

**REPORT TO:** SCRUTINY COMMITTEE - 15TH JUNE 2011

**REPORT ON:** FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 -  
ASSESSMENT REPORT AND ACTION PLAN

**REPORT BY:** DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)

**REPORT NO:** 300-2011

## **1.0 PURPOSE OF REPORT**

- 1.1 To report on the findings of the Scottish Information Commissioner's (SIC) assessment and for the Committee to note the Action Plan in response to its recommendations.

## **2.0 RECOMMENDATIONS**

- 2.1 It is recommended that the Scrutiny Committee note the Action Plan.

## **3.0 FINANCIAL IMPLICATIONS**

- 3.1 There has been limited research undertaken in the UK into the costs of handling FOI requests to the authorities subject to the Act. The Scottish Government conducted initial research during late 2009 and provisionally suggested that the average cost in staff time of responding to a request is in the region of £200. The Council received 858 FOISA requests in 2010. Using the Scottish Government's average cost would bring out an estimated cost to the Council of replying to FOISA requests in 2010 of approximately £170,000. Where a requester is dissatisfied with the FOISA reply he or she has the right to request a review by the Chief Executive and where he or she remains dissatisfied after the Chief Executive's review has the right to appeal to the Scottish Information Commissioner.

It is not possible to estimate the additional cost to the Council of dealing with these reviews and appeals.

All these costs have had to be contained within existing Departmental budgets as no extra funding was given to public authorities by the Scottish Government to implement FOISA.

## **4.0 MAIN TEXT**

- 4.1 Representatives of the SIC carried out an assessment of the Council's handling of information requests in relation to compliance with FOISA, the Environmental Information (Scotland) Regulations 2004 and the associated Codes of Practice.
- 4.2 Their Report is attached.
- 4.3 The Council were also asked to prepare an Action Plan in response to the Commissioner's Recommendations. The Action Plan prepared by Officers, approved by the SIC and updated to show the actions which have already been completed is attached.

## **5.0 POLICY IMPLICATIONS**

This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

**6.0 CONSULTATIONS**

6.1 The Chief Executive and Director of Finance have been consulted in the preparation of this Report.

**7.0 BACKGROUND PAPERS**

7.1 None.

Patricia McIlquham  
Depute Chief Executive (Support Services)

Date: 24th May, 2011

# Assessment report



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<b>Scottish public authority:</b>	Dundee City Council
<b>Dates of on-site assessment:</b>	22 and 23 November 2010
<b>Assessors from OSIC:</b>	Jill Walker and Claire Sigsworth
<b>Date of issue:</b>	12 April 2011

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## Executive summary and recommendations

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This report sets out the findings of an assessment of Dundee City Council (the Council), carried out by representatives of the Scottish Information Commissioner (the Commissioner).

The assessment considered all aspects of the Council's handling of information requests, in relation to compliance with the Freedom of Information (Scotland) Act 2002 (FOISA), the Environmental Information (Scotland) Regulations 2004 (the EIRs) and the associated Codes of Practice.

The assessment was carried out as a consequence of concerns the Commissioner identified regarding the Council's practices, particularly in relation to its compliance with the timescales laid down in FOISA, the adequacy of searches to locate information, and the level of advice and assistance offered to requestors when a request has been made.

The Council had taken some steps to improve its performance with respect to timescales, in particular via the recruitment of a Corporate FOI Co-ordinator, and improvements in the management and reporting on request handling. The Council's Chief Executive has also taken action since his appointment in October 2009. He monitors departmental performance with respect to FOISA and the EIRs and performance in these areas forms part of the appraisals of Chief Officers. The assessors welcomed these steps to ensure that compliance with FOISA is supported at a senior level within the Council, and to bring about improvement in the timescales for responding to requests.

However, the assessors identified considerable scope for further improvement within the Council as a number of current practices are not compliant with the statutory requirements laid down in FOISA and the EIRs, or the good practice set out in the Codes of Practice.

For example, the assessors noted that

- the Council continues to fail to comply with the timescales laid down in FOISA in a significant proportion of cases.
- the Council's approach to request handling did not take sufficient account of the duty to provide advice and assistance set out in section 15 of FOISA, particularly in cases where the requested information was not held, or where the cost of complying the request exceeded the £600 threshold.
- the current practice of the Council is to deal with all valid requests for information under the terms of FOISA even in cases where the request is clearly for environmental information as defined under the EIRs. (The assessors have drawn attention to the fact that there are important differences between the two sets of legislation and failure to handle requests for environmental information in terms of the EIRs creates a serious risk of non-compliance.)
- formal notices issued by the Council in terms of FOISA did not always include the required content,
- there is saw evidence of requests being refused without formal notice being given, as part of "business as usual" request handling.

The assessors' recommendations to address these and other areas where practice could be improved can be found at the end of the report.



## Scope and objectives of assessment

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1. This report sets out the findings of an assessment of Dundee City Council (the Council) by representatives of the Scottish Information Commissioner (the Commissioner). The purpose of the assessment was to establish whether the Council was complying with good practice in dealing with requests for information in terms of the **Freedom of Information (Scotland) Act 2002 (FOISA)**, the **Environmental Information (Scotland) Regulations 2004 (the EIRs)** and the associated Codes of Practice<sup>1</sup>, and to identify and make recommendations in relation to areas where procedure and practice were not in line with expected good practice.
2. The assessment considered all aspects of the way in which the Council handled information requests. The following areas were identified for particular consideration and discussion following a review of information held by the Commissioner regarding the Council's practice in relation to:
  - Compliance with timescales laid down in the legislation.
  - The systems used by the Council for handling, managing and tracking information requests.
  - The responses the Council provides to requestors when responding to their information requests, in particular whether any refusal notices issued comply with the requirements of FOISA and the EIRs, including whether requestors are advised of their right to apply to the Commissioner within six months, when a response is provided to their request for information.
  - The notices issued by the Council when seeking to rely on section 17 of FOISA.
  - Adequacy of searches undertaken prior to responding to information requests.
  - Compliance with the Council's obligations to provide advice and assistance to requestors as required under section 15 of FOISA and Regulation 9 of the EIRs.
  - Definition of an FOI and EIR request as opposed to a request dealt with as "business as usual"
  - Training provided to staff involved in receiving and responding to information requests.

## Assessment process

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3. The Council was notified of the Commissioner's intention to conduct an assessment of its practice in a letter dated 7 April 2010. In a further letter dated 30 April 2010, the Council was advised of the assessment objectives detailed above. Jill Walker and Claire Sigsworth (the

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<sup>1</sup> The relevant Codes of Practice are the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities Under the Freedom of Information (Scotland) Act 2002 (referred to in this report as "the section 60 Code of Practice") and the Code of Practice on the Environmental Information (Scotland) Regulations 2004 for Scottish Public Authorities (referred to in this report as the "section 62 Code of Practice"). It should be noted that the assessment did not assess compliance with the Freedom of Information (Scotland) Act Code of Practice on Records Management (commonly referred to as "the section 61 code").



assessors) conducted the on-site assessment on behalf of the Commissioner on 22 and 23 November 2010. During this, they met the following members of Council staff:

- David Dorward – Chief Executive
  - Patricia McIlquham – Depute Chief Executive (Support Services)
  - Roger Mennie – Legal Manager
  - Ramsay Hood – Corporate FOI Co-ordinator
  - Jim Bone – Team Leader Performance and Finance
  - Mike Keddie – Principal Architectural Services Officer
  - Louise Sutherland – Customer Services Team Leader
  - Lorraine Glynn – Mail/Filing Supervisor- Finance
  - Mark Mitchell – Principal Accountant - Finance
  - Linda Gellatly – Senior Administrative Officer - Education
  - Zena Hyslop – Senior Administration Officer – Architecture.
4. In conducting the assessment, the assessors worked through a list of questions which had been prepared in advance of the on-site assessment, based on the responses received to a pre-assessment questionnaire, together with the sample of requests and the process document the Council had provided in advance of the assessment. The assessors did not review the Council's publication scheme as this is currently with the Commissioner for approval.
  5. The assessors also made reference to the assessment checklist published within the Commissioner's Investigations and Enforcement Procedures<sup>2</sup> to ensure that each relevant area of practice had been assessed and appropriate evidence gathered.
  6. At the end of the assessment, a concluding meeting was held with Patricia McIlquham and Roger Mennie. This meeting provided an opportunity to feed back the key findings of the on-site assessment. The feedback from that meeting is reflected and expanded on in the points below.
  7. Dundee City Council delivers a full range of Council services to its population of over 142,000 people. These services include (amongst others) Education, Social Work, Housing, and Environmental Health and Trading Standards.

## Overview: culture and practice

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8. During the on-site part of the assessment, it became apparent to the assessors during interviews with staff that there is a general ethos towards making information available to requestors.
9. The assessors noted an area of good practice in the Council having proactively identified that its practice in some areas, and particularly with respect to compliance with statutory timescales for responding to requests for information, has historically fallen short of good practice. Steps taken to address this have included the employment of a dedicated Corporate

<sup>2</sup> Available online at [http://www.itspublicknowledge.info/web/FILES/publication\\_scheme/Investigations\\_Enforcement\\_Proc\\_v8.pdf](http://www.itspublicknowledge.info/web/FILES/publication_scheme/Investigations_Enforcement_Proc_v8.pdf)



FOI Co-ordinator who has responsibility for logging, monitoring and tracking the processing of FOI and EIRs requests. This development has resulted in some improvement in the Council's compliance with statutory timescales.

10. It was clear from discussion with the Chief Executive that he has taken steps, since his appointment in October 2009, to raise the profile of FOI throughout the Council and this has been reinforced through his consideration of departmental performance in his appraisals of Chief Officers.
11. Another area in which a positive approach was identified by the assessors was the Council's response to simple and straightforward information requests, where staff process these as "business as usual" requests in an effort to provide requestors with all relevant information quickly, rather than following the FOISA process. However, the assessors had some concerns (discussed below) about whether "business as usual" practice was being followed inappropriately in cases where the Council did not simply release all of the information requested.
12. The Council currently has a centralised structure for responding to information requests, with all the handling of information requests being managed centrally and responses issued by the Legal Manager. Each department or service area of the Council also has one or more FOI representative(s) who is called upon to provide assistance should a request for information be received for information held within their service area. The FOI representatives are not required to issue responses to any request for information, but simply to liaise with colleagues to facilitate the location, retrieval and provision of any information requested which is held by their service area. They will then pass this to the Corporate FOI Co-ordinator, who will gather together all relevant information and provide this, together with his recommendation on responding to the request, to the Legal Manager. While the department which holds the information may express a view as to whether the information should be disclosed, the final decision as to whether any exemption applies to the information, and whether it should be released, is made in every case by the Legal Manager.
13. The assessors considered that the centralised approach to request handling adopted by the Council creates a risk of non-compliance with the statutory timescales, because there is potential for delays at each stage in the request handling process. Also, the quality of the responses issued by the decision maker within this structure, and in particular his ability to offer reasonable and appropriate advice and assistance, depends to a significant extent on the quality of the information provided by the service area to which the request relates.
14. The assessors indicated to the Council that one option for addressing some of the areas of non-compliance identified in the assessment was to consider a less centralised approach to request handling, in which responsibility for all aspects of request handling is shared across the Council. However, the Council indicated that its preference was to continue to work within the existing structure, which was in line with its wider culture. The assessors have therefore made recommendations for how improvements in practice can be made within the existing centralised structure.
15. In particular, they have noted that the Council has a network of staff available to assist in the location, retrieval and provision of information of which they (and the colleagues they liaise



with) have an expert knowledge. The assessors suggest that this existing system can be used to improve the quality of responses, and the advice and assistance given to requestors. They suggest that the FOI representatives and their service areas are asked to supplement any response providing the information requested (or stating that it is not held, or that the cost of providing it would be excessive) with contextual information and comments as to any sensitivities surrounding the information that would assist the Legal Manager in preparing a response and providing appropriate advice and assistance to the applicant.

