

REPORT TO: Cabinet

MEETING DATE: 12 September 2023

BY: Executive Director for Council Resources

SUBJECT: Freedom of Information (Scotland) Act 2002 and Data Protection Act 2018 (GDPR) – Compliance Statistics in 2022

1 PURPOSE

- 1.1 To report on the Council's compliance with the 20 working day timescale laid down by the Freedom of Information (Scotland) Act 2002 for the calendar year 2022 (i.e.: from 1 January 2022 to 31 December 2022).
- 1.2 To report on the Council's compliance with the timescale laid down by the Data Protection Act 2018 (GDPR) for the calendar year 2022 (i.e.: from 1 January 2022 to 31 December 2022).

2 RECOMMENDATIONS

- 2.1 Cabinet is asked to note the report and for Members to provide feedback on the compliance statistics.

3 BACKGROUND

- 3.1 **Freedom of Information (Scotland) Act 2002** - During 2022, East Lothian Council operated in accordance with the statutory requirements, particularly:

Requests for information – to be answered within 20 working days

Requests for review – to be answered within 20 working days by a Chief Officer or an officer nominated by them.

If requesters remained dissatisfied after completing this process, then they had a legal right to appeal to the Scottish Information Commissioner.

3.2 Freedom of Information (FOI) statistics are recorded by Information Governance. Guidance on how to handle information requests, and requests for review, is published on the Council's intranet, accessible to all employees.

3.3 The total number of FOI requests in 2022 was 1,287. By way of comparison, 1,119 requests were received during the previous calendar year, 2021. An increase of 168. Overall, numbers of FOI requests have been increasing steadily and becoming more complex since the Freedom of Information (Scotland) Act 2002 came into force.

This figure includes information requests processed under the Environmental Information (Scotland) Regulations 2004 (EIR). A split of the FOI and EIR requests is provided at 3.5 of this report.

3.4 The total number of requests for review received in 2022 was 62. By way of comparison, 46 review requests were received during the previous calendar year, 2021. An increase of 16.

This figure includes reviews processed under the Environmental Information (Scotland) Regulations 2004 (EIR). A split of the FOI and EIR reviews is provided at 3.6 of this report.

3.5 Since January 2013, the recording system used has distinguished between FOI requests and requests falling within the Environmental Information (Scotland) Regulations 2004 (EIR). The table below provides a breakdown of the response timescales for both FOI and EIR requests in 2021:

	FOI				EIR			
	2022		2021 (for comparison)		2022		2021 (for comparison)	
On time	910	99%	785	99%	145	97%	167	99.5%
Late	7	1%	6	1%	5	3%	1	0.5%
Cancelled/Withdrawn	8		6		10		11	
Suspended	40		16		138		98	
Invalid	15		21		9		8	
Ongoing	0		0		0		0	
TOTAL ACTIONED	980*		834		307		285	

*Includes 18 requests which were covered by both FOI and EIR legislation.

3.6 The table below provides a breakdown of the response timescales for FOI and EIR requests for review in 2022:

	FOI				EIR			
	2022		2021 (for comparison)		2022		2021 (for comparison)	
On time: Within 20 Working Days	34	92%	15	79%	22	96%	25	92.6%
Late	3	8%	4	21%	1	4%	2	7.4%
Upheld or partially upheld	33		14		22		22	
Overtaken	4		5		1		5	
Decision reached for the first time (previously we failed to respond).	0		0		0		0	
Additional Info Provided	0		0		0		0	
Review Invalid	0		0		0		0	
Review Cancelled	1		0		0		0	
Review Suspended	1		0		0		0	
Still Outstanding	0		0		0		0	
Total Actioned	39		19		23		27	

3.7 The top three categories of enquirer in 2022 were:

- 1) General Public (46%)
- 2) Commercial Organisations (20%)
- 3) MSP/MPs (15%)

3.8 **Data Protection Act 2018 (GDPR)** – with effect from 25 May 2018, East Lothian Council operates in accordance with the statutory requirements, particularly:

Requests for personal information (“Subject Access Requests”) – to be answered within one month although this may be extended by a further two months for complex requests.

3.9 Data Protection (DP) statistics are recorded by Information Governance. Guidance on how to handle requests for personal information (“Subject Access Requests”) is published on the Council’s intranet, accessible to all employees.

3.10 The total number of DP “Subject Access Requests” received in 2022 was 177. By way of comparison, 120 requests were received during the previous calendar year, 2021. An increase of 57.

3.11 The table below provides a breakdown of the response timescales for DP “Subject Access Requests” received in 2022.

	2022		2021 (for comparison)	
Completed on time (within one month or extended time)	125	92%	79	95%
Late	11	8%	4	5%
Suspended	40		32	
Withdrawn	1		5	
Ongoing	1		0	
Total Actioned	177		120	

4 POLICY IMPLICATIONS

4.1 None.

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial - None

6.2 Personnel - None

6.3 Other – None

7 BACKGROUND PAPERS

7.1 None.

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DATE	