

FOI: how did English councils perform in 2016?

Paul Gibbons, aka FOIMan, summarises the outcomes from his research into FOI requests made to local authorities. Paul is a Member of the Examination Board for the Practitioner Certificate in Freedom of Information (www.foiqualification.com)

In July 2018, the Cabinet Office published the final version of its revised code of practice issued under section 45 of the Freedom of Information Act 2000 ('FOIA'). One of the most significant changes wrought by the new code is a new requirement on public authorities to publish statistics in relation to the requests that they receive under FOIA. At first sight, this new obligation appears a minor addition to the many provisions of FOIA and its codes to which public authorities are subject. Yet it is ground-breaking in many ways.

Central government has published quarterly statistics on FOIA compliance since the first year (2005) that its departments were subject to the Act's requirements to answer requests from the public. From these it is possible to see the patterns in relation to the volume of requests that are received — whether they are rising, falling or have plateaued. We can also gain an understanding of the levels of compliance with the time limits in FOIA. In recent years, academics and journalists alike have commented on the rising proportion of requests that government departments refuse. Whilst they are often critical of the trends emerging from these statistics, the fact remains that there is something to be critical of. This is not the case elsewhere in the public sector.

Until the change to the section 45 code, there was no obligation on public authorities outside of central government to lay these trends bare. As a result, the data on how FOIA has affected universities, schools, or NHS trusts is patchy at best. Whilst inquiries such as the post-legislative scrutiny in 2012, and the more recent Independent Commission of 2015-16, have heard plenty of anecdotal evidence from witnesses from outside of central government about the rising numbers of requests, the hard numbers have been scarce.

It is particularly surprising that there are few reliable statistics in relation to the part of the public sector that is reputed to receive the most FOI requests of all: local government. Whilst there have been some disclosures of statistics relating to individual authorities as a result of FOIA requests, and some authorities pro-actively publish their figures, there has been no consistency in scope or format. This makes it difficult to ascertain the impact of FOIA across the sector. There have been academic studies

which have attempted to do this, but few recently.

Last year I carried out research using FOIA (see my previous article 'From the other side – a practitioner's perspective on making FOI requests' in Volume 14, Issue 6 of this journal, pages 4-7) part of which attempted to find out how many FOI requests individual councils received in 2016, and how many of these were answered within 20 working days. In this article I will summarise the outcomes. In future, we will hopefully have more reliable figures covering the whole of the local authority sector, but in the meantime, this study aims to cast a little more light onto trends in local authority compliance with FOIA.

Why are statistics important?

Statistics are also referred to as performance indicators. That is why they are important: they provide us with an indication of how public authorities are performing against the requirements of FOIA. Without such information being publicly available, it is very difficult to get any objective sense of the impact of FOIA on public sector resources, how compliant authorities are, and what effect the legislation is having on the openness of these bodies.

This was an issue highlighted by the Independent Commission on Freedom of Information in 2016. In its report, the Commission describes how its inquiry 'has at times been frustrated by the lack of reliable statistics on compliance with the Act across the public sector'. The then Information Commissioner, Christopher Graham, told the Commission that he would like to see wider publication of statistics, leading the Commission to 'recognise that the lack of statistics from across the wider public sector makes the IC's job of monitoring and enforcing compliance with the Act significantly harder'.

The current Information Commissioner, Elizabeth Denham, has also noted (in a speech on 'Trust, Transparency and Just-in-time FOI' in March 2018) that her own Office's public reporting on timeliness (in the quarterly FOI monitoring reports) 'has proved to be a powerful tool for improving timely disclosure of information'. She added that 'public authorities have used their poor grades to push successfully for more resources

where the demand has outstripped supply'. Transparency in relation to FOI performance helps the regulator to enforce and promote improved compliance, but can also help hard-pressed practitioners to justify increased support for FOIA within their authorities.

Notably, one of the Information Commissioner's criteria for monitoring public authorities is where their performance in responding to requests within 20 working days dips below 90%. Clearly, without routine publication of performance statistics, it will be difficult for the Information Commissioner's Office to identify those that are struggling in this way.

Previous studies

The Constitution Unit of University College London (UCL) conducted research into how FOIA was affecting local authorities over the course of the first six years of FOIA's existence. Each year following the year being studied, researchers sent a link to a web-based questionnaire to FOI officers at each of the local authorities in England, and asked them to complete it, assuring them that their authority would not be identified in published results. They received a substantive response from 112 practitioners to the first survey covering requests received in 2005, or 29% of those that could have responded. A similar response rate was achieved for the further five surveys carried out.

The reports on each year noted that the proportion of responses to the survey did not allow for scientifically reliable conclusions to be reached about request volumes, but could be used to 'give an idea of the numbers across local government'. The survey asked about a range of matters

from the kinds of people who were submitting requests, to the broad subject matter of those requests, to the cost of FOIA and allocation of resources. It asked about provision of training and procedures. It also enquired about the proportion of

- 34 county councils;
- 33 London boroughs (technically 32 + the City of London);
- 36 Metropolitan councils;
- 46 unitary councils; and
- 238 district councils.