16. The assessors also suggest that the Council considers whether the Corporate FOI Co-ordinator should be offered training to enable him to make responses directly to requests, where they are straightforward, without the need for the Legal Manager to do this in every case.
17. The assessors also identified scope for improvement in other areas, where practice was identified as not being compliant with the statutory requirements laid down in FOISA and the EIRs, or good practice as set out in the Codes of Practice. Recommendations on these matters are set out in the body of this report, and in tabular form at the end of the report. The assessors were able to work constructively with the relevant Council employees in carrying out the assessment.

## Detailed outcomes, findings and recommendations

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18. The following sections provide details of the main areas of practice assessed and set out the assessor's findings and any associated recommendations. No comment is made in this report on areas where there is no evidence of practice. From the information that has been reviewed, the Council has never, for example:
  - Been required to consider extending the timescale for complying with a request for environmental information under regulation 7 of the EIRs, or received a request for a review under the EIRs (with the consequence that it had not had to comply with regulation 16)
  - Issued a notice under section 14 of FOISA (vexatious or repeated requests)
  - Issued a refusal notice in terms of section 18 of FOISA ("Neither confirm nor deny").
19. From the evidence reviewed by the assessors, they were also satisfied that the Council complies fully with FOISA, the EIRs and the associated Codes of Practice in relation to the following matters, and as a consequence these are not covered further in the report:
  - Handling requests from employees and other stakeholders under FOISA and/or the EIRs (depending on the appropriate regime)
  - Ensuring that they comply with advice and assistance requirements, in line with the Section 60 Code of Practice, in relation to equalities issues when responding to requests for information
  - Transferring requests between authorities
  - Public sector contracts.



## Receipt of requests and recording systems

20. The majority of requests for information handled by the Council as requests made in terms of FOISA are received by email communication, either via the dedicated FOI email address or emailed directly to Support Services. Some requests are, however, received directly by individual service areas and some are also received by letter. Where a request is recognised as one made in terms of FOISA, it is forwarded for logging within the Council's database for request handling.
21. Requests that are considered "business as usual" are not handled via the centralised FOI process, but are instead dealt with directly by the business area to which they relate. Requests handled on a "business as usual" basis are discussed separately below.
22. In the main, where a request is received directly by a service area, then the FOI representative will be made aware of it and will forward it directly to either the Corporate FOI Co-ordinator or one of two specified members of staff within the HR section, who will log it directly onto the database system used by the Corporate FOI Co-ordinator for logging, tracking and monitoring requests.
23. Where requests are received directly by Support Services (the service area in which the Corporate FOI Co-ordinator and Legal Manager are based), either by email or in another written form, the Corporate FOI Co-ordinator will forward these to one of two specified staff in the HR section and they will:
  - Log these requests into the database system
  - Include details of the request (commonly by attaching a copy of the request submitted by the requester).
24. Once the request has been logged on to the database system the Corporate FOI Co-ordinator will first of all review it to establish whether it should be handled in terms of FOISA. At this stage, he may identify that a request could be dealt simply with on a "business as usual" basis and pass it to the relevant area for response. In such cases, the request will not be considered any further within the Council's centralised request handling process.
25. Where a request is to be handled in terms of the Council's FOI process, the Corporate FOI Co-ordinator will consider the subject matter of the request, email the FOI representative(s) in the service area(s) which he considers might hold relevant information and ask that they provide any relevant information they hold to him within 10 working days. Additional or alternative service areas to search may be identified in the course of this process, and the Corporate FOI Co-ordinator will co-ordinate the gathering of information where searches involve more than one service area.
26. From the discussions the assessors had with FOI representatives from four service areas in the Council, they noted that all but one of these had their own systems in place for logging any FOI requests received from the Corporate FOI Co-ordinator, to ensure that they provide a response within 10 working days. These systems vary from a spreadsheet, which provides alerts when the 10 working days are about to expire, to a manual paper file system. The assessors noted, however, that one particular service area did not have any system in place



for logging, monitoring, tracking and responding to requests from the Corporate FOI Co-ordinator. This service area relies on the Corporate FOI Co-ordinator to alert them if they have not provided a response within 10 working days.

27. Once any relevant information is received back from the service areas (along with any additional comments from that area), the Corporate FOI Co-ordinator will gather the information together and provide this, together with his recommendation as to how the request should be responded to, to the Legal Manager. It is then up to the Legal Manager to decide whether to withhold or release the relevant information and to provide a substantive response to the requester.
28. When a substantive response has been provided this is logged on to the database system. Notes relating to any correspondence or communication between the Corporate FOI Co-ordinator and relevant FOI representatives are retained in FOISA email folders administered by the Corporate FOI Co-ordinator. These folders contain a full record of all interactions and communications from receipt of the request to the issuing of the substantive response. A “notes” section within each case file record in the database system enables the Corporate FOI Co-ordinator to record and reference all communications made in respect of processing and responding to the request, and these can be corroborated by the records held in the FOISA email folders and database. Access to the database system is restricted to the Corporate FOI Co-ordinator, the Legal Manager, the Records Manager, two members of staff within the HR section and the Legal Manager’s Secretary. The FOISA email folders can be accessed by the Corporate FOI Co-ordinator, the Legal Manager, the Legal Manager’s secretary and the City Archivist.
29. Requirements for review and responses to these are not currently retained in the database system; these are held within paper files. The assessors understand from discussion that it is the Council’s intention that these should be retained in the database system in future, and will be given the same reference number as the original request in order to provide a full record of the request and requirement for review. The assessors welcome this action by the Council, as it is important that the Council maintains a full record of how requests and requirements for review have been dealt with. This is particularly important should a request for review be submitted to the Council or an application made to the Commissioner.
30. The assessors were satisfied that apart from a small number of requests reviewed prior to the on-site assessment (see the next section), the Council retains a full audit trail of how it has handled, processed and responded to requests on its database system and within the email folders set up by the Corporate FOI Co-ordinator.
31. Functionality within the database system allows the Council to produce monitoring statistics and reports which assist it in fulfilling the monitoring requirements in the Section 60 and 62 Codes of Practice.

### *Conclusions/recommendations*

32. The assessors were satisfied that Support Services within the Council has adequate systems in place to log, monitor and track information requests received by the Council. The assessors consider that this centralised system acts as a useful hub for administering requests throughout the Council. The assessors were concerned, however, that one of the service



areas visited does not have any system in place to log, track or monitor the requests in respect of they are asked to search for information, and relies on the Corporate FOI Co-ordinator to alert them should they exceed the 10 working days for response. The assessors would recommend that this service area (and any others which do not currently use such a system) put in place a system which would allow it to log, track and monitor such requests. The systems adopted by other parts of the Council could be shared to assist the development of similar tools in other areas.

### **Adequacy of administrative arrangements**

33. The Council operates a largely centralised structure for dealing with information requests. Co-ordination and overall responsibility for responding to FOI and EIR requests lies with Support Services. Each service area of the Council has one or more FOI representative(s), responsible for receiving requests coming into their service area, either directly or via the Corporate FOI Co-ordinator. The processes for receiving, recording and responding to requests are described in the previous section.
34. The Council advised that it holds records of all requests and requirements for review contained on its database from 2005 onwards. Information contained within the FOISA email folders is held from 2009. Records relating to requirements for review are currently held in a paper file.
35. However, prior to the on-site assessment, the assessors reviewed a sample of requests and requirements for review which had been responded to by the Council. In doing so, the assessors saw evidence in one case where information had been disclosed in response to a request, but a copy of the information was not retained in the database with the response letter. The assessors also identified one case where the Council was unable to provide a copy of the response to an information request, and six cases where it was unable to provide the response to a requirement for review, because the information could not be found.
36. The assessors are aware from discussion with staff that both the database and Outlook email folders maintained by the Corporate FOI Co-ordinator have the functionality to record this information, to provide a full audit trail of the actions taken to respond to an information request.
37. In a largely centralised structure, as the Council currently has in place, it is useful to have in place a centralised system which provides overarching control and co-ordination of receipt of, and responses to requests, together with a means of monitoring and tracking how and when these are responded to.
38. The assessors were satisfied the system currently employed by the Council facilitates this. The system is also set up to allow monitoring reports to be produced which enable management to monitor performance and ensure that statutory timescales are being met in responding to requests and requirements for review. The production of these reports assists the Council in meeting the requirements of the Section 60 and 62 Codes of Practice in respect of collecting accurate monitoring data.



### *Conclusions/recommendations*

39. The assessors were satisfied that the Council's current logging, recording and monitoring system for requests is adequate to comply with the requirements of FOISA and the EIRs in terms of timescales and consistency of responses, and the Codes of Practice in respect of providing adequate monitoring data. However, the assessors would recommend the Council ensures that full records of all interactions and responses relating to the handling and processing of requests are retained on the systems used, to ensure that a full audit trail is available should a requirement for review be submitted and an application made to the Commissioner.
40. The assessors considered that the Council's processes for administering information requests are adequate overall. While adopting a centralised approach to the management, decision making and responding to all requests, the Council draws upon staff in individual service areas to locate the information requested and facilitate the provision of a response.
41. The assessors considered that the Council's network of FOI representatives could be developed further within an alternative approach to request handling, devolving greater responsibility for request handling and decision making to the individual departments from which information is requested. With additional training and support, the assessors considered that the FOI representatives and key local staff could be given the authority to respond to requests for information about their area of work, without input in each case by the Legal Manager. The assessors have seen such devolved structures working well in other Councils and large public authorities, and consider that these can reduce the burden of administering requests centrally. Devolved request handling also recognises that the staff working in the area to which a request relates are in many cases in the best position to understand the information requested, and any sensitivities surrounding this, and to communicate with the applicant about the matters raised by their request.
42. The assessors highlighted the alternative devolved approach to request handling at the closing meeting, but were advised that it would be preferred to retain the centralised approach. The assessors recognise that this approach brings different benefits, through consistency of practice and decision making, and have focussed their recommendations on improvements in practice within the existing structure.
43. Within this system, the supporting role played of FOI representatives (and the other staff they liaise with) in individual departments is key to effective request handling, since it is the information they supply which forms the basis of the Legal Manager's response. The assessors understood that the request sent to FOI representatives currently seeks only the information requested by the applicant. They suggested that the Council broadens the request made to the FOI representatives to prompt them to provide the information requested where it is held, and also contextual information, and comments as to whether the department considers the information should be disclosed or withheld. This additional information will assist the FOI Co-ordinator and Legal Manager in preparing a response to the applicant. The rationale for this suggestion is expanded upon further in the sections below, which identify a number of types of case where the provision of fuller information to the Legal Manager would enable him to provide more helpful responses to the applicant.



## Recognising and dealing with requests for environmental information

44. Where a request seeks environmental information, it should be responded to in terms of the EIRs, which differ from FOISA in a number of ways. Failure to identify that a request seeks environmental information can therefore lead to failures to comply with the requirements of the EIRs.
45. From examination of the completed pre-assessment questionnaire it was apparent that the Council records requests for environmental information (which should be dealt with under the EIRs) separately, and therefore was able to show how many requests they had dealt with under the EIRs.
46. The assessors understand from discussion with the Legal Manager that all of the requests for environmental information that have been dealt with under the EIRs were responded to by the Environmental Health and Trading Standards service.
47. The assessors are aware from discussions with the Legal Manager that other than these requests dealt with directly by the Environmental Health and Trading Standards service, the Council tends to deal with all valid requests for information under FOISA rather than the EIRs, even if the request is clearly for environmental information. The Legal Manager is aware of the EIRs and what they cover, but chooses to deal with these requests under FOISA as he considers that doing so ensures requesters are provided with information in a user friendly manner. The Legal Manager did not consider that the requester would suffer any detriment from having their request processed under FOISA as opposed to the EIRs. The Legal Manager also indicated that he considered it would be too legalistic to indicate in any response to a requester that their request was processed under the EIRs when they applied for information under FOISA.
48. From the sample of 65 requests reviewed for 2009, it was noted that the following cases which had been processed under FOISA appeared to involve information which could fall within the definition of environmental information in the EIRs:
  - 20090803001 regarding testing of water in swimming pools and water towers
  - 20091212001 content of a pesticide used to treat an individual's home
  - 20091123002 pollution incident reports
  - 20090904001 incident report regarding falling masonry
  - 20090212002 anti social behaviour orders applied for and granted
  - 20090721001 discarded syringes
  - 20090624004 works undertaken on Tay Road Bridge
  - 20090702003 waste incineration
  - 20090710003 details of buildings which contain phenolic foam insulation
  - 20090825004 incident involving loose masonry falling from a building.



