

Assessment report



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Assessors from OSIC:	Alistair Rennie and Jill Walker
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Executive summary and recommendations

This report sets out the findings of an assessment of the City of Edinburgh 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 (the EIRs) and the associated Codes of Practice.

In selecting the Council for assessment, the Commissioner took into consideration the applications and enquiries he had received in relation to the Council, in particular where statutory timescales had been breached. He also took into consideration evidence that during the investigation of individual applications, his Freedom of Information Officers had highlighted difficulties in getting adequate submissions and consistent responses from the Council.

During the assessment, senior management acknowledged that the Council has been underperforming in relation to its obligations under the legislation and associated Codes of Practice. A decision to address these shortcomings was instigated in April 2009, when a report was presented to the Council Management Team (CMT), seeking commitment to a full review of the Council's arrangements for dealing with information requests. This was approved and a review was carried out by the Council's Records Manager. The findings of the review, along with an action plan prepared by the Records Manager, were presented to the CMT in March 2010. Work began on implementing the action plan and in August 2010 a further report was presented to the CMT, detailing further changes being proposed by the Records Manager. Responsibility for freedom of information now lies with the Head of Legal and Administrative Services and there has been a review of management of the function and of the staff involved in carrying out reviews.

The Council has taken the opportunity to carry out a comprehensive evaluation of its arrangements for dealing with requests for information and this has led to it making considerable changes to its procedures and processes. These changes will culminate in a new Central FOI Unit, which is being set up to co-ordinate and quality check requests dealt with by the Council. The Council confirmed that the new Central FOI Unit would go live, along with other key changes, on 10 November 2010.

However, while the assessors note the significant changes being introduced by the Council, and recognise the considerable potential for improvement should these be implemented fully and effectively, it is important that its practice is evaluated in the context of its actual past and current performance. In doing this, the assessors identified a number of areas of concern where elements of current practice were not compliant with the statutory requirements laid down in FOISA and the EIRs, or the good practice set out in the Codes of Practice.

The recommendations outlined in this report focus on areas of practice which are, in general, being addressed in the new procedures and processes currently in the course of implementation. Areas of particular concern noted by the assessors included the need for staff within the Council to receive adequate training on both FOISA and the EIRs, to enable them to assess and respond to requests fully in accordance with the relevant legislation.

From conducting the assessment, it was clear to the assessors that the Council, on the introduction of FOISA, put in place procedures and processes which at the time were considered sufficiently



robust to deal with the requirements of the legislation. However, with the passage of time and increasing volumes of requests, these practices were not re-evaluated to ensure that they remained fit for purpose. The necessary re-evaluation has now taken place and is being acted upon. The changes proposed and being implemented make considerable steps in the right direction, but it will be for the Council to demonstrate that it can both implement the changes adequately and monitor their effectiveness in practice.

The assessors' recommendations are set out below.

Recommendations

PRIORITY 1		Immediate action required
Recommendation Number		
1		That the Council takes steps to ensure that where it issues a refusal notice, it complies with all applicable requirements of section 16 of FOISA and regulation 13 of the EIRs, ensuring that applicable subsections relating to exemptions/exceptions are cited correctly and that sufficiently robust explanations are given as to why they are considered to apply (including consideration of the public interest, where appropriate).
2		That the Council puts in place a programme of training across the organisation, taking into consideration the varying levels of knowledge required by staff to enable them to fulfil their duties under FOISA and the EIRs. This should include coverage of the interface between FOISA/the EIRs and the Data Protection Act 1998. As a priority, the Council should ensure that comprehensive training is provided to members of the new Central FOI Unit and that comprehensive training / refresher training is provided to the Council's FOI Officers. This should be conducted in advance of the new procedures and processes going live on 10 November 2010.
3		That staff should be fully notified in advance of all the changes in practice to be introduced from 10 November 2010.
4		That the Council takes steps to ensure that it complies with the 20 working day timescales in FOISA and the EIRs when responding to a request for information, and requests for review, also ensuring that requests are logged accurately and in a timely manner onto "Capture".
5		That the Council discontinues with its present practice to charge £70.55 for derelict tank searches.
6		That the Council ensures that where a review has been requested, the reviewer takes into consideration all facts and correspondence available to them before making a decision.
PRIORITY 2		Medium term action to be completed within 3 months
7		That the Council, with the introduction of the new Central FOI Unit, ensures that individual logging, tracking and monitoring systems currently being used by service areas are discontinued, to be replaced by consistent use of "Capture" and a new shared drive for document retention. That the Council monitors the effectiveness of this for a reasonable initial period.



8	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.
9	That the Council updates its new Access to Information Policy, request forms and new Guidance and Procedures document in line with the recommendations detailed under the section headed "Policies, procedures and other documentation" above.
10	That the Council provides training to relevant staff in relation to section 12 of FOISA, to ensure that any refusal notices issued are compliant. Training should also be provided in relation to the Council's obligations to provide advice and assistance under section 15 of FOISA. The Council should also ensure that details are kept on file to demonstrate how the FOI Officer has come to the conclusion that section 12 is applicable.
11	That the Council ensures under its new procedures and processes that it is clear who will be responsible for signing off requests (which should take into consideration resilience for planned and unplanned absence).
12	That the Council conducts a review of its staffing levels in service areas to ensure that there is sufficient cover when the FOI or Divisional FOI Officers are absent, whether this be planned or unplanned.
13	That the Council ensures that where a notice under section 25 of FOISA is to be issued in relation to a request for information contained within its publication scheme that the full exemption is cited in the response and that the requestor is provided with details of their right to request a review and apply to the Scottish Information Commissioner.
14	That the Council establish a process for following up requests where it is responding in terms of section 27 of FOISA or regulation 10(4)(d) of the EIRs and that this process is included in the new Guidance and Procedures document.
15	That the Council ensures that where a notice under section 17 of FOISA or regulation 10(4)(a) under the EIRs is being issued, that they fully comply with the requirements of the relevant legislation.
16	That the Council, in setting up the Central FOI Unit, ensures that a process is put in place to ensure that where exemptions/exceptions are being applied, the FOI Officer provides the draft response to the Unit in sufficient time to allow it to be checked and returned in time to allow the final response to be issued within 20 working days.

PRIORITY 3 Action to be completed within 6 months	
Recommendation Number	
17	That the Council conducts a cycle of audits both centrally and in its outlying offices, to evaluate compliance with the new procedures and process to be put in place from the 10 November 2010.
18	That the Council for a reasonable initial period, quality checks all its responses where information is not being disclosed in full in response to a request for information, and that this should be done via the new Central FOI Unit to ensure adherence to its new procedures and to monitor success of the training it is to provide.



1. Scope and objectives of assessment

- 1.1 This report sets out the findings of an assessment of 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 Practice¹, and to identify and make recommendations in relation to areas where procedure and practice were not in line with expected good practice.
- 1.2 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:
- 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 in relation to information not held
 - The notices issued by the Council in relation to excessive cost of compliance
 - Adequacy of searches undertaken prior to responding to information requests
 - Compliance with the Council's obligations to provide advice and assistance to requestors
 - The responses the Council provide to the Commissioner when asked to give comment and provide submissions on cases under investigation
 - 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.

2. Assessment process

- 2.1 The Council was notified of the Commissioner's intention to conduct an assessment of its practice in a letter dated 7 April 2010, setting out the assessment objectives detailed above. Alistair Rennie and Jill Walker (the assessors) conducted the on-site assessment on behalf of the Commissioner on 1 and 2 September 2010. During these two days, they met the following members of Council staff:

¹ 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").



- Tom Aitchison – City of Edinburgh Council, Chief Executive
- Jim Inch – Director of Corporate Services
- David Anderson – Director of City Development
- Alastair MacLean – Head of Legal & Administrative Services
- Nick Smith – Principal Solicitor, Legal & Administrative Services
- Kevin Wilbraham – Council Records Manager
- Clayton Pratt – FOI Officer, Services for Communities
- Lorraine Davidson – FOI Officer, Corporate Services
- Aimi Richmond – FOI Officer, Children & Families
- David Mills – FOI Officer, Finance
- Amanda McNally – Team Leader, Contact Centre
- Stuart Argo – Media Officer, Corporate Services

- 2.2 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 the pre-assessment questionnaire and the policies and procedures the Council had provided in advance of the assessment. The assessors did not review in detail the Council's publication scheme as this has only recently been approved and is not due for replacement until May 2013, although some minor corrections have been recommended to ensure that the scheme remains up-to-date. Additional questions arose in the course of the discussions and from consideration of individual requests.
- 2.3 The assessors also made reference to the assessment checklist published within the Commissioner's Investigations and Enforcement Procedures² to ensure that each relevant area of practice had been considered and appropriate evidence gathered. The Council cooperated fully and openly with the assessment process, providing full access to its systems for handling requests and further providing the assessors with the opportunity to meet relevant staff.
- 2.4 At the end of the assessment, a concluding meeting was held with Jim Inch (Director of Corporate Services), Alastair MacLean (Head of Legal and Administrative Services) and Kevin Wilbraham (Council Records Manager). This meeting provided an opportunity to feed back the key findings of the on-site assessment. The feedback provided in that meeting is reflected and expanded upon in the points addressed below.
- 2.5 The Council has a resident population of around 468,000 people and covers an area of approximately 264 square kilometres, employing in the region of 20,000 staff. The Council also forms part of a City Region, which has a population of around 1.2 million and incorporates the areas immediately surrounding the City and a number of other local authority areas. The Council delivers a wide range of functions and services to the community. These functions and services are provided through six service areas; Children and Families, City Development, Corporate Services, Finance, Health and Social Care and Services for Communities.

