

Freedom of Information and Data Protection Annual Report 2023/24

1.0 PURPOSE OF PAPER

For information

- 1.1 The purpose of the paper is to provide the Committee with details of the activity relating to Freedom of Information (FOI) and Data Protection for the period 1 April 2023 to 31 March 2024.

2.0 EXECUTIVE SUMMARY

- 2.1 As a public body the College is required to adhere to Freedom of Information, Environmental and Data Protection legislation.
- 2.2 The College received 34 FOI requests during the reporting period. 100% of these were responded to with the required reporting target. There was no EIR requests received.
- 2.3 There were nine data incidents reported to the Information Officer. These were all investigated, recommendations made and implemented. There were no incidents which required to be reported to the Information Commissioner.

3.0 RECOMMENDATION(S)/ACTION(S) REQUIRED

- 3.1 It is recommended the Committee note the contents of the report.

4.0 BACKGROUND

- 4.1 The Scottish Information Commissioner is responsible for enforcing and promoting freedom of information (FOI) law in Scotland:
- [Freedom of Information \(Scotland\) Act 2002](#)
An Act of the Scottish Parliament which gives everyone the right to ask for any information held by a Scottish public authority.
 - [Environmental Information \(Scotland\) Regulations 2004](#) (the EIRs)
The EIRs come from a European Directive on access to environmental information. The EIRs give everyone the right to ask for environmental information held by a Scottish public authority (and some other bodies).

4.2 Since April 2013, Scottish public authorities have been providing the Scottish Information Commissioner with data about the information requests they receive, on a quarterly basis via a [statistics portal](#).

4.3 The Information Commissioner Office (ICO) is responsible for enforcing and upholding information rights in the public interest. The Data Protection Act 2018 can be found [here](#).

5.0 FOI AND EIR ACTIVITY 2023/24

5.1 This report provides information on Borders College FOI activity for the year from 1 April 202 to 31 March 2024.

5.2 The overall volume of requests for information under the FOI reduced during COVID but 2023/24 has seen a continued rise back to pre covid levels both across the college sector and within Borders College.- The table below provides a summary of the volume for the last 5 years. There have been no EIR requests in any of the years shown below.

	College Sector	Borders College
2019/20	702	19 (2.7% of total)
2020/21	439	12 (2.7% of total)
2021/22	374	13 (3.5% of total)
2022/23	692	27 (3.9% of total)
2023/24	942	34(3.6% of total)

5.3 The legislative requirement is for public authorities to provide a response within 20 working days of receipt of a request for information. Borders College performs well above average for the sector except in 2020/21 and in 4 of the 5 years meets the reporting 20-day target on more than 90% of occasions.

	College Sector	Borders College
2019/20	91%	100%
2020/21	87%	75% (3 delayed)
2021/22	82%	92% (1 no response)
2022/23	86%	96% (1 delayed)
2023/24	84%	100%

5.4 Under the FOI Act, we can in certain circumstances refuse a request, for example, if:

- The individual has not provided enough detail to identify the information required
- We do not have the information asked for
- It will cost over £600 to provide the information

- We consider the request is "vexatious" - this term can apply to requests which are intended to disrupt the authority's work, rather than genuine requests for information
- The request is the same as one the individual has already made, and which has been dealt with, or
- The information is exempt under FOI law in Scotland. Some exemptions are absolute (ie no qualifications) whereas some exemptions can be over-ridden if it is felt that disclosure of the information would be in the public interest.

Historical information is not available for the College sector in relation to application of exemptions. In 2023/24 Borders College:

- Did not apply a cost exemption to any requests
- Did not apply any other exemptions
- Had no vexatious or repeated requests.

We have continued to use a template letter for responses, centralised processing of answers to requests, and a matrix to help consider whether to use potential exemptions, along with standardised text to use when an exemption is being applied.

