



## Freedom of Information - update

This report follows a paper that came to the Panel earlier in the year, regarding the Freedom of Information (FOI) requests and the work of the Civil Disclosure Unit more generally.

The report provided an overview of the scale of work undertaken by the Civil Disclosure Unit (CDU), which continues to grow, the process by which that work is managed, the performance of the team and ways in which the PFCC and Chief Constable seek to improve that performance.

Whilst the action plan remains in place, of which an update is provided in this paper, the Panel will be aware that the new Data Protection reforms (including GDPR) came into force on 25 May 2018, and has generated new challenges for policing generally, but most keenly felt in the CDU who now need to navigate responding to the information requests under these new regulations.

Whilst the below will give the Panel an understanding of current performance of this team, the PFCC and Chief Constable requested an internal audit of this function, which is being undertaken in October. The PFCC is happy to share the feedback from that audit with the Panel once it is complete. Importantly, the legal team as a whole are also part of an ongoing collaboration with the Evolve region (North Yorkshire, Cleveland and Durham), with civil disclosure matters being part of that work. The Head of Legal for the Evolve region is reviewing the civil disclosure approach across all three forces, to ensure teams are able to work together to improve response times and quality, as well as share best practice and innovation. Again, the PFCC is happy to share this work with the Panel as it progresses.

## Performance

As explained to the Panel previously, the Information Commissioner's Office (ICO) has set a compliance target for FOI responses within 20 working days of 90%. This was updated from 85% in April 2017.

Compliance had been under 70% in 2015, and an action plan developed to improve performance. The Panel were updated in this regard at a recent meeting. This paid dividends with compliance rates improving to almost 80% for a period of time, but the compliance rate for FOI requests specifically has now dropped, partly following the GDPR changes, but largely because of an increase in the number of civil disclosure requests across the board. Other elements of civil disclosure e.g. Subject Access Requests, have seen less impact in terms of compliance rates from the GDPR changes because of a specific effort to keep those requests as complaint as possible, with FOIs being the worst affected element of civil disclosure work.

The number of FOIs continues to increase year on year:

- 2014/15 – 1046
- 2015/16 – 1264 (20% increase)

- 16/17 – 1280
- 17/18 – 1390 (32% increase from 2015)
- 18/19 – projecting more than 1400

The below tables detail the FOI performance for the two data controllers for this financial year to date.

FOI Stats FY2018/19 – Point in time 28/12/2018					
	Received	Total Closed/ Completed	Outstanding	Total Non-Compliant	Currently Non-Compliant & Not complete
<b>NYP</b>	1033	665	368	199	300
<b>PFCC</b>	53	32	21	7	20

FOI Stats FY2018/19 – Point in time 31/08/2018			
	*Average Response Time (work days)	**Compliance %	Info Rights Tribunal
<b>NYP</b>	27	48%	1
<b>PFCC</b>	34	49%	2

## Update on action plan

As the Panel knows, the CDU sits within Joint Corporate Legal Services, reporting to the Chief Executive Officer through the Director of Evolve Legal Services. The PFCC conducts scrutiny of their performance through her Chief Executive Officer and through reports to her Executive Board.

The action plan was developed a number of years ago, and had been largely complete when this issue was last discussed by the Panel. This has resulted in improved compliance rate and a more efficient and effective process for responding to civil disclosure requests, with a particular focus on FOIs. Following the completion of the action plan, the focus turned to improving consistency of response rather than developing a new action plan, and planning for changes being brought in via new data protection regulations.

Whilst there was good news and improving compliance in the short term, this was not maintained. The impact of GDPR was more extensive than had been expected, and this has resulted in the complexity of work increasing, therefore taking more time to complete, which has in turn reduced the compliance rate for FOI responses. This is explained below in more depth.

## The GDPR challenge

The new Data Protection reforms (including GDPR) came into force on 25 May 2018, and has generated new challenges for the CDU. Generally the data landscape is now much more complex,

and there are, rightly, many more assurances which the CDU need to feel confident they are disclosing the relevant information.

One example of the pressures data protection reforms has brought is the timescale for responding to Subject Access Requests (SAR), which has now reduced from 40 working days to one calendar month which. This applies additional pressure to the team, not least because there are effectively 20 less working days to complete the work, which is half the time which was previously available, but also because the regulations make gathering the relevant data more complex and time consuming. Taken together, the impact is substantial to say the least. One impact in any part of the CDU team is felt by the whole team, especially by what are known as 'decision makers' who now have many more decisions to make, and more complex ones.

A similar effect has been had on FOI requests. However, despite compliance rates going down, the implementation of the action plan has stood the team in good stead, and the compliance rate would inevitably have been lower should the improvements not been made when they were. For example, the number of FOIs which are with the business area for providing further information is considerably less, with the increased backlog now largely due to the number of FOIs which are currently with the decision makers in the CDU, as explained above. In the case of FOIs, the work to prepare a response is not necessarily taking longer, but the time taken to make a decision on what to formally disclose is taking longer, impacting on compliance rates. Fundamentally, because of the increased workload within the CDU, this means decision makers are simply not able to action as many FOIs per day as they were previously.

