

## **EAST AYRSHIRE COUNCIL**

### **POLICY AND RESOURCES COMMITTEE – 8 FEBRUARY 2005**

#### **IMPLEMENTATION OF THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 AND RECORDS MANAGEMENT UPDATE**

##### **Report by the Depute Chief Executive/Executive Director of Corporate Support**

### **1. PURPOSE OF REPORT**

- 1.1** The purpose of this report is to (i) update on the steps taken to implement the Freedom of Information (Scotland) Act 2002 including issues surrounding records management and (ii) to consider an appropriate fee structure for dealing with requests.

### **2. BACKGROUND**

- 2.1** Members will be aware that the aim of the Act is to increase openness and accountability in Government and across the public sector by ensuring that people have the right to access information held by Scottish Public Authorities. The Act came fully into force on 1 January 2005.
- 2.2** An Officer Working Group was set up in October 2003 and representatives (and deposes) from each Department were appointed. These representatives will be responsible for dealing with Freedom of Information requests within their individual Departments. The Working Group have met on numerous occasions to discuss and take forward implementation issues.
- 2.3** On 19 February 2004, the Policy and Resources Committee received a report seeking approval for the Council's Publication Scheme which is required under the Freedom of Information (Scotland) Act 2002. A subsequent report to the Policy and Resource Committee on 1 April 2004 approved a Records Management Policy for the Council.

### **3. PROGRESS TOWARDS IMPLEMENTATION**

- 3.1** A large amount of work has already been undertaken to work towards the implementation date to ensure that the Council can meet its obligations under the Act. Important areas covered are as follows:

#### **3.2 TRAINING**

- 3.2.1** A training strategy was approved by the Freedom of Information Working Group which involved a tiered approach to training delivery.
- 3.2.2** Strategic level training was given to Elected Members, Chief Officers and Head Teachers which was carried out by John McLarty Associates, Ayr. A two day practitioner level training course was also carried out by McLarty Associates. This training was aimed at the representatives and deposes on the Working Group who will be responsible for dealing with Freedom of Information requests throughout the Council. Internal procedure documents have also been

drawn up to give guidance and assistance to departmental representatives. Feedback from these sessions was generally good.

- 3.2.3** The next phase of training is underway whereby the representatives on the Working Group are giving "Toolbox Training" to frontline staff in their Departments. Guidance notes are also being given out following these sessions.
- 3.2.4** General awareness to all staff has been disseminated through Eastwords, the internet and intranet, through the email system and in booklet format.
- 3.2.5** Corporate induction will now include a section on the Freedom of Information Act. In addition the representatives on the Working Group will be given information on new employees in order that they may consider providing them with the "Toolbox Training".
- 3.2.6** The Training and Development Unit are investigating the feasibility of purchasing an e-learning workbook which all staff can work through.
- 3.2.7** General awareness training will continue to be sent out to all staff through various communication channels.
- 3.2.8** Further guidance is awaited from the Scottish Information Commissioner in respect of the relationship between Freedom of Information and Councillors, and will be issued to Councillors as soon as it is received.
- 3.2.9** The Environment Information (Scotland) Regulations 2004 were also introduced on 1 January 2005. Although they align closely with the Freedom of Information Regime there are a few main differences and staff training is also covering this area. The main differences are:
  - Requests for environmental information can be in any form;
  - Additional bodies to those listed in FOI may be covered;
  - A 40 day response time can apply when cases are complex and voluminous; and
  - Exemptions work in slightly different ways

Colleagues in the Department of Neighbourhood Services and Development and Property Services will be most likely to be involved in dealing with these requests.

### **3.3 RECORDS MANAGEMENT**

#### **3.3.1 Records Surveys and Retention Schedules**

Progress with this work has been limited recently due to the comments/input required from Departments before work can be taken forward and also Freedom of Information commitments (such as training and drafting procedures). However, work is still ongoing in all Departments and should proceed at a faster rate now that many of the initial Freedom of Information commitments have been met.

### **3.3.2 The Records Centre**

The development of the BMK building for use as the Council's records centre is still ongoing. The heating system is now operational and the building has been cleaned and is now in the process of being properly equipped.

In the meantime, some urgent transfers of record consignments have been accepted at the centre. These include boxes of records from the units in Glencairn Industrial Estate which had to be moved quickly due to the sale of the units. The large quantity of boxes which had previously been deposited at the records centre have also now been sorted through and properly shelved. All consignments of records have now been added to the records management software in order that all files can be properly tracked, located when requested, and destroyed when no longer required.

### **3.3.3 Secondment**

The recent secondment of a member of staff from Finance to work as Records Management Assistant has been very positive. His assistance in running the records centre and inputting details of consignments into the software will help free up the Records Management Officer to continue with record surveys and compiling retention schedules in sections not yet done.

### **3.3.4 Electronic Records Management**

At the moment, records management is being concentrated on paper-based records. However, in the longer-term it is clear the Council will need to approach the whole area of electronic records. The Council will need to ensure the authenticity and integrity of all electronic records that are created. The Council also needs to ensure all electronic records are managed properly and can be accessed when required. An Electronic Records Management Policy will require to be produced that includes a Corporate approach to e-mail management and use and this will be done in conjunction with colleagues in the IT Section.

