<p>Assistant Assessor</p>	<p>March 2019</p>

Terms of Reference



Service:	Central Scotland Valuation Joint Board	Audit Year:	2018/19
Assessor and Electoral Registration Officer:	Pete Wildman	Audit Manager:	Gordon O'Connor
Audit Area:	Freedom of Information Requests	Lead Auditor:	Sandy Carmichael

SCOPE

The scope of this review was to evaluate and report on the controls in place to record, monitor, and respond to requests received under the Freedom of Information (Scotland) Act 2002. This review formed part of our 2018/19 Internal Audit Plan agreed by the Valuation Joint Board on 29 June 2018.

KEY RISKS

The following were identified as key risks:

- lack of clarity in roles, responsibilities, policies, and procedures, leading to a failure to comply with legislation and, ultimately, adverse publicity or reprimand;
- inadequate arrangements for recording, monitoring, and responding to Freedom of Information requests, resulting in loss of transparency, error, and / or a failure to fulfil legislative requirements; and
- inadequate management information systems, leading to an inability to demonstrate compliance with Freedom of Information requirements.

REMIT ITEMS

We developed our work-plan to obtain the necessary evidence to provide assurance that appropriate systems were in place to mitigate the above risks. This was achieved by reviewing the following:

1. roles and responsibilities of those accountable and responsible for recording, monitoring, and responding to requests received under the Freedom of Information (Scotland) Act 2002;
2. the availability of policies, procedures, and guidance for recording, monitoring, and responding to Freedom of Information requests. To include training arrangements;
3. mechanisms for recording, monitoring, and responding to Freedom of Information requests; and
4. the accurate and timely production of management information.

DEFINITION OF ASSURANCE CATEGORIES

Level of Assurance	Definition
Substantial assurance	Largely satisfactory risk, control, and governance systems are in place. There may be some scope for improvement as current arrangements may undermine the achievement of objectives or leave them vulnerable to error or abuse.
Limited assurance	Risk, control, and governance systems have some satisfactory aspects. There are, however, some significant weaknesses likely to undermine the achievement of objectives and leave them vulnerable to an unacceptable risk of error or abuse.
No assurance	The systems for risk, control, and governance are ineffectively designed and operated. Objectives are not being achieved and the risk of serious error or abuse is unacceptable. Significant improvements are required.