Table I			
Category of council (number that provided data)	Total submitted	Average	Estimated total
County councils (6)	11580	1930	52110
London boroughs (7)	11289	1613	53229
Metropolitan councils (5)	7457	1491	53690
Unitary councils (13)	18015	1386	76217
District councils (30)	24193	806	162093
Total for all councils	72534	1189	417367

As indicated above, not every council responded to the survey in each year, but the researchers were able to take the figures reported by those that did participate to calculate total figures for each type of council and an average number of requests that each council of a particular type had received. For

requests that resulted in disclosure, and how many internal review requests were received.

The six reports on the research covering the period between 2005 and 2010 provided a useful insight into how FOIA was affecting local councils in England.

Importantly for the purposes of this article, the surveys asked local authorities how many requests they had received in each year, and how many were answered within twenty working days. These figures are commonly used by authorities as performance indicators in relation to FOIA, and as noted above, are used by the Information Commissioner as criteria for deciding which authorities to monitor.

The Constitution Unit broke down these figures by type of council. At the time of the 2005 research, there were 387 principal councils in England (i.e. excluding parish and town councils). These councils included:

example, in the 2005 survey, 17 county councils responded reporting a total of 4249 requests received. Researchers divided the figure of 4249 by 17 to provide an average figure per county council. They then multiplied the resulting figure of 249.9 by 34, the number of county councils in England, to estimate the total number of requests received by county councils in 2005. This resulted in an estimate that county councils received 8498 FOI requests in 2005. Through this method, the Unit estimated that councils in England had received 60,360 FOI requests in total during 2005. In 2010, they were estimated to have received 197,737 requests, a threefold rise across the six years.

It was noted by the researchers that district councils (the lowest tier of principal local authorities) received significantly fewer FOI requests than other types of council. In 2005, district councils received an average of

[\(Continued from page 5\)](#)

92 requests according to the study, compared to the 250-300 that other councils' responses had suggested. That pattern continued throughout the study. By 2010, district councils received on average 356 requests, but other councils were seeing two to three times this number. At the start, this saw district councils outperforming other councils in terms of responding within the 20 working day deadline, with well over 90% of requests being answered on time in 2005, whilst county councils were clearly struggling on around 75%. In 2010, a similar pattern was in evidence (although district councils' performance had dipped to 83% in 2009).

Methodology of the 2016 council research

In recent articles in this journal I have referred to my own research conducted in support of my book, 'The Freedom of Information Officer's Handbook'. As described previously, it consisted of an FOI request containing a dozen questions sent to a number of local authorities in England. Amongst the information requested was the number of requests received by each council in 2016, and the number of those requests answered within 20 working days.

The primary aim of this research was not to establish the volumes of FOI requests that councils were receiving. The original aim was to find out more about the handling of FOI requests, and data on performance was only requested in order to give context to the other answers that councils provided. For example, it might provide some indication as to whether certain practices were associated with better performance against deadlines.

However, in the absence of data on FOI in local government since the conclusion of UCL's research, there

may be some value in publishing what this latest research discovered about request volumes to local authorities more recently.

The Constitution Unit at UCL was funded to conduct its FOI research, and is in a position to appoint researchers who are trained in research methodology. As I am not in this position, the research I describe here is not going to be as reliable as that described above. One key limitation is that as an individual conducting this research in their own time, I have limited time to send requests, and perhaps more

Table 2: Proportion of requests answered in 20 working days in 2016

County councils:	84%
London boroughs:	81%
Metropolitan councils:	84%
Unitary councils:	87%
District councils:	94%
All councils:	86%

significantly, to collate and analyse the results. Therefore the research had to be designed to allow for these limitations. (I was also fortunate to have an unpaid research assistant in the form of my wife, Sally, who was kind enough to help with the input of the returned data.)

Rather than contacting all local authorities in England, I chose to send the request to a sample of councils in each of the categories of council in English local government. The aim was to send the request to a quarter of councils, which, whilst even less scientifically reliable than UCL's data, would still give a sense of FOI performance across local government. In the event, a smaller proportion of district councils was selected (about 15%), as there are significantly more of these councils than other types. The councils that would be sent the FOI

request within each category were selected at random, though an attempt was made to ensure that the councils chosen covered all parts of the country.

70 councils were contacted in total, with data on request volumes provided by 51 councils. It should be noted that local government restructuring since 2005 means that there are now fewer councils than there were at that time. The numbers of councils, and how many of them provided data, are as follows:

- 27 county councils (6 provided figures – 22%);
- 33 London boroughs (7 provided figures – 21%);
- 36 Metropolitan councils (5 provided figures – 14%);
- 55 unitary councils (13 provided figures – 24%); and
- 201 district councils (30 provided figures – 15%).

