Ethics and Integrity Panel

Title: OPCC INFORMATION MANAGEMENT COMPLIANCE

Date: 17 January 2022
Agenda Item No: 06b
Originating Officer:
CC:

Executive Summary:
As a public authority, the Office of the Police and Crime Commissioner is required to process information in an appropriate manner including complying with the Freedom of Information Act 2000 and the Data Protection Act 2018. Both Acts entitle an individual to request information from a public authority and as such public authorities must comply with requests under this legislation. The Acts clearly identify how a request should be processed including timescales in which an individual should be provided with the requested information or advised why an exemption is being applied.

Recommendation:
That, the members of the Panel note the report.

1. Introduction & Background

1.1 This report is to provide information to the Panel, acting on behalf of the Commissioner, so the Panel can assure the Commissioner that the OPCC are complying with the Freedom of Information Act and the Data Protection Act.

1.2 The Chief Constable and the Police & Crime Commissioner (the Commissioner) are required to comply with the Freedom of Information (FOI) Act, the Environmental Information Regulations where applicable and the Data Protection Act. Set out within the legislation is how a request is to be processed and within what timescales.

1.3 On an annual basis the Commissioner agrees a "Funding Arrangement" with the Chief Constable. This arrangement sets out the terms and conditions under which the Commissioner will provide funding to the Chief Constable during the Funding Period. Detailed within Section 17 of the Funding Arrangement the Chief Constable will comply with their obligations detailed within the Data Protection Act 2018 and the General Data Protection Regulations (GDPR) effective from 25 May 2018. Where appropriate the Chief Constable must notify individuals that their personal data may be transferred to the

Commissioner as required under the funding arrangement. They should ensure this is carried out via a secure means of transmission.

1.4 The Chief Constable agrees to assist and cooperate with the Commissioner, where necessary, to enable the Commissioner to comply with their obligations under the FOI Act and the Environmental Information Regulations whenever a request is made for information.

1.5 In the event that a request received by the Chief Constable under the FOI Act or the Environmental Information Regulations includes a request for information, either (i) provided to the Chief Constable by the Commissioner, or (ii) where a reasonably objective observer would consider that disclosure of that information would be likely to have a prejudicial impact on the Commissioner's priorities and responsibilities, the Chief Constable shall in good faith take account of any representations submitted by the Commissioner about the applicability of any exemptions under the FOI Act or exceptions under the Environmental Information Regulations.