In the meantime, a procedure note concerned with e-mail best practice in the light of freedom of information legislation has been drawn up. This was distributed around departments in order to ensure e-mail is used appropriately and efficiently by all staff, thus better enabling the Council to meet its obligations under the legislation.

## **3.4 FEES**

**3.4.1** The Act does not require charges to be made for the provision of information, however, public authorities have discretion to charge a fee in accordance with fee regulations made under the Act. The fee regulations would apply only to formal requests for information under the Act and do not apply to any charges for documents available through the Council's Publication Scheme, such as priced publications.

The Council needs, therefore, to decide whether to charge fees for providing information.

In terms of the Act, the fee which the Council may charge is as follows:

- The first £100 of costs are provided free of charge.
- Where projected costs include the cost of staff time in locating and retrieving the information, the cost of staff time must not exceed £15 per hour for each member of staff engaged on the task. This is a maximum rather than a standard rate to be applied in every case, particularly where staff costs prove to be lower.
- For projected costs above £100, the Council may make a charge of 10% of these costs up to the prescribed amount.
- The prescribed amount is £600. The Council may charge for provision of information above that limit, but are not obliged to do so. Above the limit, the Council may recoup all projected costs (bearing in mind that staff time remains subject to a maximum rate of £15 per hour).

#### **3.4.2 Issues for Consideration**

Based on the above charging structure, the most the Council could charge for a request at the prescribed limit of £600 would be £50.

There will be a cost to the Council in officer time to determine whether the Council actually hold the information and projecting how much the fee should be. The Council cannot charge for any cost incurred in determining whether it actually holds the requested information or for any costs incurred deliberating about whether or not to provide the information.

It is envisaged that there will be very few requests which go above the £600 prescribed limit.

In considering whether to adopt a fee structure, Members should consider whether it would be cost effective for the Council to do so.

Whether or not a fee structure is adopted, a full review will be carried out after 12 months following the introduction of the Act to assess the impact of the Act which will include any issues arising regarding costs to the Council.

#### **3.4.3 Options for Charging**

Members therefore have 2 options for consideration:-

**Option1** – to adopt the full fee regulations as detailed in paragraph 3.4.1 of this report

**Option 2** – Not to adopt the fee regulations and that the Council will only charge for the provision of information above the £600 prescribed amount. (The Council in this case to recoup all projected costs above the prescribed amount subject to the staff time not exceeding the maximum £15 per hour for each member of staff engaged on the task).

The recommendation of the representatives of the Freedom of Information Working Group would be the adoption of Option 2. This would minimise (i) the additional administrative burden and (ii) avoid incurring additional (irrecoverable) expense in terms of Option 1 while also promoting the spirit of openness and accessibility which underpins the Act.

**3.4.4** This matter has already been considered by the Corporate Management Team on 8 December 2004, when it was agreed to recommend Option2 to this committee.

**3.4.5** Monitoring forms are also in use by Departmental Representatives which will monitor both numbers of requests and actual costs to the Council for dealing with requests. These statistics will be evaluated after the first year of the introduction of the Act to ensure the effectiveness of the fee regulations adopted.

### **3.5 IMPACT UPON THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973 – ACCESS TO INFORMATION**

**3.5.1** The introduction of the Freedom of Information Act will have an impact on the Local Government (Scotland) Act 1973, Access to Information. Just because the information is exempt under the 1973 Act does not automatically mean it will be exempt under the Freedom of Information legislation.

However, many of the reasons why information may be exempt under the 1973 Act have corresponding exemptions under the Freedom of Information Act.

#### **3.5.2 Future Considerations**

Officers will therefore aim to consider exempt information in the context of Freedom of Information in the future to minimise conflict between these two sets of legislation.

Members may find that information previously submitted to Committee meetings as “not for publication” may now become a public document.

Also, if a document is marked “not for publication” it will not automatically mean that it will not be released, in full or in part, in respect of a future Freedom of Information request.

Officers will be required to review the context of “not for publication” documents to assess whether any of the exemptions listed in the Freedom of Information Act apply.

#### **4. CONCLUSION**

- 4.1** The Freedom of Information Act came into force on 1 January 2005 and the Council now have the necessary procedures in place to ensure full compliance with the Act. Records Management will be an important aspect in compliance with dealing with requests and ongoing work in this area will continue.
- 4.2** The Council requires to determine at this stage whether or not to adopt a fee structure for dealing with requests for information taking into account the issues detailed at Paragraph 3.4 of the report.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1** If the Committee decide to implement a fee structure in terms of the Act, there will be a very small increase in revenue to the Council.

#### **6. POLICY/LEGAL IMPLICATIONS**

- 6.1** The Council are duty bound to the comply with the Freedom of Information (Scotland) Act 2002 and the policy previously adopted by the Council in relation to Records Management.

#### **7. RECOMMENDATIONS**

- 7.1** The Committee are asked to:-
- (i) decide on a preferred option for a fee structure as detailed in paragraph 3.4.3;
  - (ii) remit to the Head of Administrative and Legal Services to put in place an appropriate procedure for charging; and
  - (iii) note that further reports on issues arising from the introduction of the Freedom of Information (Scotland) Act 2002 will be submitted in due course after an initial operational period.

Elizabeth Morton  
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JA/LM  
25 January 2005

#### **LIST OF BACKGROUND PAPERS – Nil**

Anyone wishing further information on this report should contact David Mitchell, Head of Administrative and Legal Services on telephone no (01563) 576061.

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