

Scrutiny & Overview Committee Supplementary Agenda



8. **Freedom of Information (FOI) & Subject Access Requests (SARs)** (Pages 3 - 16)

The Committee is asked to review the report and consider whether it wishes to make any recommendations.

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Agenda Item 8

For general release

REPORT TO:	Scrutiny and Overview Committee 16 July 2019
SUBJECT:	Freedom of Information (FOI) and Subject Access Requests (SAR's)
LEAD OFFICER:	Sean Murphy, Director of Law & Governance
CABINET MEMBER:	Councillor Simon Hall, Cabinet Member for Finance & Resources
PERSON LEADING AT SCRUTINY COMMITTEE MEETING:	Emma Newby, Legal Business Manager

CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON:

[Corporate Plan for Croydon 2018-2022](#)

Responding to FOI and SAR's requests is a statutory requirement. Failure to comply can lead to complaints to, or sanctions imposed by, the ICO.

ORIGIN OF ITEM:	This report has been included on the agenda at the request of the Chair of the Overview and Scrutiny Committee.
BRIEF FOR THE COMMITTEE:	To set out the time- frames and process of requests under the Freedom of Information Act and Subject Access Requests and consider the frequency and level of such requests at Croydon Council. Identify trends and improvement processes in place.

1. EXECUTIVE SUMMARY

- 1.1 This report covers the legislation, process and procedure for Freedom of Information and Subject Access requests. The report seeks to outline the main exemptions and extensions that can be supplied. This report also covers some statistical data in relation to the number of requests and the services to which they most frequently relate. The report also sets out plans to improve process, procedures and statutory compliance figures where relevant.

2. FREEDOM OF INFORMATION (FOI)

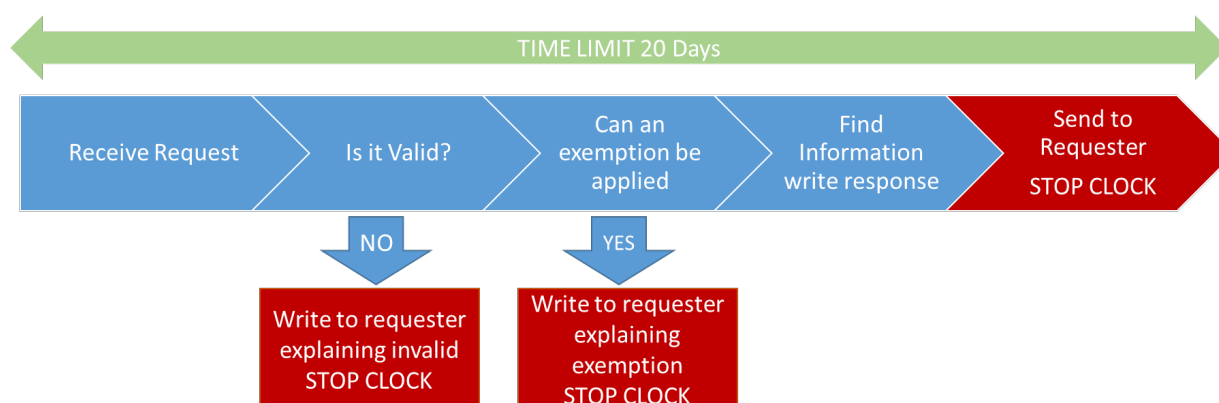
Freedom of Information Act 2000 – Legislation Overview

2.1 The Freedom of Information Act gives a general right of access to information held by a public authority.

- It is a right of access to information which must be formally recorded (manually or electronically)
- It includes information such as memoranda, plans, photographs, video, sound recording or data held on computer.
- The information **must** be held at the **time of request**
- It is held by the authority, otherwise than on behalf of another person or if it is held by another person on behalf of the authority

FOI Process

2.2 The diagram below sets out a brief overview of the FOI (Freedom of Information) process flow



Time Frame for response

2.3 Under the FOI regulations the response should be sent not later than 20 working days from date of receipt of request. There is no 'extension' process under the legislation (although there is a potential time extension for public interest requests).

2.4 The Information Team manage, co-ordinate, record and send FOI responses. The draft responses come from within the appropriate Service(s). There is a service contact in each area, and the Director has responsibility of delegation and completion of the response.

