

Implementation of the Freedom of Information Act 2000 at HPC

This note describes the content of a presentation to be made to the Finance and Resources committee, concerning Freedom of Information and our required response. Whilst there is no immediate financial impact for HPC there could be some cost toward the end of Financial Year 2004-5. The presentation may be provided to Council if required.

As a "public body" HPC are required to follow the provisions of the FoIA 2000. This paper provides an overview of how the Executive will implement the act locally.

Data Protection Act 1984 & 1998 based on EU Directive 95/46/EC
to ensure free flow of information, to uphold respect for the private life of the individual, covering all holders of paper or computer based data.

Freedom of Information Act 2000
to contribute to public accountability, to make provision for the disclosure of information held by public authorities – amends DPA

By December 2003 or February 2004 we must have published a Publication Policy. By January 2005 we must operate a policy of providing information to all enquirers, unless we have a requirement not to.

FoI basically requires that we publish or disclose information on how decisions are made, how processes are run, meta data and reports.

Our web site makes a good start on this.

However we need to start a policy of coding documents as they are created under the following regime;

- i) Publish as soon as complete.
- ii) Publish after internal consultation process or approval of minutes.
- iii) Publish after a certain activity has taken place.
- iv) Never Publish. [Need to log reasons why] This can include personal information relating to employees or applicants and registrants etc

The FoIA requires that we publish *information*, not documents, so we do not have to release original items, although this may be the most pain free method of publication. We can provide summary information.

If the information is already published, we do not need to supply again, so to control costs we must get as much on the website as soon as possible.

A few other points;

We cannot destroy anything embarrassing at the point we are asked for it – however if it is disposed of under our published document management policy (draft in progress) we can say no longer available.

Employees have protection if they respond to an FoI request and it causes HPC embarrassment.

We do not have to create data in a particular format – they get what we have, we do not have to process it for them.

There is a balance between public good [the right of access to information] and the protection of personal data. Normally the DPA takes precedence over FoI as it is derived from a European requirement for legislation. However, sample conflicts such as potential suppliers co-habiting with decision making employees; and C.E. expenses are seen as likely to come up.

Third party “In Commercial Confidence” clauses and requests are to be resisted where ever possible, and the Information Commissioner can override if required *for the public good*. **This will include third party contracts.**

If you do not want to see the information published – never record it.

We MUST carry out a Data audit over the next 3 months. If it is not included in the audit, it must be destroyed.

We are required to publish a list of FoI requests and the outcome but not details of the requestor.

There are going to be difficult balances between DPA and FoI requirements. It is likely that HPC and other bodies will be referred to the Information Commissioner for judgments on particular cases.

We can charge for information; generally 10% of retrieval cost up to £60 on £600 cost, above this no cap on charges. Note this is different to the DPA where a £10 charge is in force. We must publish a scale of charges and a publication policy.

Decision Process and Key Outcomes of FOI Implementation

Information is organised and stored in such a way that it can be identified and located easily.

All staff are aware of obligations under FoIA, and treat information in a way that facilitates subsequent release

All written work is structured so that anything liable to be released under FoIA can be identified (and separated from parts not liable to be released, if necessary)

All key decisions within the organisation are documented

Records management enables staff to know whether any document is still in existence or has been destroyed

Records management enables any document in existence to be easily located and released (in whole or in part)

Front-line staff know what they should be doing, and are doing it

Front-line staff understand their obligations under FoIA, and are dealing confidently with requests for information

Front-line staff have access to guidance and advice whenever they need it

Decisions on requests are taken at the lowest appropriate level

Reasons for decisions are recorded (especially where a request is refused)

Fees (where appropriate) are charged, received and accounted for correctly

Local managers have information on compliance with the FoIA regime in the area

The public knows what it can expect, and is getting it

A comprehensive and informative Publication Scheme is easily accessible to the public (and to staff)

Guidance is available to the public on how to request information not covered by the Publication Scheme

The regime for charging fees is publicly available, and is specifically brought to the attention of any person from whom fees may be charged

The number of successful (or even unsuccessful) appeals to the Information Commissioner is minimal

Requests and decisions are recorded and documented, so that the organisation knows whether it is acting fairly and consistently and complying with statutory obligations

All requests under FoIA (whether granted or refused) are logged centrally, and refusals (together with reasons) are centrally scrutinised

Complaints to the Information Commissioner are monitored and lessons learned from his reports

Any difficulties or disputes (whether individual or recurring) are identified and addressed

Included below is a flowchart of the decision process for releasing or not releasing information to the public.