49. From the sample of 65 requests reviewed for 2010, it was noted that the following cases which had been processed under FOISA might have been more appropriately dealt with under the EIRs:
- 20100922002 erection of wind turbines
  - 20100922001 biennial report to Ministers under the Reservoirs Act 1975
  - 20100921001 amount of money spent on contaminated land
  - 20100722003 type and amount of pesticide sprayed in a particular area
  - 20100519003 information about a specific planning decision.
50. From discussions with staff, it was apparent that some of them had received training on FOISA, including attendance at the Dundee University Centre for FOI. Although the Council has provided the assessors with a note of some training that was delivered to staff in 2004, there does not appear to have been any formal training provided on the EIRs since then, and in fact some staff (including the Corporate FOI Co-ordinator and some FOI representatives) were not familiar with the legislation at all. As a consequence of this, staff within the Council have limited or no knowledge of the EIRs or how to recognise a request for environmental information. Some staff, however, were that a request for environmental information could be made verbally.
51. Conclusions/recommendations: The assessors were concerned that the current practice of the Council in responding to a request for environmental information under the terms of FOISA is misleading to the requester, as it leads them to believe that should it would be appropriate to seek similar information in future under FOISA rather than the EIRs.
52. The assessors were concerned that the current process of not dealing with requests under the EIRs when they clearly seek environmental information stems from a deliberate decision on the part of the Council not to follow the correct legislative regime. It was apparent to the assessors that those staff involved in making a decision and issuing substantive responses to requesters are familiar with the EIRs and their application. The assessors cannot accept as legitimate the arguments advanced by the Council for dealing with valid requests for environmental information under FOISA.
53. The assessors would recommend that the Council should take immediate steps to ensure that it has processes and arrangements in place to ensure that where a request for information is received, consideration is given to whether this should be processed and responded to under FOISA or the EIRs.
54. The assessors would also recommend that the Council takes immediate steps to ensure that all requests for environmental information are processed and responded to under the EIRs. There are important differences between FOISA and the EIRs and the legislation is clear that requests for environmental information *must* be dealt with under the EIRs.
55. The assessors would further recommend that guidance and training be provided to all staff on the scope and application of the EIRs, in particular to the Corporate FOI Co-ordinator and FOI



representatives, to ensure that it is understood that requests for environmental information can be made verbally and could be received by any member of staff.

## **Records management and searching**

56. It is essential to successful request handling that the authority is able to identify and retrieve the information it holds on receipt of a request. In general, the Council appears to have systems in place to provide information readily when it is requested. Information is held on a variety of electronic systems and in paper records throughout the Council.
57. The assessors were advised during discussions that the Council is currently taking steps to move towards a CeRDMS system which will be used to hold the records for a number of services areas in one central location. This should improve records management and the ability of the Council to locate information quickly.
58. The Council has also recently agreed to adopt the Scottish National Records Retention Schedule, which means that it will be using a Records Retention Schedule following a national set of guidelines, in common with other local authorities who use this system. The adoption of the Scottish National Records Retention Schedule will also help the Council in moving towards the implementation of its CeRDMS system, and its ability to comply with the Section 61 Code of Practice.
59. From speaking to relevant staff, the assessors were satisfied that FOI representatives in each service have a clear understanding of the nature of the information they hold and where it can be accessed. This knowledge has been further reinforced following a recent information audit carried out on a number of service areas.
60. As mentioned previously, where a request has been received by the Council, the Corporate FOI Co-ordinator will consider the subject matter of the request and decide which service area may hold information which would address it: the request is then passed to the FOI representative(s) in the service area via email, asking that they provide a response to the Corporate FOI Co-ordinator within 10 working days. The FOI representative(s) in the service area will then consider the request and carry out searches, either themselves or with the assistance of colleagues with more specific knowledge of the particular subject matter. The FOI representative(s) or relevant member of staff will be asked to search electronic and paper records to determine whether any relevant information is held.
61. Once the searches have been completed, where these have been carried out by a member of staff other than the FOI representative(s), they will notify the FOI representative(s) of the outcome of the searches. In some service areas, the Chief Officer or Director of that service area will also be advised of the outcome of the searches and asked to review any relevant information identified prior to a response being made to the Corporate FOI Co-ordinator.
62. Any information identified which is considered to fall within the scope of the request will then be passed on to the Corporate FOI Co-ordinator. In some cases, the Chief Officer or Director of the relevant service area may notify the Corporate FOI Co-ordinator if they consider that there is particular sensitivity around the information. The Corporate FOI Co-ordinator will then pass any information on to the Legal Manager, together with their recommendations on how



the request should be responded to, to facilitate the Legal Manager in making a substantive response to the requester.

63. Although the Council utilises a number of different electronic and paper based systems for recording and holding information, the assessors were satisfied that the FOI representatives in each service area have the expertise and knowledge to locate and retrieve relevant information, either themselves or with the support of suitably qualified and experienced colleagues. The assessors were also satisfied that FOI representatives would refer to records retention and destruction schedules when carrying out searches to determine if relevant information is held.
64. Where an authority gives notice that it does not hold information in response to a request, it must first ensure that reasonable and thorough searches are carried out to determine if relevant information is held. It is also advisable to keep a record of the searches that are carried out, should a request for review be submitted or an application made to the Commissioner regarding the case.
65. Having reviewed a sample of requests dealt with by the Council, the assessors identified six cases in 2009 where the Council advised the requester that no information was held. In a further four cases in 2009 and three cases in 2010, the Council advised the requestor that it did not hold some of the information which had been requested. A thorough examination was carried out of these requests. From the information that was provided by the Council in respect of the sample, it was difficult for the assessors to be satisfied that thorough searches had been carried out by the relevant service areas prior to a response being provided by the Legal Manager. During discussions with the Legal Manager, it became clear that they would not expect FOI representatives to provide the Corporate FOI Co-ordinator with a record of the searches carried out prior to determining that no relevant information is held. The Legal Manager would accept the FOI representative's statement that no information is held. As a result, the database and email folder system maintained by the Corporate FOI Co-ordinator does not currently hold any evidence of what searches have been carried out. Consequently, the assessors were unable to be completely satisfied that adequate searches had been carried out in all cases prior to providing a response to the requester.
66. Where a public authority responds to a request for information by indicating that it does not hold some or all of the information, it will often be appropriate to offer advice and assistance to the applicant in line with the duty set out in section 15 of FOISA and regulation 9 of the EIRs. The type of assistance or advice that is reasonable in the circumstances will depend on the nature of the request, but it might include (inter alia):
  - explaining to the applicant why it is not held (e.g. because information is recorded in a manner different from the requestor's expectations, it was once held but has since been destroyed, or the matters of interest to the requestor are not within the authority's remit);
  - highlighting that the information would be expected to be held by another public authority (if this is known) and providing contact details;
  - explaining the searches undertaken to establish whether or not the information is held; or
  - highlighting other types of information which are held and might assist the applicant in understanding the matters raised by their request (advising how to make a request for this).



67. From the sample of requests reviewed, the assessors only saw evidence in three cases of the Council fulfilling its duty under section 15 of FOISA in providing advice and assistance to the requester, by either explaining why information was not held or signposting the requester to another body which might hold relevant information. In other cases, the Council simply advised the requester that no information was recorded or held by it.
68. The assessors discussed with the Legal Manager the Council's approach to the provision of advice and assistance in cases where no information is held. Through these discussions, it became clear that the Council's approach to request handling is to focus on the exact information that is specified in the request. If the Council does not hold this particular information, its practice is generally not to offer advice and assistance of the types detailed above.

### *Conclusions/recommendations*

69. The assessors were satisfied that the Council had adequate systems in place to search for information within all service areas when a request was received. The assessors consider that the Council's adoption of the Scottish National Records Retention Schedule and its move towards implementing a CeRDMS system will further enhance its ability to locate, retrieve and provide relevant information quickly.
70. However, due to the incomplete information held within the Council's database and email folder system regarding handling and responding to requests, and the fact that the Legal Manager does not require the FOI representatives to provide evidence to him of the nature and scope of searches carried out, the assessors could not see any evidence of these searches. As a consequence, they could not be satisfied that adequate searches had in fact been carried out to determine if relevant information was held prior to responding to these requests. The assessors would recommend that FOI representatives in all service areas, together with those staff asked to carry out searches for any relevant information, should be asked to retain records of these searches and provided evidence of them to the Corporate FOI Co-ordinator when responding on their outcome.
71. The assessors considered that the Council's approach to the provision of advice and assistance in cases where some or all of the information requested was not held fell short of good practice. In particular, they considered that the Council's narrow focus on the precise terms of a request for information risks failure to provide reasonable advice and assistance when responding to such requests. The assessors therefore recommend that the Council takes steps in future to ensure that its responses provide advice and assistance in cases where information is not held.
72. To ensure that the Legal Manager is able to fulfil the duty to provide advice and assistance within the responses provided to requests, the assessors would also recommend that FOI representatives are asked to provide background or contextual information that would assist a requester in understanding why information is not held, whether the Council holds other types of information held by the Council which might be of interest to them, and whether the information may be accessible (or requested) elsewhere.



## Timescales for compliance

73. An authority in receipt of a request for information (including environmental information) must respond promptly and no later (with certain specified exceptions) than the twentieth working day following receipt of the request.<sup>3</sup>
74. An authority receiving a requirement for review of its handling of an information request must conduct a review and notify the applicant of its outcome promptly and no later (with certain specified exceptions) than the twentieth working day following receipt of the requirement.<sup>4</sup>
75. As noted above, once a request is logged, the Corporate FOI Co-ordinator will pass it to the relevant department(s), asking them to provide the information requested within ten working days. On receipt of the information, recommendations are prepared for the Legal Manager, who will consider and prepare the response. The assessors note that within such a structure, it is vital that the appropriate information is passed to the Legal Manager in a timely manner to ensure that he is able to finalise the response within the required timescale.
76. The database system used by the Council does not create alerts to notify the Corporate FOI Co-ordinator as to when the timescale for compliance is to expire. The Corporate FOI Co-ordinator does check the system each day to ascertain which responses are due from FOI representatives within the service areas and which are outstanding, beyond the ten working days imposed on the service areas.
77. Where the Corporate FOI Co-ordinator does not receive the information requested from a service area within the ten working day deadline, he waits until the fifteenth working day and then sends a reminder email to the relevant FOI Representative. A further reminder is sent after nineteen working days if the response is still outstanding. If it is then not received by the twentieth working day, a further email is copied to the FOI Representative(s), their Chief Officer or Director, and the Chief Executive and Depute Chief Executive, to alert them to the delay in the provision of the information.
78. This practice (including the ten working day internal deadline) was introduced in January 2010 following the appointment of the Corporate FOI Co-ordinator. This has led to some improvements in the Council's compliance with the twenty working day timescale in which to provide a response to a request for information. The assessors welcome this proactive change to address issues with timescale compliance. However, the assessors consider that the Council still has some way to go to meet the statutory timescale in all cases as required by the legislation.
79. Prior to the on-site assessment, the Council provided the assessors with a sample of 27 requests from 2010. The Council provided a log of the requests that it received in 2009 and 2010 and the assessors asked that the Council provide them with 57 requests from 2009 and 33 requests from 2010. The assessors also reviewed a further 13 requests, 5 of which were from 2010 and 8 of which were from 2009. These included requirements for review.