² Available online at http://www.itspublicknowledge.info/web/FILES/publication_scheme/Investigations_Enforcement_Proc_v8.pdf



3. Overview: culture and practice

- 3.1 In preparing for this assessment it became evident to the assessors that it would be necessary to consider the Council's arrangements in two stages. Firstly, evaluation of the Council's current processes, where the assessors looked at historic data in forming a view on the Council's performance in relation to the legislation; and secondly, evaluation of the Council's new procedures and processes, which in the approach to and during the on-site assessment it was actively in the process of putting in place.
- 3.2 With the introduction of FOISA in January 2005, the Council set-up a project team responsible for ensuring that systems and processes were put in place to allow the Council to meet its obligations under the new legislation. Responsibility for FOISA lay with the Council's Director of Corporate Services. Operational responsibility for FOISA lay with the Heads of Department. Consequently, structures and processes were set-up on a "devolved" basis, supported by a network of trained staff with specific FOI responsibilities to carry out the day-to-day responsibilities of responding to requests for information. To support this structure further, the Council's Contact Centre was identified as its primary handling area for FOI requests, responsible for logging and passing requests to the appropriate service area(s).
- 3.3 The assessors appreciate that when FOISA came into force the Council set up the above arrangements with a view to delivering on its responsibilities, and at this point it appears that the Council was making a concerted effort to put in place effective processes. Over time however, with increasing volumes of requests and requests for review, the Council did not take the opportunity to review its arrangements. It was not until April 2009, when a report was presented to the Council Management Team (CMT) by the Director of Corporate Services seeking a commitment to carry out a full review of the Council's processes and procedures, that a review took place. It was evident to the assessors that during the intervening period, the Council lost its focus in dealing with requests for information, with a consequent decline in performance in relation to compliance with the statutory requirements of FOISA and the EIRs and with good practice as defined in the Codes of Practice.
- 3.4 Another consequence of this loss of focus is that staff training has not been provided to any real extent beyond the training that took place in preparing for the introduction of the new legislation, although the assessors noted that both City Development and Services for Communities have provided some informal training in the intervening period. Consequently, staff have not been given any formal opportunity to keep up to date with changes and developments in the legislation, which has had a knock-on impact on the quality of responses the Council has issued to requestors, particularly when it is withholding information requested on the basis of an exemption/exception.
- 3.5 However, the assessors have also taken into consideration the steps the Council has taken since April 2009 to address its compliance and performance issues. These steps are looked at in detail in this report, along with additional proposals presented to the CMT in August 2010. All of this work indicates a growing commitment within the Council, at senior management level, to significantly improving its performance and compliance with FOISA, the EIRs and the Codes of Practice.



3.6 In conducting the assessment, the assessors noted Council staff's willingness to co-operate in the process.

4. Detailed outcomes, findings and recommendations

4.1 The following sections provide details of the main areas of practice assessed and set out in the assessors' findings and any associated recommendations. No comment is made in this report on areas where there is no evidence of practice. For example, from the information that was reviewed the Council has not:

- 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 has not had to comply with regulation 16)
- Issued a refusal notice in terms of section 18 of FOISA ("Neither confirm nor deny")
- Issued a refusal notice in terms of section 13 of FOISA
- Provide assistance to an applicant who is unable to write
- Provide information in an non-standard "accessible format"
- Sought to consult with a third party in relation to a request.

4.2 From the evidence reviewed by the assessors, they were 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 this report:

- Requests treated as "business as usual" as opposed to under FOISA and/or the EIRs
- Handling requests from employees and other stakeholders under FOISA and/or the EIRs (depending on the appropriate regime)
- Transferring requests between authorities
- Advice and assistance relating to equality issues
- Public sector contracts.

Receipt of requests and recording systems

Current practice:

4.3 Currently, the majority of requests for information come in to the Council via email into the Council's Contact Centre: requests may also be received by letter or via the Council's paper-based information request forms. When the Council set up its current processes, it also allowed requests under FOISA to be taken verbally by the Contact Centre. The decision to do this was based on the calls being recorded and consequently the Council took the view that such requests were in a "recordable format". In addition, the decision to accept verbal requests at the Contact Centre was viewed as a means of fulfilling the requirement to provide applicants with advice and assistance under section 15 of FOISA and Regulation 9 of the EIRs. The Council also considered this approach to be consistent with the requirement under the EIRs to accept verbal requests for environmental information. The assessors noted through discussions with staff that where a request under FOISA was taken verbally, the request would be read back to the requestor for confirmation of accuracy. Occasionally, requests are received directly by the various service areas. The Council explained that the reason for this is that certain requestors build up communication relationships with particular



members of staff and consequently go directly to them with a request. If requests are received directly, the member of staff picking up the request will pass it to the Contact Centre in the first instance to log. The Contact Centre will then either pass the request back to that service area or distribute it to the appropriate area(s).

- 4.4 The assessors noted that requests received by the Media section, where these requests are straightforward, and can be answered directly, are dealt with as a routine enquiry. However, if the requests are complex or voluminous then they would be logged as FOI requests and dealt with as such.
- 4.5 Where requests are received directly by the Contact Centre by email or in other written form, a member of staff within the Contact Centre will:
- Log these requests directly onto the Customer Records Management system (CRM) “Capture”. This is an Access database system
 - Attach a copy of the request to the record
 - Send an acknowledgement letter or email to the requestor
 - Log into “Capture” the service area the request should be directed to: “Capture” will automatically send the request to the appropriate FOI Officer or Service Manager in that area.

The “Capture” system is set up in such a way that each service area has a generic mailbox in which to accept requests for information distributed by the Contact Centre. Authorised staff are then responsible for accessing this mailbox to pick up requests their area is required to deal with.

- 4.6 Once “Capture” has forwarded the request to the appropriate service area, then the responsibility for responding to the request (with advice from Legal & Administrative Services, where appropriate) lies with the FOI Officer. The current procedures state that the Contact Centre is responsible for receiving, logging, allocating and monitoring requests. From discussions with various FOI Officers it became evident that in practice some Officers close requests off on the “Capture” system themselves, while others use a pro-forma to send to the Contact Centre to close the case. For example, City Development and Corporate Services use these pro-formas, whereas the FOI Officer from Services for Communities closes the case on “Capture” himself. The assessors understand that from 10 November 2010 use of this pro-forma will cease.
- 4.7 “Capture” is set up to allow the person logging the request to input whether the request should be dealt with under FOISA or the EIRs. This facility is currently used by staff responsible for logging requests. It was also noted by the assessors that the legislation chosen can be subsequently altered if required.
- 4.8 Acknowledgment letters to requestors are generated automatically from “Capture” once a request is received. This acknowledgment incorporates confirmation of the legislation the request will be dealt with under and provides notification of when the requestor should receive a response by. The assessors noted in some cases that the day the request is logged on “Capture” may not be the same as the day the request was actually received by the Council. It was explained that the reason for this is that on occasion the request is not logged on the day it is received and consequently the “logged” date shows, for example, as the following working



day. It is important that requests are logged onto “Capture” timeously so that the Council can accurately determine its 20 working day calculation. It is also vital to gain an accurate picture of when the request is received, so the Council has the ability to accurately monitor its performance in line with the Codes of Practice.

