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| Committees: Digital Services Sub (Finance) Committee | Dated: 03.09.2021 |
| Subject: Freedom of Information Act / Environmental Information Regulations - 2020 Annual Report | Public |
| Report of: Michael Cogher, Comptroller & City Solicitor | For Information |
| Report author: Sophie Jordan Compliance Manager – DP & FOI | |

Summary

The performance indicators show that the usual high standard of compliance with the legislation was maintained in 2020 both at a corporate and departmental level, despite the impact of Covid-19 on working practices.

Please note, in 2020 the Community Safety Team moved from the Town Clerk's Department to the Department of Communities and Children's Services. As this move took place towards the end of 2020, we have continued to include all statistics for the Community Safety Team within the totals provided for the Town Clerks Department in order to have a complete year. Going forwards from January 2021, any statistics for the Community Safety Team will be reported as part of the overarching statistics for the Department of Communities and Children's Services.

Recommendation(s)

Members are requested to note the report.

Main report

Introduction

1. This is the seventh annual report in respect of corporate and departmental compliance with the Freedom of Information Act (2000) (FOIA) and the Environmental Information Regulations (2004) (EIR).

Background

2. The FOIA applies to the City of London (CoL) as a Local Authority, Police Authority and Port Health Authority. In addition, the FOIA also applies to the Guildhall School of Music and Drama (GSMD) and has done so since 2006 when it began to receive funding from the Higher Education Funding Council for England. Thereby making GSMD unique in the CoL in being the only area where funding by City's Cash is subject to the FOIA.
3. It is noted that the following three bodies, while associated with the CoL are legally separate for the purpose of compliance with the FOIA: City of London

Police; The Aldgate School and the Museum of London.

4. The EIRs are a similar regime to the FOIA, but they relate to environmental information, which is considered as exempt under the FOIA and requests for this information are managed separately under the EIR legislation. In accordance with, and subject to further legal advice the EIRs are taken to apply to the same areas to which the FOIA applies, and in addition to our City's Cash funded Markets and Open Spaces.
5. The definition of a request under the FOIA is broad potentially covering every request for information that is received regarding our within-scope functions. However, a pragmatic approach is permitted, and the legislation is not intended to replace existing business as usual processes that are routinely providing information. As such the FOIA will only need to be engaged when information is being requested, which is not already routinely disclosed, or when a request requires a search for information to an unusual extent.
6. Co-ordination of the compliance work is undertaken by the Compliance Team – Data Protection and Freedom of Information, who are based in the Comptroller and City Solicitor's Department.
7. The Compliance Team report to the Comptroller and City Solicitor who is also the CoL's Senior Information Risk Officer (SIRO) and the Data Protection Officer (DPO).
8. To assist with departmental responsibility and corporate co-ordination an Access to Information Network (AIN) was established in 2003 with one or more representatives (AIN Reps) established in every department. This followed a report by the Town Clerk and Comptroller and City Solicitor¹ in November 2002 and was subsequently reiterated in a further report by the Town Clerk to the Committee in July 2004². The duties of an AIN were formalised in a memo in 2003³ and consist, in summary of assisting in ensuring all aspects of compliance within their areas with the FOI, EIR, Data Protection Act 2018 (DPA) and Re-use of Public Sector information (RePSI) legislations.

Impact of requests

9. In the 2020 annual year, the CoL received a combined total of 1,231 FOI and EIR requests, out of a total of 1,308 for all requests⁴ received. Please see **appendix one** for a further breakdown.

