

# report



meeting      **COUNTY COUNCIL**

date            **16 December 2004**

agenda item number

## **REPORT OF THE MONITORING OFFICER**

### **Freedom of Information Act implementation**

#### **1. Purpose of Report**

- 1.1** To report progress towards implementation for the Freedom of Information Act 2000.
- 1.2** To report the work conducted by Consultants engaged to assist in this area.
- 1.3** To note an Action Plan for implementation
- 1.4** To approve Freedom of Information Act and Records Management Policies.

#### **2. Background**

- 2.1** The right to request official information under the Freedom of Information Act 2000 (FOI) known as the “right to know” comes into force on 1 January 2005. This will involve access to information which would previously have been classed as “internal” such as briefing notes, emails and minutes of informal meetings.
- 2.2** The Council has made extensive preparations to embrace this culture change in the provision of information by looking at its recording and management of information and by preparing a system for dealing efficiently and effectively with information requests within the twenty working day timescale.
- 2.3** Consultants from Instant Library were engaged earlier in the year to assist the council with its FOI planning. They made a number of

recommendations both in relation to “records management” and FOI preparation.

### **3. Consultants**

**3.1** The Consultants conducted some initial review of our systems and processes by interviewing 25 key officers. This enabled early recommendations to be formulated and considered some of which such as developing a process model for FOI requests have been turned into “early wins”.

**3.2** A more detailed best practice audit was then conducted involving interviews of 99 staff across the 6 departments using a model action plan issued by the Department for Constitutional Affairs.

### **4. Action Plan**

**4.1** The high priority recommendations arising from the Consultants findings which should be actioned by January 2005 were discussed at Corporate Management Board on 6 July 2004 and again on 21 September 2004. They have now been developed into the Action Plan attached at Appendix 1 which Cabinet formally endorsed at its meeting on 13 October 2004.

**4.2** Those actions that have been completed are coloured green in Appendix 1 and those actions that are underway are coloured amber. The majority of those actions that are underway are nearing completion within the given timescales.

### **5. Policy**

**5.1** FOI involves legal requirements and standards which will apply to a 100,000 public bodies including Government. It is important that the Council has its own individual approach to this area and to its management of recorded information. In doing so it is also important to have regard to nationally available guidance and good practice.

**5.2** At appendix 2 are two draft policies that have been developed with the Consultants which set out proposed approaches for Nottinghamshire County Council to Freedom of Information and the linked discipline of Records Management. Cabinet endorsed these policies at its meeting on 13 October 2004.

### **6. Unknowns**

**6.1** At the time of writing of this report there are several significant unknowns regarding FOI.

**6.1.1** It is not known what ability the Council will have to charge for individual requests. The Scottish fees regulations which have been published already may provide an indication. In Scotland FOI requests that require less than £100 worth of finding and collating (using a £15 hourly rate - in other words about six and a half hours) are free and for other requests between £100 worth of collating and £600 allow a fee of 10% of the cost to be charged.

**6.1.2** Section 36 allows a “qualified person” to decide which information should not be disclosed because to do so would prejudice the conduct of public affairs. It is not known who this individual will be for the County Council but is widely suspected to be the “Monitoring Officer”. This section could apply to the minutes of political group meetings for example.

## **7. Equal Opportunities Implications**

**7.1** Access to information will be available to a wide range of people.

## **8. Personnel Implications**

**8.1** The training of staff as FOI specialists in each department involves some Officers acquiring new responsibilities. Senior Officers are expected to take significant decisions in this area but they also are acquiring additional duties. It is suggested that this represents a sensible response to the unknown quantity of FOI requests the Council may receive. If the workload becomes too onerous then the Council may need to look to recruit specialist posts to deal with this legal requirement.

## **9. Strategic Property Implications**

**9.1** The use if appropriate of offsite storage could free up currently unusable office space.

## **10. RECOMMENDATIONS**

### **It is recommended:**

**10.1** That the County Council notes the progress made towards FOI implementation

**10.2** That County Council notes the Action Plan at appendix 1

**10.2.1** That the County Council approves the Freedom of Information and Records Management policies at appendix 2.

## **11. Options**

- 11.1** FOI is a legal imperative. However there are different ways of achieving compliance. The preparations outlined and the tasks to be actioned involve the engagement of consultants with their attendant expertise, Council wide consultation, developing processes based on a model action plan issued by the Department of Constitutional Affairs and reference to other best practice guidance. The Council could adopt a different approach lacking some or all of the above. Such an approach could be criticised for lacking real commitment to FOI and leave the Council at risk of failing to meet its legal obligations.

### **Legal Comments (JMF 7.12.04)**

Full Council has the authority to agree the recommendations . The legal position with regard to the legislation is as set out in the report

### **Head of Resources Comments(MB 7.12.04)**

The estimated costs associated with Freedom of Information Act implementation in 2004/05 can be met from the £85,000 reserve set up for this purpose, or absorbed within departmental budgets. As part of the 2005/06 budget process, a bid of £60,000 has been made for Freedom of Information Act implementation. Ongoing costs will have to be met from this provision. However, if the bid is unsuccessful, alternative sources of funding will have to be found.

## **Background Papers**

### **Electoral Divisions Affected – all**