- 4.9 If a request is received directly by a service area, the FOI Officer should pass the request immediately to the Contact Centre to log. The Contact Centre will then either send the request back to that service area to deal with or redirect it to another service area(s) if appropriate.
- 4.10 In line with current procedures, where a request is received by the Contact Centre that requires input from more than one service area, the Contact Centre will identify a lead service area. This particular service area will be responsible for co-ordinating the response and will also be responsible for tracking progress on the case and updating “Capture”/ Contact Centre to the point of closure. If the Contact Centre has passed the request to the wrong service area, the service areas will liaise with each other to identify who should deal with the request or where applicable which service area should take the lead. The Contact Centre should be updated by the service area that assumes the lead role.
- 4.11 The assessors were made aware of a technical problem which had affected the Council’s ability to log, track and monitor requests. In 2005 the Council had in place a Customer Records Management (CRM) system called BT Contact Central. This system crashed in September 2008. In response to this situation the Council replaced the system with a new Access Database system called “Capture”, but this was not in place until May 2009. During the intervening period of nearly eight months, service areas were asked to put in place temporary solutions to log, track and monitor requests received. Consequently, service areas developed different systems to deal with this situation. The intention of the Council in introducing the new “Capture” system was to revert to its pre-crash processes, with the result that individual service areas would cease using their temporary solutions. It became evident, however, that a number of service areas are still operating their own systems, which means service areas are not working within current procedures and there are consequent inconsistencies in recording.
- 4.12 At the moment there is inconsistency in the way the Council records responses to requests and any interactions surrounding decisions taken on responding to these requests. Certain information is retained within “Capture”, but other associated correspondence may be held in separate electronic folders held by individuals throughout the organisation and in paper file format. This inconsistency appears to have come about as a consequence of the system crash in 2008 and the failure of the Council to monitor and secure the consistent use of “Capture” when it was introduced in 2009.

Practice going forward:

- 4.13 As part of its review of its arrangements for dealing with requests for information, the Council is to set up a new Central FOI Unit (Central Unit). This Unit, amongst other things, will become the first point of contact for a requestor making a request to the Council and will become responsible for logging, tracking and monitoring requests. Consequently the Contact Centre will no longer be responsible for this function. The Central Unit is due to go live on 10 November 2010.



- 4.14 The Central Unit will then be responsible for allocating requests to the relevant service area(s) to identify the information and process the request, including which information regime the request should be processed under.
- 4.15 The Central Unit will not be directly involved in responding to the request, but will record all requests and monitor their progress and responses to them. The Central Unit will operate in tandem with the “devolved” structure currently in place with the Council. FOI Officers (with assistance from Divisional FOI Officers, who are responsible for carrying out searches for information based on their specialist knowledge of the units within which they work), will be responsible for ensuring that requests are processed promptly and in accordance with the new procedures. When required FOI Officers can seek guidance from the Central Unit with respect to the application of any exemptions / exceptions it might wish to apply to a request. Where an FOI officer is seeking to withhold information from the requestor, including where the Council considers that a request is repeated or vexatious, or that to comply with the request would exceed the cost limit in the Fess Regulations, the response will require to be passed to the Central Unit for quality checking before it is issued by the FOI officer.
- 4.16 The Central Unit will use “Capture” to manage FOISA and EIR requests. “Capture” will handle the specification (identifying whether the request should be processed under FOISA or the EIRs), acknowledgement, monitoring and reporting of FOISA and EIR requests. Each FOI Officer will have access to “Capture” in order that they can assign and track requests within their own service area.
- 4.17 As explained above “Capture” is an Access database and as such does not lend itself to being a mechanism for holding all information relating to a request. The Council is keen, however, to ensure that all records relating to a request are kept in one area. To address this, the Central Unit will operate an electronic folder system on a shared drive within the Council’s systems to hold all information and correspondence relating to the request. Consequently the Central Unit will be working with only two systems in managing its arrangements.
- 4.18 Conclusion/recommendation: The assessors noted that the Council had recognised that historically and currently the systems in place to log, track and monitor requests were inadequate to allow it to fully satisfy its obligations and responsibilities under FOISA and the EIRs (and conform to the relative Codes of Practice). However, the assessors also noted with approval the steps the Council are taking to address these problems, notably the introduction of the Central Unit. The assessors noted, however, that it is the Council’s intention to quality check only responses where an exemption / exception is being cited. The assessors recommend that for an initial period, quality checks should be carried out by the Central Unit on all responses to requests where information is not being disclosed in full, to provide the Council with a more complete analysis of its performance in the light of the changes it is making. Discussions with the Council’s Records Managers confirmed that in future all requests for information will be logged by the Central Unit onto “Capture”. The assessors recommend that Council monitors this closely for an initial period.



Adequacy of administrative arrangements

Current practice:

- 4.19 As mentioned above, the Council operates a “devolved” system for responding to information requests. Each service area within the Council has an FOI Officer who is currently responsible for receiving information requests coming into their service area, either via “Capture” or into the service directly. The FOI Officers are supported by a network of Divisional FOI Officers who are responsible for carrying out searches to identify the information requested and for preparing draft responses to be passed to the FOI Officers, who in turn pull together the final response to be sent to the requestor.
- 4.20 The decision as to whether to release or withhold the information usually lies with the FOI Officer but may also lie with a departmental line manager. Currently, responses can also be sent out by Divisional FOI Officers. There is currently no consistency throughout the service areas as to who is responsible for signing off the response to the requestor.
- 4.21 The inclusion of a line manager in the process means that certain service areas have sufficient resilience built in to cover the absence of the FOI Officer. However this resilience is not evident across the organisation as a whole, as was demonstrated by concerns in City Development.

Practice going forward:

- 4.22 The Council will maintain the “devolved” set-up it currently has in place. This will now work in tandem with the new Central FOI Unit. The Central Unit will be the primary handling area for FOISA and EIR requests and will be responsible for logging, tracking and monitoring all requests. The new team will be made up of three staff and day-to day management of the Unit will be the responsibility of the Council’s Records Manager. Overall responsibility will lie with the Head of Legal & Administrative Services. The team will be made up from staff currently working in Legal Services and this will be their full time responsibility from 10 November 2010.
- 4.23 As indicated above “Capture” is an Access database system and consequently does not possess the necessary functionality to be used as a single point for holding all records relating to a request. Consequently, the Central Unit will utilise an electronic folder system on a shared drive to maintain a full audit trail of all paperwork associated with a request.
- 4.24 It is also the Council’s intention to ensure that each service area has sufficient resilience to be in a position to fulfil its obligations. To demonstrate this, the Council confirmed that Corporate Services has committed to training two new members of staff to provide cover for the FOI Officer should they be absent from work. The FOI Officer from Services for Communities also confirmed in interview two members of staff had been trained to cover his absence.
- 4.25 From discussions with staff, the assessors noted that there was some inconsistency throughout the service areas, in relation to who was responsible for signing off responses to be issued to requestors. Responses primarily would be issued by the FOI officer or a line manager, but other members of staff with FOI responsibilities would issue a response on



occasion. From 10 November 2010, the Council's position is that the FOI Officers will be responsible for issuing all responses: this will, however, require arrangements to cover absences.

- 4.26 Conclusion/recommendation: The assessors were satisfied that in developing its new processes, the Council has taken into consideration the provision of cover in the event of staff absence, whether planned or not. All staff with FOI responsibilities have access to "Capture" and the new document retention system to be set up by the Central Unit will be set up on a shared drive. However, through discussions with staff it was evident that not all service areas within the Council have sufficient resilience built in at present. The assessors would recommend that the Council carry out a full review of all of its service areas to ensure that sufficient resilience is in place to allow it to meet its obligations in the event of planned or unplanned absences. The assessors would also recommend that the Council updates its procedures to make it clear that the responsibility for issuing responses to requests for information lies with the FOI Officer, but also details what should happen where an FOI Officer is absent, whether planned or unplanned, with a view to ensuring there is adequate resilience.

Records management and searching

- 4.27 It is essential to successful request handling that an 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 in both paper and electronic files throughout the Council. It was apparent from discussion with some of the FOI Officers within the Council that each service area is aware of the nature of the information it holds and where this can be accessed.
- 4.28 The Council has a Records Policy in place. This policy aims to provide standards across the organisation which require to be adhered to. New retention schedules are also to be put in place and this process is currently being rolled out throughout the organisation. Log sheets are completed for archived records, many of which are retained off-site, enabling these to be identified and retrieved when required.
- 4.29 The Council operates a multitude of systems for recording and holding information and each service area holds information both electronically and in paper format.
- 4.30 Responsibility for searching lies with either the FOI Officer or the relevant Divisional FOI Officer. This process will be carried into the new procedures and processes. Once the FOI Officer receives the request they will decide which Divisional FOI Officer would be best placed to search for the information in question. The Divisional FOI Officer will also prepare a draft response to send to the FOI Officer. This will include the information identified and being disclosed, notification if the information is not held (including details of what searches have been carried out), details of any exemption/exceptions being cited and details of costs where section 12 of FOISA is being relied on. The FOI Officer will evaluate this response, seeking clarification where required, and will then prepare the final response, utilising (where appropriate) one of the standard template letters accessible via "Capture".
- 4.31 From discussions with a Divisional FOI Officer and other FOI Officers, the assessors were satisfied that staff throughout the organisation responsible for identifying information would



know where to look for information in order to be able to respond to the FOI Officer before a response to the requestor was issued.