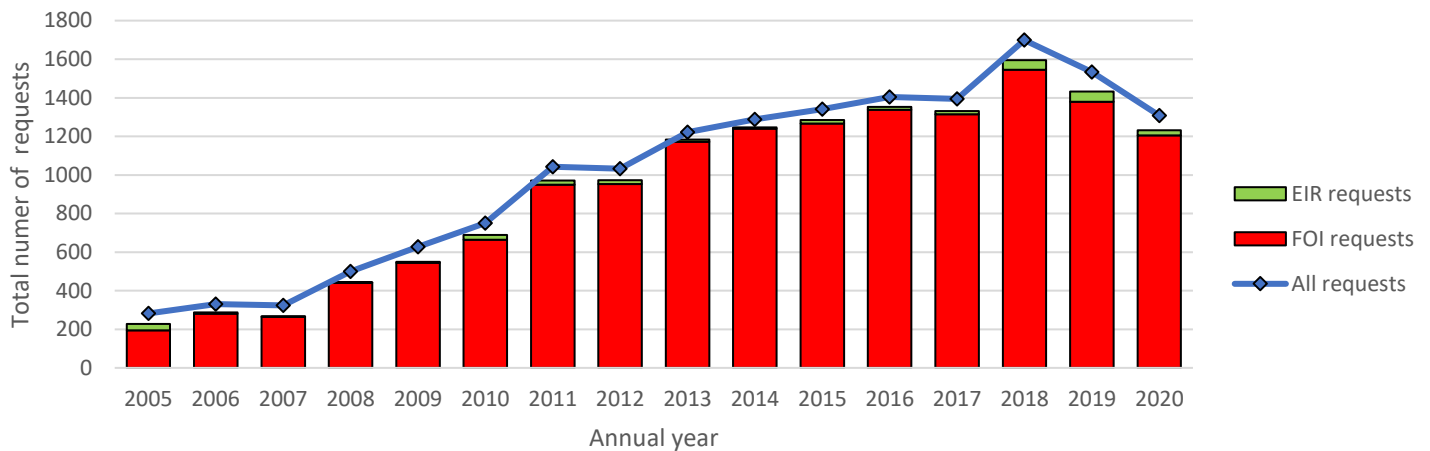
¹ November 2002 Policy and Resource Committee Report.

² July 2004 -Policy and Resource Committee

³ Memo for AIN role 2003

⁴ All requests received refers to a combined total of Data Protection, Re-Use of Public Sector Information requests as well as FOI EIR and Out of Scope requests.

An annual comparison for the amount of FOI and EIR requests to the total number of all request recived



10. It is noted that from 2005 to 2020, 2.11% of the total of FOI/EIRs requests were managed under the EIR legislation.

11. For the 2020 annual year, the CoL experienced a decrease of 14.12% in the amount of FOI and EIR requests that were received, and a decrease of 14.67% in the total number of all requests received, when compared to the 2019 annual year. The latter represents a decrease of 225 requests during this year. It is considered that the decrease of requests received during the 2020 period, was a by-product of the Covid-19 pandemic, as fewer requests were received in the months following the first national lockdown, (March 2020).

12. On average, the CoL received 109 requests (a combined total of FOI, EIR, Data Protection, RePSI and Out of Scope) per month in 2020.