<sup>3</sup> Section 10 of FOISA and regulations 5 and 13 of the EIRs

<sup>4</sup> Section 21 of FOISA and regulation 16 of the EIRs



80. The Council's own data for the first nine months of 2010 showed that it had received 685 requests, and responded to 152 of these (22%) outwith the 20 working day period.
81. The Council received 706 requests for information in 2009. Within the sample of 65 of these reviewed by the assessors, 30 (i.e. 46%) had been responded to outwith 20 working days. In one example, the assessors saw a request which was not answered until 197 working days over the 20 working day timescale for response. In another example, one requester waited 122 working days over the 20 working day timescale to receive a response to their request for information. The assessors also saw two examples of cases where requesters waited 82 and 89 working days over the statutory 20 working days before a substantive response was provided.
82. From 1<sup>st</sup> January 2009 to 22 October 2010, the Council received 78 requirements for review. The assessors reviewed 13 requirements for review, 5 of which were from 2010 and 8 of which were from 2009.
83. All 5 of the requirements for review from 2010 were responded to outwith the statutory 20 working day timescale. 3 of the 8 requirements for review from 2009 were responded to outwith the statutory 20 working day timescale.
84. The Council monitors performance of its departments with respect to the provision of information to the Corporate FOI Co-ordinator. Having reviewed the departmental performance statistics the Council provided, the assessors noted in a significant number of cases (in some months, more than 50%) information was received from the departments after the 10 working-day target, and in a significant number of cases after more than 15 working days had passed. Furthermore, in 12% of cases in January 2010 and 13% of cases in July 2010 service areas had not provided relevant information to the Corporate FOI Co-ordinator until after 21 working days had passed.

#### *Conclusions/recommendations*

85. The assessors noted a substantial number of instances where the statutory timescales were breached by the Council in responding to requests for information. The assessors also noted that in all 5 of the requirements for review reviewed from 2010, the Council had breached the statutory timescale in responding to a requirement for review.
86. The assessors appreciate that the Council is aware of its failings in this area, and that it has taken some steps to address this in respect of the employment of the Corporate FOI Co-ordinator and the use of the ten working day timescale within which FOI representatives in service areas are required to provide relevant information. While this has led to some improvement in respect of the responses to information requests, the assessors consider that more needs to be done by the Council to remedy this substantial failing.
87. The assessors were particularly concerned about the examples they saw where a response was not made to a request until over 80, and sometimes over 100, working days after the statutory timescale for response had expired.
88. Within the request handling structure operated by the Council, the Legal Manager can only reach a decision and issue a response to an information request once the information that has



been requested is provided to him. Delays in the provision of the required information by the service(s) holding it will therefore have a knock-on effect on the Legal Manager's ability to issue a substantive response within the required timescale. The Council's reports suggest that delays in the provision of information by the service areas are common, and often mean that information reaches the Corporate FOI Co-ordinator with little or no remaining time to prepare or issue a response within the twenty working day limit.

89. The assessors therefore considered the delays in the provision of information by the service areas to be a major factor in the Council's difficulty in meeting the statutory twenty working day timescale for a response. They recommend that the Council takes further steps to ensure that information is passed to the Corporate FOI Co-ordinator in line with internal deadlines, so that the Legal Manager is able to prepare and issue a response within the statutory twenty working day timescale.
90. In particular, the assessors recommend that any failure to provide information to the Corporate FOI Co-ordinator within ten working days is chased up on the following working day, rather than on the fifteenth day.
91. The assessors would also recommend that action is taken to ensure that requirements for review are responded to within the statutory timescale.
92. The assessors also recommend that the Council considers whether certain types of requests could be responded to directly by the Council's Corporate FOI Co-ordinator, without requiring further input from the Legal Manager. They consider this could allow timescales to be shortened in simple cases by removing one step in the process of administering requests.

### **Content of refusal notices**

93. When information is being withheld in response to an information request an applicant should be given a refusal notice which:
  - Discloses that the authority holds the information requested
  - States that the information is exempt information
  - Specifies which exemption has been judged to apply: and
  - States (if not otherwise apparent) why the exemption applies.<sup>5</sup>
94. Where the exemption claimed is subject to the public interest test, the notice must state why, in all the circumstances of the case, the authority has judged that the public interest in maintaining the exemption outweighs that in disclosure of the information.
95. Any such refusal notice must also provide details of the authority's procedure for dealing with complaints about its handling of requests for information and the applicant's right of review and application to the Commissioner.<sup>6</sup> Broadly the same requirements are set out in the EIRs.<sup>7</sup>

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<sup>5</sup> Section 16 of FOISA

<sup>6</sup> Section 47(1) of FOISA

<sup>7</sup> Regulation 13 of the EIRs



96. There is no obligation in either FOISA or the EIRs to advise requesters of the rights of review and application to the Commissioner in cases where the information requested is provided in full. However, the Commissioner considers it good practice to include this information nonetheless, recognising that there will be cases where a requestor may wish to challenge the public authority's claim that the information supplied is all that is held which falls within the terms of their request.
97. From discussion with relevant staff, it was apparent that the Council does have some standard template letters in place, which it uses when responding to information requests. The standard template letters currently in use include notices:
- under section 12(1) of FOISA, where the Council argues that it would cost in excess of £600 to provide the requested information
  - indicating that information is otherwise accessible and so the Council is applying the exemption in section 25(1) of FOISA
  - indicating that no recorded information is held by the Council.
- In each of these standard letters, the Council clearly sets out the requester's right of review and who any request for review should be submitted to, together with the staff member who will carry out the review. Where the standard letter also provides details of the right of application to the Commissioner, it does not detail the six month timescale in which an application should be submitted.
98. Of the 65 requests the assessors reviewed from 2009, they noted that the requester had not been advised of their right to request a review and apply to the Commissioner in twelve cases (where no, or partial information was disclosed). In a further twelve cases, where the requesters had been advised of their right to request a review and apply to the Commissioner they were not advised of the six month timescale in which to submit an application to the Commissioner.
99. Of the 65 requests reviewed from 2010, it was noted that in five cases (where no, or partial information was disclosed) the requester was not advised of their right to request a review and apply to the Commissioner. In a further twelve cases where requesters had been advised of their right to request a review and apply to the Commissioner, they were not advised of the 6 month timescale in which to submit an application to the Commissioner.
100. From the cases examined by the assessors, exemptions under FOISA were cited in response to four cases in 2009 and seven cases in 2010. In two cases from 2009 and two cases from 2010, the assessors noted that the Council had relied on section 38(1)(b) of FOISA for withholding certain information, but had not indicated which Data Protection Principle it considered would be applicable, or why. In one case in 2009, the Council had relied on the exemption in section 33(1)(b) of FOISA for withholding relevant information but it had not provided an explanation as to why this exemption was applicable, or given adequate consideration to the public interest test.
101. Where the Council had given consideration to the public interest test, the assessors saw examples where this amounted to a rehearsal of the examples of possible public interest test considerations that could be taken into account by public authorities, as set out in the Commissioner's guidance. The assessors were concerned that in simply rehearsing these



possible, generic, public interest test considerations, the Council was not considering the particular subject matter of the information in question and any public interest there might be in relation to that particular information. The Council does not appear to take account of any public interest that the requester may consider favours disclosure.

102. The assessors noted one case from 2010 where the Council responded to a request for personal information under FOISA by correctly advising the requester that they would be better to proceed with this request by submitting a Subject Access Request under the Data Protection Act 1998. However, while the Council clearly indicated at the top of the letter that this response was being made under the FOISA, it did not cite the exemption in section 38(1)(a) for not disclosing the information. In a further case in 2010, the assessors noted that the requester had asked for a copy of a letter which contained information about them. The Council responded to this request under FOISA and provided the requester with a complete copy of the letter. In this case the Council did not cite section 38(1)(a) of FOISA or seek to process the request under the Data Protection Act 1998.
103. In discussion with relevant staff about these cases, they indicated that they did not cite the exemptions under FOISA as they did not want to make the responses too legalistic and they sought to be helpful in providing the responses they did. On the other hand, the current practice of the Council here is contrary to the information contained in the PowerPoint training slides on its intranet site, which clearly indicate that personal data should never be given out in response to a FOI request.
104. The assessors reviewed two cases from 2009 and two from 2010 where the Council considered that it had provided full disclosure of the requested information. However, having read these responses together with the requests, the assessors found that parts of these requests had not been responded to. Where the Council considered that it had fully addressed the request for information, it did not notify the requester of their right to request a review or apply to the Commissioner.

#### *Conclusions/recommendations*

105. The assessors recommend that the Council ensures that requesters are provided with full details of their right to request a review and their right to apply to the Commissioner in all refusal notices. The assessors recognise that the standard template letters currently used by the Council include full details of the review process; however, the level of detail regarding the right to appeal to the Commissioner is inadequate. The assessors would recommend that the Council advises requestors of the six month timescale they have in which to apply to the Commissioner. These are fundamental rights which are afforded to requesters and it is of paramount importance that they are advised of them.
106. Where the Council is seeking to rely on any exemption(s)/exception(s) to withhold information from the requester, the assessors would recommend that the Council should ensure that it cites any exemption(s)/exception(s) and other provision correctly in providing a refusal notice, with adequate explanations as to why these apply, as required by the legislation. The assessors would also recommend that the Council should give full consideration to the public interest in respect of the specific information under consideration (where applicable).



107. Where the Council believes that it has provided a full response to a request for information, the assessors consider that it would be good practice for the Council to advise the requester of their right of review and application to the Commissioner should they not be satisfied that their request has been fully addressed.
108. While the assessors appreciate the intention behind the Council's responses to certain requests which relate to personal data, they would recommend that the appropriate exemption/exception should be cited under FOISA or the EIRs (whichever legislation is applicable) and the correct legislative regime followed in processing and responding to the request.

## Review process

109. Neither FOISA nor the EIRs are prescriptive about the form of review that should be undertaken following a request for review. Under FOISA<sup>8</sup>, the review may confirm the original decision, with or without modifications, substitute a different decision for it, or reach a decision where none has previously been taken. For environmental information,<sup>9</sup> the authority must review the matter to decide whether it has complied with the EIRs, and where it finds a breach, immediately take steps to remedy this.
110. The section 60 and 62 Codes of Practice provide guidance on the conduct of reviews, which includes:
  - Authorities should have in place procedures for handling reviews, which should be fair and impartial and enable different decisions to be taken if appropriate
  - The procedures should be straightforward and capable of producing a decision promptly and in line with statutory timescales
  - A review should be handled by a person not involved in the original decision.
111. When notifying a person of the outcome of a review<sup>10</sup>, the authority must inform the applicant of its decision and state its reasons for reaching that decision. This notice must also explain the right of application to the Commissioner, and the subsequent right to make an appeal against the Commissioner's decision to the Court of Session<sup>11</sup>. The EIRs similarly require the authority to notify the applicant of the outcome of the review. Although there is no equivalent statutory provision requiring notification of the rights of appeal, the section 62 Code of Practice indicates that it is good practice to do so.
112. As indicated above the Council had 78 requirements for review from 1 January 2009 to 22 October 2010.
113. The letters and emails sent by the Council when responding to a request clearly state that the requester should address any requirement for review to the Legal Manager, who will then forward it onto the Chief Executive to be dealt with. The assessors examined 8 requests for

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<sup>8</sup> Section 21(4) of FOISA

<sup>9</sup> Regulation 16(3) and (5) of the EIRs

<sup>10</sup> Section 21(5) of FOISA

<sup>11</sup> Section 21 (10) of FOISA



review received in 2009 and 5 requests for review received in 2010, and noted that in one case in 2010 the requester was not notified of their rights at all in the Council's response. In the four remaining cases from 2010, the assessors noted that the requesters were advised of their right to application to the Commissioner, but not of the 6 month timescale in which to submit an appeal. In no case was the requester advised of their right to appeal to the Court of Session following the Commissioner's decision. Similar breaches were apparent in the 8 review cases examined from 2009.

