

SCRUTINY COMMISSION – 6TH NOVEMBER 2002

REPORT OF THE CHIEF EXECUTIVE

FREEDOM OF INFORMATION ACT 2000 - IMPLEMENTATION

Purpose of Report

1. The purpose of the report is to draw to the attention to:
 - (a) the requirements placed on the County Council by the Freedom of Information Act 2000;
 - (b) progress made in developing a Publication Scheme for submission to the Information Commissioner for approval;
 - (c) seek the views of the Commission on the proposed Publication Scheme.

Policy Framework and Previous Decisions

2. The production of the Publication Scheme is a statutory requirement of the Freedom of Information Act. The County Council's Information Management Policy requires us to be proactive in facilitating public access to information held by the Council, and for information to be managed in accordance with legal requirements. There are no previous decisions in respect of the Freedom of Information Act.

Background

3. The Freedom of Information Act 2000 (FOI) received Royal Assent on 30th November 2000. It will be brought fully into force in January 2005, but the County Council is obliged to bring a Publication Scheme into effect by February 2003. The County Council has to submit its proposed Scheme to the Information Commissioner by 31 December for his approval.

Who does it affect?

4. FOI imposes new duties upon Public Authorities, which includes the County Council, Schools, Police, Health Service and Central Government. It extends the rights of public access to Public Records.

What does the Act do?

5. FOI introduces a general right of access to all persons including individuals and companies to all types of recorded information held by Public Authorities. This includes information recorded as written memoranda, photographs, plans, videos and sound recordings, and to data held on computer. The access right is much wider than under the Data Protection Act but there are a larger number of exemptions which may apply.

What is the general right of access?

6. Section 1 of the Act gives any person making a request for information to a Public Authority a right :
 - (a) to be informed in writing by the Public Authority whether it holds information of the description specified in the request, and
 - (b) if that is the case to have that information communicated to them.

Are there any exemptions?

7. The Act contains a number of absolute exemptions - some of which will apply to information held by the Local Authority : examples are information which is accessible to the applicant by other means and personal information about the person making the request, which will have to be dealt with under the Data Protection Act. Other exemptions are subject to a public interest test : this might apply to information intended for future publication, information held in respect of investigations and proceedings conducted by the Local Authority, information attracting legal professional privilege, and commercially sensitive information. If one of these exemptions apply the Local Authority must employ the 'Public Interest Test'. This requires the Authority to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Where the balance between disclosure and withholding the information is seen as equal, the information must be released.
8. Under Section 35 of the Act information held by a government department or the National Assembly of Wales, relating to the formulation of government policy is exempt - subject to the public interest test. This does not apply to local government. However, section 36 does allow an exemption to be claimed by a Local Authority where in the opinion of Government Minister, disclosure of information would or would be likely to prejudice the effective conduct of public affairs. This is subject to the public interest test.

9. The Office of the Deputy Prime Minister is currently consulting with local authorities, the public and other stakeholders on how the exemptions in the Freedom of Information Act can be more closely aligned with exempt and confidential information defined in the Local Government Act 1972.

How will the Act be enforced?

10. The Information Commissioner (formerly the Data Protection Commissioner) has statutory responsibility for enforcing, investigating and dealing with complaints in relation to FOI. There will also be an Information Tribunal to deal with appeals. It is an offence under the Act if any person, after a request for information has been made to the Public Authority, alters, defaces, blocks, erases, destroys or conceals any record held by the Public Authority with the intention of preventing the disclosure of information to which the applicant would have been entitled.

Preparation for FOI

11. Local authorities will have to :

- (a) Raise Staff Awareness

All staff who deal with the public and external bodies must have some awareness of the obligations placed on the authority by the Act, the Codes of Practice and Guidance, in respect of the rights of persons making requests and the application of any exemptions.

- (b) Establish a Central Contact Point for dealing with access requests
- (c) Establish a Complaints Procedure
- (d) Provide advice and assistance
- (e) Audit and review Record Management procedures
- (f) Learn to deal with exemptions
- (g) Prepare a Publication Scheme

Publication Scheme

12. Under Section 19 of the Act all Public Authorities have a duty :
 - (a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Information Commissioner;
 - (b) to publish information in accordance with the scheme; and

- (c) from to time to time to review its publication scheme.

