



**Executive**  
10<sup>th</sup> October 2005

**Report from the Director of  
Finance & Corporate Resources**

For Action/Information

Wards Affected:  
ALL

**Report Title: Freedom of Information**

Forward Plan Ref: Cor-05/06-90

## 1.0 Summary

- 1.1 This report is a review of the Council's position some 8 months after the disclosure provisions of the Freedom of Information (Fol) Act 2000 came into force in January 2005.
- 1.2 Preparations made in 2004 and new procedures implemented across the Council have ensured that we are meeting our statutory obligations under the Act.
- 1.3 A full review of our Fol procedures has been made and between July and September 2005 two reports have been taken to Corporate Management Team (CMT). In common with many other authorities there are some issues that need attention. Some of the recommendations approved by CMT also require the approval of the Executive.

## 2.0 Recommendations

### **That the Executive:**

- 2.1 Agree the amendments to the Fol Policy detailed in paragraphs 3.8 to 3.11.

- 2.2 Agree that the Director of Finance and Corporate Resources will be the Council's Information Champion as discussed under paragraph heading 3.12.
- 2.3 Agree that the Council's policy should continue to be not to provide information where the cost of doing so would exceed the appropriate limit as set out in the FoI Act Fees Regulations (FoI and Data Protection (Appropriate Limit and Fees) Regulations 2004), detailed in paragraph 3.16.
- 2.4 Agree that the FoI Fees Policy be amended to charge for disbursements only where a fee of £2 or more will be incurred. This is discussed in paragraph 3.17.
- 2.5 Agree that work commence on the e-Government National Priority Outcome G19 as detailed in paragraph 3.22.
- 2.6 To note that a request for growth will be made as part of the 2006/7 budget process in order to fund an additional temporary post to assist the Corporate Information Manager with FOI work as laid out in paragraph 3.23.

### **3.0 Detail**

#### **3.1 Statistical Summary and Position Statement**

- 3.2 Preparations were made during 2004 to ensure that the Council was able to meet its statutory obligations under the disclosure provisions of the FoI Act. This included raising awareness and the implementation of new procedures and responsibilities across the Council. By and large these are in place and working well. There has been a high level of cooperation from the service areas in dealing with requests for information. Details of this preparatory work can be found in Appendix A.
- 3.3 The highlights are that in the 8 months from January to August 2005 the Council received 230 requests for information. 84% of these were processed fully within the statutory time limits, which is within our expectations of the settling in period since the introduction of the Act. Our performance in July and August has been significantly better, with 89% of requests processed fully within 20 working days in July and 100% in August. Our average performance is comparable with other London Boroughs, while the best performing Central Government department in March 2005 was the Department of Transport which processed 83% of requests within 20 working days. The Home Office answered just 30% within 20 working days, whilst the average across departments was 64%.
- 3.4 This improving and, now, high level of performance is at the expense of resource being diverted, both at the centre and in service areas, from other activities. The situation needs to be continually monitored and our practices improved to ensure a high level of compliance.

- 3.5 Whilst the number of requests is below our expectations, their complexity is greater than anticipated. Prior to the Act we arranged for the majority of requests to be dealt with by individual service areas, with a small amount of central coordination. However, the nature of the requests places greater emphasis on the central function. 27% of cases have involved the Corporate Information Manager.
- 3.6 There is excessive demand in some areas. Environmental and Cultural Services have received 33% of all requests, one third of which have been dealt with by Streetcare and one fifth by Transportation.
- 3.7 The majority of requests (35%) are from local residents, followed by external agencies (24%), research (8%), journalists (7%) and political parties (7%).

### **3.8 Amendment to the Fol Policy**

- 3.9 The Council adopted its Fol Policy on 13<sup>th</sup> December 2004. It defines the responsibilities for meeting the Council's obligations under the Fol Act. To ensure that appropriate consideration is given to refusals the policy identifies the Service Area Director as the person who should sign Refusal Notices.
- 3.10 The Fol Appeal and Complaints Process was adopted at the end of July. It requires a senior officer to review a decision in regard to an appeal or complaint. If Service Area Directors continue to sign Refusal Notices any appeals or complaints will need to be reviewed by the Chief Executive which is considered onerous. It is therefore recommended that paragraph 3.3 of the Fol Policy be amended to read:

“Any refusal for a request for information under the Act will be signed-off by the Assistant or Deputy Director of the Service Area, or equivalent.”