114. The Council does not have any written procedure in place regarding how it will handle a requirement for review.
115. The main person who currently carries out reviews within the Council is the Chief Executive. It is very rare that the Chief Executive would be involved in responding to the initial request. However, if he was then the review would be carried out by the Depute Chief Executive (Support Services). The Depute Chief Executive also provides advice to the Chief Executive, should he need it, when carrying out reviews, and it would be the Depute Chief Executive who would carry out reviews in the Chief Executive's absence.
116. Where a requirement for review is received by the Council, the Corporate FOI Co-ordinator would update the status of the request on the Council database. They would then pass the requirement for review to the Legal Manager, who would forward it on to the service areas who assisted in responding to the initial request, which would be asked for their comments on the requirement for review. Once these comments have been received back, the Legal Manager will pass these, together with a copy of the original request, response to request and request for review, to the Chief Executive for his consideration.
117. The Chief Executive uses the review as an opportunity to look at the request afresh. This includes a re-evaluation of the information in question (if applicable) and consideration of all of the correspondence relating to the request. If the response to the initial request was that information was not held either in full or in part, or that compliance would cost more than the threshold specified for the purposes of section 12 of FOISA, the reviewer would question this and, where necessary, expect the relevant service area to be able to show what searches (or other work, as appropriate) were conducted for them to reach their conclusion. The reviewer would also expect to see a breakdown of the calculation undertaken which demonstrates that the £600 threshold would be breached.
118. Once the Chief Executive has carried out the review, he advises the Legal Manager of his decision and it is the Legal Manager who will then prepare a draft reply giving effect to the decision, for the Chief Executive's approval or revisal. Once the draft has been approved it is sent out to the requester.
119. Presently all records relating to the requirement for review and the response to it are retained in a paper file. The assessors understand from discussion with the Legal Manager and the Corporate FOI Co-ordinator that it is the Council's intention to include this information in the database with the information and correspondence relating to the original request.
120. From discussion with the FOI representatives from some of the service area within the Council, it was apparent that there is a clear understanding of who is responsible for carrying out reviews within the Council and who any requirement for review should be directed to.



### *Conclusions/recommendations*

121. The assessors recommend that the Council ensure that requesters are provided with full details of their rights to apply to the Scottish Information Commissioner and appeal to the Court of Session following the Commissioner's decision, and that this should be included in every response to a request for review. As mentioned above, these are fundamental rights and it is of paramount importance that requestors are advised of these.
122. The assessors were concerned that although the Council has a formal process in place for responding to requirements for review, this is not documented in a procedure. Where the assessors understand that both the Chief Executive and Depute Chief Executive are fully aware of the requirements of the process, the assessors would recommend that this procedure is documented. This will ensure that the process followed when responding to requirements for review is consistent, particularly if another member of staff is called upon to carry out a review. It would also achieve compliance with the section 60 and 62 Codes of Practice which recommend that it is good practice for an authority to have a written procedure in place regarding how they process requirements for review.

### **Other aspects of request handling**

#### Recognition of a FOISA request and "business as usual" request handling

123. Staff within Support Services have an understanding of what constitutes a request for information under the terms of FOISA. The assessors were concerned, however from discussion with some of the FOI representatives about the level of recognition of such requests throughout the rest of the Council.
124. From discussion with FOI representatives, it was evident that where a requester clearly cites FOISA, or the request is redirected to them from the Corporate FOI Co-ordinator, then staff are able to recognise it as an information request and know (where it has come into the representative directly) to forward it to either the Corporate FOI Co-ordinator or one of two specified staff in HR. Where it has come from the Corporate FOI Co-ordinator, they know to search for any relevant information that may be held in their service area. However, where no mention is made of FOISA within the request, or it has not been received from Corporate FOI Co-ordinator, the assessors were concerned from discussion with staff that FOISA requests might not be appropriately identified and dealt with.
125. The assessors identify that this as a potential area of risk and recommend that the Council provides training to all staff including FOI representatives to ensure that they are able to recognise FOISA requests.
126. The assessors noted from the sample of requests dealt with by the Council that they had correctly identified most of these as requiring to be dealt with under FOISA. The assessors did see one example, however, where the Council dealt with a request for information on a "business as usual" basis, despite the fact that it was a valid information request under FOISA and the Council did not supply the information in full. While this response amounted to a refusal to supply the relevant information, no formal notice (in line with the requirements discussed above) was given explaining the grounds of refusal or advising the requestor of their



rights of review and application to the Commissioner. This practice had the effect of limiting the requester's rights.

127. The Commissioner considers that an authority should only deal with a request for information as "business as usual" where to do so facilitates the routine provision of information. If no (or partial) information is being provided, or if it appears likely in the circumstances that the applicant will not be happy with the information that is being provided, then a review may be required and the request should not be treated as "business as usual". Dealing with a request as "business as usual" should not lead to the applicant receiving information less quickly than is required under (as appropriate) FOISA or the EIRs, or to any other failure to meet the requirements imposed on the authority under the relevant legislation: the applicant always has the right to have a valid request for information dealt with in accordance with these.
128. From discussions with relevant staff, the assessors understand that the Council will seek to deal with straightforward requests for information, where a full response can be given quickly, under its "business as usual" arrangements. The Council's definition of "business as usual" aligns with the Commissioner's view, and the assessors recognised that there was a positive culture throughout the Council which aimed to provide responses to simple requests for information without delay.
129. The assessors also noted that the Corporate FOI Co-ordinator's initial review of requests logged in the FOI database enables him to identify cases which can be handled as "business as usual" and prompt the relevant department to deal with the request in this way.
130. In one interview, a departmental FOI representative indicated that requests for "confidential information" were dealt with on a business as usual basis, suggesting that such requests would be refused without the full FOI process being followed, and appropriate notice being given.
131. While the assessors acknowledge that the Council has the best of intentions in dealing with certain requests on a "business as usual" basis to facilitate the early provision of a full response, it must ensure that requests are only dealt with on a "business as usual" basis where full information is being disclosed.
132. Where a valid request for information has been made under FOISA or the EIRs and no (or partial) information is being provided, or if it appears likely in the circumstances that the applicant will not be happy the information that is being provided, then the request must be dealt with following the formal FOISA or EIR process (whichever legislation is applicable).
133. Conclusions/recommendations: The assessors acknowledge the intention of the Council in dealing with requests for information as "business as usual" in an effort to facilitate the early provision of a full response. However, the assessors were concerned to find evidence that "business as usual" practice might be followed in cases where information is not provided in full. Handling such requests on a business as usual basis risks failure to comply with the requirements of FOISA, and applicants being disadvantaged by the failure to advise them of their rights.
134. The assessors would recommend that all staff within the Council are reminded of the circumstances in which a request can be dealt with as "business as usual" and when valid



information requests should be dealt with formally under the process set out in FOISA and the EIRs (whichever is the appropriate legislative regime).

135. They also recommend that (if this practice is not already followed) the Corporate FOI Co-ordinator takes steps to check with the relevant department that all information sought by a request can be provided before passing it on for handling as a business as usual request.

### Validity of requests

136. Under section 8 of FOISA a request for information is valid if it is submitted in writing or some other permanent form, states the name of the applicant and an address for correspondence, and describes the information requested.
137. A recent decision in the Court of Session<sup>12</sup> considered (amongst other things) the requirement that a requestor describes the information (as opposed to documents) that they wish to access.
138. Following on from the Court of Session decision, the Commissioner issued guidance to requesters and public authorities on the terms of the decision. In particular, this guidance noted that, although the Court had made clear that FOISA provides a right to access information rather than documents, it is commonplace for the information requested to be described by reference to a document (e.g. a report, a minute or a contract). This guidance suggests that, where it is reasonably clear that a request is for the information contained in a document, the authority should respond to the request as one properly made under FOISA.<sup>13</sup>
139. During the assessment, the assessors raised concerns with the Council prompted by applications received by the Commissioner. In these cases, the Council had advised the requesters following its reviews that it considered their requests to be invalid in light of the Court of Session decision as the request was for copies of documents. No further explanation was given to the requester in the response, and the Council did not provide any comments in support of this position to the Commissioner when invited to do so.
140. During the on-site assessment the assessors discussed the position taken by the Council in these cases. The Council explained that it did not agree with the Commissioner's guidance following the Court of Session decision and considered that in any case the decision of the Court of Session had primacy over any guidance from the Commissioner. It indicated that, apart from cases where the most appropriate method of providing information would be to give a copy of the document containing it, the Council is likely to continue to deem requests as invalid where copies of documents have been requested.
141. Conclusion/recommendations: The assessors consider that the stance taken by the Council with respect to the validity of requests appears to take an unduly narrow interpretation of the Court of Session decision, to the effect that any request for information expressed by reference to documents is deemed to be invalid. They consider that adopting this approach in

<sup>12</sup> Glasgow City Council v Scottish Information Commissioner [2009] CSIH 73  
<http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>

<sup>13</sup> <http://www.itpublicknowledge.info/Law/FOISA-EIRsGuidance/CourtofSessionGuidance2010/Validrequests.asp>



response to individual requests could have the effect of delaying the provision of information, or responses considered fully in terms of FOISA, to which requestors are entitled.

142. The assessors also considered that the Council's approach demonstrated in these requests would be likely to discourage applicants from seeking information in future. They note also that the Council's responses in such cases have offered no explanation of this decision to the requester, or advice and assistance on how they might request information in a manner that is not perceived by the Council to be deficient. They note that the duty to provide advice and assistance in terms of section 15 of FOISA applies where a person intends to make an information request. The assessors consider that the approach taken by the Council in the requests referred to above, if followed in relation to other similar requests, would be likely to fail to comply with the duty in section 15 of FOISA.
143. The assessors therefore recommend that the Council adopt an approach to the validity of information requests consistent with that set out in the Commissioner's guidance.
144. They also recommend that in any cases where the Council considers that a person has failed to make a valid information request (in circumstances where it is clear that they were intending to do so), it has regard to the duty in section 15 of FOISA and offers reasonable advice and assistance on how the requester should frame their request to avoid the deficiencies identified by the Council.

#### Issuing a notice under section 12 of FOISA

145. An authority is not obliged to respond to a request for information if the cost of doing so would exceed the prescribed limit of £600<sup>14</sup> as set out (and calculated in line with) the Fees Regulations<sup>15</sup>. Where this provision is invoked, the applicant must be notified that this is the case. Where it is found to apply, the authority should consider its obligations under section 15 of FOISA to advise and assist the applicant, and it may be appropriate to provide advice on how their request might be refined and brought within the prescribed limit.
146. There is no provision in the EIRs directly equivalent to section 12 of FOISA, but a request can be refused if it is manifestly unreasonable<sup>16</sup>. Excessive cost is one of the reasons why a request might be judged to be manifestly unreasonable. The applicant should be notified of such a decision in a refusal notice. There is also an equivalent duty to provide advice and assistance within regulation 9 of the EIRs.
147. In the case of one request from 2009 (2009033001) and one request from 2010 (20100616002) the Council relied on section 12 of FOISA for not providing all or part of the information requested to the requester.
148. In these cases, the assessors noted that in providing a response to the requester the Council had not provided an explanation as to why or the extent to which the cost of providing the relevant information would exceed the £600 threshold in the Fees Regulations, or advice on

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<sup>14</sup> Section 12 of FOISA

<sup>15</sup> The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

<sup>16</sup> Regulation 10(4)(b) of the EIRs



how the requestor might modify the request to bring the cost of compliance within the prescribed limit.

149. The assessors were also concerned to note at the initial request stage, the Corporate FOI Co-ordinator and Legal Manager do not require the FOI representatives to provide evidence or documentation relating to how the cost of compliance with the request was calculated, or what searches have been carried out to evidence the work required to locate, retrieve and provide the relevant information.
150. They considered that it would be appropriate for such information to be passed to the Legal Manager to enable him to be satisfied that appropriate steps had been followed to determine the cost of complying with the request, and also to ensure that the response to the information request included appropriate advice and assistance to the requester.
151. During discussion, relevant staff advised the assessors of the exercises that they would go through in order to determine whether the cost of responding to the request would exceed the £600. The assessors were satisfied that staff would carry out appropriate exercises to determine the cost of locating, retrieving and providing information prior to deciding to rely on section 12 of FOISA. However, the assessors were not satisfied that evidence of these exercises was being recorded and retained, particularly given the fact that the Corporate FOI Co-ordinator and the Legal Manager do not require to see these prior to the response being made to the information request. During discussion the Corporate FOI Co-ordinator and the Legal Manager accepted that this evidence should be recorded and retained in future and should be available to them when a decision is being made on the application of section 12 to a request for information.
152. The assessors were not satisfied that the Council is consistently complying with its duty under section 15 of FOISA to provide advice and assistance when it is seeking to rely on section 12 in responding to a request. The assessors saw evidence in one case where the Council indicated to the requester that the cost of providing all relevant information to them would exceed £600, although the Council did provide a portion of the relevant information. However, in another case, the assessors saw that the Council had simply advised the requester that the cost of fulfilling the request would exceed £600. The Council did not invite the requester to narrow down the scope of the request or seek to provide partial information (at a cost of less than £600) in response to the request, as suggested in the Section 60 Code of Practice.
153. Conclusions/recommendations: The assessors were concerned about the lack of evidence recorded and held by the Council to justify the Council's reliance on section 12 of FOISA, in particular the fact that at the initial request stage the Corporate FOI Co-ordinator and the Legal Manager do not require the FOI representatives to provide them with documentation to evidence the work that would be carried out to locate, retrieve and provide the relevant information.
154. The assessors were also concerned about the Council's failure to consistently meet the requirements of section 15 of FOISA in not always providing satisfactory explanations in their responses or advice and assistance to requesters when relying on section 12.