- 4.32 Having reviewed a sample of requests dealt with by the Council, the assessors identified 2 cases between May and December 2009 where the Council advised the requestor that no information was held. In 3 further cases during this timeframe, the Council advised the requestor that certain of the requested information was not held. The assessors also saw examples for between January and July 2010. From this sample, the assessors noted 4 instances where requestors had been told that no information was held and a further 6 examples over this time period of where the Council advised that certain of the information was not held. A thorough examination was carried out of these requests and the assessors were satisfied that adequate searches had been carried out in all these cases prior to providing a response to the requestor.
- 4.33 The assessors did note one case (reference 132321), where the response issued did not actually state that the information was not held or cite section 17 of FOISA. The assessors noted, however, that the response did direct the requestor to various organisations that the FOI Officer concluded might hold the information in question. By doing this, the FOI officer was fulfilling his obligations under section 15 of FOISA in providing the requestor with advice and assistance (and it was at least implicit that the Council did not hold the information). It was further noted that the requestor was provided with information, their right to request a review and their right to apply to the Commissioner.
- 4.34 Conclusion/recommendation: The assessors were satisfied that the Council has adequate systems in place to search for information within all of its service areas when a request is received. The assessors were also satisfied from the requests reviewed that adequate searches had been carried out to determine if relevant information was held prior to responding to these requests. The assessors recommend, however, that refresher training be provided to staff responsible for dealing with requests for information, reminding them that where information is not held the requestor should be informed of this.

Timescales for compliance

- 4.35 An authority in receipt of a request for information (including environmental information) must respond promptly and no later (with certain specified exceptions) than the 20th working day following receipt of the requirement.³
- 4.36 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 20th working day following receipt of the requirement.⁴
- 4.37 “Capture” has since 2008 been the primary system used by the Council for logging, tracking and monitoring requests for information. As has been noted various areas within the Council have used other systems for this purpose; however, when the new Central Unit goes live on 10 November 2010, all requests will be logged onto “Capture” and this will be the only system used by the Council for doing this.

³ Section 10 of FOISA and regulations 5 and 13 of the EIRs

⁴ Section 21 of FOISA and regulation 16 of the EIRs



- 4.38 Currently, the majority of requests are logged onto “Capture” by the Contact Centre. As the request is dealt with, “Capture” will be updated by a combination of staff from the Contact Centre and also by staff with FOI responsibilities within the various service areas.
- 4.39 Going forward, all requests will be logged, tracked and monitored by the Central Unit. FOI Officers will update “Capture” when allocating the request to a Divisional FOI Officer, issuing the response and closing the case.
- 4.40 The assessors were provided with a demonstration of how “Capture” operates. The vast majority of requests are received by email, although requests can be received by letter. The Council also utilises manual request forms. These forms are completed by requestors and are to be found for example in Council offices and libraries. “Capture” contains the following key information:
- The name of the requestor
 - The contact details for the requestor
 - The nature of the request (there is a mechanism to select FOISA, EIR or DPA)
 - The subject matter of the request
 - Which service area(s) is the correct one to deal with the request
 - The date on which the request has been logged
 - The date on which a response should be provided to the requestor
 - The date the response is sent out
 - The status of the request
 - Any relevant attachments e.g. if the request was made by letter
- 4.41 Once the record has been completed, an acknowledgment will be automatically generated to be issued to the requestor. The acknowledgement details the date in which the requestor should expect a response by. The Council currently utilises a suite of standard template letters for corresponding with requestors in relation to their information requests. These standard letters are accessible via “Capture.”
- 4.42 The request will then be assigned to an appropriate service area(s), where an email will be issued to the service area’s generic mailbox for the FOI Officer to pick up. Where a request for information relates to more than one service area, currently the Contact Centre and in future the Central Unit, will decide which area the request primarily relates to and this area will be selected as the lead service area. The lead service area will be responsible for co-ordinating the response. However from the 10 November 2010, although the lead service area will be responsible for preparing and issuing the response the Central Unit will be responsible for monitoring and tracking the progress of all requests and consequently will be responsible for the overall management of the response.
- 4.43 “Capture” assigns a unique reference number to each request and when requests are assigned to a service area the system generates outlook calendar notes to highlight when responses are due. Alerts are also contained within “Capture” in what are called “Jeopardy Notices”. These notices provide an early warning system to the member of staff responsible for the request, where a response may be delayed. These notices are generated the closer the request gets to the twenty working day deadline. These notices initially are received by



the FOI Officer, but as time progresses the notices go further up the line until they are escalated up to departmental manager level.

- 4.44 There is currently no central place where correspondence relating to the handling of a request is retained. Some information is kept within “Capture”, but each service area has its own systems for retaining information relating to the request. Much of this, as previously mentioned, is a legacy from when the Council’s old CRM system crashed in 2008. However, these “temporary” solutions are still being used. A consequence of this is that it can be difficult for the Council to gather all information relating to the handling of a request. This was demonstrated in the lead up to the on-site part of the assessment, where the assessors had some difficulty in obtaining complete correspondence for requests they had selected as part of their initial sampling exercise.
- 4.45 Going forward, the Council will retain all correspondence relevant to a request in individual folders kept on a shared drive. Each Departmental FOI Officer will be able to access their own departmental folder and the cross-departmental folder. The Central FOI Unit will be able to access all folders.
- 4.46 Records relating to requests and requirements for review will be retained and managed by the Council in accordance with the recently updated Information Management Retention and Disposal Schedule.
- 4.47 The assessors sought to review requests for information dealt with by the Council since the introduction of the “Capture” system. For this purpose, a sample of requests was selected from May 2009 through to July 2010. The assessors looked at 39 requests from May-December 2009 and 36 requests from January – July 2010.
- 4.48 The assessors also looked at a sample of requests for review handled by the Council. They considered 12 requests for review from May – December 2009 and 5 from January – July 2010.
- 4.49 The Council received 1072 requests between 27 May and 31 December 2009. Having reviewed the requests within the sample for that time period, the assessors identified 3 cases from the 39 reviewed that had been responded to outwith the required 20 working days. In one of these cases (reference 47606) the assessors noted that the Council had responded some 79 working days beyond the date on which the response should have been provided. The assessors were unable to confirm whether timescales had been adhered to in 8 of the cases sampled. The reasons for this included the Council’s inability to provide a full audit trail of the correspondence relating to some of the requests, and in some cases letters and request forms were not date stamped by the Council.
- 4.50 The Council received 1003 requests between 1 January and 5 July 2010. Having reviewed the requests within the sample for that time period, the assessors identified 7 cases from the 36 reviewed that had been responded to outwith the required 20 working days. The assessors were unable to confirm whether timescales had been adhered to in 1 of the cases sampled for the reasons identified above.



- 4.51 All requirements for review were previously submitted to the Director of Corporate Services. Requirements for review are now submitted to the Head of Legal & Administrative Services, who now has overall responsibility for the review process within the Council. This will continue to be the process in future. These requests are logged onto “Capture”, although a separate spreadsheet is currently maintained and held by the Head of Legal & Administrative Services in relation to reviews. New case reference numbers are also generated when a requirement for review is logged. From 10 November 2010, the Central Unit will co-ordinate all requirements for review. “Capture” will continue to be used and all information relating to reviews will be incorporated into the requestor-specific folders on the shared drive, and maintained by the Central Unit.
- 4.52 In 2009, 90 requirements for review were received by the Council. Between January and July 2010, 40 requirements for review had been received. The assessors reviewed 12 requirements for review from 2009 and 5 requirements for review from 2010. From the 2009 reviews examined, the assessors noted that the Council failed to provide its response within 20 working days on 5 separate occasions. In one particular case (case reference 57770), the response breached statutory timescales by 82 working days. In another (case reference 64919), the breach equated to 21 working days. The assessors were unable to establish if timescales had been adhered to in 2 of the examples examined. From the 2010 reviews examined, the assessors noted that the Council failed to provide its response within 20 working days on 3 separate occasions. In one particular case (case reference 117200), the response breached statutory timescales by 45 working days.
- 4.53 Conclusion/recommendation: The assessors noted a number of instances where the statutory timescales were breached by the Council in providing responses to requests for information. The assessors also noted that there were a number of examples where timescales could not be evaluated, in the main due to administrative or record keeping issues. The assessors also noted the high number of instances where the Council breached the statutory timescales in responding to a requirement for review. The assessors appreciate that the Council has recognised its failings in these areas (a recognition which has led in part to its own internal reviews of its FOI practice) and are confident that the new processes to be put in place should address these issues, but they recommend that the Council takes action to ensure that all relevant staff are aware of the statutory timescales laid down in FOISA and the EIRs and that they seek to comply with these in all cases. For the Council to monitor this effectively it will be vital that it records information into “Capture” accurately and maintains a full audit trail of correspondence relating to the request / requirement for review.