Not only is the workload up considerably, for example in the July –September 2018 quarter the number of Subject Access Requests received into the Civil Disclosure Unit increased by 138% compared to the July-September 2017 quarter, but there is generally more disclosure work required in policing across the board. This is reflective of the changing nature of police demand, which is now more focussed on vulnerability and mental health matters, which in turn makes any disclosure more complex. Whilst unpalatable, areas of work outside FOIs are having to be prioritised, and rightly so. For example, the number of Court Orders for disclosure in Child Care is up significantly, and given these document's active involvement in court proceedings, these requests have a very short deadline and are critical requests. Equally, Court Orders around children can be extremely complex and the resource required to ensure the right information is being disclosed is very significant indeed. Lastly, given the increased focus on data protection on the media over the last six months in particular, not only are there more FOI and SAR requests, these requests are much more detailed and complex than used to be the case. One part of the action plan was to be transparent by design e.g. publishing information in the public interest proactively rather than waiting to be asked, and whilst this negates the need for some FOIs, many FOIs and SARs are now focused on personal information of applicants, which requires extensive searching of police systems and databases, of which there are many. The increase in scale and complexity, with reduced timescales to complete requests, combined with an added workload from other parts of policing, has had a big impact. That impact has been most keenly felt in the compliance rate of FOIs.

Returning to the action plan, one of the successes was reducing the number of FOIs which are sat with the business area e.g. finance, with the backlog now as a result of an increased number of FOIs which are sat with the decision maker within CDU. This is because of the increased work demand within the CDU generally, meaning that the Legal Officers are simply not able to action as

many FOIs per day as they were previously. In addition, it has been noted that the complexity of the FOIs received into the CDU is now greater and more time is being taken to respond.

## Staffing

Staffing since January 2018 has been consistent within CDU, but recently one of the most experienced members of the team retired. Although this individual did not work specifically on FOIs, he did work on some of the other business areas listed above e.g. court disclosure. Given the impact that SARs and Court Ordered Disclosure have had on FOI compliance, the CDU is now reviewing the requirement to not only compensate for losing such an experienced member of the team but also trying to mitigate the increased volume of work across the whole of the CDU. The CDU have received permission to recruit for a part time Disclosure Assistant for the team and a part time Legal Officer.

## Disclosure log

Alongside reductions in FOI compliance, the disclosure log has also been updated less than it otherwise would have been. Whilst not a statutory requirement to maintain, the PFCC and Chief Constable admit that it assists with both NYP and the PFCC in being as transparent and open as possible. This is part of the staffing review being undertaken by CDU.

## Audit

In October 2018, an FOI Internal Audit took place in the CDU. 6 management actions were agreed as a result of the audit, 3 of low priority, 2 of medium priority and 1 of high priority and the final report was published on 26 October 2018. The high priority action is focused around the staffing issue within the CDU and the need for additional resource in order to increase the FOI compliance rate. This has been actioned as per the staffing update above. The remaining five actions focused around the need to update the FOI Disclosure Log, scrutiny of the FOIs at the Executive Board and the internal review process.

## CDU in the future

The PFCC and Chief Constable acknowledge that FOI compliance has reduced to unacceptable levels, but work is underway to resolve these issues as quickly as possible. Not only via increased staffing, but in the work being undertaken across the Evolve region to better understand, manage and respond to civil disclosure requests of all types. The work is undertaken in different ways in each corporate sole in each force area e.g. CDU in North Yorkshire response to both Chief Constable and PFCC civil disclosure requests, but in Cleveland FOI responses are managed by the OPFCC independently. There are also varying degrees of experience and innovation in the three force areas, and it is important to share knowledge and best practice where possible.

Evolve work will continue, and processes, albeit already subject to an improvement action plan, will be assessed to ensure they are as slick as possible and there are not other ways to improve compliance with all types of civil disclosure request. This work will also seek to understand why North Yorkshire has a higher rate of FOI and SAR applications compared to the other forces in the Evolve region.

The head of legal services in North Yorkshire is working closely with the above work, and a business case is being developed in response to changes in data protection regulations, and in the subsequent impact this has had in North Yorkshire. One proposal currently under consideration is for the CDU team to move from the legal department to the information management department. Should these proposals progress, the Commissioner is happy to share this with the Panel.