155. The assessors recommend that the Council should keep detailed records of the exercises it undertakes to determine whether the cost of locating, retrieving and providing information exceeds the £600 threshold, together with the calculations involved.
156. The assessors also recommend that the Corporate FOI Co-ordinator and Legal Manager require that these records be provided to them prior to a response being made to the request for information to enable the Legal Manager to make an informed decision.
157. The assessors also recommend that the Council provide guidance or training to the FOI representatives and Support Service staff to ensure that they are aware of their duty under section 15 of FOISA in providing advice and assistance to the requester where it is seeking to rely on section 12 of FOISA, and that relevant information is supplied to the Legal Manager to allow his response to include such advice.

#### Issuing a notice under section 25 of FOISA

158. A notice under section 25 of FOISA can be issued by a public authority where the requested information can be reasonably obtained by the requester other than by requesting it under section 1 of FOISA.
159. In the case of one request in 2010 that was reviewed by the assessors, the Council had relied on section 25 of FOISA. The assessors were satisfied that in this case the requester was provided with links to a relevant website to enable them to access the relevant information.
160. The assessors saw two cases from 2009 and one case from 2010 where the Council responded by advising the requestor that certain of the relevant information was available on its website. In one of the cases from 2009 and the case from 2010, the Council also signposted the requester to other public authorities who might hold relevant information. In the one case from 2009 and the case from 2010, the Council did not cite and rely on section 25 of FOISA when it should have done. Furthermore, it did not provide the requester with details of their right of review and application to the Commissioner.
161. From discussion with staff within the Council, the assessors acknowledge that where a request is received for information which is available from the Council's publication scheme, staff will deal with this on a "business as usual" basis in order to provide full information in response to the request quickly. This will involve either providing a link to the information, or in some cases to provide a copy of the information requested.
162. While the assessors understand the intention of the Council in dealing with these requests as a "business as usual" request, the Council should ensure that when a request is received for information that is available from its publication scheme and it is simply providing a link to enable the requester to access relevant information, it issues a notice to the requester under section 25 of FOISA. Where full information is being provided to the requester by the Council in the response letter, section 25 of FOISA does not need to be cited. The assessors would encourage the Council to continue its practice of providing link(s) to the information, and where appropriate to provide copies.
163. Conclusions/recommendations: The assessors recommend that the Council should ensure that where staff respond to a request for information contained within its publication scheme



that they issue a refusal notice in line with section 16 of FOISA which cites section 25 of FOISA (where appropriate).

### Charges for contaminated land searches

164. From reviewing the sample of requests, the assessors noted that the Council currently makes a charge for contaminated land searches. This was demonstrated in case reference 20090427006. The charge levied by the Council for this service was £50. It is clear from reading the record of the handling of the request that the Council sought to levy this fee under regulation 8 of the EIRs. It was also evident from the completed pre-assessment questionnaire and in discussions with relevant staff that the Council has levied a fee under regulation 8 of the EIRs for the provision of this information in a further 66 cases between April 2008 and March 2009.
165. The information in this case was released in full, with no exceptions being used to withhold any of the information. It was clear to the assessors that the information being requested was environmental information and as such the Council had been correct to process the request under the EIRs. However, under the EIRs an authority is entitled only to levy a charge for the provision of environmental information which does not exceed a “reasonable amount”. In the context of the case under consideration, the current charge of £50 appears unreasonable.
166. Any charge levied for the provision of environmental information should be detailed in a published Schedule of Charges, which may form part of the Council’s Publication Scheme. If the charge in question is not detailed in the Schedule of Charges, the Council would not be in a position to charge anything for dealing with requests for contaminated land searches.
167. Conclusion/recommendation: The assessors recommend that the Council cease its current practice of charging for contaminated land searches and comply with its relevant obligations under the EIRs. The assessors also recommend that any Schedule of Charges published by the Council in respect of environmental information should reflect any charge it intends to levy in future for the provision of this information.

### **Policies, procedures and other documentation**

168. Prior to the on-site assessment, the Council provided the assessors with a copy of its Corporate FOISA process map. This sets out the process that the Council would go through where it receives a request for information and a requirement for review.
169. During discussion, the Legal Manager informed the assessors that this FOISA process map is not actually used as a tool to assist staff in processing and responding to information requests and requirements for review, but was drawn up to assist with the introduction of the forthcoming CeRDMS system.
170. Prior to the on-site assessment, the assessors were also given a copy of a committee report from 2007 which set out the structure of the Council in terms of who would be responsible for dealing with information requests and what process would be followed in processing and responding to these. This committee report also set out the process that would be followed in conducting requirements for review, who would carry these out and who would be responsible for preparing documentation should an appeal be made to the Commissioner. The assessors



understand, from speaking to relevant staff, that the information contained in this committee report is now out of date.

171. The Council does not have any up to date procedures in place in relation to how it would handle, process and respond to a request for information. As indicated earlier, the Council does not have any procedures in place setting out the process that would be followed where a requirement for review has been received.
172. Conclusions/recommendations: The assessors recommend that it would be good practice for the Council to develop and implement a procedure which formalises the current process which is followed when handling, processing and responding to information requests. Such a procedure should also set out the differences between handling and processing FOISA and EIR requests. This will enable a consistent process to be followed, particularly if there are any changes in staff involved in the process of responding to requests.

### **Training and awareness arrangements**

173. During the assessment, training and awareness processes were explained.
174. Prior to FOISA being introduced in 2005, the Council delivered some training to staff which provided an overview of FOISA, including who within the corporate team were responsible for responding to requests and how requests would be dealt with. This training was delivered to all Council staff in 2004/05.
175. The Council also has some material on its intranet site which staff can refer to regarding FOISA and the EIRs. The information on the intranet site includes; the Section 62 code of practice, instructions as to what FOI representatives should do if they receive a request for information directly, PowerPoint slides from a training course delivered to staff on FOISA and the EIRs, and the minute of the FOI representatives' group meeting.
176. The assessors note that within the PowerPoint slides, in the slide titled "In Summary", the Council has indicated that "one of the main exemptions is the Data Protection Act or "DPA", never, ever, ever, ever, give out personal data under a FOISA RFI". The assessors consider that this is an oversimplification of the relevant exemptions in FOISA and would recommend that the Council should reconsider the statement.
177. Some staff within the Council have attended training courses delivered by outside bodies in relation to FOISA, including attendance at the Centre for FOI at Dundee University. The assessors were also advised that in-depth training had been provided to the Chief Executive, in the form of briefings on the exemptions in FOISA, when he came into post.
178. The biannual meetings that the Council has set up with the FOI representatives from each of the service areas have a number of purposes, including; to help raise the profile of FOI throughout the Council, to enable the representatives to raise issues they may be concerned about in relation to FOI or that may be of general interest, and to help cascade information about FOI throughout the Council.
179. One of the outcomes of the most recent FOI representatives' meeting was that the FOI representatives would be involved in raising awareness of FOISA within their service areas.



The assessors are aware from discussions with some of the FOI representatives that the intention is to provide training to other staff within their service area, but that this has not been done yet.

180. Although staff within two service areas of the Council advised that they had some awareness of the EIRs and knew that requests for environmental information could come in verbally, other than the PowerPoint slides available on the Council intranet site (which give a basic overview of the EIRs) it was apparent from discussion with relevant staff that there has been no training, formal or informal, provided to staff on the EIRs.
181. Conclusions/recommendations: The assessors consider that there is a definite need for all staff within the Council to be provided with basic training on FOISA and the EIRs, to enable them to recognise a FOISA request and a request for environmental information, and to know who to pass this to for response. The assessors would also recommend that the Council revisit its PowerPoint training slides to ensure that these accurately reflect the terms of FOISA and the EIRs, in particular in respect of the exemptions/exceptions.
182. The assessors suggest that the Corporate FOI Co-ordinator be provided with more comprehensive training on FOISA and the EIRs, to enable him to issue responses directly to some types of requests (if it is agreed that the Legal Manager does not need to respond to every request). The amount of training required by the Corporate FOI Co-ordinator will depend on the extent to which his authority to respond to requests is extended.
183. The assessors also considered that training on the EIRs should also be delivered to staff within Support Services who are involved in responding to information requests and requirements for review (including the Corporate FOI Co-ordinator, even if the fuller training identified in the previous paragraph is not required), in order to ensure that they are able to ensure that future request handling properly takes into consideration the requirements of the EIRs.

## Conclusions and summary of recommendations

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184. Having concluded their assessment, the assessors identified some areas of good practice in the Council's approach to FOISA. They welcomed the action taken by the Council to address areas where its practice had historically not been compliant with the statutory requirements. This was seen particularly in relation to the employment of a dedicated Corporate FOI Co-ordinator who is responsible for logging, monitoring and tracking the processing of FOI and EIR requests. This development has resulted in some improvement in the Council's compliance with statutory timescales when responding to information requests.
185. The steps taken by the Chief Executive since his appointment over a year ago to raise the profile of FOI throughout the Council and his monitoring of departmental performance in relation to compliance with statutory requirements was also recognised as good practice by the assessors.
186. Another area of good practice identified by the assessors was the Council's approach to simple and straightforward information requests, where staff process these as "business as



usual” requests in an effort to provide requesters with all relevant information quickly. While the assessors consider this to be good practice, they would remind the Council to ensure that the “business as usual” process is only followed when responding to a valid information request where there is full disclosure of the requested information. Where any information is not held or is withheld from the requester, the formal process under FOISA or the EIRs (whichever regime is applicable) should be followed.

187. However, the assessors also noted areas where the Council’s practice was not compliant with the statutory requirements or good practice as set out in the Codes of Practice. The most significant concern was the current practice of the Council where all valid requests for information are responded to in line with FOISA, even when the request is clearly for environmental information and should be dealt with under the EIRs. The assessors are aware that relevant staff within Support Services have good knowledge of the EIRs and their application, but choose not to process requests which are clearly for environmental information under these regulations. This is of significant concern to the assessors as there are important differences between the two sets of legislation and the legislation is clear that requests for environmental information must be dealt with under the EIRs. To fail to follow this requirement is contrary to the legislation and could limit a requester’s right to receive information falling within the scope of their request. The assessors were also concerned about the lack of training that has been provided to all Council staff on the EIRs, and the impact this has on the ability of some staff to recognise requests for environmental information and process these correctly.
188. Another area of concern was the failure by the Council to comply with statutory timescales when responding to both requests for information and requirements for review. While the assessors acknowledge that there has been some improvement here since the employment of the Corporate FOI Co-ordinator, it was apparent that difficulties are created as a consequence of the delay in the FOI representatives providing relevant information to the Co-ordinator. Changes need to be made to the current process to address this.
189. The assessors also saw evidence, where the Council was withholding all or part of the relevant information, that it did not always advise requesters of their right to request a review and apply to the Commissioner. In cases where details of these rights were given, requesters were not advised of the timescale in which an application should be submitted to the Commissioner. In the case of responses to requirements for review, where all or part of the relevant information was being withheld, the assessors did not see any examples of cases where requesters were advised of the timescale in which to submit an appeal to the Commissioner or of their right to appeal to the Court of Session following the Commissioner’s decision. These are fundamental rights and should be notified to the requester.
190. The assessors were also concerned about the failure by the Council to consistently fulfill the duty under section 15 of FOISA in terms of providing advice and assistance to requesters. This was seen particularly in relation to cases where the requested information was not held, or where the cost of complying with the request exceeded the £600 threshold.
191. In particular the assessors recommend:



## Recommendations

Priority 1	Immediate action required
Recommendation Number	
1	<p>a) That the Council takes immediate steps to ensure that it has arrangements in place to ensure that where a request for information is received that consideration is given to whether this should be processed and responded to under FOISA or the EIRs.</p> <p>b) That where a request is made for information covered by the definition of environmental information in the EIRs, this is processed and responded to in line with the requirements of the EIRs rather than FOISA.</p>
2	<p>a) That the Council takes action to ensure that all requests for information and requirements for review are responded to within the statutory timescales laid down in FOISA and the EIRs.</p> <p>b) That the Council takes steps to ensure that information is passed to the Corporate FOI Co-ordinator in line with internal deadlines, to enable the Legal Manager to issue a response within the statutory 20 working day timescale. In particular, that any failure to provide information to the Corporate FOI Co-ordinator within 10 working days is chased up on the following working day, rather than on the fifteenth day.</p> <p>c) That the Council ensures that a suitable system is put in place for logging, tracking and monitoring requests for which information has been requested, in all service areas which do not currently have such a system in place.</p>
3	<p>a) That requesters are provided in all refusal notices and notices that information is not held with details of their right to request a review and apply to the Commissioner (including the 6 month timescale in which an appeal can be submitted).</p> <p>b) That requesters are provided in all responses to requirements for review with details of their right to apply to the Scottish Information Commissioner (including the 6 month timescale in which an appeal can be submitted) and their right of appeal to the Court of Session following the decision of the Commissioner.</p>
4	<p>That the Council ensures that all refusal notices comply fully with section 16 of FOISA or Regulation 13 of the EIRs (whichever is appropriate), ensuring in particular that where exemptions/exceptions are being relied upon for withholding information that these are cited correctly and adequate explanations are given as to why they are considered to apply. Where applicable, full</p>



	consideration should also be given to the application of the public interest test.
5	That the Council broadens the request made to FOI representatives to prompt them to provide the information requested, where it is held, to include contextual information, and comments as to whether the department considers the information should be disclosed or withheld.
6	That the Council ensures that full records of all interactions and responses relating to the handling and processing of requests should be retained on the database and email folder system administered by the Corporate FOI Co-ordinator, to ensure that a full audit trail is available should a requirement for review be submitted and an appeal made to the Commissioner.
7	<ul style="list-style-type: none"><li>a) That the Council retains records of the searches carried out by staff to determine whether any relevant information is held which would answer a request for information.</li><li>b) To ensure that the Council is able to fulfill its duty to provide advice and assistance when responding to requests, that FOI representatives are asked to provide background or contextual information that would assist a requester in understanding why information is not held, whether other types of information may be held by the Council which might be of interest, and whether the information may be accessible (or requested) elsewhere.</li><li>c) That the Council takes steps to ensure that its responses provide such advice and assistance in cases where information is not held in future.</li><li>d) That the evidence of the searches carried out, with any relevant background or contextual information, is provided to the Legal Manager to facilitate the provision of a fully informed substantive response where the Council issues a notice under section 17 of FOISA.</li></ul>
8	<ul style="list-style-type: none"><li>a) That the Council retains records of the work carried out by staff to determine that the cost of locating, retrieving and providing information under FOISA would exceed £600.</li><li>b) That these records are provided to the Legal Manager to ensure they are fully informed prior to issuing a notice under section 12 of FOISA.</li><li>c) That the Council ensures that relevant information is provided to the Legal Manager to allow the provision of reasonable advice and assistance to requesters where it is seeking to rely on section 12 of FOISA, and that such advice and assistance is provided when the Council responds to a request under section 12.</li></ul>



9	That where the Council receives a request for information which relates to the requester's own personal data, it cites the appropriate exemption/exception under FOISA or the EIRs (whichever legislation is applicable) and that the correct legislative regime is followed in processing and responding to the request.
10	That where the Council considers it has provided a full response to a request for information, it advises the requester of their right of review and application to the Commissioner.
11	That the Council reviews its approach to the validity of information requests and adopts an approach that is consistent with that set out in the Commissioner's guidance (including in respect of the provision of advice and assistance on requests considered invalid).
12	<p>a) That the Council reminds all staff the circumstances in which a request can be dealt with as a "business as usual" request, and when a valid information request should be dealt with formally as a request for (environmental) information. The importance of recognising as an information request any request for information made in recorded form should be underlined.</p> <p>b) That the Council ensures that steps are taken to check with the relevant department that all information sought by a request can be provided before passing it on for handling as a business as usual request.</p>
13	That the Council discontinues its current practice of charging £50 for contaminated land searches.

<b>Priority 2</b>	<b>Medium term action to be completed within 3 months</b>
Recommendation Number	
14	That the Council considers whether certain types of requests could be responded to directly by the Corporate FOI Co-ordinator, without requiring input from the Legal Manager.
15	That the Council puts formal procedures in place relating to how its processes and responds to requests for information and requirements for review under both FOISA and the EIRs.
16	That the Council reviews the schedule of charges in its publication scheme, to ensure that it covers adequately all situations in which it would charge for environmental information.
17	That the Council ensures that where it responds to a request for information contained within its publication scheme, it issues a refusal notice (where appropriate) which cites section 25 of FOISA.



<b>Priority 3</b>	<b>Action to be completed within 6 months</b>
Recommendation Number	
18	<p>a) That the Council develops and implements training and guidance material on FOISA and the EIRs, and in particular on the application of the exemptions/exceptions, together with recognition of EIRs requests and how these should be handled.</p> <p>b) That basic training is provided to all staff, to enable them to recognise information requests and requests for environmental information and understand where they should be passed for response.</p> <p>c) That more comprehensive, in-depth training is provided to the Corporate FOI Co-ordinator and other staff within Support Services who are involved in responding to requests and requirements for reviews, with a view in particular to ensuring that future request handling properly takes into consideration the requirements of the EIRs.</p>
19	That the Council reviews its PowerPoint training slides to ensure that these accurately reflect the terms of FOISA and the EIRs, in particular in respect of the exemptions/exceptions.

192. The assessors consider that all steps which require to be taken in relation to these recommendations can reasonably be completed within a period of six months.
193. A copy of the action plan prepared by the Council, setting out the actions it intends to take to satisfy the recommendations in this report is attached at appendix 1.
194. Unfortunately agreement could not be reached between the assessors and the Council as to any change to the Council's practice in response to recommendation 11, regarding its approach to assessing the validity of information requests that it receives. In communications following the issue of a draft of this report, the Council has maintained that although it does not agree with the Commissioner's interpretation of the law on this point, its practice is essentially in line with the Commissioner's guidance. As a result, the Council has proposed no action to address the Assessors concerns (which arose for the reasons set out in the paragraphs 136 and following above) about its practice in this respect.
195. Since it has not been possible to reach agreement with the Council in the course of the assessment process, the Commissioner will monitor the Council's practice in this area and consider whether to take separate action (outwith the assessment process) using the enforcement powers available to him.
196. At the end of the six month period (from date of publication of this assessment) the Commissioner will ask the Council to submit a report to him explaining the measures put in place to address the issues identified in the assessment and the outcomes of the action plan.



Following receipt of the report, the Commissioner may seek a follow-up meeting with the Council to discuss progress and any outstanding issues.

.....  
**Jill Walker**  
**Freedom of Information Officer**

.....  
**Claire Sigsworth**  
**Deputy Head of Enforcement**

Report approved by

.....  
**Kevin Dunion**  
**Scottish Information Commissioner**

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# Assessment report



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**Scottish public authority:** Dundee City Council  
**Dates of on-site assessment:** 22 and 23 November 2010  
**Assessors from OSIC:** Jill Walker and Claire Sigsworth  
**Date of issue:** 12 April 2011

## Appendix 1: Action plan for Dundee City Council

Recommendation	Action	Status	Due	Owner
1  (a) That the Council takes immediate steps to ensure that it has arrangements in place to ensure that where a request for information is received that consideration is given to whether this should be processed and responded to under FOISA or the EIRs.  (b) That where a request is made for information covered by the definition of environmental information in the EIRs, this is processed and responded to in line with the requirements of the EIRs rather than FOISA.	The principal features of the EIRS will be included in the PowerPoint and Intranet training modules	<del>Pending</del> Complete	20 working days from date of approval of draft action plan	<b>Ramsay Hood Iain Flett Jack Clinton</b>
	Additional training for Dept. Foi Reps. and relevant staff as required in person using the updated PowerPoint and Intranet training modules. The training will be designed to raise awareness and understanding of the differences between FOISA and EIRs.	<del>Pending</del> Complete	20 working days from date of approval of draft action plan	<b>Ramsay Hood Iain Flett Jack Clinton Roger Mennie</b>
	The Legal Manager will ensure that where such a request is made it is responded to in	<del>Pending</del> Complete	Date of approval of draft action	<b>Roger Mennie</b>



Recommendation	Action	Status	Due	Owner
	<p>line with the requirements of the EIRS.</p> <p>Identify request by "Environmental" topic within the FOI database</p> <p>Prepare Standard letters</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	<p>plan</p> <p>Date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p>	<p><b>Roger Mennie Ramsay Hood Iain Flett</b></p> <p><b>Roger Mennie Ramsay Hood Tracey Knight</b></p>
<p>2</p> <p>(a) That the Council takes action to ensure that all requests for information and requirements for review are responded to within the statutory timescales laid down in FOISA and the EIRs.</p> <p>(b) That the Council takes steps to ensure that information is passed to the Corporate FOI Co-ordinator in line with internal deadlines, to enable the Legal Manager to issue a response within the statutory 20 working day timescale. In particular, that any failure to provide information to the Corporate FOI Co-ordinator within 10 working days is</p>	<p>Departmental response times reduced from 10 to 8 days</p> <p>Amend standard email request from Foi co-ordinator to Depts.</p> <p>Foi Co-ordinator reminds Dept. Reps by email on 9th day as opposed to 15th day that response information is overdue</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	<p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft</p>	<p><b>Ramsay Hood Dept. Foi Reps.</b></p> <p><b>Roger Mennie Ramsay Hood</b></p> <p><b>Ramsay Hood</b></p>



Recommendation	Action	Status	Due	Owner
<p>chased up on the following working day, rather than on the fifteenth day.</p> <p>(c) That the Council ensures that a suitable system is put in place for logging, tracking and monitoring requests for which information has been requested, in all service areas which do not currently have such a system in place.</p>	<p>To be discussed at special Dept. Foi Reps. meeting</p> <p>All Departments to introduce a formal process for logging, tracking and monitoring requests.</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	<p>action plan</p> <p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p>	<p><b>Roger Mennie Ramsay Hood Dept. Foi Reps.</b></p> <p><b>Heads of Dept. and Dept. Foi Reps.</b></p>
<p>3</p>	<p>Prepare standard letter</p>	<p><del>Pending</del> Complete</p>	<p>20 working days from date of approval of draft action plan</p>	<p><b>Roger Mennie Ramsay Hood Tracey Knight</b></p>
<p>(a) That requesters are provided in all refusal notices and notices that information is not held with details of their right to request a review and apply to the Commissioner (including the 6 month timescale in which an appeal can be submitted).</p> <p>(b) That requesters are provided in all responses to requirements for review with details of their right to apply to the Scottish Information Commissioner (including the 6 month timescale in which an appeal can be submitted) and their right of appeal to the Court of Session following the decision of the Commissioner.</p>	<p>As above</p>	<p><del>Pending</del> Complete</p>	<p>20 working days from date of approval of draft action plan</p>	<p><b>Roger Mennie Ramsay Hood Tracey Knight</b></p>