Content of refusal notices

- 4.54 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.⁵

⁵ Section 16 of FOISA



- 4.55 Where the exemption claimed is subject to the public interest test, the notice must also 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.
- 4.56 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.⁶
- 4.57 Broadly the same requirements are set out in the EIRs.⁷
- 4.58 From discussions with staff and after receiving a demonstration of "Capture", the assessors were able to witness that standard template letters are available for all staff with FOI responsibilities to utilise when corresponding with the requestor. The Council has a robust suite of template letters in place, which allows it to, for example, seek clarification where necessary from a requestor as to the nature of their request, or inform the applicant that their request will be dealt with as a subject access request under the Data Protection Act 1998 (DPA), where appropriate. However, it also became evident during interviews with staff that although "Capture" allows easy access to these standard template letters, some FOI Officers (again, as a consequence of the "temporary" solutions previously put in place) maintain their own versions of the letter templates to work from. Inevitably, this has led to inconsistencies in the quality of the responses issued, which the assessors noted from examination of the sample requests, the Council intends to remedy this and ensure consistent use of the template letters, with the introduction of the new Central Unit.
- 4.59 From the sample of requests examined between May and December 2009, the assessors were satisfied that in 15 of the responses examined the requestors were provided with full details of their rights to request a review and apply to the Commissioner. However, in 13 further examples, although the requestors were informed of their right to request a review, they were incorrectly informed that they had 40 days in which to do so. The requestors should have been informed that they had 40 *working* days in which to request a review. The assessors also noted that in a further 5 cases, the requestor had not been informed of any of their rights.
- 4.60 From the sample of requests examined between January and July 2010, the assessors were satisfied that in 22 of the responses examined the requestors were provided with full details of rights to request a review and apply to the Commissioner. However, in 3 further examples, although the requestors were informed of their right to request a review, they were incorrectly informed that they had 40 days in which to do so. The assessors also noted a further 6 cases, where the requestor had not been informed of any of their rights.
- 4.61 From the cases examined by the assessors, exemptions in terms of FOISA and/or exceptions under the EIRs were cited in response to 15 requests from 2009. The assessors noted that in 4 of the requests examined, the Council had failed to cite either the full or correct subsection in relation to the exemptions/exceptions being relied on. Of considerable concern to the assessors was the number of examples where the Council had failed to provide sufficiently detailed arguments to support its application of a particular exemption/exception and, where

⁶ Section 47(1) of FOISA

⁷ Regulation 13 of the EIRs



applicable, it had failed to provide adequate arguments to support why it considered the public interest lay in favour of non disclosure: these issues arose in 10 of the 15 cases (reference numbers 50327, 51445, 54502, 39058, 68331, 84737, 40727, 44464, 41120 and 69867).

- 4.62 From the cases examined by the assessors, exemptions under FOISA and/or exceptions under the EIRs were cited in 11 cases in 2010. The assessors noted that in 3 of these, the Council had failed to cite either the full or correct subsection in relation to the exemptions/exceptions being relied on. Once again, the Council failed in a number of these cases (8 out of the 11) to provide sufficiently detailed arguments to support its application of a particular exemption/exception and, where applicable, in support of its conclusions on the public interest. The cases in question were numbers 113699, 134907, 119372, 117479, 130707, 136884, 109664 and 123698.
- 4.63 It is important when a refusal notice is issued to a requestor that the requestor is given full details of why the information they have requested is not being disclosed, whether in full or in part. This enables the requestor to understand why the public authority believes the information should be withheld and provides them with an opportunity to consider any arguments which may support release of the information. This allows the requestor to be able to clearly express their dissatisfaction should they seek to request a review of the decision.
- 4.64 Conclusion/recommendation: The assessors recommend that the Council ensures that requestors are provided with details of their right to request a review within 40 *working* days, by updating its standard template letters to reflect this timescale. The assessors note the Council's intention to ensure that the new Central Unit and the FOI Officers use the standard template letters at all times, when a refusal notice is issued. The Council should also ensure that it cites any exemptions/exceptions and other provisions relied on correctly in providing a refusal notice, with robust explanations as to why these apply (including adequate consideration of the public interest test, where applicable): the comprehensive training to be provided to members of the Central Unit and FOI Officers should address this.

Review Process

- 4.65 Neither FOISA nor the EIRs are prescriptive about the form of review that should be undertaken following a request for review. Under FOISA⁸, 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,⁹ 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.
- 4.66 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

⁸ Section 21(4) of FOISA

⁹ Regulation 16(3) and (5) of the EIRs



- a review should be handled by a person not involved in the original decision.

- 4.67 When notifying a person of the outcome of a review¹⁰, 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 Session¹¹. 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.
- 4.68 The Council received 90 requirements for review in 2009 and 40 requirements for review between January and July 2010.
- 4.69 Previously, letters issued by the Council when responding to a request clearly stated that the requestor should address any requirement for review to the Director of Corporate Services. More recently however, responsibility for the review process has been passed to the Head of Legal & Administrative Services. Since the introduction of this change, the standard letters have been updated. The assessors examined 12 requests for review received in 2009 and 5 requests for review received in 2010 and noted that in 11 of the cases from 2009 (with the exception of case reference 57770, where no information on rights was provided to the requestor) and in all 5 of the cases from 2010, the requestors were provided with details of their right of application to the Commissioner should they be dissatisfied with the outcome of the review. Requestors were also notified in each example (except case reference 57770), that they had 6 months in which to apply to the Commissioner, which the Commissioner considers to be information required to comply with section 21(10) of FOISA.
- 4.70 The Council clearly sets out the full contact details for the Commissioner in its response letters.
- 4.71 With the exception of case reference 57770, the requestor was also provided with details of their right to make an appeal to the Court of Session in response to a decision being made by the Commissioner, if they are dissatisfied with the decision, on a point of law only.
- 4.72 As detailed above requirements for review were previously directed to the Director of Corporate Services, but this has changed recently and reviews are now the responsibility of the Head of Legal & Administrative Services. The Council's current procedures do not provide any guidance on how a review should be conducted and there is no written guidance to assist the reviewer to carry out a full and comprehensive review of the Council's handling of a request.
- 4.73 The Council, recognising the lack of guidance it has on this matter, has introduced changes to the review procedures. These new procedures were being implemented at the time of the on-site assessment. This has led to a change in who is responsible for the day-to-day management of reviews and the establishment of a small team of reviewers within Legal Services, one of whom will work solely on reviews. Overall responsibility for the review process will remain with the Head of Legal & Administrative Services. Reviews will generally

¹⁰ Section 21(5) of FOISA

¹¹ Section 21(10) of FOISA



be dealt with by members of Legal Services and will be managed on a day-by-day basis by one of the Council's Principal Solicitors. The Central FOI Unit will support the review process and offer administrative support. However the Council's procedures make it clear that the review officer will not have been involved with the original request.

- 4.74 The Council has also taken the opportunity to incorporate more information about the review process in its new procedures guide, which includes detailed guidance on how a reviewer should go about the process of reviewing a case.
- 4.75 Upon receipt of a requirement for review, the Central Unit will log it onto "Capture", which will then be used to track and monitor the review, with information pertinent to the review being attached to the original request in a specific electronic folder (which is accessible via the shared drive). This process will be managed by the Central Unit. The Central Unit will send an acknowledgment to the requestor, which will indicate a response date.
- 4.76 It was evident to the assessors through the interviews they conducted that in general the Council sees the review as an opportunity to look at the request afresh. This includes a re-evaluation of the information in question (where 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 (wholly or partly), or that compliance would cost more than the threshold specified for the purposes of section 12 of FOISA, the reviewer would challenge 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.
- 4.77 The assessors did note one example, however, where it was clear that the review had been completed without a comprehensive review of the facts and correspondence by the reviewer. In case reference 48119, the original response to the requestor confirmed that their request would be dealt with under the Data Protection Act 1998 (the DPA) on the basis that the information requested was for the requestor's own data. The requestor requested a review on the basis that some of the information requested was not their own data and therefore should not be dealt with under the DPA. A review was carried out and the initial decision was upheld in its entirety, even though there was correspondence on file showing that email exchanges between staff recognised that some of the information should have been dealt with under FOISA.
- 4.78 Once the reviewer has carried out the review, they will prepare the response using one of the standard template letters available and update "Capture" to reflect that the response has been issued.
- 4.79 From discussions, it was evident to the assessors that staff within the Council are aware that any requirements for review should be dealt with by the Head of Legal & Administrative Services and that for any reason they should receive a request directly, they should pass it immediately to this area.
- 4.80 Conclusion/recommendation: The assessors were satisfied that the Council now has in place new procedures and guidance in relation to its review process, which will allow it to not only monitor performance effectively, but will ensure that the review is carried out thoroughly and in full consideration of the facts and correspondence available to the reviewer. The assessors note the Council's intention to keep all correspondence in relation to the review together with



the correspondence from the initial request. The Council should ensure that it makes appropriate use of its standard template letters, at all times when responding to a request for review.