- 3.11 Now that we have implemented Fol procedures across the Council it is recommended that the Fol Implementation Group be renamed to the Fol Operations Group. It is also recommended that this group have responsibility for improving Fol procedures. This will involve amendments to paragraphs 3.4, 3.5, 3.10 and 3.11 of the Policy.

### **3.12 The Information Champion**

- 3.13 At the Executive meeting of 13<sup>th</sup> December 2004, the Director of Corporate Services was identified as the Council's Information Champion. The recent restructure has left this role unfilled. It is proposed that the Director of Finance and Corporate Resources take on this role.

### **3.14 Fees Structure**

- 3.15 On 17<sup>th</sup> January 2005 the Executive set the Council's charging policy in line with the Act's Fees Regulations (Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004) made under the Act. It was agreed that this policy be reviewed 6 months after full implementation of the Act and adjusted as appropriate, in line with our experience.

- 3.16 It is recommended that the Council's policy continue to be not to provide information where the cost of doing so would be above the 'appropriate limit' as defined in the Fees Regulations. This 'appropriate limit' allows for certain activity to be taken into account when estimating the cost of processing a request for information. For example, we are allowed to estimate costs based on an amount of £25 per hour for staff time, including contractors, which equates to 18 hours of work. Officers are dealing with requests for information in addition to their core responsibilities, and to require them to complete these large and time consuming requests would be burdensome. Over the first 8 months since full disclosure provisions came into effect only 15 requests have been turned down because they exceeded the 'appropriate limit'. In such cases we offer advice and assistance to refine the request below the 'appropriate limit'.
- 3.17 The charging policy is currently to charge for disbursements within the statutory limitations, typically at 10 pence per sheet of paper provided. It is recommended that the charging for disbursements be dropped where the cost charged to the applicant would be less than £2. This would, for example, allow for 20 sheets of photocopy to be provided free of charge. It will allow for the free provision of information in the majority of requests, whilst ensuring that frivolous requests involving large amounts of paper and officer time are discouraged. The current arrangement is administratively cumbersome.
- 3.18 Additional Resource**
- 3.19 The roles and responsibilities adopted in regard to the FoI Act have been effective in the Council successfully meeting its statutory obligations. However, the majority of requests were expected to be processed by the relevant Service Directorates. As discussed in 3.5 above, the nature of the requests have been more complicated than expected. In many instances they cross directorates and involve central coordination.
- 3.20 The implications of this are two-fold. The Corporate Information Manager is unable to dedicate time to strategic guidance and support to Action Officers and FoI Representatives and is unable to concentrate on other areas of responsibility, most importantly information management. 95% of this manager's time is currently spent on FoI operational issues, much of which is in processing requests.
- 3.21 The majority of cases have been correctly and efficiently processed within the appropriate timeframes. However, there is area for improvement and at present the Corporate Information Manager is unable to dedicate time to building capacity in the Service Areas for dealing with the complex cases, or for improving procedures. To date there have been two complaints to the Information Commissioner's Office. The outcomes of these are as yet unknown.
- 3.22 Under the e-Government National Priority Outcome G19 the Council is required to adopt the international standard ISO 15489. This standard relates to information management and forms part of the FoI Act section 46 Code of Practice on the Management of Records. The standard was

devised to ensure that appropriate protection is given to all records, and that evidence and information they contain can be retrieved more efficiently and effectively. This will involve the audit of current records management practices across the Council and gap analysis to assess our position in regard to these requirements.

- 3.23 It is recommended that the Corporate Information Manager be given a temporary additional resource, for 2005/6 and 2006/7, with a review in 2006/7. During this time the Corporate Information Manager, in conjunction with the FoI Representatives of the Service Areas, will concentrate on building the capacity for Service Areas to deal with the majority of requests, including the more difficult cases. As the capacity for dealing with requests increases more time will be spent on information management.