Recommendation	Action	Status	Due	Owner
<p>4</p> <p>That the Council ensures that all refusal notices comply fully with section 16 of FOISA or Regulation 13 of the EIRs (whichever is appropriate), ensuring in particular that where exemptions/exceptions are being relied upon for withholding information that these are cited correctly and adequate explanations are given as to why they are considered to apply. Where applicable, full consideration should also be given to the application of the public interest test</p>	<p>Prepare standard letters</p> <p>More detailed explanations of why exemptions/exceptions are considered to apply and more detailed discussion of the Public Interest Test will be included in response letters</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	<p>20 working days from date of approval of draft action plan</p> <p>Date of approval of draft action plan</p>	<p><b>Roger Mennie</b> <b>Ramsay Hood</b> <b>Tracey Knight</b></p> <p><b>Roger Mennie</b></p>
<p>5</p> <p>That the Council broadens the request made to FOI representatives to prompt them to provide the information requested, where it is held, to include contextual information, and comments as to whether the department considers the information should be disclosed or withheld.</p>	<p>To be raised and discussed at special Departmental Foi Co-ordinators Meeting</p> <p>Amend standard email request from Foi co-ordinator to Depts</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	<p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p>	<p><b>Roger Mennie</b> <b>Ramsay Hood</b> <b>Iain Flett</b></p> <p><b>Roger Mennie</b> <b>Ramsay Hood</b></p>



Recommendation	Action	Status	Due	Owner
<p>6</p> <p>That the Council ensures that full records of all interactions and responses relating to the handling and processing of requests should be retained on the database and email folder system administered by the Corporate FOI Co-ordinator, to ensure that a full audit trail is available should a requirement for review be submitted and an appeal made to the Commissioner.</p>	<p>Corporate Foi Co-ordinator to ensure the ongoing retention of full records relating to the handling &amp; processing of requests within the Foi database</p> <p>Database to be reviewed with I.T. to incorporate additional information including Request for Reviews and audit date trail</p>	<p>Completed</p> <p><del>Pending</del> Complete</p>	<p>40 working days from date of approval of draft action plan</p>	<p><b>Ramsay Hood</b></p> <p><b>Jane Crawford (I.T. Software (Development))</b></p>
<p>7</p> <p>(a) That the Council retains records of the searches carried out by staff to determine whether any relevant information is held which would answer a request for information.</p> <p>(b) To ensure that the Council is able to fulfill its duty to provide advice and assistance when responding to requests, that FOI representatives are asked to provide background or contextual information that would assist a requester in understanding why information is not held, whether other types of information may be held by the Council which might be of interest, and whether the information may be accessible (or requested) elsewhere.</p>	<p>Departmental Foi Reps. to introduce formal recording procedures relating to information searches based on standard format.</p> <p>To be raised at special Departmental Foi Co-ordinators Meeting and agree additional training and processes</p> <p>Amend standard email request for Foi coordination to Depts.</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	<p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft</p>	<p><b>Heads of Dept. and /Dept. Foi Reps.</b></p> <p><b>Roger Mennie Ramsay Hood Iain Flett</b></p> <p><b>Roger Mennie Ramsay Hood</b></p>



Recommendation	Action	Status	Due	Owner
<p>(c) That the Council takes steps to ensure that its responses provide such advice and assistance in cases where information is not held in future.</p> <p>(d) That the evidence of the searches carried out, with any relevant background or contextual information, is provided to the Legal Manager to facilitate the provision of a fully informed substantive response where the Council issues a notice under section 17 of FOISA.</p>	<p>Advice and assistance to be provided by Legal Manager on a case by case basis</p> <p>Prepare standard letters</p> <p>as 7(a) and (b) above</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	<p>action plan</p> <p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p>	<p><b>Roger Mennie</b></p> <p><b>Roger Mennie Ramsay Hood Tracey Knight</b></p> <p><b>Heads of Dept and Dept. Foi Reps. Roger Mennie Ramsay Hood Iain Flett</b></p>
<p>8</p> <p>(a) That the Council retains records of the work carried out by staff to determine that the cost of locating, retrieving and providing information under FOISA would exceed £600.</p>	<p>Dept Foi Reps. to introduce formal recording procedures relating to estimated costs</p>	<p><del>Pending</del> Complete</p>	<p>20 working days from date of approval of draft action plan</p>	<p><b>Heads of Dept and /Dept. Foi Reps.</b></p>



Recommendation	Action	Status	Due	Owner
<p>(b) That these records are provided to the Legal Manager to ensure they are fully informed prior to issuing a notice under section 12 of FOISA.</p> <p>(c) That the Council ensures that relevant information is provided to the Legal Manager to allow the provision of reasonable advice and assistance to requesters where it is seeking to rely on section 12 of FOISA, and that such advice and assistance is provided when the Council responds to a request under section 12.</p>	<p>Dept Foi Reps to detail costs of retrieval to Legal Manager</p> <p>as above</p> <p>Prepare standard letter</p> <p>Advice and assistance to be provided by Legal Manager on a case by case basis</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	<p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p>	<p><b>Heads of Dept and /Dept. Foi Reps.</b></p> <p><b>Roger Mennie Ramsay Hood Tracey Knight</b></p> <p><b>Roger Mennie</b></p>
<p>9</p> <p>That where the Council receives a request for information which relates to the requester's own personal data, it cites the appropriate exemption/exception under FOISA or the EIRs (whichever legislation is applicable) and that the correct legislative regime is followed in processing and responding to the request.</p>	<p>Additional training for Dept. Foi Reps and other relevant staff</p> <p>Amend PowerPoint training module. The training will be delivered in person and</p>	<p><del>Pending</del> Complete</p>	<p>20 working days from date of approval of draft action plan</p> <p>20 working days</p>	<p><b>Ramsay Hood Iain Flett Jack Clinton</b></p> <p><b>Ramsay Hood Iain Flett Jack</b></p>



Recommendation	Action	Status	Due	Owner
	<p>designed to raise awareness and understanding of the differences between FOISA and EIRs.</p> <p>The Legal Manager will ensure that where a request under the EIRs is made it is responded to in line with the requirements of the EIRS</p> <p>Prepare standard letter</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	<p>from date of approval of draft action plan</p> <p>Date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p>	<p><b>Clinton Roger Mennie</b></p> <p><b>Roger Mennie</b></p> <p><b>Roger Mennie Ramsay Hood Tracey Knight</b></p>
10	Prepare standard letter	<del>Pending</del> Complete	20 working days from date of approval of draft action plan	<b>Roger Mennie Ramsay Hood Tracey Knight</b>
11	That the Council reviews its approach to the validity of			



Recommendation	Action	Status	Due	Owner
<p>information requests and adopts an approach that is consistent with that set out in the Commissioner's guidance (including in respect of the provision of advice and assistance on requests considered invalid).</p>				
<p>12</p> <p>(a) That the Council reminds all staff the circumstances in which a request can be dealt with as a "business as usual" request, and when a valid information request should be dealt with formally as a request for (environmental) information. The importance of recognising as an information request any request for information made in recorded form should be underlined.</p> <p>b) That the Council ensures that steps are taken to check with the relevant department that all information sought by a request can be provided before passing it on for handling as a business as usual request.</p>	<p>To be raised at special Departmental Foi Co-ordinators Meeting and agree additional training</p> <p>Amend PowerPoint training module to include points made in Recommendation 12(a), train Departmental Foi Reps then Departmental Foi Reps cascade to all relevant staff</p> <p>Ramsay Hood telephones the Department then emails the Department to respond to the customer direct with a cc to himself for inclusion in the Foisa email accounts</p>	<p><del>Pending</del> <b>Complete</b></p> <p><del>Pending</del> <b>Complete</b></p>	<p>20 working days from date of approval of draft action plan</p> <p>20 working days from date of approval of draft action plan</p> <p>Completed</p>	<p><b>Roger Mennie Ramsay Hood Iain Flett</b></p> <p><b>Ramsay Hood Iain Flett Jack Clinton</b></p> <p><b>Ramsay Hood</b></p>
<p>13</p> <p>That the Council discontinues its current practice of charging</p>			<p>20 working days</p>	



Recommendation	Action	Status	Due	Owner
£50 for contaminated land searches.	<p>Council will cease to apply current charges.</p> <p>Council will make an application to the Commissioner to update Publication Scheme/Publish Schedule of Charges.</p>	<p><del>Pending</del> Complete</p> <p><del>Pending</del> Complete</p>	from date of approval of draft action plan	<b>Roger Mennie</b>
<p>14</p> <p>That the Council considers whether certain types of requests could be responded to directly by the Corporate FOI Co-ordinator, without requiring input from the Legal Manager.</p>	We have considered this recommendation and will not take action on this			
<p>15</p> <p>That the Council puts formal procedures in place relating to how its processes and responds to requests for information and requirements for review under both FOISA and the EIRs</p>	<p>CE/Depute CE (Support Services) &amp; Legal Manager to agree Request for Review formal process</p> <p>Production of a Corporate Foi Policy</p>	<p>Pending</p> <p>Pending</p>	<p>Within 3 months from date of approval of draft action plan</p> <p>Within 3 months from date of approval of draft action plan</p>	<p><b>Chief Executive</b> <b>Depute Chief Executive (Services)</b> <b>Roger Mennie</b></p> <p><b>Roger Mennie</b> <b>Ramsay Hood</b> <b>Tracey Knight</b></p>



Recommendation	Action	Status	Due	Owner
<p>16</p> <p>That the Council reviews the schedule of charges in its publication scheme, to ensure that it covers adequately all situations in which it would charge for environmental information.</p>	<p>Update Publication Scheme/Publish Schedule of Charges</p>	<p>Pending</p>	<p>Within 3 months from date of approval of draft action plan</p>	<p><b>Roger Mennie</b></p>
<p>17</p> <p>That the Council ensures that where it responds to a request for information contained within its publication scheme, it issues a refusal notice (where appropriate) which cites section 25 of FOISA.</p>	<p>Prepare standard letter</p>	<p>Pending</p>	<p>Within 3 months from date of approval of draft action plan</p>	<p><b>Roger Mennie Ramsay Hood Tracey Knight</b></p>
<p>18</p> <p>(a) That the Council develops and implements training and guidance material on FOISA and the EIRs, and in particular on the application of the exemptions/exceptions, together with recognition of EIRs requests and how these should be handled.</p> <p>(b) That basic training is provided to all staff, to enable them to recognise information requests and requests for environmental information and understand where they should be passed for response.</p>	<p>Amend PowerPoint Training Module accordingly. Intranet training information to be reviewed.</p> <p>Prepare standard letters</p> <p>Create an intranet link from Employee Handbook to Foisa training information</p>	<p>Pending</p> <p>Pending</p> <p>Pending</p>	<p>Within 6 months from date of approval of draft action plan</p> <p>Within 6 months from date of approval of draft action plan</p> <p>Within 6 months from date of approval of draft action plan</p>	<p><b>Ramsay Hood Iain Flett Jack Clinton Roger Mennie</b></p> <p><b>Roger Mennie Ramsay Hood Tracey Knight</b></p> <p><b>Iain Flett Adam Derby (Personnel)</b></p>



Recommendation	Action	Status	Due	Owner
<p>(c) That more comprehensive, in-depth training is provided to the Corporate FOI Co-ordinator and other staff within Support Services who are involved in responding to requests and requirements for reviews, with a view in particular to ensuring that future request handling properly takes into consideration the requirements of the EIRs.</p>	<p>The Foi Reps. to brief their respective Management Teams for Departmental cascade to all relevant staff</p>	<p>Pending</p>	<p>Within 6 months from date of approval of draft action plan</p>	<p><b>Heads of Dept and /Dept. Foi Reps.</b></p>
	<p>Amend PowerPoint Training Module accordingly. Additional training for Dept. Foi Reps. and relevant staff as required in person using the updated Powerpoint training module</p>	<p>Pending</p>	<p>Within 6 months from date of approval of draft action plan</p>	<p><b>Ramsay Hood Iain Flett Jack Clinton Roger Mennie</b></p>
	<p>Training to be provided in person by Legal Manager and given to Ramsay Hood, Iain Flett and Jack Clinton who will cascade to the Dept. Foi Reps.</p> <p>Legal Manager to attend relevant external training.</p>	<p>Pending</p>	<p>Within 6 months from date of approval of draft action plan</p>	<p><b>Ramsay Hood Iain Flett Jack Clinton Roger Mennie</b></p>
<p>19</p>				
<p>That the Council reviews its PowerPoint training slides to ensure that these accurately reflect the terms of FOISA and the EIRs, in particular in respect of the exemptions/exceptions.</p>	<p>Amend Powerpoint Training Module accordingly</p>	<p>Pending</p>	<p>Within 6 months from date of approval of draft action plan</p>	<p><b>Ramsay Hood Iain Flett Jack Clinton Roger Mennie</b></p>



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