2.5 The Corporate information team is managed by the Legal Business Manager and consists of 8 X FTE Officers and 1 x Information Manager. This team moved to the Law & Governance Division in January 2019.

2.6 Approximately 4 FTE deal with the FOI and SAR's requests. Currently there is also some additional staffing deployed within this area to address the backlog.

Validity of requests

2.7 To be valid a request must be:

- in writing
- State the name of the applicant and an address for correspondence and
- Describe the information requested
- Any oral request must be confirmed in writing
- The FOIA contains no obligation to refer specifically to the Act when making a request
- Where information is not held the public can provide advice and assistance

2.8 Sometimes a request might come in as an FOI request, but is more properly dealt with under one of the following:

- Environmental Impact Regulation Request
- Subject Access Request
- Compliant
- Business as usual query

FOI's received by London Borough of Croydon

2.9 Croydon receives some of the highest volumes of FOI requests in London Boroughs. A total of 1751 requests were received – an average of 146 per month.

2.10 The following table below shows the number of FOI's received in the last 5 financial years.

2014/2015	1,659
2015/2016	1,643
2016/2017	1,644
2017/2018	1,882
2018/2019	1,751

2.11 2018/19 Financial year breakdown

Top 5 Divisions for FOI requests (57% approx. of overall requests)

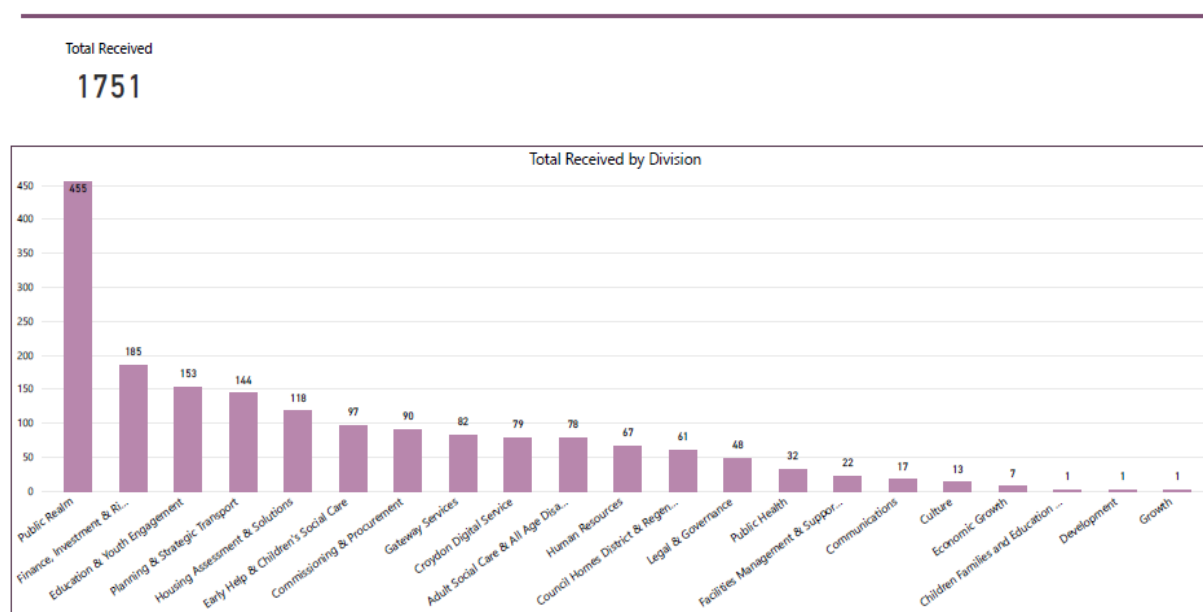
- Public Realm – 455 (22%)
- Finance Investment and Risk – 185 (11%)
- Education and Youth Engagement - 153 (9%)
- Planning and Strategic Transport - 144 (8%)
- Housing assessment & Solutions - 118 (7%)

Top 5 Service areas for FOI requests (32.5% approx. of overall requests)

- Collections and Benefits – 128 (7.5%)
- Development Management – 121 (7%)
- Public Protection – 115 (7%)
- Highway Services – 98 (6%)
- Environmental Leisure 89 (5%)

