

Report To: Corporate Governance Committee  
Date of Meeting: 18<sup>th</sup> November 2015  
Lead Member / Officer: Head of Service – Business Improvement & Modernisation  
Report Author: Corporate Information Manager  
Title: Freedom of Information Act Consultation

---

**1. What is the report about?**

To provide the Committee with Denbighshire County Council's proposed response to a consultation on the Freedom of Information Act 2000.

**2. What is the reason for making this report?**

The Corporate Governance Committee has shown a keen interest in the way the Council is managing the workload associated with handling Freedom of Information requests. It is thought that the Committee would appreciate a copy of the Council's proposed response and to have an opportunity to input into it before being submitted (by 20<sup>th</sup> November).

**3. What are the Recommendations?**

To note the Council's proposed consultation response and to provide any comments to be incorporated.

**4. Report details**

The Freedom of Information Act 2000 ("the Act"), commenced in January 2005, provides an enforceable right to access recorded information held by around 100,000 public sector organisations. The Act's intended objectives, on parliamentary introduction, were to: 'transform the culture of Government from one of secrecy to one of openness'; 'raise confidence in the processes of government, and enhance the quality of decision making by Government'; and to 'secure a balance between the right to information...and the need for any organisation, including Government, to be able to formulate its collective policies in private'.

The Act also provides for guidance through a code of practice to help to ensure that important records of the decision-making process are retained as part of the historic background to government. The Act does not apply to requests for environmental information as those requests are considered under the Environmental Information Regulations 2004 (or, in Scotland, the Environmental Information (Scotland) Regulations 2004), which implement the EU Directive on Access to Environmental Information. The Act also does not apply to requests for

one's own personal data as those requests are considered under the subject access provisions of the Data Protection Act 1998.

The Act gives requesters a statutory right to find out if a public authority holds information and, within a framework of limits and safeguards for sensitive information, to be provided with access to it. The limits and safeguards within the Act include exemptions for certain types of information, derogations so that some information falls outside the scope of the Act, provisions to prevent requests which are too costly or which are vexatious, and a power for a Cabinet Minister, acting collectively with the rest of Cabinet, to veto the release of information.

After ten years of the Act's operation, the Independent Commission on Freedom of Information was established on the 17th July. The terms of reference for the Commission were set out by the Cabinet Office:

*“The Commission will review the Freedom of Information Act 2000 (‘the Act’) to consider whether there is an appropriate public interest balance between transparency, accountability and the need for sensitive information to have robust protection, and whether the operation of the Act adequately recognises the need for a ‘safe space’ for policy development and implementation and frank advice. The Commission may also consider the balance between the need to maintain public access to information, and the burden of the Act on public authorities, and whether change is needed to moderate that while maintaining public access to information.”*

The Commission is clear that its terms of reference require it to look carefully at the implications for the Act and at the practical operation of the Act as it has developed over the last ten years in respect of the deliberative space afforded to public authorities. The Commission is also interested in the balance between transparency and the burden of the Act on public authorities more generally. The Commission is particularly focused on the following questions:

- Question 1: What protection should there be for information relating to the internal deliberations of public bodies? For how long after a decision does such information remain sensitive? Should different protections apply to different kinds of information that are currently protected by sections 35 and 36?
- Question 2: What protection should there be for information which relates to the process of collective Cabinet discussion and agreement? Is this information entitled to the same or greater protection than that afforded to other internal deliberative information? For how long should such material be protected?
- Question 3: What protection should there be for information which involves candid assessment of risks? For how long does such information remain sensitive?
- Question 4: Should the executive have a veto (subject to judicial review) over the release of information? If so, how should this operate and what

safeguards are required? If not, what implications does this have for the rest of the Act, and how could government protect sensitive information from disclosure instead?

- Question 5: What is the appropriate enforcement and appeal system for freedom of information requests?
- Question 6: Is the burden imposed on public authorities under the Act justified by the public interest in the public's right to know? Or are controls needed to reduce the burden of FoI on public authorities? If controls are justified, should these be targeted at the kinds of requests which impose a disproportionate burden on public authorities? Which kinds of requests do impose a disproportionate burden?

### **Denbighshire's Freedom of Information Act Consultation Response**

Denbighshire County Council (The Council) has compiled the following response to question 6, as it's believed that this represents the most pertinent issue for the Council.

The Council firmly supports the view that that public authorities should be transparent and accountable for their decisions and as part of this the public has a right to request information being held. The Council also believes that the burden being placed upon public authorities under the Act is fast reaching a level where controls are urgently needed to reduce the associated workload before they become overwhelming.

The burden from the Act is diverting valuable staff time away from providing core services to an arguably less important task. This is adding further strain to local authorities who are having to maintain core services whilst experiencing significant budget cuts.

The Council has been experiencing year on year increases in information requests being received. When the Freedom of Information Act came into being during 2005, the Council received 500 such requests. This figure increased to 1150 requests in 2014.

Attempts have been made to reduce the burden, particularly through publishing more information, but this has had little impact with each request being ever so slightly different. Being a Welsh local authority also means that everything published to the website must be bilingual, which increases this workload.

The Council has found that many requests involve several hours of work but which often fall below the £450 charging threshold (Section 12). Additionally, redaction of documents can take several hours' even days in some cases but at present, the Act does not allow this work to be included within the timescale threshold.

Within large and diverse public sector organisations, such as local authorities, information is rarely held centrally but often spread across multiple service areas in various databases or other media. These types of requests often take the most amount of time, as they involve multiple officers from across multiple teams to determine whether the information is held, locating it, retrieving it, extracting it and then bringing the information together to provide a single coherent response.

For the reasons stated above, Denbighshire County Council's would encourage the Commission to amend the Freedom of Information Act to include provision for public authorities to charge a nominal fee of say £20, for each request. It is also recommended that the appropriate limit (Section 12) is reduced from 18 to 10 hours. Section 12 should also be amended to include time spent on redaction.

It is believed that introducing these changes would reduce the burden for public authorities to a more manageable and proportionate level whilst maintaining the public's statutory rights of information access.

**5. How does the decision contribute to the Corporate Priorities?**

N/A

**6. What will it cost and how will it affect other services?**

N/A

**7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report**

There is nothing arising from the EqIA that will impact on individuals with protected characteristics.

**8. What consultations have been carried out with Scrutiny and others?**

SLT, Directors and key Officers from across the Council were invited to contribute to the consultation.

**9. Chief Finance Officer Statement**

The response proposed highlights the additional burdens the Act places on the Council and offers sensible suggestions that may help to reduce them.

**10. What risks are there and is there anything we can do to reduce them?**

N/A

**11. Power to make the Decision**

N/A