2. Issues for Consideration

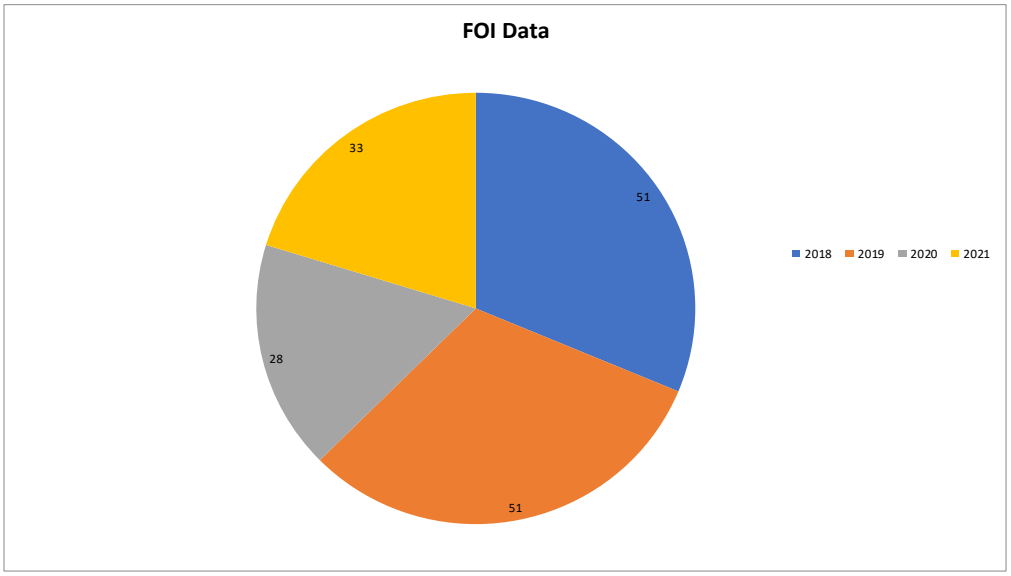
Freedom of Information Act

2.1 In order to have assurance that the OPCC and the Constabulary are complying with the Freedom of Information Act, the Police and Crime Commissioner has delegated authority to the Ethics and Integrity Panel to monitor this areas of business. This report is to provide assurance to the Panel that the OPCC are complying with the Freedom of Information Act.

2.2 The OPCC on its website publishes a procedure for dealing with FOI requests. This enables the OPCC to ensure that it meets its statutory obligations under the FOI Act and to inform members of the public to in how to make an FOI request.
https://cumbria-pcc.gov.uk/wp-content/uploads/2020/12/2020-FOI-Procedure.pdf?x74634

2.3 When responding to requests under the FOI Act essentially information provided is released into the public domain. In order to be open and transparent the OPCC publishes the requests it has received and the responses it has provided on a monthly basis. These disclosure logs can be found on the Commissioner's website:
https://cumbria-pcc.gov.uk/finance-governance/foi/

2.4 The chart below shows the number of FOI requests that the OPCC has received from over the past 4 years.



2.5 The Act requires that requests for information are dealt with within 20 working days. This timescale commences the day after the request is received. The table below illustrates the number of requests received by the OPCC and how they were dealt with.

YEAR	N° of Requests Received	Within 20 working days	Over 20 working days	Request withdrawn	Internal Reviews	ICO Appeals
2014	39	34	3	2	0	0
2015	25	24	0	0	2	0
2016	15	14	1	1	1	0
2017	28	28	0	0	0	0
2018	51	48	3	0	0	0
2019	51	48	3	0	0	0
2020	28	26	2	0	0	0
2021	33	30	3	0	0	0

2.6 There are a number of reasons why a request cannot be dealt with within the 20-working day timescale. In cases where the request is taking longer to process, under Section 10 of the Act where a qualified exemption is being applied a public authority may extend the deadline for consideration of public interest tests for a time which is reasonable.

2.7 Following receipt of information a requestor can, if they are unhappy with the information they have received or feel they should be entitled to further information, request the OPCC to undertake an Internal Review. This involves the OPCC looking at the request again and determining whether or not further information should be disclosed. In 2020, the Office of the Police and Crime Commissioner did not receive any internal review requests.