2.12 Please see details of the FOI requests for 2018/19 below, broken down by service

FOI Requests: 2018-19



Themes

2.13 The current data capture systems used is CRM which does not allow for categorisation of data by theme and therefore it is not possible to supply data around this. However common frequent themes include the following when looking at requests in 2018/19:

Education

- No of SEN (Special Education Needs) Placements
- Cost of SEN appeals
- National offer day how many got their first preference (Primary and secondary)
- How many children are home educated

Gateway

- Public Health Funerals
- Rough sleepers
- Food banks
- How much is spent on interpretation services
- Temporary Accommodation statistics

Health & Wellbeing

- Spend on rehabilitation services
- Smoking cessation commissioning
- Sexual health services
- Budget for health services
- How many assisted living & care homes are there in your area?
- Care home placements
- How many Residential & Nursing homes are run directly by Croydon Council

Place

- Fixed penalties i.e. fly tipping, wrong waste in wheelie bins
- Recycling statistics
- Spend on repairing roads/pot holes
- Missed bin collections
- Tree queries i.e. tree preservation orders, how many felled, how many planted
- Christmas lighting costs (celebrities, turning them on and cost of decorations)
- Noise pollution complaints
- Parking Penalty Charge Notices
- Parks in the borough
- Cladding
- Library services
- Council assists (corporate buildings)
- Residential blocks over 18 metres
- Fire safety tests
- Allotment sites

Resources

- Legal spend
- MIPIM
- HMO lists
- IT software procurement
- Agency workers
- Councillor funds, councillor donations
- Business Rates, Unclaimed business rate credits
- Software licensing
- Election results (when applicable)
- Investment performance
- Pension performance
- BAME staff in senior roles

2.14 Most requests are received directly from a requestor. They may also be received via 'What Do They Know' website that allows submission of requests via a webform and the site also publishes the responses. Please see numbers of requests received via 'What do they know' over the last 5 financial years below:

	WDTK	
Year	Volume	Proportion
2014/2015	140	8%
2015/2016	175	10%
2016/2017	222	13%
2017/2018	269	14%
2018/2019	235	13%

Out of scope requests

- 2.15 Section 12 of FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit.
- 2.16 The 'appropriate limit' for a local authority is where a request will cost over £450 to process. Time of officers is calculated at £25 per hour. This cannot include time spent considering exemptions. This can include some additional costs. The ICO (Information Commissioner's Office) provides some guidance of what this may or may not include.

Exemptions

- 2.17 A request can be refused where any exemption is engaged. A refusal notice must be issued and must provide the requestor reasons for the refusal
- 2.18 There are 23 exemptions under the FOIA.
- 2.19 There are 8 absolute exemptions and 15 qualified exemptions

Absolute Exemptions

- 2.20 An absolute exemption is where a public authority is not obliged to communicate the information and will also be excused from the obligation to comply with the duty to confirm or deny

Qualified Exemptions

- 2.21 All exemptions that are not absolute are qualified. They are "prejudice –based" exemptions and will only be effective if the disclosure would or would be likely to, prejudice particular specified interests
- 2.22 The test of prejudice involves several steps:
- Identify the applicable interests within the relevant exemption
 - Identify the nature of the prejudice (it must be real)
 - Decide on the likelihood of the prejudice occurring
 - The prejudice test relates to circumstances at the time when the authority received the request or within the statutory time for compliance.
 - Once the exemption has been engaged on the basis of the prejudice test, it is then necessary to consider the balance of public interest.

- A public authority can extend the 20 days time limit to consider a public interest test

Qualified Exemptions

- Section 26 - Defence
- Section 27(1) - International relations
- Section 28 – Relations within the UK
- Section 29 - The economy
- Section 31 - Law enforcement
- Section 33 – Audit functions
- Section 36 – Public affairs
- Section 38 – Health and safety
- Section 43(2) – Commercial interests

Most common Exemptions

Section 21 Exemption - Information reasonably accessible to the applicant

2.23 The purpose of the section 21 exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route.

Section 22 Exemption – Information intended for future publication

2.24 To apply, the public authority must, at the time of the request, hold the information and intend that it or 'any other person' will publish it in future. This means it must have a settled expectation that the information will be published at some future date.