#### **4.0 Financial Implications**

- 4.1 As part of the budget process for 2005/6 and beyond, £50k was added to the base budget of the IT Unit for the purposes of FoI and associated records and information management activity.
- 4.2 A report on the implementation of FoI to the Executive in December 2004 identified that this sum would be used for:
- (i) Ongoing expenses associated with FoI implementation such as communications, training, software maintenance etc.
  - (ii) Up front consultancy and feasibility study on records management.
  - (iii) Purchase (over a period of years) and maintenance of a records management system.
- 4.3 It was noted in the report, mentioned above, that until the initial feasibility study had been completed the resource requirements for a records management system and any further services would not be known. Consequently, it was noted that a further bid for growth might be required. This remains the case.
- 4.4 This report recommends the engagement of a temporary resource in 2005/6 and 2006/7 to assist the Corporate Information Manager with FoI work, including building Service Area capacity, so that she may start to focus on information and records management. In the remainder of 2005/6 the costs of such a resource can be met from the £50k allocated to the IT Unit as only small amounts have been used so far this year, because of the constraints upon the lead officer's time. The remainder will be used on up-front consultancy.
- 4.5 In 2006/7 the costs of the temporary resource cannot be met from the ITU budget as the £50k will be used for purchase and maintenance of systems as planned. It is therefore recommended that a growth bid in the sum of £60k be supported by the Executive, as part of its revenue budget consideration. Approval for this item will need to be made by Full Council as part of agreeing the overall budget in March 2006. The figure of £60k is

based on an estimated cost of £300 per day for 200 days through 2006/7. Officers will look at ways of minimising this cost.

## **5.0 Legal Implications**

- 5.1 It is a statutory duty that Brent Council meet the requirements of the Freedom of Information Act. Failure to do so could lead to successful challenges to the Information Commissioner.
- 5.2 The Act is not prescriptive as to how public authorities should arrange their information or respond to requests. It is, however, necessary that the Council have regard to the Codes of Practice issued by the Lord Chancellor under the Act. The Code of Practice on the discharge of public authorities' functions under the Freedom of Information Act 2000 has been issued under section 45 of the Act and the Code of Practice on the Management of Records has been issued under section 46 of the Act.
- 5.3 The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 came into force on January 1st 2005 and prescribe the basis on which charges may be made for the provision of information in response to a request under the Act.

## **6.0 Diversity Implications**

- 6.1 It is not believed that the decisions proposed will affect any sections of the community in a disproportionate manner.

### **Background Papers**

Report from the Corporate Information Manager to the Corporate Management Team, 28<sup>th</sup> July 2005

Report from the Corporate Information Manager to the Corporate Management Team, 8<sup>th</sup> September 2005

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## **Appendix A**

### **Preparation for the Act and Review of Procedures**

- 1.1 On 13th December 2004 the Executive approved an extensive report covering the council's preparations to meet the requirements of the Act and took a number of key decisions covering:-
  - Freedom of Information Policy
  - Procedures
  - Roles and Responsibilities
  - Timescales
  - Future work on records management
- 1.2 In addition on 17th January 2005 the Executive approved the council's information provision arrangements including:-
  - The charging for disbursements on Fol requests
  - That the council will not provide information where the cost of doing so would be greater than "the appropriate limit" as defined by the regulations.

#### **Preparation**

##### **Fol Policy**

- 1.3 The council adopted its Freedom of Information Policy on 13th December 2004. This policy is available on the internet. It defines the responsibilities for meeting the Council's obligations under the Fol Act. In general Service Areas have adopted this policy and have taken responsibility for dealing with Fol requests relating to the information they hold. It was agreed that the Policy would be reviewed after 6 months.
- 1.4 The Fol Policy is due for review.

##### **Fol Procedures**

- 1.5 Detailed Fol Procedures were developed and published on the council's Fol intranet site along with process diagrams defining workflow, and a description of the roles and responsibilities of all staff. These procedures have generally been followed.
- 1.6 Legal and Democratic Services have supplemented the procedures with a series of informative Guidance Notes.
- 1.7 A list of contact names of officers who are capable of handling requests is available on this site.

## **Appendix A**

- 1.8 The council's on-line Fol Tracking System (FITS) was deployed at the end of December 2004 and has been invaluable in tracking the progress of information requests. The recording of actions will ensure that we are compliant with the Information Commissioner's code of practice on handling requests.
- 1.9 Standard letter templates are available for all correspondence surrounding a request for information. These have been successful in promoting consistency and ensuring that the council is complying with the statutory obligations of the Act.

