

**POSSIBLE ITEM FOR CONSIDERATION BY THE SCRUTINY COMMITTEE – REQUEST  
BY A MEMBER OF THE COMMITTEE**

**Purpose**

To advise on a request by a member of the committee for an item to be included on the Scrutiny Committee agenda.

**Introduction**

Under the Council's constitution there is provision for any member of the Scrutiny Committee to give notice of any item he/she wishes to be included on the Committee's agenda.

Councillor Clemerson has given notice of the following item which is reproduced as received.

***It should be noted that the item contains the views and interpretations of the member concerned and may or may not reflect the actions taken or planned by this committee, any other committee or the Council.***

**Detail**

At each meeting of this Committee, members should receive a report detailing all Freedom of Information Requests received by the Borough of Broxbourne.

**Background**

The Freedom of Information Act introduced a public "right to know" in relation to public bodies.

The full provisions of the act came into force on 1 January 2005

The Act affects over 100,000 public bodies including government departments, schools and councils.

As well as the "general right of access", the Act places a duty on public authorities to adopt and maintain pro-active "publication schemes" for the routine release of important information (such as annual reports and accounts). These publication schemes must be approved by the Information Commissioner.

In general, public authorities have 20 working days to respond to an information request, though this deadline can be extended in certain cases and/or with the agreement of the requester.

Under the Act, public authorities are encouraged to enter into a dialogue with the requester to better determine the information they want, and the format they want it in.

Requests can be refused if they cost more than £600, including time spent searching for files.

The Act creates a general right of access, on request, to information held by public authorities (Schedule 1 of the Act sets out a long list of the authorities covered by the Act).

There are exemptions to the Act, some of which are absolute and some are qualified. This means the public authority has to decide whether the public interest in disclosing the relevant information outweighs the public interest in maintaining the exemption.

An applicant for information who considers that a request has been wrongly rejected may apply to the Information Commissioner, who has the power to order disclosure. However, such orders can be appealed to a specialist tribunal (the Information Tribunal) and in some circumstances the Government has the power to override orders of the Information Commissioner.

Any person can request information under the Act; this includes legal entities such as companies. There is no special format for a request. Applicants do not need to mention the Act when making a request.

Applicants do not have to give a reason for their request.

There are a number of features of the Act which members should be aware of:

1. Requests by individuals for access to their own personal information are dealt with outside the Act for most practical purposes. They are dealt with under the Data Protection Act 1998 once it has been determined that the exemption for first party personal data is engaged, although some key provisions remain applicable e.g. the right of complaint to the Information Commissioner.
2. Requests for information about matters concerning the environment are dealt with by the Environmental Information Regulations 2004. Those regulations, while similar to the FOIA, do differ in a number of ways.
3. There is no procedure whereby third parties can challenge a decision by a public authority to disclose information: for instance, if a commercial organisation provides information to a public authority, and the authority discloses that information in response to an FOI Act request, the commercial organisation has no right of appeal against that decision

### **Possible discussion topics and questions**

- Is there a need or indeed a desire for this committee to monitor FOI requests and the Councils responses?
- In particular, should this committee review the Councils compliance to the statutory timescales provided by the provisions of the act?
- Should reasons for failing to respond to statutory timescales be reviewed and challenged as appropriate
- That if the committee agrees that a regular report is desirable, that a reporting schedule be agreed at this meeting, including agreement on the timeframe for the first report to cover.
- Should the Committee receive an annual report confirming that the Councils publication scheme has been (1) reviewed and updated (2) agreed by the Information Commissioner's Office
- Should the Council prominently publish and regularly update all FOI requests and responses on the Council website.
- Should the council provide a template on the website to help facilitate the submission of FOI requests

## **Conclusion**

At present, the Councils performance in responding to Freedom of Information requests is not reviewed in a systematic way.

Publication of FOI requests and responses appears to be lacking from the Council website or other publications.

In the interests of improving local democracy, Council accountability and transparency the Scrutiny Committee should implement the measures suggested in this document as priority within the 2010 – 2011 work-plan.

*It should be noted the proposal above reflects the Members own view as to how any question(s) should be dealt with and do not necessarily reflect any advice officers may offer the Committee.*

## **Legal, Financial and Risk Management Implications**

**Legal:** The description of the Act as a ‘right to know’ is potentially misleading and influences a number of requests that are claimed to be FOI requests. Often requests are for answers to questions, opinions, advice and justification for actions. These are not FOI requests although the requester often says they are asking under the FOI Act. FOI requests are for information held by the Council in some stored form. In addition, it does not matter that a request is not specified to be an FOI request; if it is in fact covered by the Act then it must be treated as such. Given these points it is not likely that reporting what are said to be FOI requests will assist in monitoring performance. As mentioned in the report there is a statutory appeal procedure for applicants for information to use if they are not satisfied. That also covers Environmental Information requirements and there is no logical reason to separate the 2 types of request. It would be more cost effective and less resource intensive to report anything from the Information Commissioner’s office that affects the Council than every request.

## **Financial/Risk**

Officers to advise at the meeting.

## **RECOMMENDED:**

**That the member’s request be considered**

## **Background Documents**

Borough of Broxbourne FOI Publication Scheme - January 2009

## **External Information**

Information Commissioner’s Office Website  
<http://www.ico.gov.uk/>