Section 30 – Investigations and proceedings conducted by public authorities

2.25 Section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings.

Section 31 - Law Enforcement

2.26 Section 31 provides a prejudice based exemption which protects a variety of law enforcement interests.

Section 36 - Prejudice to the effective conduct of public affairs

2.27 Section 36 provides an exemption if disclosure would or would be likely to inhibit the free and frank provision of advice or exchange of views. Public authorities should keep a record of the qualified person's opinion and the submission made to obtain that opinion. In the event of a complaint, the ICO will expect to see a record of the qualified person's opinion. The qualified person for Croydon Council is the monitoring officer.

Section 40 – Personal data

2.28 This provides an exemption to disclosure of information which constitute personal data as defined under the GDPR and Data Protection Act 2018.

Section 41 – Information provided in confidence

2.29 When determining if an action for breach of confidence would be likely to succeed, the authority will need to consider whether there would be a public interest defence to the disclosure

Section 43 – Commercial Interests

2.30 Section 43(1) provides an exemption under FOIA for information which is a trade secret

Section 44 – Prohibitions on disclosure

2.31 Section 44(1)(a) exempts information where its disclosure is prohibited by other legislation.

Vexatious Requests

2.32 Under section 14(1) of the Act, public authorities do not have to comply with vexatious requests. There is no public interest test.

2.33 Whilst public authorities should think carefully before refusing a request as vexatious they should not regard section 14(1) as something which is only to be applied in the most extreme of circumstances.

2.34 Section 14(1) can only be applied to the request itself and not the individual who submitted it. (so frequent requestors will only be restricted on that particular request/ area of request)

2.35 Sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious.

2.36 A public authority must still issue a refusal notice unless it has already given the same individual a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one.

Improvements in FOI's:

2.37 Performance of on-time responses for the last 5 financial years is set out below:

Financial Year	Number out of time responses	Percentage of on time responses
2014/2015	465	72%
2015/2016	246	85%
2016/2017	312	81%
2017/2018	583	69%
2018/2019	560	68%

2.38 This is measured by the number of responses received within that financial year that leave the organisation on time.

2.39 The ICO require 90% or above response to be sent on-time.

- 2.40 There is currently a backlog of out of date responses. This stood at 262 on the 11th July 2019 and having been reduced by 75 in the last 2 months. The oldest dates back to June 2017.
- 2.41 Given the performance level in this area and the historic backlog, there is an improvement plan in place.
- 2.42 Governance generally and of the improvement plan is via bi-weekly task and finish group (Chaired by the Executive Director of Resources) in the first instance where the Head of Service reports on the plan and gathers improvement suggestions. The Head of Service also reports to ELT (Executive Leadership Team) to update on the improvement journey and get authority for key changes in process and responsibility. The Head of Service reports at quarterly DLT (Directorate Leadership Teams) to raise awareness and engagement with key changes.
- 2.43 Corporate Governance is maintained with the Head of Service reporting to IMMSG (Information Management Steering Group) by request and Governance Board quarterly. The DPO (Data Protection Officer) provides an advisory role and ensures in an independent manner that the organisation applies the laws protecting individual's personal data.

Improvement process

- 2.44 As part of the improvement process there has been a through audit of the process and immediate and long term changes identified. A new case management system has been procured following research into best practice and models. This will assist progress in this area due to efficiency savings and transparency in information. The key improvements will be:
- Streamlined accessible data for those responsible for FOI's within the Council to improve accountability.
 - Transparency and ease for requestors via web- forms and publication of FOI's to improve digital openness and access to data
 - Administrative and process streamlining to assist the Information team with capacity
- 2.45 As part of the review process it was identified that as well as system improvements, there needs to be cultural change to drive compliance performance. Recommendations have been taken to ELT, and cultural change is to be embedded into the messages around change to be communicated. Methods and themes have been identified and there is an implementation programme around this.
- 2.46 From July Croydon Council will be reporting to the ICO monthly on progress on the FOI performance and backlog, as required of all London Borough's.

