

Management of freedom of information by combined authorities

Research report commissioned by the Combined Authorities
Governance Network

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About CfPS

CfPS is a national centre of expertise on governance and scrutiny. We passionately believe that better governance and scrutiny leads to more effective decision-making, reduced risk and ultimately improved outcomes. Our work spans corporate decisions impacting on the public, to how tax payers' money is spent. We focus on behaviours and culture, as well as design and delivery.

Since its launch sixteen years ago, CfPS has supported hundreds of organisations and people. through leading research, policy and practical support. With a long-track record helping local councils, we also work with a wide range of others including health bodies, housing organisations, membership organisations, government agencies, regulators and private sector businesses. We deliver large improvement programmes on behalf of the Department for Communities and Local Government (through the Local Government Association) and the NHS.

About CAGN

The Combined Authorities Governance Network is an informal grouping of senior professionals working in governance and scrutiny services within combined authorities in England. The network meets four times a year and is chaired by CfPS, which benefits from funding from the Local Government Association to support this role. In the financial year 18/19 additional funding was made available to carry out research on a range of issues likely to be of interest on combined authority governance. This paper is one of the products of this research.

Overview

Like all public authorities, CAs are obliged to comply with the Freedom of Information Act (FOIA). An important element of the way that public authorities engage with the Act's obligations lies in developing a culture of effective management of information – and a culture of transparency – rather than a culture of “compliance” with the terms of the Act itself. The purpose of the research is to undertake a light touch review of publicly-visible information systems relating to FOI and to consider how CAs might engage with this agenda more productively.

The research engages with FOIA in order to consider some wider issues relating to information management in CAs; we have not however considered engagement with GDPR/DPA issues or with CAs' obligations under the Environmental Information Regulations (EIR).

Research questions

- What particular, unique circumstances apply to CA business which might raise challenges (or opportunities) in the way that they manage information?
- What can we learn from the ways that CAs present and make information available to the public (principally online)?
- What can we learn from the way that information is made available about FOI request arrangements by CAs?
- Are there any general lessons to be taken from the above (and from wider research) on how CAs manage information and use it transparently to inform decision-making?

This paper should not be interpreted as an audit or formal evaluation of CAs' individual or collective approach towards the management of FOI requests or their compliance with the FOIA. It aims to compare approaches to reflect on

How our findings were reached

We:

- reviewed publicly available information on information access and use within CAs;
- interviews with FOI officers and others in CAs with direct professional experience on these issues (governance and legal professionals);
- using the Information Commissioner's Office's (ICO) guidelines on the Act with a particular focus on the needs for public bodies to:
 1. Proactively publish information in keeping with a "presumption/assumption in favour of disclosure".
 2. Adopt the ICO model publication scheme
 3. Produce a "guide to information", or ensure that the authority's existing website meets this need.
 4. Specifically provide:
 - a. Contact details for making a request, including a named contact and phone number for any enquiries about the Act.
 - b. Details on charges incurred by requests.
 5. Ensure that members of the public can easily obtain the information.

More information on the ICO's guidelines can be found here: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

Content of ICO guidance

The Act is designed to make the work of public authorities more transparent by giving the general public greater access to information held by the authorities. It does this in two main ways:

1. By obliging authorities to release a large amount of information.
2. By allowing the public to request information from the authorities.

Publication

The freedom of information act mandates public authorities to publish a large amount of data and sets out the way that bodies should adopt publication schemes in order to do this¹ A few CAs follow this approach precisely, with many producing a combination of a publication scheme and a guide to information.

The ICO also states that public authorities "should produce a Guide to information which specifies the particular information it publishes, how it will be published and what charge, if any, is to be made"².

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/publication-scheme/>

² <https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

In practice, the “guide” may be the council’s website; the ICO state that “A public authority should... produce a guide to information, or ensure that their existing website meets this need”³.

In that the model publication scheme states what information is to be published, the guide to information is designed to signpost where and how much of this information is published.

The guide to information is described more vaguely than the model publication scheme itself. A useful principle to bear in mind when considering policy around freedom of information is offered in the ICO guidance – “making information available is only valuable to the public if they know they can access it, and what is available”⁴. Essentially there are two strands to the publication scheme, there is the proactive publishing of a large proportion of public sector information, and then there is presentation of said data such that it is useful and accessible to the public.