Aside from the in-built limitations to this research, there are other reasons why the data ought to be treated with caution. In my previous article on this research, I wrote about some of the issues with the responses received to my FOI request. In particular,

many authorities responded by providing figures for the financial year of 2016-17, rather than those for the calendar year of 2016. I have chosen to include this data, since although the periods covered are not completely coterminous, they still give an indication of request volumes over a similar, if not identical twelve-month period.

Request volumes and performance in 2016

Putting these reservations aside, the numbers revealed by the 2016 research are interesting. They appear to show that the average local council received 1189 requests in 2016, with county councils receiving nearly 2000 during the course of the year. In total, the latest research suggests that English local authori-

ties may have received 417,367 requests in 2016 (compared to the 45,415 requests reported across central government in the same year). Table 1 shows the total volumes reported by each category of council, the average number of requests per council, and the estimated total for the category based on that average in 2016.

The diagram on this page shows the proportion of requests that were answered within 20 working days. District councils are the best performers against the deadline, perhaps related to the lower number of requests that they are processing. Otherwise there is no noticeable relationship between volumes received and being able to respond on time, with for example, county councils performing better than London boroughs despite receiving more requests.

Trends between 2005 and 2016

Bearing in mind the caveats listed earlier in this article, it is still tempting to seek to compare the data for 2016 against the data collected by the UCL Constitution Unit between 2005 and 2010, and to try to see whether the patterns they identified back then have continued.

The most noticeable trend is, of course, that FOI request volumes have continued to rise. The average council in 2016 received ten times as many requests as it had in 2005.

The rise in FOI requests to English local authorities

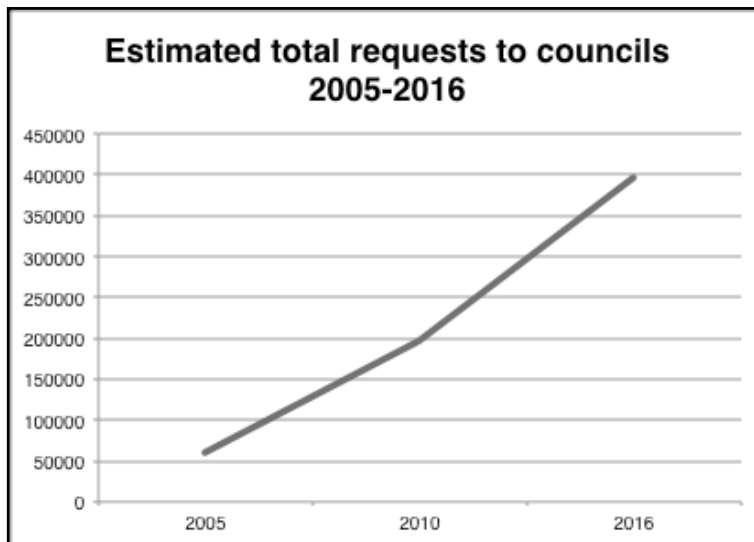
Looking at a breakdown of the data, district councils still receive fewer re-

quests than other councils, especially county councils, who received on average double the volume (1930) received by district councils (806) in 2016. District councils are also still high performers in responding to requests, with a success rate of 94% — the same as it was back in 2005.

Overall, performance has remained fairly static, with 86% of requests an-

authorities and other public authorities are to manage this ever widening flood of requests, they will need to put in place appropriate resources. That means not just additional members of staff to handle requests, but ensuring that those that are in place are well-informed, trained and professional. By maintaining and publishing performance indicators for their authority, practitioners can help make that case. It might even lead to healthy competition between authorities, with no council wanting to be seen to fall behind their peers.

With a new requirement to maintain and publish FOI statistics set out in the section 45 code of practice, presumably there will be a flood of data on FOI performance in the coming years. In the meantime, it is hoped that this research complements previous more academic studies in casting some light on the impact of FOIA on local authorities in England.



swered on time by councils in 2016, compared with 85% in 2005. Taking the vastly increased volumes of requests over that time into account, it is to practitioners' and their colleagues' credit that performance has not diminished, even if it can't be said to have improved.

Summing up

Whilst the studies outlined above don't give us a comprehensive picture of the impact of FOIA on local government, they do nonetheless provide a sense of what is happening. The experience of local government painted by these figures appears to echo that of central government, and indeed of other sectors, such as higher education, that have published data on FOIA. There has been a constant rise in the numbers of requests submitted to councils. Indeed, there is a suggestion in the 2016 numbers of a slight acceleration in this rise since the UCL research was completed.

Perhaps this illustrates the importance of statistics for practitioners. If local

Paul Gibbons
FOI Man
paul@foiman.com