FOI SWOT analysis

<p>Strengths</p> <p>Streamlined processes and procedures in place</p> <p>ELT and CLT support in the improvement journey</p> <p>DPO oversight</p>	<p>Weaknesses</p> <p>Failure of Services to respond to requests on time</p> <p>Lack of knowledge across Services</p>
<p>Opportunities</p> <p>New case management system</p> <p>New ways of working</p> <p>Digital opportunities to drive down demand</p> <p>Increased training and expertise across services</p>	<p>Threats</p> <p>Failure to comply with statutory compliance resulting in ICO actions</p> <p>Increases in demand which would affect performance with current capacity.</p>

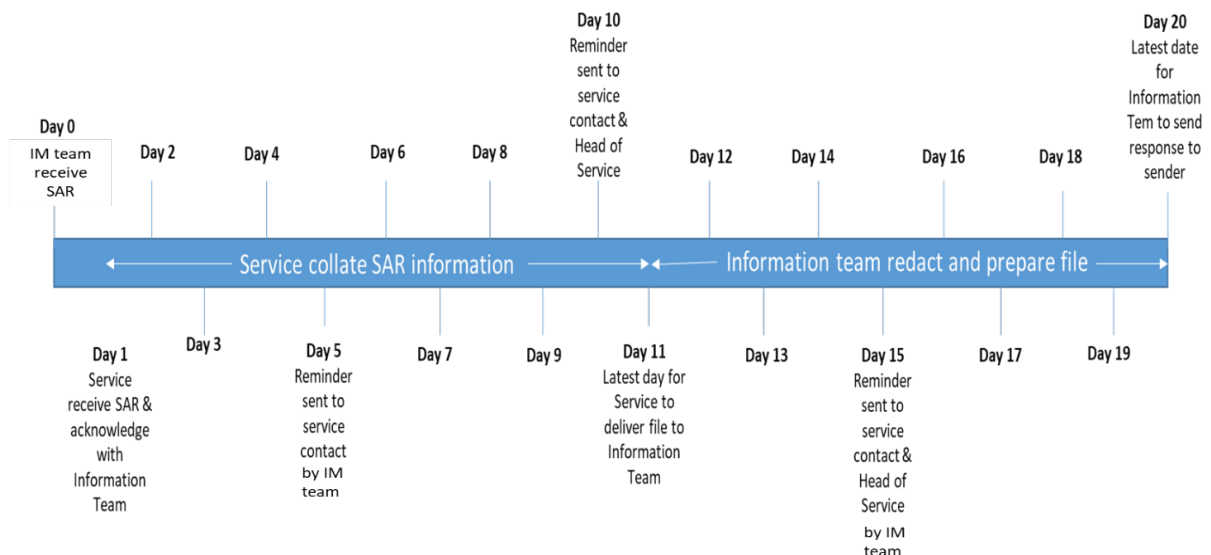
3. SUBJECT ACCESS REQUESTS

Data Protection Act (2018) (DPA 2018)– Subject Access Requests (SAR) Legislation Overview

- 3.1 A Subject Access Request is a right of access (under the DPA 2018) which allows residents to be aware of and verify the lawfulness of the processing of their personal data.
- 3.2 Residents may also want to ask about any logic involved in any automated decisions made about them or get confirmation that their data is being processed.

SAR process

- 3.3 The diagram below sets out a brief overview of the FOI process flow



3.4 The SAR process is governed by several variables:

- How many services need to provide information;
- The timeframe from which records are being requested;
- Is the request for the requester or another party?

3.5 The Information Team receives the SAR and allocates to the appropriate service(s). The services then collate the required information and return it to the Information Team.

3.6 The Information Team then reads the file as submitted to them, and redacts any information which is third-party data, is outside the scope of the request, etc.

3.7 The request response is then compiled and sent securely to the requester.

3.8 The team is resourced as set out in section 2.2 above.

Time Frame

3.9 A requester needs to provide proof of identity to make a valid request. In the instance of a request on behalf of another – (e.g.) a relative, a solicitor, etc – demonstration of entitlement and/or consent would also be required (proof of probate, proof of parental responsibility, etc).

3.10 Under the DPA (2018), the authority is required to provide a response within a calendar month of the date of request or the receipt of ID – whichever is the later.

3.11 Response time can be extended by a further two months in the case of particularly complex and/or extremely large requests.

