FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 - PROGRESS REPORT

1. Reason for Report
The purpose of this Report is to update Members on the Council's progress to date in relation to the implementation of the Freedom of Information (Scotland) Act 2002 and ensure the Council has complied with the provisions of the Act which was introduced on 1 January 2005.

2. Report Summary
2.1 The Council has complied with the provisions of the Act and introduced a database system to support this function on a day to day basis.
2.2 The Council has introduced a Compliance Review Panel to independently examine any reviews in accordance with the Legislation. This is the subject of further comment in the main part of the Report.
2.3 The introduction of a Records Management Scheme and approval of a new Publication Scheme in terms of the Act continues to be work in progress.

3. Glossary of Terms
SIC - Scottish Information Commissioner
FOIWG - Freedom of Information Working Group
CRP - Compliance Review Panel
FOI - Freedom of Information

4. Recommendations
Members are asked to:

4.1 note the position regarding the operation of the Freedom of Information (Scotland) Act 2002 within the Council as detailed at paragraph 6 and 8 and the graphs provided at Appendices 1, 2, 3 and 3A;
4.2 note the Risk Assessment in regard to the Compliance Review Panel detailed at paragraph 7;
4.3 note and agree the recommendation set out at paragraph 7.6.2;
4.4 note progress on implementing Records Management within the Council and, in particular, the pilot project in Social Work; and
4.5 note the work ongoing in relation to the Publication Scheme as detailed at paragraph 10.4.

5. Corporate Plan Links and Contribution
5.1 This progress report on the operation of FOISA links to detailed reports to the Governance and Audit Committee and contributes to sound governance arrangements.
5.2 As part of the wider aspects of FOI the report links to the Shared Services Agenda with other public bodies within Dumfries and Galloway who are subject to the Act.

6. Resources/Value for Money Assessment

6.1 In 2005 the Council appointed a Senior Information Officer to co-ordinate and administer the Council's approach to FOI and ensure full and consistent compliance with the Act. The functions connected with the operation of the FOISA are at present implemented from within existing resources, ie the Senior Information Officer and support staff on an identified needs basis. The details of the costs in complying with the Act are difficult to calculate exactly, however an analysis of the workload and statistical information over a snapshot period of time has allowed an estimated cost to be reached.

6.2 A snapshot of requests was carried out over a two month period at the beginning of 2006 and again in May 2007 to determine as best as possible an estimated time and cost involved in complying with a request received under the terms of the Act.

6.3 It was estimated that the time involved to manage each request from start to completion took approximately 5 hours. This was based on when the request was first received, logged, acknowledged and responded to within the 20 working days timescale set out in the Act.

6.4 It was established it would be difficult to calculate a true cost associated with processing a request under the Act due to the various members of staff in each Service dealing with such a request and their differing salary scales. However, using a base figure quoted in the appropriate Legislation, namely the Freedom of Information (Fees for Disclosure) (Scotland) Regulations 2004 of a maximum of £15 per hour which the authority may charge in certain circumstances, it has been possible to give an estimated cost:-

2005 - 341 requests x 5 hours x £15 = £25,575.
2006 - 75 requests x 5 hours x £15 = £28,125
2007 - 324 requests x 5 hours x £15 = £24,300
The total for the three years is £78,000.

6.5 The cost of the CRP has been calculated taking into account the salary scale of the membership of the CRP and the time taken to carry out a Review. It has been estimated that it takes about 2 hours for a Review to be carried out and the decision-making process to be completed. The average cost of the CRP is £130 per hour. On this basis the cost of the CRP for the previous three years is as follows:-

2005 - 14 Reviews x 2 x £130 = £3,640
2006 - 16 Reviews x 2 x £130 = £4,160
2007 - 9 Reviews x 2 x £130 = £2,340
The total cost for the three years is £10,140.

6.6 The cost of complying with an Investigation by the SIC has been calculated to take approximately 20 hours work from initial contact to the final submissions. On the basis of the earlier calculation of £15 per hour the cost is as follows:-
6.7 The true cost of the implementation and compliance with the Act is much greater than the totals shown, £91,140. However, this gives Members an estimated cost to the Council.

7. Risk Assessment

7.1 The risk associated with non-compliance with the provisions of the FOISA is that the Council would be served with an Information Notice by the SIC which would legally require the Council to give the SIC such information in a specified format relating to the application in order to comply with the Act. There have been no Information Notices served on Dumfries and Galloway Council to date.