Other aspects of request handling

Recognising a FOISA request

- 4.81 From examination of requests and through discussions with staff at the Council, the assessors were generally satisfied that staff have a robust understanding of what constitutes a request for information under the terms of FOISA.
- 4.82 In one example however, the assessors noted that a request (case reference 44022) had been made in terms of FOISA, but was processed as a subject access request on the basis that the requestor was looking for their own personal data. In these circumstances, the Council should have responded in terms of FOISA by citing section 38(1)(a), which is an absolute exemption, but then under section 15 of FOISA explained that the request would be dealt with a subject access request and proceeding on this basis. This response should have incorporated details of the requestor's right to request a review and apply to the Commissioner.
- 4.83 Conclusion/recommendation: The assessors would recommend that staff responsible for drafting and issuing responses receive refresher training on the interaction between FOISA and the DPA, to ensure that the Council meets its obligations when issuing a response in this context.

Recognising an EIR request

- 4.84 From examination of the pre-assessment questionnaire and from the log sheets provided by the Council, it was apparent to the assessors that the Council records requests for environmental information (which would be dealt with under the EIRs) separately from FOISA and DPA requests. Consequently it is possible for the Council to record how many requests it processes under the EIRs.
- 4.85 From reviewing the sample of requests received from the Council, the assessors saw 14 examples of requests which had correctly been responded to under the EIRs between May 2009 and July 2010. However, the assessors also saw 4 requests over this period which could be deemed to be requests for environmental information under the EIRs, but had been dealt with under FOISA. These were:
- 4628 – information relating to vacant commercial property and whether planning permission for a change of use had been made/granted
 - 39174 – food safety reports
 - 39058 – information relating to the Seafield Odour Abatement Steering Group
 - 40139 – swimming pool water testing
 - 144222 – mosquito noise devices
- 4.86 In conducting the assessment, the assessors noted that amongst staff dealing regularly with requests for information, there is a general awareness of the differences between FOISA and



the EIRs. Consequently, requests for environmental information are being identified and processed accordingly. However, the Council has provided virtually no training to staff on the EIRs. The assessors noted one example where the Contact Centre had initially processed a request under FOISA, but the FOI Officer in the relevant service area had then identified it correctly as a request for environmental information and processed it accordingly. It is a positive sign that the Council's systems have allowed this switch to happen when required, but it still demonstrates an overall inadequacy in the understanding of the EIRs across the Council.

- 4.87 The assessors were particularly concerned that due to the lack of training on the application of the EIRs, staff not involved day-to-day with processing requests for information may not be sufficiently knowledgeable to spot requests for environmental information. To an extent this will be addressed as a consequence of the new Central Unit becoming the primary point of contact for requests coming into the Council. Staff in the Central Unit will need to be trained appropriately, but it will remain possible for requests to be received elsewhere and therefore all staff engaging with the public should have at least a basic understanding of what constitutes environmental information and how a request for such information might be made (in particular, that it may be made verbally).
- 4.88 Conclusion/recommendation: The assessors would recommend that comprehensive training on the EIRs be provided as a matter of urgency to staff within the Council responsible for dealing with and responding to requests for information. The assessors would also recommend that guidance and training should be provided to all staff to assist them in identifying a request for environmental information, particularly as such requests can be made verbally and could be received by any member of staff within the Council.

Issuing a notice under section 12 of FOISA

- 4.89 An authority is not obliged to respond to a request for information if the cost of doing so would exceed the prescribed limit of £600¹² as set out (and calculated in line with) the Fees Regulations.¹³ 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.
- 4.90 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.¹⁴ 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.
- 4.91 From the sample of requests examined by the assessors, the Council had relied on section 12 of FOISA for not providing all or part of the requested information to the requestor on 7 occasions.

¹² Section 12 of FOISA

¹³ The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

¹⁴ Regulation 10(4)(b) of the EIRs



- 4.92 From this sample, the assessors were satisfied that sufficiently detailed refusal notices were provided in 4 of the cases. In 3 cases (47606, 83686 and 134336), the explanations provided to the requestors were inadequate. In case numbers 41952, 83686, 92302 and 134336, the Council cited section 12 of FOISA, but then also cited exemptions to demonstrate that the information would be exempt anyway. The assessors pointed out to the Council that this is not required where a refusal notice under section 12 of FOISA is being issued – and may in fact put out a confusing message to the applicant.
- 4.93 The assessors also noted, from the sample of requests examined, that there were no instances where the file contained details of how costs were established. Finally, it was noted that in some of the cases the requestors were provided with some information notwithstanding the section 12 stance taken. This is commendable, but on the other hand there were no examples of the Council actively approaching the requestor to see if the request could be narrowed down with a view to providing information to the requestor. The Council generally has an obligation under section 15 of FOISA to do this.
- 4.94 Conclusion/recommendation: The assessors recommend that training be provided to staff in relation to section 12 of FOISA, to ensure that all requirements (including relative obligations under section 15 of FOISA) are met when a refusal notice is issued in this context. The assessors noted that the Council is in the process of updating its standard letter templates to ensure a robust response is issued to the requestor. The assessors would also recommend that whenever a section 12 notice is to be issued that the Council maintains on file details of how it concluded that the cost of compliance would exceed the prescribed limit.

Issuing a notice under section 25 of FOISA

- 4.95 A notice under section 25 of FOISA can be issued by a public authority where the requested information can be reasonably obtained other than by requesting it under section 1 of FOISA.
- 4.96 From the requests examined by the assessors between May 2009 and July 2010, in 3 cases the Council had relied on section 25 of FOISA.
- 4.97 In 2 of these cases (case reference numbers 50327 and 44464), the assessors were satisfied that the requestors were provided with information / links to relevant websites to enable them to access the information requested. In one example, however (case reference 80090), the requestor was informed that section 25 applied to the request, but was not provided with a link to the appropriate information.
- 4.98 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, a response is provided to the requestor advising them that the information is available on the website and a link will be provided to it. In some cases, to assist the requestor, a copy of the information may be provided.
- 4.99 The assessors were satisfied with the approach taken by Council staff in responding to a request for information contained in the publication scheme, although through discussions with staff it became apparent that where the requestor is informed that the information is publicly available, a notice specifically citing section 25 is not always issued.



- 4.100 The Council should ensure that when a request is received for information that is available from its publication scheme, it issues a notice to the requestor under section 25 of FOISA, to allow the applicant to challenge that decision should they consider it appropriate to do so. The assessors would encourage the Council to continue its practice of providing link(s) to the information, and where appropriate to provide copies.
- 4.101 Conclusion/recommendation: 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 notice under section 25 of FOISA (where appropriate), but continue to carry out the practice of providing a link to the requestor, so that the requestor can easily access the information they are looking for.

Charges for “derelict tank” searches

- 4.102 From reviewing the sample of requests, the assessors noted that the Council currently makes a charge for carrying out derelict (fuel) tank searches. This was for example demonstrated in case reference number 122769. The charge currently being levied for this service is £70.55 per search and the request is being processed under the terms of the EIRs.
- 4.103 The information (as identified by carrying out the search), is being 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 is environmental information and as such the Council is 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 and this charge must be “reasonable” in the context. In consideration of this, the current charge of £70.55 appears unreasonable in this context. In discussions with staff, justification for the charge could not be provided.
- 4.104 A “reasonable” charge for the provision of the information should be detailed in the Council’s Schedule of Charges in its Publication Scheme. If this charge is not detailed in the Schedule of Charges, the Council would not be in a position to charge anything for dealing with requests relating to derelict tank searches. Currently the Council does not have a schedule of charges, which will need to be addressed (see Policies, procedures and other documentation section below).
- 4.105 Conclusion/recommendation: The assessors recommend that the Council cease its current practice of charging for derelict tank searches and comply with its obligations under the EIRs. Any Schedule of Charges published by the Council in respect of environmental information should reflect any charge it will levy in future for the provision of this information.