- 5.5 If the individual is unhappy with how their request for information has been responded to, they have legal rights to challenge our response.
- In the first instance this would involve requesting a review from us. A review would be handled by someone other than the person initially providing the College response.
 - If an individual has already been through the two steps of making a request and requesting a review and is still not happy, they can appeal to the Scottish Information Commissioner.
 - If the individual is unhappy with the Commissioner's decision on the appeal, the individual has a right of appeal to the Court of Session (but only on a point of law).

Information on requests for reviews across the sector is not available. In 2023/24 Borders College had no requests for review and no appeals to the Commissioner.

5.6 A log of all requests made to Borders College is maintained on the College website under the Freedom of Information section. There is no particular theme although information regarding staffing, salaries and spend detail to suppliers do recur. We also maintain a database of all responses, which is publicly available in the same area of the website. Some of the requests received in the last year are listed below.

- IT devices and software
- Senior Salaries
- Incidents of violence and hate crimes reporting
- Management structures and costs

If we receive repeated requests for similar information, we consider routinely making such information publicly available. This has not been required during the year.

5.7 Borders College adopted the Model Publication Scheme as set out by the Scottish Information Commissioner. It was last updated in July 2021. This scheme sets out what information is routinely available and where it can be found.

The Schemes sets out eight broad classes of information, and by adopting it, Borders College is committing to publishing everything that it holds which falls into the broad description given for each class. The classes are:

Class 1: About the authority

Class 2: How we deliver our functions and services

Class 3: How we take decisions and what we have decided

Class 4: What we spend and how we spend it

Class 5: How we manage our human, physical and information resources

Class 6: How we procure goods and services from external providers

Class 7: How we are performing

Class 8: Our commercial publications

6.0 DATA PROTECTION ACTIVITY

6.1 This report provides information on Borders College Data Protection activity for the year from 1 April 2023 to 31 March 2024.

6.2 The College is obliged under the GDPR to act in respect of such data incidents and breaches. The Data Breach Procedure sets out how the College will manage a report of a suspected data security breach. The aim is to ensure that where data is misdirected, lost, hacked or stolen, inappropriately accessed or damaged, the incident is properly investigated and reported, and any necessary action is taken to rectify the situation.

- 6.3 During 2023/24 there were 9 incidents reported to the Data Protection Officer. All incidents were fully investigated, and actions recommended to mitigate the risk of future incidents. The implementation of the actions are reported on a quarterly basis to the Audit and Risk Committee. the
- 6.4 All incidents are scored against the agree risk matrix the table below summaries the risk levels of the reported incidents. There were incidents which required to be reported to either the ICO or the data subjects.

Risk Level	Requirement to Notify ICO	Requirement to notify data subjects	No during 2023/24
Very High	Yes	Yes	-
High	Yes	Consider	-
Medium	Consider	Consider	-
Low	No	No	-
Very Low	No	No	9
Total			9

7.0 IMPLICATIONS AND CONSIDERATIONS

7.1 Financial Implications

There are no direct financial implications from the contents of this report.

7.2 Learner Implications

There are no direct learner implications from the contents of this report.

7.3 Staff Implications

There are no direct staff implications from the contents of this report.

7.4 Equality and Diversity Implications/Equality Impact Assessment

There are no direct equality and diversity implications from the contents of this report.

7.5 Sustainability/Environmental Implications

There are no direct sustainability or environmental implications from the contents of this report.

8.0 RISK COMMENTARY

- 8.1 The College is required to adhere to a legislative, including the ones noted in this report. If the College fails to meet these there would be a reputational impact and could result in legal action against the college and financial penalties. This report provides assurance to the Committee and Board that the College is meeting all its FOI and GDPR legislative responsibilities.

9.0 CONCLUSION

9.1 The College is fully meeting the standards required by the Scottish Information Commissioner and has had no data incidents which required reporting to the Information Commissioner Office.

Kirsty Robb, Vice Principal Finance & Corporate Services

Previous Board or College Committee Approvals: Audit & Risk Committee 5 October 2023

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