7.2 A further risk, recently identified, concerns compliance with decisions made by the CRP, where at the present time the Chairman of the CRP has no delegated authority to instruct a Service to comply with CRP findings.

7.3 At the present time the Chairman of the CRP possesses no legal authority under the Act to instruct a Service or individual to comply with the findings of the CRP, and can only recommend an appropriate course of action for the Service or individual to take. There is currently no remedy if a Service chooses to disregard the findings of a CRP review.

7.4 It should be noted that each three member CRP consists of two senior Council Officers and Dumfries and Galloway Constabulary’s FOI Officer. Each Panel normally has a solicitor from Legal Services as a member of the Panel and the Council’s Senior Information Officer for officer support. The Panel is normally chaired by either a Group Manager or an Operations Manager.

7.5 The Act itself states that an authority must have a process and procedure to Review any request for information where the applicant is not satisfied with the initial response from the authority. There is no statutory power within the Act to allow the Chair of the CRP to legally instruct a Service to comply with its findings.

7.6 This calls into question the reason for the CRP in the first place. The options to resolve this situation are set out below with a brief risk.

Assessment

7.6.1 the status quo – that the CRP continues to offer recommendations to the Service with the potential that a Service may disregard or mis-interpret that advice. The risk of continuing with this course of action would mean that the CRP has no authority and that the Service could simply ignore its findings. The risk is that decisions of the CRP can continue to be ignored which is potentially publicly embarrassing to the Council and problematic in terms of a SIC investigation.

7.6.2 the Policy Committee agrees that an instruction procedure note be prepared for the Chairman of the CRP, which includes an obligation on Services to comply with the findings of the CRP, unless there is any statutory provision which exempts compliance. Any risk associated with this course of action is minimised by the
experience of the CRP membership, the decision-making process of the CRP, and the expertise available to the Panel.

7.6.3 the Review process involves Group Managers and Directors. The risk associated with this course of action is that Senior Officers become involved in the operational aspects of FOI rather than strategic management. The cost and logistics of this action would mean that the timescales set out in the Act would not be met.

It is recommended that the course of action set out at 7.6.2 above be adopted.

8. **Authorities and Legal Implications**

8.1 The Council, through the Senior Information Officer has a legal obligation to comply with the provisions of the Act and to respond to requests for information in line with the Act. Any breach of the Act will result in an investigation by the SIC and subsequent report to the Council.

8.2 A CRP process has been set up in line with the provisions of the Act to review the actions of the Council in responding to applications. Any applicant who is not satisfied with the manner in which their request for information has been dealt with or where information has not been disclosed can request a review. The CRP includes the Freedom of Information Officer from Dumfries and Galloway Constabulary as part of the Shared Services/Joint Working Agenda together with expert legal opinion.

8.3 A FOIWG meets quarterly to review issues which have been raised by Services or ongoing work which requires to be discussed, e.g. training programme for staff, Publication Scheme etc. The FOIWG has proved to be a useful Group to move forward work.

8.4 The SIC can investigate any valid submissions made to him by an applicant who was not satisfied with the decision of the CRP. The Senior Information Officer, on behalf of the Council, corresponds with the SIC on any investigations and submits detailed documentation on decisions which have been taken.

9. **Consultations**

The Operations Manager Cultural Services, Group Manager Corporate Support and Governance and Group Manager Policy & Improvement have been consulted on this report and comments received have been incorporated within the report.

10. **Background**

10.1 The Freedom of Information (Scotland) Act 2002 gives a general statutory right of access to all types of recorded information held by Scottish public authorities.

10.2 The Council has introduced a robust database system to collect and collate all requests made under the terms of the Act, which will link to the CRM being introduced in 2008. This database is managed by staff within the Communications Unit and the Senior Information Officer. Every request under the Act is given a unique reference number and an acknowledgement is automatically generated back to the applicant. The database allows the Council to identify the types of request received, the Directorates involved and the responses that are sent to the applicant. A breakdown of the numbers of requests received to date is set out at Appendices 1, 2 and 3 together with a summary of the source of enquiries at Appendix 3A.
10.3 The Act also requires all Scottish public authorities to adopt and maintain a Publication Scheme which sets out the types of information we publish, how this information is published and what, if any, charges apply. The purpose of the Publication Scheme is to ensure that a significant amount of information is available to the public without the need for specific requests to be made. The Publication Scheme can be viewed on the Freedom of Information mini-web - http://www.dgcouncil.net/cis/miniweb.aspx?id=7.