Issuing a notice under section 27(1) of FOISA

- 4.106 Section 27(1) of FOISA allows Scottish public authorities to withhold information if there is an intention to publish the information within twelve weeks. Regulation 10(4)(d) relates to material in the course of completion, unfinished documents or incomplete data: any refusal notice under this exception should state the time by which the authority considers the information will be finished or completed. Both the exemption and the exception are subject to the public interest test.



- 4.107 From the sample of requests examined, the assessors noted 4 occasions where the Council had cited either section 27(1) of FOISA (i.e. case reference numbers 51866 and 66722), or regulation 10(4)(d) (i.e. case reference numbers 54502 and 130939). The Council indicated the expected time of completion of the information in the response for case 54502, but not in that for case 130939: in the latter case, therefore, the Council failed to meet its obligations under regulation 13(d) of the EIRs. The assessors noted that in none of these cases was there any evidence to show if the FOI Officer dealing with the request had made provision for checking if and when the information was made publicly available. During discussions with staff it became evident that the Council does not have a procedure for this and that staff are left to make their own arrangements.
- 4.108 Conclusions/recommendation: The assessors recommend that the Council put into place a procedure where it is responding to a request on the basis of section 27 of FOISA or regulation 10(4)(d) of the EIRs, to check on the subsequent publication/completion (as appropriate) of the information requested. This procedure should be incorporated into the Council's new Guidance and Procedures document.

Policies, procedures and other documentation

- 4.109 As detailed above, the Council has undertaken an overhaul of its Access to Information Policy, FOI Guidance and Procedures document and suite of standard template letters used by the Council when responding to requests for information. These new procedures will officially go live at the same time as the new Central FOI Unit on the 10 November 2010.
- 4.110 As part of the pre-assessment work undertaken by the assessors, the Council's current Guidance and Procedures document was assessed. The assessors were also provided with copies of the Council's updated Access to Information Policy, Guidance and Procedures document and updated standard letters. It should be noted that at the time of the on-site part of the assessment, these documents were still in draft form, although developments/updates were clearly well advanced. Consequently, given their impending introduction, the assessors' conclusions and recommendations are based on analysis of the Council's proposed arrangements for the future.
- 4.111 The assessors noted the Council's draft Access to Information Policy and Guidance and Procedure document and these appear to be comprehensive in covering most of the processes that need to be gone through in responding to an information request. There are, however, certain elements that require correction, while certain enhancements are also required to ensure that the documents are fully effective. The policy provides a comprehensive overview of the Council's responsibilities in relation to access to information.
- In the Access to Information Policy, Appendix A, page 2, reference is made to the Contact Centre as having responsibility for the logging and monitoring of requests and providing performance information. This should be updated to reflect the transfer of these responsibilities to the new Central FOI Unit from 10 November 2010.
 - Hard copy request forms do not currently allow the requestor to enter a date. These forms should be updated to allow the requestor to input this detail so that the Council can identify precisely when the request was received.



- 4.112 Suggested amendments to the Council's new Guidance and Procedures document were brought to its attention and the assessors were pleased to note that all but two of these have now been addressed fully. The following two bullet points refer to areas where amendments still need to be made to the new Guidance and Procedures document:
- Page 22 – paragraph 7, reference to section 36 should be changed to 33, i. e. Commercial interests.
 - Page 34 – retention of information relating to requests where section 12 (cost of compliance) or section 17 (information not held) is relied upon should be added to the list of information FOI Officers should ensure is stored in the assigned folder.
- 4.113 Suggested amendments were also brought to the Council's attention in relation to the suite of standard template letters found in Appendix 6 of the Guidance and Procedures document. The assessors were pleased to note that all but one of these amendments have now been addressed fully by the Council. The following bullet point refers to part of one letter which still requires to have some adjustment made to it:
- Letter 3 – This refusal notice should be updated to show the full section being relied on to withhold the information i. e. section 38(1)(a) of FOISA. Space should also be provided in this letter to allow the person making the response to provide reasons to support the application of section 38(1)(a). As in letters 1 and 2, the requestor should be provided with details of their rights as detailed above.
- 4.114 During discussions it became evident that the Council does not have a schedule of charges for responding to requests for environmental information.
- 4.115 Following the provision of the draft report to the Council it became clear that the Council does have a schedule of charges on its publication scheme but this does not fully reflect the fees the Council considers that it may charge for the provision of environmental information.
- 4.116 The assessors noted that the Council has also gone through a comprehensive overhaul of the FOI pages on its website. These changes went live on 1 November 2010. The changes have been designed to assist members of the public wishing to make an information request to the Council, but will also act as a source of guidance for staff dealing with requests for information. The assessors were presented with a demonstration of the updated website and were satisfied that these changes should have a positive impact on members of the public wishing to seek guidance on how to make a request to the Council.
- 4.117 The assessors noted also that the Council provides additional information to staff on its intranet site. This guidance provides useful links to the legislation and the Scottish Information Commissioner's website, and details of the Council's FOI Officers, but also provides a useful "Q and A" section covering the main areas that need to be considered by all staff with respect to identifying and handling requests for information.
- 4.118 Conclusion/recommendations: The Council should review its Access to Information Policy, Guidance and Procedures documents and standard letters in line with the recommendations detailed above. The Council should also ensure that the current paper request forms are amended to allow the requestor to enter the date on which the request is being made. The



Council should also review the schedule of charges in its publication scheme, to ensure that it covers adequately all situations in which it would charge for environmental information.

Training and awareness arrangements

- 4.119 When FOISA was first introduced, general training was provided to all staff. More in-depth training was provided to those who would be dealing directly with requests for information, such as staff in the Contact Centre and both FOI and Divisional Officers who would be responsible for searching for information and providing responses to requestors. From discussions with FOI Officers, it was apparent that the training at that time was provided in-house and had been prepared and delivered by the working group set up prior to FOISA coming into force. The Council's intranet was enhanced to provide information to staff on FOISA and the EIRs.
- 4.120 From discussions with FOI Officers, the assessors noted that training has been provided on both a formal and informal basis, although there has been very little formal training since the introduction of FOISA. It appeared to the assessors that much of the training has been carried out on "on the job" basis. FOI Officers have maintained their knowledge through a combination of attending FOI seminars and conferences and through keeping abreast of developments on the Commissioner's website. The Council also has in place an FOI Working Group. This group, led by the Council's Records Manager, provides staff with FOI responsibilities with the opportunity to discuss such matters as procedures, specific issues and areas of good practice. It acts as a support network, bringing together representatives from all the service areas within the Council. The assessors noted that one FOI Officer had attended a formal training course run by PDP three years ago, but noted that the same individual was due at the time of the assessment to attend a further course run by PDP, looking at the relationship between FOISA and the DPA. It was also noted by the assessors that staff with FOI responsibilities had received informal training on "Capture" since its introduction in 2009.
- 4.121 From holding discussions with the Head of Legal and Administrative Services and the Council's Records Manager, it was apparent to the assessors that the Council is aware of the lack of formal training it has delivered to staff since the initial introduction in 2005. Key areas of concern noted by the Council are that training has been inconsistent across the Council; some departments have received no training/awareness raising sessions since 2004/05, and the guidance on the internet/intranet is not particularly clear or easy to use.
- 4.122 With a view to countering these issues, the Council had at the time of the on-site assessment put the following training programme together:
- A training plan had been drafted, taking into consideration the different roles within the organisation e. g. frontline staff, FOI Officers. In relation to this draft training plan, some training had been delivered to Services for Communities and City Development.
 - An E-learning module on FOISA and the EIRs had been drafted as part of a suite of information management training packages (including DPA, information security and records management) to be launched in mid September.
 - The Council's intranet content was in the process of being revised, to take into consideration the Council's new corporate arrangements for dealing with requests for information.



- The setting up of the new Central FOI Unit. As well as being responsible for the logging, tracking and monitoring of requests received by the Council, this will provide guidance to FOI Officers on the application of the legislation, provide a quality checking facility for FOI Officers before they issue a response where an exemption/exception is being applied to the request. It will also be responsible for co-ordinating FOI training activities in future. All staff in the Central FOI Unit are from Legal Services.