As we have noted above the challenge lies not in “complying” with the Act but in understanding how to publish information in order to be genuine use to local people. In order to do this, a public authority needs to understand who the public are. This particular challenge is one with which we will engage below.

Arrangements for FOI requests

These arrangements are identical to those applying to other public bodies – responses within 20 days, confirmation in the case of refusal whether information is in fact held and the reasons for withholding it, and arrangements for appeals.

Again, the focus here is about going beyond statutory obligations to ensure that the public body in question is “helpful” throughout the process (as set out in ICO guidance).

For example, if an authority does not have the requested information but they believe that another public body might do, where appropriate, the authority may transfer the request themselves to the other public body.

Unique circumstances for CAs

CAs’ circumstances

Combined authorities are strategic bodies whose work focuses on long term investment and high level planning. The development of options, business cases, priorities and pipelines for investment means that substantial amounts of information will be prepared which:

- May contain politically sensitive information;
- May contain commercially sensitive information (relating to bidders for funding, for example, or the detail of the ways in which those bids have been evaluated and assessed);
- May contain sensitive information about risk which might be organisationally harmful if released (for the CA or for its partners).

Of course, some of these issues will apply for other public bodies – and the issues above would not necessarily present cause for restricting access to information. But the partnership dimension in which CAs operate, the long term nature of their business and their unique

³ <https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

⁴ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>

political dynamics mean that CAs may face challenges in thinking about how they will proactively, and reactively, release information about the way that decisions are made.

CAs' stakeholders and information users

For most CAs their high level strategic responsibilities are complemented by operational activities in some areas – particularly on transport.

Although it is difficult to be pejorative across all areas there are likely to be a range of actors with an interest in CA business, and who might either be interested in accessing information which is publicly available or making FOI requests:

- In relation to operational transport. Here, requesters might be pressure or advocacy groups, who might wish to know details of operational management, performance statistics and information relating to the withdrawal or alteration of certain services. Depending on the management of bus contracts and franchising, potential bidders or service providers might use the Act to obtain information to formulate and develop bids;
- In relation to strategic matters (economic development, growth, strategic planning, strategic transport, other infrastructure). Here, requesters are less likely to be individual members of the public or advocacy groups. Potential bidders for funding or contracts might wish to use the Act to access information or to gain an advantage over competitors.

Proactive information management would suggest that much of the information set out above could be referred to in CAs' publication schemes. Certainly once a request is dealt with and information is released, ICO guidance suggests that this information should be made available publicly as a matter of course.

General approach to FOI

Websites

Most websites had the FOI section under “transparency” or “governance”. The North East CA had links for both freedom of information and publication scheme at the bottom of every page. This was perhaps the most prominent place a CA put these links.

Some of the most accessible websites had a kind of hub for freedom of information and publication schemes. The policies on these topics are highly interlinked and the need for a freedom of information request depends on the availability of information through a publication scheme. For ease of moving between these topics then, it can be helpful to display them clearly in the same section as a micro-site can do, as seen on the West Yorkshire CA website.

Cultural commitment

All respondents felt their CA followed good practice in relation to the FOI Act (2000) overall with systems in place to process FOI requests. Some reported that regular contact is maintained with FOI officers in the Authority's constituent authorities to ensure responses to similar enquiries are consistent.

Most respondents felt there was a positive information culture within their authority, with some reporting an increasing appreciation of the importance of information and issues such as good information gathering, management, retention, and transparency and a willingness to improve in this area. Some noted that staff skill in sourcing the necessary information to

respond to FOI requests was improving through increased awareness and exposure to FOI requests. Some respondents reported that regular training briefings on FOI were being undertaken and staff champions for FOI had been appointed in different departments, who liaised between their teams and the information governance team.

Some of the practical components of a cultural commitment to transparency include:

- Staff proactively publishing information on line and dealing with FOIs positively (which includes being able to identify information which should go online, and taking an approach that information produced by the authority should go online unless there is a compelling reason not to do so),
- Answering enquiries as fully as possible and on time;
- A positive approach to sharing information and knowledge within and outside the organisation (possibly subject to agreements with external organisations);
- Awareness at a senior level of key principles underpin positive information management;
- Awareness at all levels of the need for positive information handling in day to day work;
- A high quality information assurance framework following national standards;

There were no reports of any significant issues with partners on how FOIs are dealt with. Some reported that the close working relationship with constituent authorities meant often having to liaise closely with other authorities regarding the release of information regarding the regional area. And there was one respondent that noted increasingly, the Combined Authority is taking a co-ordinating role in responding to FOI requests which relate to information held both by the Combined Authority and the constituent councils.