## Appendix 1: Action Plan

1. **New FOI Process** - Implement a new streamlined process largely based on the model recommended by CRU (outlined below) from the 1<sup>st</sup> October 2016. The implementation plan for this is also outlined below.
2. **IAB ownership of FOI** - Add FOI as a standing agenda item at IAB for verbal update by Police Lawyer (Civil Disclosure) – to include performance information and allow SIRO and the board to be briefed about any problems in information gathering and any high profile cases/organisational issues affecting the FOI/DPA process.
3. **FOI policy** – Policy to be amended so it essentially says that NYP will comply with the APP
4. **FOI procedure** – Draft a new supplementary procedure which sets out the new process (outlined below).
5. **FOI Champion** - Ensure an FOI champion is in place within NYP (suggest this is the SIRO) who can push this from the top down. If this is SIRO this will link to the IAB updates.
6. **FOI Officer** - The Police Lawyer (Civil Disclosure) to act as the NYP FOI Officer. If information owners or stakeholders have problems then these can be raised with the FOI Officer, who will have a direct route in to the FOI Champion (SIRO). Link to APP description of FOI officer.
7. **Empower FOI decision makers** - The Legal Officers should be empowered to make decisions without disproportionate scrutiny (decisions to be QA'd by the FOI officer where necessary & escalated to HOLS by exception) and should conduct the triage of all new requests.
8. **Transparency by design** - Implement “transparency by design” within NYP where the FOI team are consulted at the outset about potentially high profile issues so advice can be given about publication strategies – this will require education of COT, heads of department and project staff.
9. **FOI training** - implement FOI NCALT across the force as a mandatory training item for all existing and new staff and officers. Consideration for NCALTS to be done as team briefings.
10. **Internal comms** – to support the implementation of the new training, policy and process.
11. **FOI backlog** – recognise that process changes alone will not clear the backlog and that if the new process is to be successful it is best to start with as few outdated requests as possible. 20 days before “go live” all applicants for requests that are overdue by more than 2 weeks should be contacted and asked to confirm whether they still require the information, with it being made clear if they do not respond within 20 days their request will be treated as withdrawn.
12. **Review** – review compliance figures after 6 and 12 months to establish progress. The aim should be set for NYP to achieve 85% compliance within 1 year of the implementation of the new process.
13. **OPFCC** – personal details of force FOI applicants should not be shared with the OPFCC as this is a breach of data protection. The only exception to this is where the applicant has made the same request to both organisations.

### Suggested new process

1. **New Requests** - new requests received into the civil disclosure inbox and transferred into FOI triage sub-folder within the inbox, but not logged or acknowledged.

2. **Triage** - On a daily rota basis, a Legal Officer (Civil Disclosure) will triage all requests, considering the following:
  - Can a link be provided to a previous response and/or published material?
  - Can the request be diverted into the SAR process/s40?
  - Is there a preferred option for dealing with the request outside FOI?
  - Can we contact the applicant by telephone to clarify what they want and why – and suggest better approach to the request?
  - Is the request excess cost and can we respond immediately?
  - Any remaining requests can be logged and acknowledged & any CRU referrals completed.
3. **Engagement with Information Owners** - On a daily basis, for requests that are to remain in the FOI process, an email should be sent by the triager to all potential identified information owners, for them to confirm whether recorded information is held and how long it would take to retrieve it. A response will be requested within 3 days (flexible on case by case basis, e.g. if we know performance are busy etc), together with a warning about non-response. Daily informal discussions between FOI staff within civil disclosure to identify information owners and stakeholders. Requests where information cannot be retrieved within cost, or where information is not held, can be closed at this stage.
4. **Information Retrieval and Comms** - Where information is held and a disclosure is possible, the information and details of any harm will be requested from the information owner, with a timescale set for them to provide it and warnings about failure to provide. At this stage, requests will also be sent to identified information stakeholders (including comms), with them given the same timescale to provide any comments/context/harm.
5. **Decision Making & QA** – once all information is received, the Legal Officer (Civil Disclosure) will draft a response and pass appropriate requests to the Police Lawyer (Civil Disclosure) to QA (check legally compliant and harm considered), which should be done on an almost daily basis (in line with CLPD advice). Police Lawyer (Civil Disclosure) to seek supervision on complex requests where necessary from Force Solicitor/Deputy Force Solicitor.

### Inputs into FOI Team & Awareness of Responses

**Organisational awareness** - FOI team, or possibly Police Lawyer (Civil Disclosure) via SMT, will receive a weekly briefing from the Force Solicitor/Deputy Solicitor about organisational issues to be aware of. Potential publication schemes to be discussed and contact made with relevant parties. Complex cases to be discussed if needed.

**Performance and Information Management** – a Legal Officer (Civil Disclosure), Performance Researcher and Head of Information Management will meet on a weekly basis to discuss any relevant issues and requests that the FOI team require input on, or that the performance team have any issues with. Head of Information Management to provide guidance about potential information owners if not identified during the triage process.

**Awareness of responses** – A weekly list of all responses sent out will be sent to the staff office, Head of Legal Services and the comms team.