

## **FREEDOM OF INFORMATION ACT – EXPERIENCES WITH IMPLEMENTATION**

### **Purpose of Report**

1. This reports gives Chief Officers information about Wiltshire County Council's experiences of implementing the Freedom of Information Act since it came into force. It recommends some changes to the council's charging policies.

### **Background**

2. The Freedom of Information Act 2000 came into force on 1<sup>st</sup> January 2005. Responses are collated and sent out on a departmental basis, usually by the departments' Complaints and Access to Information Officers. More complex requests or those that span two or more departments are co-ordinated by the council's Information Officer, who works in Department of Resources. All those responding to requests are asked to log brief details of the requests they respond to, stating what information was requested, whether the request was replied to in full or if not, what exemptions were applied, and how long it took to respond to the request. The Act requires a full response to be sent within 40 calendar days of the council's receipt of a request.
3. The appendix to this report provides a number of tables containing statistical information and analysis of the requests received by the council in 2005 and 2006.

### **Main Considerations for the Council**

4. There is considerable interplay between the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2000 (EIR). This causes difficulties because the two pieces of legislation have different statutory charging structures. Many requests for information straddle both pieces of legislation, making it difficult to determine how charges should be applied.
5. Our current policy is to respond to all FOI requests, irrespective of their size, subject to the applicant paying a fee, which is on a sliding scale set out in the legislation. This was decision was made in the light of the council's wish to be as transparent as possible in its processes and decision making. However, experience has shown that the very complex requests require significant amounts of officer time for response, often meaning that they are unable to do the "day job", and causing significant disruption to operational delivery. It may, therefore, be the case that the public interest in receiving timely and good quality services outweighs the public interest in transparency and accountability for this minority of

requests. The Act permits public bodies to refuse to respond to requests that would exceed the upper limit for costs (currently £450, or 18 hours of officer time).

6. The council has been the subject of 3 complaints to the Information Commissioner. None of these has been upheld. This compares well with other local authorities. However, there has been an increase in the number of late responses in the last 12 months (see appendix), which increases the risk of a complaint being upheld.
7. There is no provision for training on the requirements of the Data Protection Act 1998, FOI or EIR in our current induction processes. There is a module available for managers in Manage2Lead, but it is optional, and only 40 managers have attended since the module was introduced. There is no requirement for other officers to attend or receive training on the access to information legislation.
8. It was originally intended to publish the responses to all requests for information on the internet. The intention in doing this was to reduce the number of “repeat” requests. However, analysis of the requests received demonstrates that there are few, if any, repeats. This would suggest that the effort of publication may not be warranted.
9. The council is required to maintain a Publication Scheme of documents that are readily available to the public. This is an extensive document. It was first prepared in 2004 and required very substantial officer input from all departments, and a great deal of co-ordination. It is now completely out of date. The Act requires councils to update their publication schemes annually. This has not been done, because there are no resources available to do so. The council’s information officer, who would normally be responsible for co-ordinating this task, has no capacity to carry this out. There were originally 2.5 FTE officers who were employed in the Corporate Services Department to co-ordinate and manage access to information matters. This has reduced to 1 FTE.

## **Proposals**

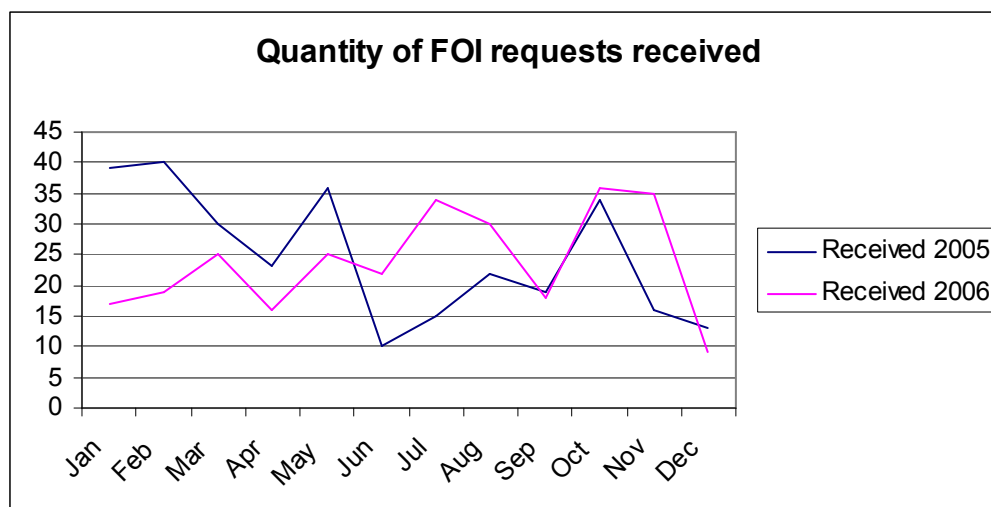
10. That the council adopts a single charging structure for FOI and EIR requests, based on the FOI charging structure. This is permitted by the legislation.
11. That the council no longer complies with requests made under FOI that would exceed the statutory limit.
12. That the council considers making training on the access to information legislation mandatory for all officers.