The point was made by some interviewees that some CAs were structured to include the LEP and it was important to promote understanding of the CA obligations under the FOI Act amongst private sector organisations and businesses involved in working with the CA. and the need to ensure that businesses are aware that information they provide to the CA is subject to requests made under the FOI Act and that the CA will strike an appropriate balance between its commitment to transparency and obligations to preserve the integrity and commercial sensitivity of partners' information.

CA Publication Schemes

The main issue we came across in relation to ICO guidance was the lack of clarity between publication schemes and guides to information. Only three of the ten authorities explicitly adopted the ICO model publication scheme and in those cases, there was some difference between the three. For example, Tees valley put a link to the actual ICO document whereas Sheffield City Region and West Yorkshire had copied the text and put it into one of their own documents/webpages.

Sheffield City Region is worthy of particular mention as it included the ICO model publication scheme and a separate guide to information. This was a very simple document that used the 7 classes of information from the ICO publication scheme to group tables of information and their relevant links.

The ways that CAs deviated from the ICO publication scheme guidance also differed across authorities. Many used the publication scheme to structure documents that resembled a guide to information more than a publication scheme.

The West Midlands CA and West Yorkshire CA both opted not to give a separate publication scheme document but have the information on a webpage. From looking at some websites,

the lines between policy on freedom of information requests, publication schemes and sometimes topics like Mayor's questions could become mixed up if the FOI information is spread between different webpages and mixed with other topics. This may dilute the authority's ability to show their commitment to publishing certain documents without the need for requests particularly.

The way CAs presented their links to sources of information also varied. Some did not do this to any meaningful extent at all and in other cases, the reader was re-directed to a separate section containing large amounts of information that could make pinpointing the required information challenging.

Some CAs grouped the links for information by the seven classes of information offered by the ICO, which worked well as these are intuitive and easy topics to sort information into.

Part of the ICO guidance is an obligation to review publication schemes regularly. There were a few authorities where important links were not found or in one case, took you to another combined authority's website and there was one CA website where we were unable to find any information on FOI requests or publication schemes. On a practical note, a publication scheme review seems the perfect time to check all of the links to check that they still work and add any missing information.

Managing FOI requests

There was a varying degree of information about how to respond to freedom of information requests amongst Combined Authorities. All authorities apart from one explicitly mentioned the 20 day deadline. Some made reference to what information may be exempt from sharing. Some offered how the 20 day deadline is measured – not including the time to clarify exactly what the request is asking and time it takes to pay the fee. Most also mentioned that fees may apply to requests however much fewer mentioned how the fees were calculated.

It is hard to tell from a website how FOI requests are dealt with in practice. However, the clearest websites were those that made FOI requests about a wider commitment to transparency. The wider topics of publication schemes and guides to information made very effective introductions to FOI requests.

Speaking to FOI officers and others involved in CA governance, the following issues arose in dealing with requests within the 20 day deadline:

- delay in receiving information from a third party
- a complex question has been asked which requires input from more than one person/department/organisation
- officer workload/capacity
- a culture of staff questioning why they have to answer these questions

The fourth of these is obviously concerning if widespread, further to the comments we made above on cultural commitment.

One of those to whom we spoke felt that the work of the Combined Authority was often misunderstood and as a result the CA received Freedom of Information requests which were actually intended for the constituent councils. Anecdotally we know that this is the case for other organisations; emphasising the importance for CAs in particular to be proactive

Conclusions

- CAs share many of the same challenges as other authorities in understanding the information needs of those they serve, but face particular challenges around the nature of their work (especially the partnership dynamic of their work) and how that affects how information is collected, used and released;
- A push towards more proactivity – in identifying common themes around which requests are made, and also those where releases of information would provide more insight to a wider range of people about CA business – would both aid in public understanding and reduce the burden of needing to react to FOI requests. A first step might be a review of publication schemes and information on CA websites to provide more, and more useful, information as a matter of course;
- The challenges attached to managing FOI requests are similar to those experienced by other organisations, although the partnership dynamic (and requesters' uncertainty of CAs' responsibilities) offer some unique challenges.