### **Roles and Responsibilities**

- 1.10 Since April 2005 regular meetings are held between the Corporate Information Manager and Legal Services to raise any complex and possibly contentious cases, and to discuss the council's approach to handling the Act and to highlight any issues.
- 1.11 The Freedom of Information Implementation Group (IIG), consisting of the Corporate Information Manager and the Service Area Fol Representatives, has been responsible for disseminating training and good information practice throughout the service areas. However, due to heavy workload, these meetings have not taken place since March 2005.
- 1.12 The Corporate Information Manager provides guidance to officers on difficult cases, advises where exemptions may be involved or where gathering information may not be possible within the "appropriate limit". She also coordinates complex requests which cover more than one Service Area.
- 1.13 The Fol Representatives provide a point of contact within the Service Areas. They advise on procedure, coordinate the handling of requests and represent the service area interests at IIG meetings. Nearly all Service Areas have appointed a lead Fol Representative.
- 1.14 Each Service Area has a number of Fol Action Officers who are responsible for coordinating all aspects of a request including communications with the applicant. They receive guidance from appropriate management, their Fol Representative or the Corporate Information Manager. There are approximately 100 Action Officers.
- 1.15 All other staff members are responsible for recognising requests for information under the Fol Act, and should forward these non-standard requests for information to the Fol Action Officers. There have been few known cases where this has not happened.
- 1.16 Senior management are responsible for giving guidance to Action Officers. In certain instances a significant amount of senior officer time can be taken in evaluating sensitive information, and in consulting with Legal Services on which information may be exempt and in considering the Public Interest Test.

### **Training and Awareness**



## Appendix A

- 1.17 An extensive awareness program took place through the latter part of 2004 and in early 2005. This first wave of awareness included briefing sessions and open days, on-line learning, various bulletins and a staff leaflet sent out with the November payroll.
- 1.18 In addition a number of initiatives were targeted at the FoI Action Officers and FoI Representatives.
- FoI Workshops were attended by 66 FoI Action Officers covering FoI procedures, exemptions guidance including the public interest test, and a demonstration of the on-line tracking system (FITS).
  - A series of informative talks were given by Legal and Democratic Services early in 2005. More are planned later this year.
  - Regular bulletins are sent by the Corporate Information Manager to all FoI Action Officers giving updates on procedure, guidance on dealing with exemptions, reports on the number of requests received, and suggested approach to common requests.

### The Public

- Brent website includes a FoI page. This informs the public of their right to information under FoI Act. It also directs the public to pages summarising the Data Protection Act 2000 and the Environmental Information Regulations 2004 and explains how to make a request for information. It lists frequently asked questions and provides a link to the council's Publication Scheme. It includes details of their right to complain.
- Public information posters and leaflets were made available through the Service Areas and One Stop Shops.
- The Information Commissioner's Office is planning a publicity campaign in January 2006.

### Third Party Contractors

- 1.19 A standard letter was drafted by Legal Services and sent to all third party contractors in December to ensure that they were aware of our obligations regarding the FoI Act. It details our commitment to consult with them when considering the disclosure of information about them, but our right to have the final say on disclosure after assessing the public interest test. It also outlines their obligation to make information available to us in a timely manner when required to do so for a request for information.

### Other Public Authorities

- 1.20 The Council has established an overarching inter-agency information sharing protocol. Originating in Childrens' Services it became apparent that information sharing affects all ages which led to the protocol being developed as a framework that all agencies can follow. It includes procedures for dealing with

## Appendix A

FoI requests, where shared information is sought. This has been signed by the following public authorities:

- Metropolitan Police Service
- Central & North West London Mental Health Trust
- Brent Council
- London Fire Brigade
- Brent Teaching Primary Care Trust
- The North West London Hospitals NHS Trust

- 1.21 The Metropolitan Police Service has circulated a draft 'Information Sharing Protocol' which is currently under review.
- 1.22 A network of officers from London Boroughs dealing with FoI Act meets regularly through London Connects
- 1.23 The Chief Executive at Brent has prompted the Association of London Government to organise a forum Chief Executives and senior officers of London Authorities to discuss the political implications of FoI Act, and to investigate the possibility of bringing FoI procedures in line across London. It is hoped that this initiative will create the momentum for developing joint initiatives and a consistent approach across London Boroughs.