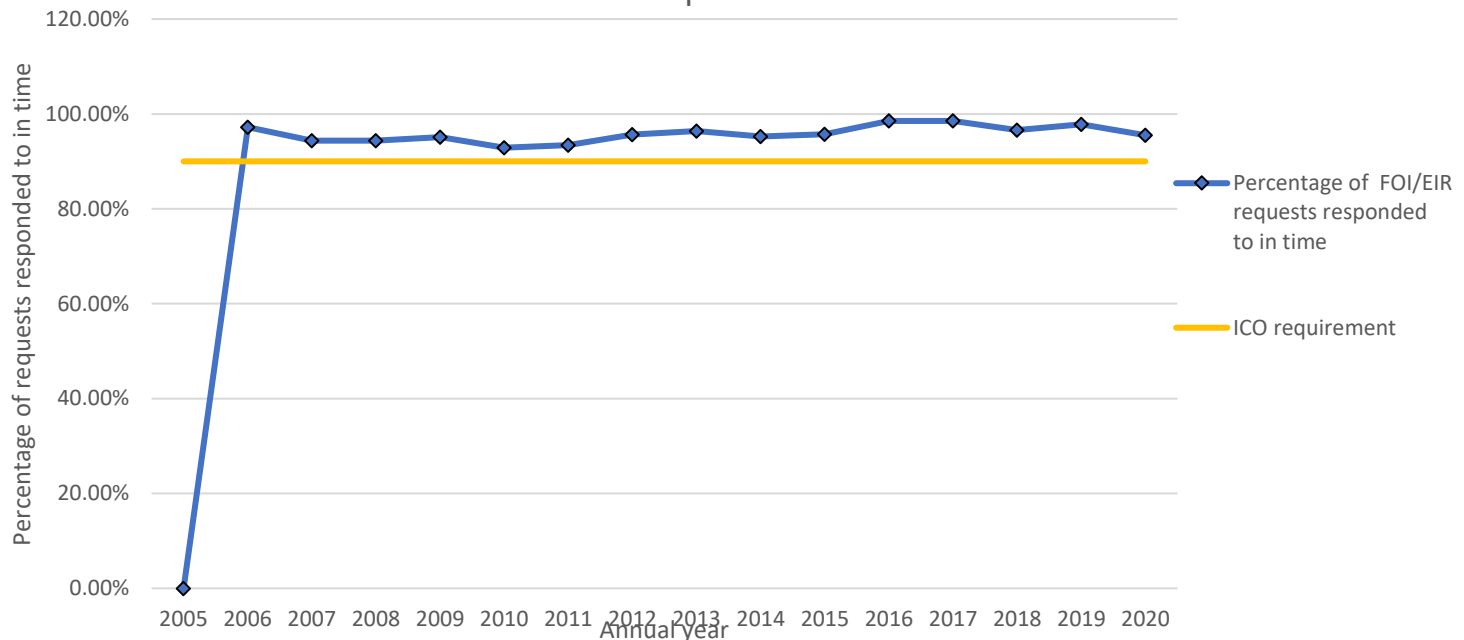
Performance

13. The regulatory body, the Information Commissioner's Office (ICO) considers that the key performance indicator is the compliance with the statutory 20 Working days deadline for both FOI and EIR requests. It is noted that the ICO would intervene to monitor an authority where it was aware that its compliance rate had fallen below 90%.

14. The CoL's record on meeting the deadline has been consistently high and in the 2020 annual year, it responded to 95.53% of requests within the statutory

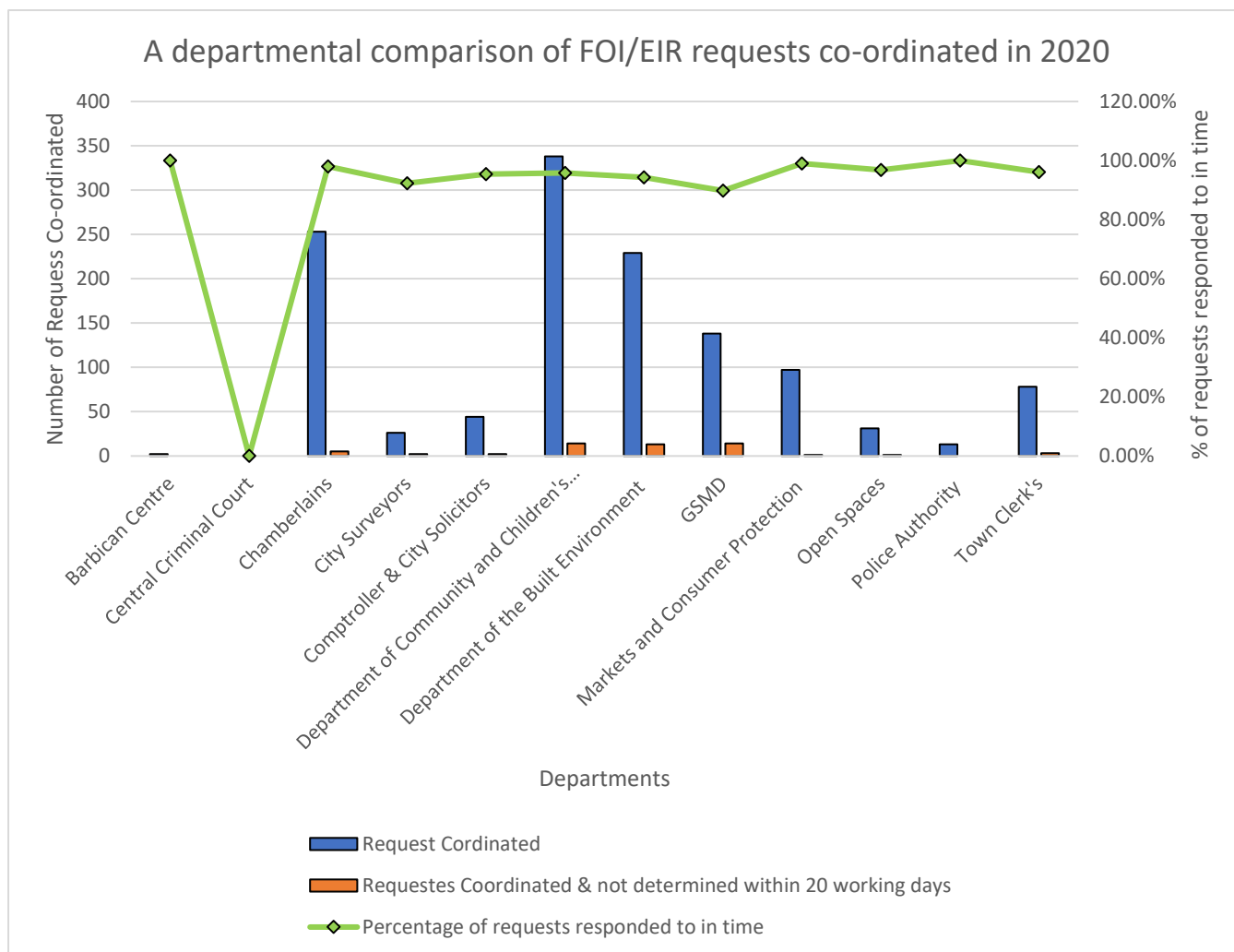
compliance deadline. The following graph demonstrates the CoL's position on meeting the statutory deadline.

