

## TRANSFORMATION AND RESOURCES POLICY AND PERFORMANCE COMMITTEE

3 DECEMBER 2015

### 24 NOTICE OF MOTION - OPEN GOVERNMENT?

The Head of Legal and Member Services reported that at the meeting of the Council held on 12 October 2015 (minute 59 refers), the following Notice of Motion proposed by Councillor Phil Gilchrist and seconded by Councillor Chris Carubia was referred by the Mayor to this Committee for consideration –

#### ***OPEN GOVERNMENT?***

*This Council recognises that the Information Commissioner's Office, as the independent authority set up to uphold information rights in the public interest and to promote openness by public bodies, upheld 13 complaints against Wirral Council in the past year.*

*Of the 18 notices issued between 29 September 2014 and 24 August 2015, the majority (72%) of complaints were upheld.*

*Council believes that this is a matter for concern, requiring an explanation to its Members. Council requests that lessons should be learned and applied from these decisions and questions whether Officers have been excessively cautious or defensive in their interpretation of the legislation.*

*Council, therefore, requests that the legislation is approached with greater regard to the 'public interest test' so that the risk of further reputational damage to Wirral can be reduced.*

In accordance with Standing Order 7 (6), Councillor Gilchrist had been invited to attend the meeting in order for him to be given an opportunity to explain the Motion.

The Head of Legal and Member Services had also circulated a Briefing Note which gave details and a breakdown of the number of FoI requests and Information Commissioner's (ICO) Decision Notices.

The Briefing Note also referred to the FoI Scrutiny Review which was published in April 2014 which had made 8 recommendations, 6 of which had been implemented and two of which were in the process of being implemented. The ongoing work to achieve the two remaining recommendations was detailed in the Briefing Note.

Councillor Gilchrist sought clarification as to the status of the Briefing Note to which the Head of Legal and Member Services responded that it provided factual information and context to the Notice of Motion which Members would find relevant.

Councillor Gilchrist stated that the calculations circulated in the Briefing Note regarding Decision Notices issued between 29 September, 2014 and 24 August,

2015 (18 Notices containing 28 decisions of which 67.8% were upheld or partly upheld) and Decision Notices issued between 12 February, 2012 and 26 January, 2015 (43 Notices containing 69 decisions of which 68% were upheld or partly upheld) was not dissimilar to the figure of 72% referred to in his Motion. He referred to a couple of individual cases and the responses received from the ICO and also to comparisons with other Local Authorities and the number of Notices issued and upheld. He welcomed the fact that the Council was now better organised in terms of dealing with requests though questioned whether the Council was being excessively cautious or defensive in dealing with FoI requests.

The Head of Legal and Member Services stated that the Council had improved in its response rate to Fols and was now consistently achieving above target. He acknowledged that there were areas which needed to be improved upon. The Council did exercise a judgement around what it felt was disclosable and that sometimes the ICO agreed with the Council and sometimes it did not. Valid points had been made regarding lateness of responses though the Council did not ignore what the ICO requested of it, overall performance had come a long way since the previous issues of Fols had been raised. With six of the eight recommendations from the scrutiny review implemented and work in progress on the remaining two the position on Fols would further improve and he would be happy for a further Review to take place.

A Member commented that a Notice of Motion was a fairly blunt instrument for raising an issue such as this. He queried whether a list of names of those submitting FoI requests could be provided to the Committee either in open or closed session. Some Fols were also submitted from Members who could have asked for the information in another way.

The Head of Legal and Member Services, in response, stated that it was not lawful to disclose the names of requestors.

A Member commented that he was pleased that a lot of the recommendations from the review had been put in place but suggested that it would be worth looking into the fact that a number of complaints to the ICO had been upheld. With regard to Members sometimes requesting information through Fols he commented that maybe officers should be a bit more amenable with Members.

A Member suggested that with 3,975 Fols received and 1.1% of these resulting in complaints upheld this was a satisfactory response rate. The Motion gave the impression that the Council's approach to Fols was systemically dysfunctional when this was clearly not the case.

Responding to further comments the Head of Legal and Member Services stated that there were certain individuals who did regularly submit FoI requests but these prolific requestors did not make up the majority as FoI requests came in from a number of individuals and bodies / organisations. Requests were significant but probably not disproportionate to other similar sized Councils. There was a need to ensure that information was readily and easily available. Responses to those Fols which were relatively straightforward were provided well within the 35 day period.

The complexity of certain Fols was sometimes quite challenging when a variety of issues, sometimes sensitive matters, were raised.

It was then moved by Councillor Sykes, seconded by Councillor Muspratt, that –

“Given that the recommendations for improvements to the Fol process are still being implemented, which will hopefully improve the situation, but that this is an important issue to tackle, therefore the Committee asks for a reconvening of the Task and Finish Panel to look at whether further recommendations may be necessary and to review the progress of the current implementation in further detail.”

Councillor Gilchrist, in response to comments made stated that he had brought the matter to Council because he thought it was of sufficient general interest and he would welcome the reconvening of the Task and Finish Panel.

The Chair then moved an alternative motion, which was seconded by Councillor Muspratt, that –

“Committee acknowledges that the number of complaints upheld by the ICO total 1.19% of all Fol requests and that the Council is committed to working towards improving how it responds to Fols and recommends a further ‘task and finish’ review is undertaken.”

At this point Councillor Sykes withdrew his motion and it was then –

**Resolved (14:0) – Committee acknowledges that the number of complaints upheld by the ICO total 1.19% of all Fol requests and that the Council is committed to working towards improving how it responds to Fols and recommends a further ‘task and finish’ review is undertaken.**