

# BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

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| <b>Report to:</b>                 | <b>CABINET</b>  |
| <b>Report of:</b>                 | <b>CHIEF LEGAL OFFICER</b>  |
| <b>Date of Meeting:</b>           | <b>24 APRIL 2006</b>  |
| <b>Relevant Forward Plan Ref:</b> | <b>N/A</b>  |
| <b>Subject:</b>                   | <b>FREEDOM OF INFORMATION ACT 2000 - THE FIRST TWELVE MONTHS &amp; A CODE OF PRACTICE</b> |
| <b>Relevant Cabinet Member:</b>   | <b>Councillor Mike Whitby - Leader of the Council</b>                                     |
| <b>Relevant O&amp;S Chairman:</b> | <b>Councillor Michael Wilkes</b>  |
| <b>Wards affected:</b>            | <b>All</b>  |

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| <b>1. Purpose of report:</b>   |
| 1.1 To update Cabinet on the implementation, in the first twelve months, of the Freedom of Information Act that came into force on 1 <sup>st</sup> January 2005; and . |
| 1.2 To seek approval to the Code of Practice for re-use of public sector information   |

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| <b>2. Decision(s) recommended:</b> (Use an Appendix, if these exceed 1/3 of a page)                          |
| 2.1 To note the report; and  |
| 2.2 To approve the attached Code of Practice and to authorise the Chief Legal Officer to keep it up to date, |

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| <b>Contact Officer:</b>             | <b>Mirza Ahmad</b><br><b>Chief Legal Officer</b> |
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| <b>Signatures:</b>           |
| <b>Chief Officer:</b> .....  |
| <b>Cabinet Member:</b> ..... |

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| <b>List of background documents:</b>  |
| Corporate Policy on FOIA and related database information (save for confidential / exempt information). |

### **3. Brief Summary of Report:**

This report details the impact of the Freedom of Information Act in terms of:

- number of requests received from January – December 2005;
- number and type of requestors;
- performance of the City Council in responding to requests

### **4. Compliance Issues:**

#### **4.1 Are Decisions consistent with relevant Council Policies, Plans or Strategies:**

The report reflects the City Council's management of requests for information under the Freedom of Information Act. The Act aims to support more open and transparent local decision-making. The City Council's policy document, which is available on the website – has been reviewed and amended accordingly over the course of the year to reflect emerging best practice and guidance. This includes guidance on seeking clarification, use of exemptions, fees regulations, dealing with the media and establishing appeals panels.

#### **4.2 Relevant Officers/Members/ others consulted on this matter:**

The Leader has been consulted over the drafting of this report.

#### **4.3 Relevant legal powers, including Financial, Personnel, Equalities and other resource implications (if any):**

- (a) The Department of Constitutional Affairs (DCA) published the Fees Regulations which entitled Public Authorities to make charges in relation to complying with a request made under the Act. There is a limit of £450, below which Local Authorities are not entitled to charge the applicant. In order to work to the £450 limit, an hourly rate of £25 per person per hour should be used. This equates to 18 hours of work. The £450 limit does not cover disbursement or postage charges (see below), which the Public Authority can still charge the applicant. The DCA has indicated that it may review the Fees Regulations in light of the experience of FOIA in the first year. Cabinet will be advised of any changes as necessary.
- (b) The work entailed in dealing with the request to which the fees apply is: determining whether the information is held; locating and retrieving the information and/or striking any exempt information from the document containing the information. The Government has not made any resources available to local government to deal with Freedom of Information Act requests and, as such, all resources spent have been from Council resources. The total annual cost to the Council, in relation to the Corporate FOIA Team is about £ 117,000. This figure does not include the officer time spent in each of the Directorates to deal with FOIA requirements. The Departmental time/cost is being calculated.

#### **4.4 Main Risk Management and Equality Impact Assessment Issues (if any):**

The City has a duty to provide advice and assistance and in validating a request. The provision of advice and assistance also takes into account the City Council's commitment to its Customer Charter, the Corporate Equality Scheme and obligations under legislation such as the Race Relations Amendments Act and the Disability Discrimination Act.