An annual comparison of the the timeliness for responding to FOI and EIR requests.



*Please note that no data is held for 2005.

15. It is noted that the total of 95.53% of requests responded to in time, is a slight decline from the 97.90% reported in the 2019 annual year. However, we consider that this decrease was again a by-product of the Covid-19 Pandemic, which had an impact on both the ability for us to gain access to some of the requested information and the increased workloads of staff members while they undertook additional duties in relation to the pandemic.
16. The table at **appendix 2**, provides further information in respect of the average number of working days taken to respond to the request, the average hours to manage each request and the number of full-time equivalent (FTE) staff involved.
17. The robust results reflect the continuing build-up of expertise within departments, under central guidance and supervision. It is a strong indication that the embedding expertise within departments through the AIN, continues to work well and is a key strength of our compliance process.
18. The following graph demonstrates some of the key indicators of departmental performance in 2020. A further breakdown can be seen at **appendix 3**.



19. The Col publishes annually the number of requests it receives and a considerable number of related performance indicators. It also publishes (redacted of any personal data) the log which is used by the Compliance Team to monitor compliance.

20. It is difficult to find compliance information for other authorities. However, where these have been available from time to time, it has been clear that the CoL has been in the top band for compliance. At the time of writing we have been unable to compare our compliance with other London Authorities.

Complaints

21. Complaints usually relate to the non-disclosure of information, rather than late or overlooked responses. Each year, about 70% of requests received result in the full disclosure of information. With the remaining 30% being cases where information is either fully or partially refused, where the appropriate limit⁵ is applied, the request is withdrawn or are for the sort of information that the CoL

⁵ The appropriate limit refers to a request where the time spent or cost in responding to the request would exceed either 18 hours or £450. In this instance the requests are refused in accordance with s12 of the FOIA.

would not hold.

22. In 2020 there were 17 complaints received concerning request responses, (1.38% of request received), a comparison with previous years is held at **appendix 4**. Of the 17 complaints, 15 were not upheld (88%) and 2 were partly upheld (22%).
23. For the period 2005-2020 the CoL has experienced 32 appeals by applicants to the ICO and so far, the CoL has never challenged the outcomes. Of the 32 appeals 6 were upheld, 5 were partly upheld and 21 were not upheld.
24. It is noted that there is no legal deadline for responding to a FOI/EIR complaint, however, to prevent the abuse of this, the ICO prescribed that complaints should be dealt within, 20 working days. For the 2020 period 11 of the 17 complaints were managed within that period (64.70%).
25. Appeals can be made to the information tribunal (a two-tier court) about any decision made by the Commissioner. Since 2005 the CoL has experienced 10 appeals to the Tribunal by applicants in cases where the ICO has upheld the CoL's position. Of these 2 were upheld and 8 were not upheld.

Enforcement

26. The ICO is responsible for monitoring and investigating compliance with the legislation by public authorities. With reference to FOI and EIR compliance the ICO's key trigger would be in instances where an authority is responding to less than 90% of requests within the 20 working days statutory deadline. The ICO's investigations can last several months and an authority may be issued with an Undertaking requiring compliance measures to be in place by stated deadlines. Additionally, where failings are persistent the ICO can issue an enforcement notice. Failure to comply with the enforcement notice can result in civil proceedings in the High Court, where the authority can be dealt with as if it had committed contempt of court.
27. To date the CoL has never been investigated by the ICO or received any undertaking or other enforcement notice in respect of FOI compliance.