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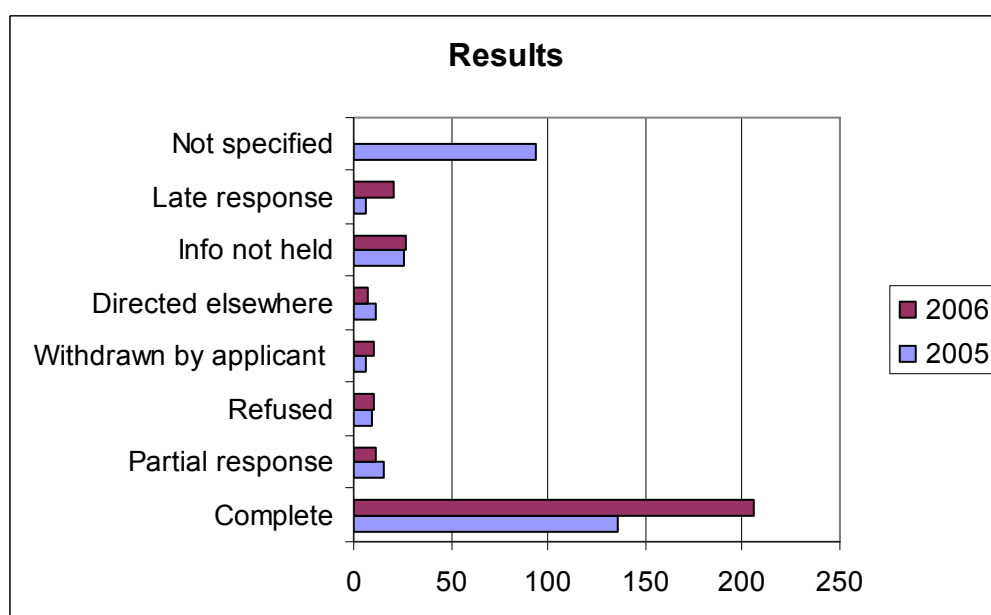
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**The following unpublished documents have been relied on in the preparation of this Report:** None

## CMB Report – Freedom of Information Act update

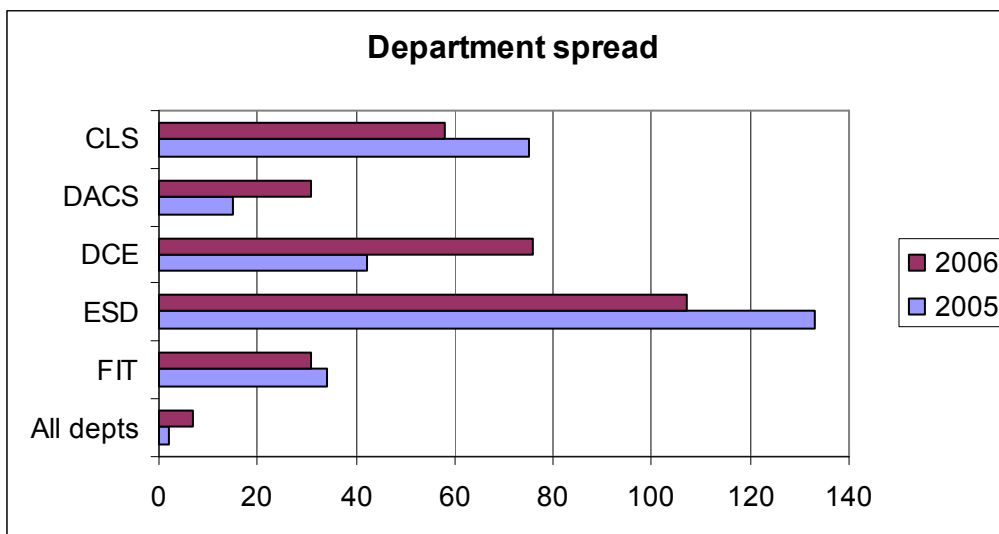


Two years into the legislation and it is still difficult to decipher a sustained pattern.