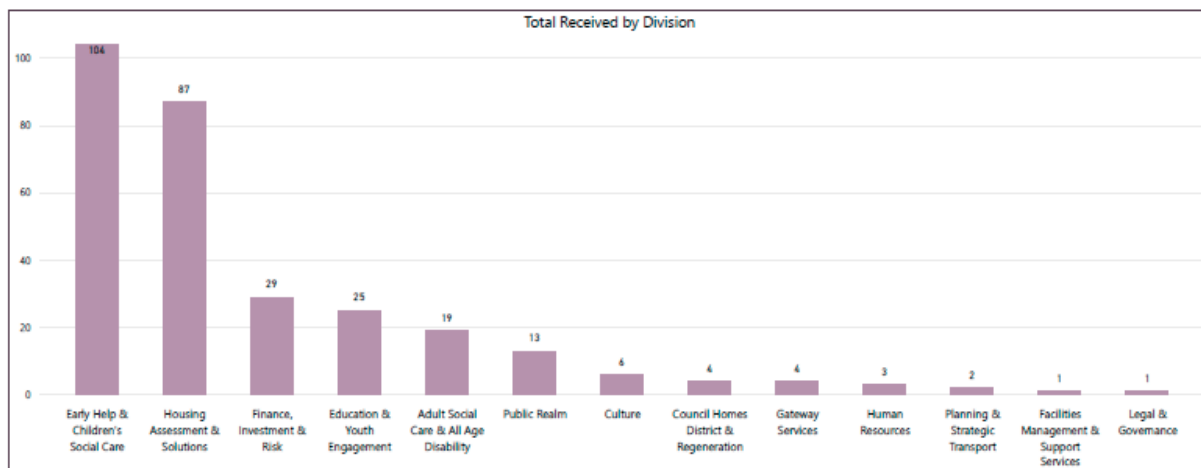
Croydon SAR's

3.12 Please see table below setting out the number of SAR requests within the last 5 years.

Year	Number of SAR's
2014/15	236
2015/16	244
2016/17	257
2017/18	212
2018/19	298

3.13 The slide below shows a breakdown of SAR's by service for 2018/19

Total Received
298



Exemptions

3.14 There is no 'appropriate limit' after which requests can be refused.

3.15 Data protection legislation (DPA 2018) recognises that there will be some circumstances in which the authority would have a legitimate reason to not comply with a SAR. Certain restrictions and exemptions exist for such circumstances.

3.16 Such restrictions/exemptions include:

- Publicly available information
- Crime and taxation
- Confidential references
- Management information
- Regulatory activity
- Legal proceedings

Improvements to SAR

3.17 Please see data below regarding SAR's performance over the last 5 years.

Year	On-time response percentage
2014/15	83%
2015/16	88%
2016/17	70%
2017/18	54%
2018/19	72%

3.19 This is measured by the number of responses received within that financial year that leave the organisation on time.

3.20 The ICO (Information Complaints Office) require 90% or above response to be sent on-time.

3.21 There is currently a backlog of out of date responses. which is currently at 14, reduced from 31 since January 2019. The oldest SAR was due on 3/01/18. Targeted work is ongoing to reduce this to zero, and we report regularly to the ICO on the progress on this.

3.22 Given the historic performance levels and backlog the Head of Service reports bi-weekly task and finish group (Chaired by the Executive Director of Resources) in the first instance where the Head of Service reports on the plan and gathers improvement suggestions. The Head of Service also reports to ELT (Executive Leadership Team) to update on the improvement journey and get authority for key changes in process and responsibility. The Head of Service reports at quarterly DLT (Directorate Leadership Teams) to raise awareness and engagement with key changes.

3.23 Corporate Governance is maintained with the Head of Service reporting to IMSG (Information Management Steering Group) by request and Governance Board quarterly. The DPO (Data Protection Officer) provides an advisory role and ensures in an independent manner that the organisation applies the laws protecting individual's personal data.

Improvement Process

3.24 As part of the improvement process there has been a through audit of the process and immediate and long term changes identified.

3.25 The key improvements identified and implemented are:

- Changes in the allocation process.
- Early identification of cases where exemptions can apply.
- Cultural change to drive compliance performance.

3.26 As a result of the improvements made there has been 100% on time responses consistently since December 2018.

3.27 From July Croydon Council will be reporting to the ICO monthly on progress on the FOI performance and backlog, as required of most London Borough's.

SWOT analysis

Strengths Improved Processes and procedures 100% on- time response since December 2018	Weaknesses Potential for services to supply incomplete of late data
Opportunities New case Management system will raise awareness around SAR's Training will increase expertise within Services	Threats GDPR and removal of fees has increased SAR requests. This could affect performance due to capacity.

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