Training and Guidance

28. Since the introduction of the FOIA and EIRs, considerable guidance for staff and Members has been provided within the Access to Information pages set up on the intranet. More recently, the compliance team have also established a Microsoft Teams site for all AIN representatives, providing a further channel for advice and guidance.

29. A FOI e-learning package was first introduced in 2004 and then subsequently updated in 2016. The e-learning package is available for all staff members to complete.
30. AIN representatives are asked to complete the FOI e-learning package and are provided with one-to-one training on becoming a representative. This is in addition to further advice and guidance provided by the Compliance Team on a case by case basis, regarding any specific queries relating to requests received.

Monitoring

31. The CoL's compliance with FOI/EIRs is continually monitored by the Compliance Team. In October 2019 an external FOI compliance audit was undertaken by Mazars, and finally concluded in February 2020, upon receipt of the final report. The final report from Mazars found that the CoL had achieved substantial assurance with FOI (having secured a control environment with risk to system objects being reasonably managed). One low priority recommendation was raised in respect of updating and reviewing the FOI documents held on the CoL's internet and intranet.
32. Internal Audit undertook a further review of this recommendation in October 2020 and revised the deadline for completing this activity to 31 March 2021. It is noted that due to the impact of Covid-19 on our workloads there has been slow progress made on this recommendation.

Records Management

33. While it is not the role of the Compliance Team to ensure efficient records /information management at a corporate or departmental level. It is however noted that ensuring the management of all information can and does have an impact on the CoL's ability to respond to any request received. Section 46 of the FOIA provides requirements on all authorities to ensure that a reasonable standard of records management (in all media) is maintained, with investigation and enforcement action being possible. This is to prevent the work undertaken in respect of the FOI/EIRs being undermined by poor records management and to ensure that any refusal under the 'appropriate limit' is reasonable.

Conclusion

34. The performance indicators, the relatively low number of complaints and the absence of any enforcement action by the Information Commissioner, demonstrates that FOI/EIR compliance has been consistently managed to a high standard across the CoL.

Appendices:

Appendix 1: CoL – Annual request totals 2005 -2020

Appendix 2: CoL-20 Working Days Deadline, FTEs etc, 2005-2020

Appendix 3: CoL Departments – Key Indicators 2020

Appendix 4: CoL- Complaints, 2005-2020

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Appendix 1: CoL – Annual request totals 2005-2020

| Year | FOI & EIRs requests only | All requests* |
|------|--------------------------|---------------|
| 2005 | 228 | 282 |
| 2006 | 288 | 330 |
| 2007 | 267 | 324 |
| 2008 | 443 | 500 |
| 2009 | 549 | 627 |
| 2010 | 689 | 750 |
| 2011 | 971 | 1,042 |
| 2012 | 972 | 1,033 |
| 2013 | 1,184 | 1,222 |
| 2014 | 1,247 | 1,288 |
| 2015 | 1,284 | 1,342 |
| 2016 | 1,353 | 1,405 |
| 2017 | 1,331 | 1,394 |
| 2018 | 1,595 | 1,699 |
| 2019 | 1,432 | 1,533 |
| 2020 | 1,231 | 1,308 |

*The all column shows the total number of FOI/EIRs, 'Out of Scope' requests, Subject Access Requests (SARs) and requests under RPSI.

Appendix 2: CoL – 20 Working Days Deadline, FTEs, etc, 2005-20

| Year | No. of FOI/ EIRs Re-requests | Responded to within the statutory 20 working days | Average working days per request | Hours per RFI | FTEs (1 FTE = 1,540 hours) |
|------|------------------------------|---|----------------------------------|---------------|----------------------------|
| 2005 | 228 | N/A | N/A | 9.42 | 1.39 |
| 2006 | 288 | 97.22% | N/A | 6.65 | 1.24 |
| 2007 | 267 | 94.38% | 13 | 8.04 | 1.39 |
| 2008 | 443 | 94.35% | 13 | 5.74 | 1.65 |
| 2009 | 549 | 95.08% | 15 | 6.61 | 2.35 |
| 2010 | 689 | 92.88% | 13 | 6.41 | 2.87 |
| 2011 | 971 | 93.40% | 14 | 5.44 | 3.43 |
| 2012 | 972 | 95.67% | 13 | 5.83 | 3.68 |
| 2013 | 1,184 | 96.36% | 12.16 | 5.19 | 3.99 |
| 2014 | 1,247 | 95.26% | 13.37 | 5.10 | 4.13 |
| 2015 | 1,284 | 95.71% | 12.97 | 4.20 | 3.50 |
| 2016 | 1,353 | 98.52% | 11.72 | 3.71 | 3.26 |