10.4 The Publication Scheme was approved by the Scottish Information Commissioner in June 2004 and will require to be re-submitted for approval toward the end of 2008. The Commissioner will be looking for evidence that the Scheme has been developed, that the information is accurate, that some form of consultation has taken place regarding what information should be made available on the Scheme and that it is “fit for purpose”.

10.5 To this end a report has been prepared for the FOIWG to allow Services to progress the Publication Scheme within the timescales outlined. A copy of the report is attached at Appendix 4.

10.6 The External Audit Action Plan, as set out in the Governance and Audit Committee Report dated 21 August 2007, highlighted the requirement to have a records management scheme in place and this major piece of work is presently ongoing as shown in the audit recommendations. A copy of the Action Plan which refers to records management is appended at Appendix 5. As part of the implementation of records management within the Council a pilot project is due to commence shortly in Social Work. This pilot will allow the proposed corporate system to be fully tested and, if necessary, amended prior to further roll-out across the Council. Social Work was identified for the pilot due to the work already underway to improve business systems within that service as a result of the SWIA report.

11. Key Issues
The key issues are set out above in terms of the Compliance Review Panel, Publication Scheme and Records Management Scheme.

Alex Little
Senior Information Officer
Committee & Member Services

Date of Report: 23 January 2008
File Ref: FOI

Leslie Jardine
Corporate Director of Corporate Services
Council Offices
English Street
DUMFRIES
DG1 2DD

APPENDICES - 6

Background Papers – Report dated 16 February 2006 by Corporate Director of Corporate Services to Corporate Policy Committee of 7 March 2006 (paragraph 4 of Minute of Meeting of that date refers)

<table>
<thead>
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<th>YEAR</th>
<th>NO OF DECISIONS</th>
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<td>2005</td>
<td>4</td>
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<tr>
<td>2006</td>
<td>5</td>
</tr>
<tr>
<td>2007</td>
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- 2005: 1.1%
- 2006: 1.3%
- 2007: 0.3%
1.1 The information at graph number 1 indicates the number of requests received by the authority on an annual basis (1st January – 24th December). It should be noted these figures are based on validated requests under the terms of the Act (FOISA) and do not include requests which have been responded to as “business as usual”.

1.2 The information shown at graph 2 indicates the number of reviews carried out by the authority on an annual basis (January – December). It should be noted the Act clearly states the public authority must have a process of review for requestors who are not satisfied with the initial response to their request for information.

1.3 The information shown at graph 3 indicates the number of Decisions made by the office of the Scottish Information Commissioner on an annual basis (January- December). It should be noted that of the total Decisions issued by the S.I.C a total of 6 relate to one individual.

1.4 The percentage of reviews to the number of requests received is shown under each graph as is the number of decisions issued by the S.I.C to the number of requests received.
## FOIFromOrg

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<tr>
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<td>Charity</td>
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<td>Missing Information</td>
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<td>Support Services</td>
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<td>Union</td>
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<td>Welfare Rights</td>
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<td><strong>Total</strong></td>
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## DirectoratePartner

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<td>Corporate Services</td>
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<td>Education, Social Work &amp; Community Services</td>
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<td>Financial Services</td>
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<td>Fire and Rescue Service</td>
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<td>Planning &amp; Environment Services</td>
<td>229</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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FREEDOM OF INFORMATION – PUBLICATION SCHEME.

Background to Report:

The Freedom of Information (Scotland) Act 2002 gives a general statutory right of access to all types of recorded information held by Scottish public authorities. The Act also requires all Scottish public authorities to adopt and maintain a Publication Scheme which sets out the types of information we publish, how this information is published and what if any charges apply. The purpose of the Publication Scheme is to ensure that a significant amount of information is available to the public without the need for specific requests to be made. The Publication Scheme can be viewed on the Freedom of Information mini-web.

The Publication Scheme was approved by the Scottish Information Commissioner in June 2004 and will require to be re-submitted for approval toward the end of 2008. The Commissioner will be looking for evidence that the Scheme has been developed, that the information is accurate, that some form of consultation has taken place regarding what information should be made available on the Scheme and that it is “fit for purpose”.