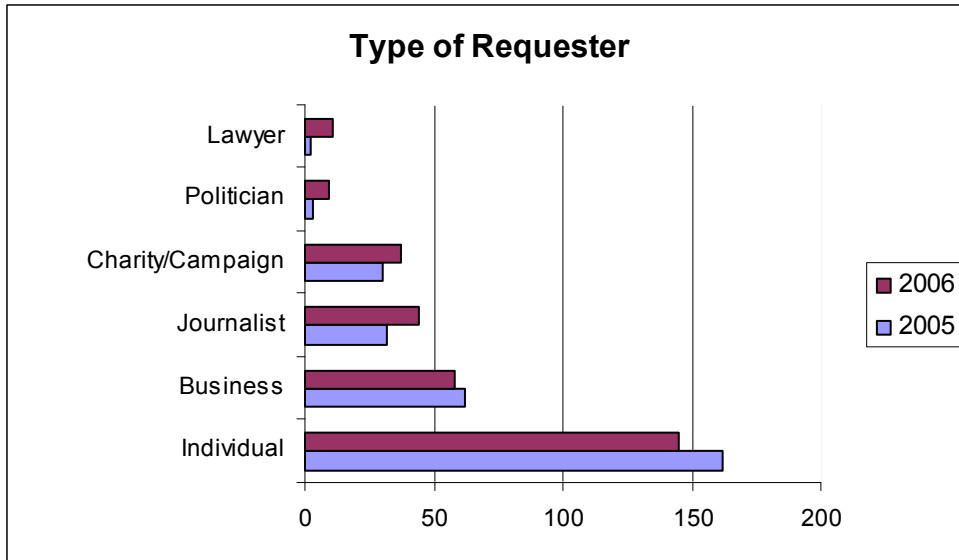


- Initial version of central recording system did not detail result, therefore unable to easily specify results for the first 94 enquiries.
- Apparent increase in late responses may, in part, be due to initial lack of recording, it may also be due to an increase in complexity, requests often straddling sections or departments. This delays responses, particularly if the first port of call is incorrect and request is not rerouted speedily.
- The Act covers recorded information only, for example, some applicants ask for details of meetings that were never minuted.

- Applicants often send requests for information to the wrong authority, if possible these are rerouted, but if environmental information is requested the legislation states the applicant must be contacted before the transfer is undertaken.
- There is current debate amongst FOI officers regarding the lawfulness of an applicant withdrawing a request. There does not seem to be a provision for this under the legislation but commonsense demands that if the applicant no longer requires the information, the authority should not be bound by law to still produce it. WCC have not responded to those that have been withdrawn and as yet, have not been challenged.
- Few requests are refused entirely, the exemptions generally applied by WCC relate to personal information, commercial interests or information supplied in confidence (contract details), information accessible by other means and legal professional privilege. This chart does not include s39 refusals which state the authority must consider the request under Environmental Information Regulations (EIR) and not FOI. Approximately 100 of the enquiries received by ESD have been dealt with under EIR.
- Refusals also include information that is already available or will become available to the public, eg information already published on our website. It is a refusal to supply the information under the legislation, not a refusal to supply the information.



- A small number of requests have been received for information from all departments, for this report these have been counted as one request as several of the departmental responses would be nil.
- Requests for information from two departments have been counted as two requests.



- Applicants often only supply a name and email address, from this it is difficult to identify the category of requester. The results in the table above may not be entirely accurate as I have assumed they are individuals unless indicated otherwise. The Act demands that the request is processed as applicant-blind, some journalists, businesses and campaigns may ensure this is the case by applying under a pseudonym.

n.b Whilst these figures give a fair representation of WCC's experience with the legislation they are not exact due to pressure of officers' workloads, resulting in under recording of requests received.