| | | | | | |
|------|-------|--------|-------|------|------|
| | | | | | |
| 2017 | 1,331 | 96.62% | 12.07 | 3.75 | 3.24 |
| 2018 | 1,595 | 97.80% | 11.99 | 3.70 | 3.83 |
| 2019 | 1,434 | 97.90% | 13.08 | 4.40 | 2.71 |
| 2020 | 1,231 | 95.53% | 13.95 | 2.51 | 2.01 |

Appendix 3: CoL Departments – Key Indicators, 2020

| FOI & EIRs Performance Indicators 2020 | Requests Coordinated | Requests Coordinated & not Determined within 20 Working Days | Working Days per Request Coordinated | Hours for all Requests+ | Average hours per request | Complaints Upheld | Complaints Partly Upheld | Complaints not Upheld |
|---|---------------------------------|---|---|------------------------------------|--------------------------------------|------------------------------|-------------------------------------|----------------------------------|
| Barbican Centre | 2 | 0 | 0 | 8 | 4 | 0 | 0 | 0 |
| Built Environment | 229 | 13 | 21 | 679 | 2.96 | 0 | 2 | 3 |
| Central Criminal Court | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Chamberlain's | 253 | 5 | 12 | 378 | 1.49 | 0 | 0 | 3 |
| City Surveyor's | 26 | 2 | 5 | 146 | 5.61 | 0 | 1 | 0 |
| Community & Children's Services | 338 | 14 | 22 | 710 | 2.10 | 0 | 0 | 5 |
| Comptroller & City Solicitor's | 44 | 2 | 4 | 115 | 2.61 | 0 | 0 | 0 |
| GSMD | 138 | 14 | 15 | 479 | 3.47 | 0 | 0 | 0 |
| Markets & Consumer Protection | 97 | 1 | 10 | 310 | 3.19 | 0 | 0 | 1 |
| Open Spaces | 31 | 1 | 1 | 37 | 1.19 | 0 | 0 | 0 |
| Police Authority | 13 | 0 | 0 | 16 | 1.23 | 0 | 0 | 0 |
| Town Clerk's | 78 | 3 | 10 | 316 | 4.05 | 0 | 0 | 2 |
| | | | | | | | | |
| Totals | 1,231 | 55 | 8.33 | 3,203 | 2.65* | 0 | 3 | 14 |

+ This is the number of hours spent on requests, whether the department coordinated the response or assisted another department with the request.

* This average departmental figure excludes the additional time taken to give advice and assistance to departments by the Compliance Team and other staff in the Comptroller & City Solicitor's Department. When this time is included, the corporate average is 4.13 hours.

Appendix 4: CoL – Complaints, 2005-19

| | Number of FOI/EIRs requests | Number of Complaints | Complaints as a % of the number of requests received |
|-------------|-----------------------------------|-------------------------|--|
| 2005 | 228 | 5 | 2.19% |
| 2006 | 288 | 0 | 0% |
| 2007 | 267 | 5 | 1.87% |
| 2008 | 443 | 2 | 0.45% |
| 2009 | 549 | 10 | 1.82% |
| 2010 | 689 | 23 | 3.33%* |
| 2011 | 971 | 3 | 0.30% |
| 2012 | 972 | 14 | 1.44% |
| 2013 | 1,184 | 15 | 1.26% |
| 2014 | 1,247 | 7 | 0.56% |
| 2015 | 1,284 | 12 | 0.93% |
| 2016 | 1,353 | 14 | 1.03% |
| 2017 | 1,331 | 14 | 1.05% |

| | | | |
|-------------|-------|----|-------|
| | | | |
| 2018 | 1,595 | 14 | 0.87% |
| 2019 | 1,432 | 7 | 0.48% |
| 2020 | 1,231 | 17 | 1.38% |

* The high percentage of complaints received by the CoL during the period 2009-2010 was the result of a campaign of requests on a specific issue received by the CoL, responses to which were routinely complained about by the applicants.