To this end this report has been prepared, along with the flow chart to allow Services to progress the Publication Scheme within the timescales outlined.

This is a piece of work which requires to be carried out in order that the Council meets its requirements under the Act.

Present Position:

The present Publication Scheme utilises the Local Government Category List which allows the arrangement of 12 main subject groups which can be found at the beginning of the Publication Scheme. This list has now been superceded by the Scottish Navigation List which is web-based and which has been accepted as the corporate way to arrange classes of information.

The information contained within the Publication Scheme may be out of date, Services have changed their designation etc and as such there is no doubt that the present Publication Scheme is outdated and requires reviewed and updated.

Proposed Action:

The FOI Working Group, which met on 6 September 2007 approved the attached flow chart as the basis for progressing the work required to update the present Publication Scheme. This will involve the Services carrying out an audit of the present Publication Scheme and comparing the information with the new Scottish Navigation List, level 1 and 2 and where necessary making changes and submitting an updated version to the Senior Information Officer. This should also include any changes to Service names, description, format, availability and cost. (These are all set out in the present Publication Scheme).
The Senior Information Officer will collate all the changes centrally, and Services should have the changes to him by no later than Friday 26 October 2007.

A revised and updated Publication Scheme will then be available for comment by early December 2007.

A period of both external and internal consultation will take place to determine what information should be further included in the new Publication Scheme and it is hoped that by the beginning of January 2008 a process similar to that set out in the flow chart will be in place. This will allow each of the Services to update the Publication Scheme themselves.

The Content Management System will be in place by end of April 2008 which will allow this updating to take place.

The Senior Information Officer will write up a detailed process to enable Services to put information onto the Publication Scheme and also an Audit system to be administered by the Senior Information Officer.

It is appreciated there will be information within Services which they will identify should be put on the Publication Scheme and it would be helpful if they were identified and put into one of the SNL classes during the initial audit of the Publication Scheme in order that we have a comprehensive new Publication Scheme by the end of the year.

Any clarification can be sought from Alex Little.
FOI
Publication Scheme

Audit present Scheme and update using the SNL Classification Scheme

Accuracy changes etc (S.I.O. to rewrite introduction etc)

Collate centrally (S.I.O.)

(November) Accurate document (hard copy)

Internal Consultation

External Consultation

(January 2008) Process to update Scheme

Update Scheme April 2008

Services determine information (Highlighted by S.I.O.)

FOI contact or S.I.O. check relevance

Reporter in service (or Central web team)

Audit process by S.I.O.

Dip sampling / quarterly for new info / half yearly reviews
## EXTERNAL AUDIT REPORTS

### 1. Data Protection & Freedom of Information Review (Nov '04)

<table>
<thead>
<tr>
<th>Ref</th>
<th>Recommendation</th>
<th>Priority</th>
<th>Due Date</th>
<th>Action On</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>10</td>
<td>A record management scheme will be developed at the earliest opportunity in order to comply with FoI requirements.</td>
<td>1</td>
<td>Dec 04 revised to June 06 revised to June 07</td>
<td>Alex Little</td>
<td>Sept 05 - a records management scheme is under discussion for all Council business and this is presently being debated at a strategic level before moving forward. Aug 06 - a seminar/workshop is being organised for the end of August to take records management forward. June 07 - A Record Management &quot;pilot scheme&quot; is presently being project managed by Social Work Services with a timescale of reporting back to Project Board by October 2007. A discussion paper on options regarding Data Protection/FOI/Records Management was submitted to the Corporate Services/Financial Services Synergy Group and has been circulated to the FOI Working Group for comment. The vision is that the principles and the processes used in the Social Work Services pilot scheme will form the basis of a framework for a roll out of Records Management across the Council. It has also been highlighted that appropriate resources and skills require to be made available for any roll out across the Council.</td>
</tr>
<tr>
<td>11</td>
<td>Consideration will be given to reviewing the storage, retention and archival arrangements for important paper documents.</td>
<td>2</td>
<td>Dec 04 revised to June 06 revised to June 07</td>
<td>Alistair Johnston Alex Little</td>
<td>Sept 05 - a records management scheme is under discussion for all Council business and this is presently being debated at a strategic level before moving forward. Aug 06 - the review will follow on from decisions on the record management scheme. June 07 - the Records Management pilot within Social Work Services will provide experience and the lessons learned will be used to inform further progress with RM and associated storage requirements.</td>
</tr>
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