The Publication Scheme has to be submitted to the Information Commissioner for approval by 31 December 2002, and will become effective from 1 February 2003. Guidance on developing a Publication Scheme has been issued by the Information Commissioner. There are no existing local authority Publication Schemes, and no model schemes are available.

Importance of the Publication Scheme

13. The Publication Scheme will be a highly significant document. Apart from being a legislative requirement, the Scheme will play a central role once the Freedom of Information Act is fully operational. Information which is reasonably accessible in accordance with its approved publication scheme will be subject to an absolute exemption under the Act and the Council will not be required to handle such FOI enquiries. The potential savings in costs and time will act as an incentive to maximise the amount of information published. At some point a balance will need to be struck on resources required to publish information against resources required to answer other enquiries : where few enquiries are expected, the cost of publication may not be justified.

Other benefits of a Publication Scheme

14. Other benefits include :
- avoidance of mistakes: enabling enquirers to find information themselves will reduce the incidence of mistakes or risks that enquiries are not answered within the set limit of 20 working day;
 - declaration of openness : it is likely that the Publication Scheme will come to be seen as a declaration of the County Council's openness, and comparison with Schemes from other councils will occur;
 - better internal awareness of what is published : production and maintenance of the Scheme will require the Council to develop effective awareness and monitoring systems over what it publishes and in what manner.

Other Implications

15. Once the Publication Scheme has been approved, the Council will be required by law to make available ALL the information defined within the 'classes' of its Scheme. Each box on the attached draft Scheme constitutes a 'class', and the first two lines of the box (title and 'description') define the content of that class. Any exemptions claimed by the authority must be stated within the description. Great care will be required to ensure that the classes are appropriately defined.

16. The Information Commissioner has indicated that revisions of the Scheme which reduce the amount of published information will have to be justified. The Council must therefore ensure that the Scheme is an accurate reflection of what it intends to publish, and to continue to publish in the foreseeable future. There will be an accompanying requirement to ensure that new editions of publications are made available in a timely manner.

Development of a Publication Scheme for Leicestershire County Council

17. Work on a Publication Scheme has been progressing throughout the year, and is continuing. The overall shape of the scheme has been agreed, although some of the detail has yet to be finalised. The latest version of the draft scheme for Leicestershire County Council is attached.

Resources Implications

18. The Publication Scheme has been developed to date without incurring any additional expenditure. Once implemented in February 2003 there will be an on-going additional resource requirement, which will increase further in 2005 when the Freedom of Information Act comes fully into force. The resource implications will need to be considered as part of the budget process for 2003-2004.
19. The Director of Resources has been consulted in the preparation of this report.

Equal Opportunity Implications

20. The Information Commissioner has indicated that the Publication Scheme should be available in both printed form and on the world wide web. The Commissioner will also require each authority to indicate what steps have been taken to ensure the Scheme is accessible to people with disabilities, to those in disadvantaged communities and, where appropriate is produced in other languages.
21. The Publication Scheme will be made available on request in alternative formats and in other languages.

Consultation

22. It is proposed that consultation on the Publication Scheme be undertaken between 14 October and 13 December. These dates will permit 'Leicestershire Matters' to inform residents of Leicestershire of the consultation arrangements. A copy of the scheme be circulated to all members of the County Council through the Members Information Service. The Scheme will also be made available on the County Council website and CIS (Corporate Information Service).

22. Consultation will help the County Council to deliver an effective Publication Scheme which meets the requirement of the Information Commissioner that the Scheme takes account of public interest.

Timetable for Decisions (including Scrutiny)

23. A report will be submitted to Cabinet on 17 December outlining the outcome of the consultation process and requesting approval of the Scheme prior to its submission to the Information Commissioner by 31 December.

Members Advised Under Sensitive Issues Procedure

24. This issue affects all electoral divisions.

Recommendations

25. The Scrutiny Commission is asked to consider the proposed Publication Scheme and indicate what comments, if any, it wishes to submit to the Cabinet.

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