## 5. Relevant background/chronology of key events:

- 5.1 The Freedom of Information Act was introduced in 2000. The Act gives two general rights in relation to the disclosure of information which came into force on 1<sup>st</sup> January 2005:
- The right to be told, subject to relevant exemptions, if the information is held;
  - The right to be given, subject to relevant exemptions, that information within 20 working days.
- 5.2 The Act also requires that public bodies produce and maintain a Publication Scheme. The City Council produced its first Publication Scheme as one of the pilot authorities in February 2003. The current version was prepared in February 2005 and is on the website.
- 5.3 An analysis of the FOIA requests submitted during January to December 2005 is attached at **Appendix 1** of this Report. It shows that requests appear to be stabilising around 30-40 requests per month. The Development Directorate has revised the greatest number of requests, followed by the Local Services Directorate and the Chief Executives Department.
- 5.4 Requests for information are required to be dealt with within 20 working days however, public bodies have the legal right to extend the working days in certain circumstances, such as consideration of a public interest test exemption or where the City Council has sought to consult with third parties where the information requested relates to them.
- 5.5 Over the first 12 months, only 50 requests have not met the statutory deadlines. Out of a total of 647 for 12 months, this equates to a default of 7.72%. This includes 9 late responses in August : 5 from Social Care and Health, which related to one applicant which were eventually refused under Section 40 exemption and 9 late responses in December (4 from Housing where notification of extension of the working days for public interest consideration was done outside of the 20 working day limit).
- 5.6 During the first 12 months period, the City Council has received a small number of complaints with regard to FOIA. We have handled 9 internal appeals so far and dealt with three complaints referred by applicants to the Information Commissioner. The Information Commissioner has also issued the City Council with a Decision Notice (in January 2005) related to a failure to comply with a request within the 20 working days.
- 5.7 The Office of the Deputy Prime Minister also concluded (in September 2005) the first of 2 surveys to obtain evidence on how the introductions of the FOI Act and the changes to the Environmental Information Regulations were being implemented in local government. The first survey, in which the City Council took part, sought to assess number of requests between 31<sup>st</sup> May 2005 and 23<sup>rd</sup> August 2005. The second survey - originally scheduled for November 2005 and January 2006 - was not issued by ODPM.

## 6. New Code of Practice

- 6.1 This Report also takes the opportunity for Cabinet to approve the Draft Code of Practice for the “Re-use of Public Sector Information” (**Appendix 2**). This has been introduced to reflect changes in law, brought into effect during the summer of 2005, and is recommended to Cabinet as a model of good practice. It is also recommended that I be authorized to keep it up to date. A copy of the Code will be placed on the website.
- 6.2 The Code of Practice will support the City Council in managing requests for re-use under these Regulations. It links closely with existing agreed policies to manage requests for information under Freedom of Information legislation.
- 6.3 A public sector body **may** permit re-use but they are not under an automatic obligation to allow the “re-use” of any document they hold. However, where a public sector body permits re-use, it shall do so in accordance with the Regulations. Where a public sector body has allowed the re-use of information to one organisation, it must treat all requests for re-use of the same information by other organisations for similar purposes, on the same terms, i.e. the terms of the licence should be the same. Likewise, exclusive licence agreements should also be avoided, unless it is necessary for the provision of a public service.
- 6.4 A request for re-use must first satisfy the criteria for access under relevant legislation – such as Freedom of Information (FOI). Information exempt under FOI cannot be provided for re-use, so all requests for re-use must first be considered in accordance with existing policy on access to information. This will incorporate guidance on the provision of advice and assistance supporting applicant making, or wishing to make, requests for information.
- 6.5 The re-use Regulations do not carry the same obligations as FOI. However, where Birmingham City Council is the copyright holder of the information it should set out its baseline for re-use. It is recommended that re-use for personal, educational or non-commercial purposes is permitted without further reference to the City Council. This will support the requirements of the Regulations and ensure applications to re-use will be dealt with in a timely, open and transparent manner and the process will be fair, consistent and non-discriminatory.
- 6.6 This is a relatively new area for the City Council and policy will need to be developed in accordance with emerging practice and guidance. The organisations covered by the Regulations include Central Government Departments (including Parliament), Local Government, Police, Fire and Health Services. The coverage does not extend to schools, universities or other educational establishments. Cultural organisations such as libraries and museums and public sector broadcasters, such as the BBC, are also excluded. However, information about these organisations, held by public sector bodies is included.
- 6.7 Public bodies can choose the extent to which something is put into place to support re-use of public sector information. The proposed Code of Practice enables the City Council to process any requests for re-use and set a baseline for re-use conditions.