4.123 Conclusion/recommendations: The Council has acknowledged that it has not provided suitably robust training activity amongst its staff since the initial introduction of FOISA in 2005. The assessors acknowledge the steps the Council is now making to address this issue, noting that many of the proposals were at an advanced stage of development at the time of the on-site assessment. A number of them remained in draft form or otherwise incomplete, however, and the assessors recommend that the Council finalises its arrangements before the new processes go live on 10 November 2010, appreciating that implementation will involve a rolling cycle of activity across the whole organisation. As a priority, the Council should ensure that comprehensive FOISA and EIRs training be provided to members of the new Central FOI Unit along with the FOI Officers on the application of exemptions/exceptions so that responses / refusal notices issued by the Council are compliant with the requirements of FOISA and the EIRs. Failure to do this will compromise the positive actions the Council are taking to improve its performance going forward.

5. Conclusions and summary of recommendations

5. 1 In carrying out the assessment of City of Edinburgh Council, the assessors have been required to evaluate the Council on two levels. Firstly, how the Council has performed to date in relation to its obligations under FOISA, the EIRs and the various Codes of Practice, and secondly, because the Council is in the course of a comprehensive review of its FOI arrangements, evaluation of the changes the Council have already put into place and propose to put into place for the future.
- 5.2 With respect to the current procedures and performance, the Council acknowledged that it was falling short of its requirements under the legislation and the Codes of Practice. It was evident from analysis of the Council's current Guidance and Procedures document and through discussions with various staff throughout the organisation, that although apparently robust systems and processes were put in place initially, the Council failed to monitor and evaluate the effectiveness of these processes as the number of requests received grew. Further evidence of this failure to ensure that systems and processes were fit for purpose was also evident from the Council's failure to repair/replace immediately its initial CRM system when it crashed in September 2008. The replacement for this system (which was an essential part of the Council's systems for compliance) was not put in place until around July 2009. During this intervening period, service areas were asked to put in place temporary solutions, some of which remain in use with consequent inconsistencies in recording.
- 5.3 It was also evident to the assessors that the Council has failed to put in place a systematic programme of training since the introduction of the legislation in 2005. There have been examples of some formal training provided to staff, but in the main staff have received only informal in-house training and have been left to learn and develop primarily through carrying



out their roles, although it was noted as an area of good practice that the Council has an FOI Working Group, providing FOI professionals within the Council with a forum to discuss matters relating to FOI.

- 5.4 However, going forward it was apparent to the assessors that there is a real determination from senior management down to make significant changes to the Council's procedures and processes with a view to improving performance. This started with the report made to the CMT in April 2009, which outlined a comprehensive overview of where the Council was with its current processes, where it was falling short and what actions would need to be undertaken to address these issues. This has developed into a full review of the Council's arrangements in relation to FOI, which continues to have support from senior management. Key aspects to these changes are to be found in the establishment of a Central FOI Unit to co-ordinate all requests for information coming into the Council, the review of the Council's Access to Information Policy and Guidance and Procedures document, an overhaul of the Council's website in relation to FOI and other areas relating to information governance, and a review of the Council's position in relation to training. This particular review will culminate in a training plan for the Council, which will take into account the different training needs of staff within the organisation and it is intended that this training plan will provide a robust basis for ensuring that staff, new and current, remain knowledgeable and equipped to deal with requests for information.
- 5.5 Through discussions with the Head of Administrative and Legal Services and the Council's Records Manager it was also evident that the Council would welcome an audit in 12 months time to evaluate its new practices and procedures. The assessors recognised this as reflecting the Council's commitment to not only implement change, but to evaluate how successful the changes have been. The Council will, of course, have an opportunity initially to demonstrate how successful the changes have been when it provides a report to the Commissioner on the actions it has taken to address the recommendations outlined in this report. With the need to secure compliance with substantially new arrangements in mind, it is recommended that the Council conducts its own programme of audit.
- 5.6 In evaluating the Council's new procedures and plans, the assessors have made a number of recommendations. The assessors therefore recommend that the Council develops an action plan to demonstrate its commitment to the changes it is making and to bring about the recommendations identified in this report, to ensure that its new practices are fully in line with the statutory requirements of FOISA and the EIRs and with good practice as set out in the section 60 and 62 Codes of Practice.
- 5.7 In particular, the assessors recommend:



Recommendations

PRIORITY 1 Immediate action required	
Recommendation Number	
1	That the Council takes steps to ensure that where it issues a refusal notice, it complies with all applicable requirements of section 16 of FOISA and regulation 13 of the EIRs, ensuring that applicable subsections relating to exemptions/exceptions are cited correctly and that sufficiently robust explanations are given as to why they are considered to apply (including consideration of the public interest, where appropriate).
2	That the Council puts in place a programme of training across the organisation, taking into consideration the varying levels of knowledge required by staff to enable them to fulfil their duties under FOISA and the EIRs. This should include coverage of the interface between FOISA/the EIRs and the Data Protection Act 1998. As a priority, the Council should ensure that comprehensive training is provided to members of the new Central FOI Unit and that comprehensive training / refresher training is provided to the Council's FOI Officers. This should be conducted in advance of the new procedures and processes going live on 10 November 2010.
3	That staff should be fully notified in advance of all the changes in practice to be introduced from 10 November 2010.
4	That the Council takes steps to ensure that it complies with the 20 working day timescales in FOISA and the EIRs when responding to a request for information, and requests for review, also ensuring that requests are logged accurately and in a timely manner onto "Capture".
5	That the Council discontinues with its present practice to charge £70.55 for derelict tank searches.
6	That the Council ensures that where a review has been requested, the reviewer takes into consideration all facts and correspondence available to them before making a decision.

PRIORITY 2 Medium term action to be completed within 3 months	
7	That the Council, with the introduction of the new Central FOI Unit, ensures that individual logging, tracking and monitoring systems currently being used by service areas are discontinued, to be replaced by consistent use of "Capture" and a new shared drive for document retention. That the Council monitors the effectiveness of this for a reasonable initial period.
8	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.
9	That the Council updates its new Access to Information Policy, request forms and new Guidance and Procedures document in line with the recommendations detailed under the section headed "Policies, procedures and other documentation" above.
10	That the Council provides training to relevant staff in relation to section 12 of FOISA, to ensure that any refusal notices issued are compliant. Training should also be provided in relation to the Council's obligations to provide advice and



	assistance under section 15 of FOISA. The Council should also ensure that details are kept on file to demonstrate how the FOI Officer has come to the conclusion that section 12 is applicable.
11	That the Council ensures under its new procedures and processes that it is clear who will be responsible for signing off requests (which should take into consideration resilience for planned and unplanned absence).
12	That the Council conducts a review of its staffing levels in service areas to ensure that there is sufficient cover when the FOI or Divisional FOI Officers are absent, whether this be planned or unplanned.
13	That the Council ensures that where a notice under section 25 of FOISA is to be issued in relation to a request for information contained within its publication scheme that the full exemption is cited in the response and that the requestor is provided with details of their right to request a review and apply to the Scottish Information Commissioner.
14	That the Council establish a process for following up requests where it is responding in terms of section 27 of FOISA or regulation 10(4)(d) of the EIRs and that this process is included in the new Guidance and Procedures document.
15	That the Council ensures that where a notice under section 17 of FOISA or regulation 10(4)(a) under the EIRs is being issued, that they fully comply with the requirements of the relevant legislation.
16	That the Council, in setting up the Central FOI Unit, ensures that a process is put in place to ensure that where exemptions/exceptions are being applied, the FOI Officer provides the draft response to the Unit in sufficient time to allow it to be checked and returned in time to allow the final response to be issued within 20 working days.

PRIORITY 3 Action to be completed within 6 months	
Recommendation Number	
17	That the Council conducts a cycle of audits both centrally and in its outlying offices, to evaluate compliance with the new procedures and process to be put in place from the 10 November 2010.
18	That the Council for a reasonable initial period, quality checks all its responses where information is not being disclosed in full in response to a request for information, and that this should be done via the new Central FOI Unit to ensure adherence to its new procedures and to monitor success of the training it is to provide.

- 5.8 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, and they are aware that the City of Edinburgh Council has already taken steps to address some of the recommendations.
- 5.9 A copy of the action plan prepared by the City of Edinburgh Council, setting out the actions it has taken and intends to take to satisfy the recommendations in this report is attached at appendix 1.



5.10 At the end of the 6 month period (from the date of publication of this assessment) the Commissioner will ask the City of Edinburgh 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 this report, the Commissioner may seek a follow-up meeting with the City of Edinburgh Council to discuss progress and any outstanding issues.

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Alistair Rennie
Freedom of Information Officer

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Jill Walker
Freedom of Information Officer

Report approved by

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Kevin Dunion
Scottish Information Commissioner

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