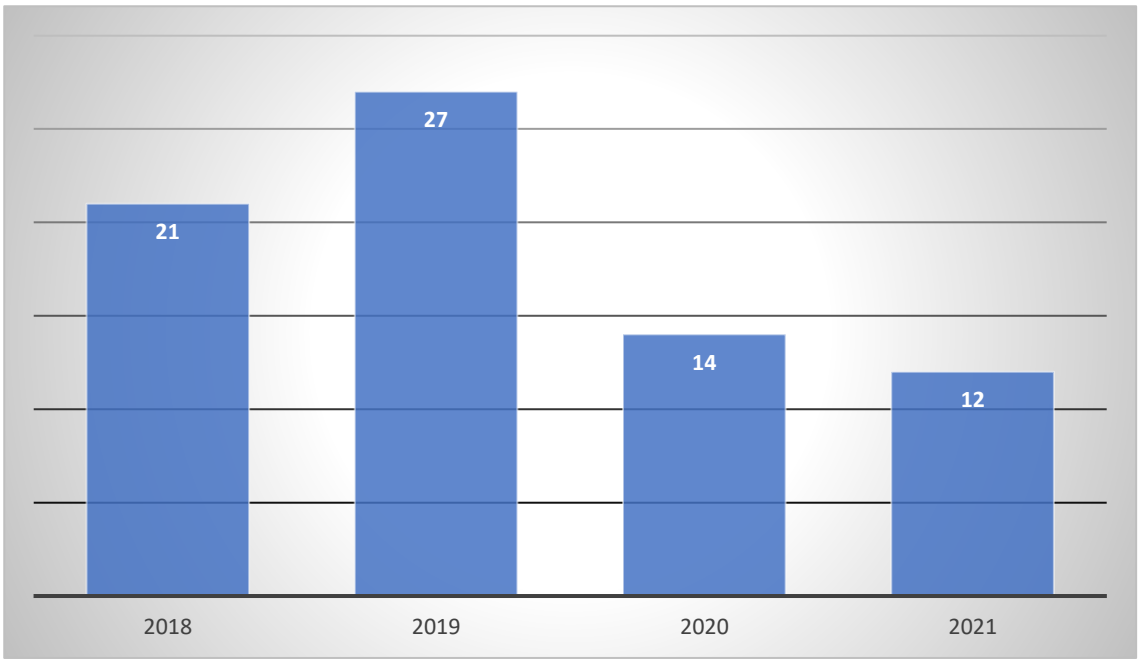
2.8 If a requestor still remains dissatisfied with a response they have received, they can then appeal to the Information Commissioner's Office (ICO) and have them undertake a review

of the OPCC's decision. During this process the ICO look to work with the organisation to ensure that the correct information has been disclosed and where appropriate identify further information which can be disclosed. In the last 3 years the OPCC has not had any appeals dealt with by the ICO.

2.9 Information Provided:

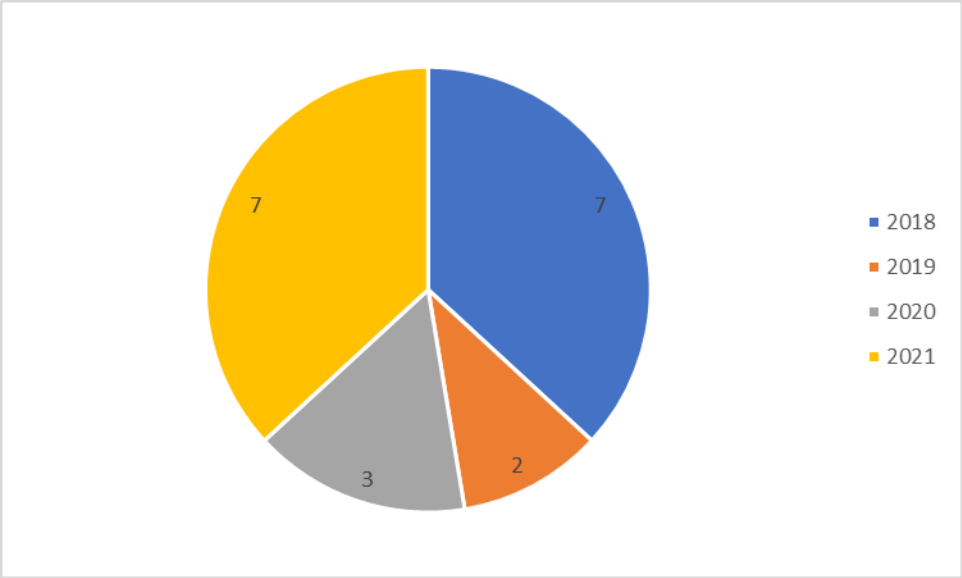
The Office of the Police and Crime Commissioner received varied requests during 2021 and of those where information was provided was largely in relation to funding/grant applications. Three requests related to staff numbers and staff salary costs, and 1 request related to complaints information. Further request received related to Transparency/spending's information.

Having received a request, where the OPCC does not hold the information as the information requested relates to the Constabulary; the requestor is advised of this and where appropriate provided with the contact details of the Constabulary. Figures included below:



2.10 In addition to the OPCC not holding the information it may be necessary not to provide a requestor with information due to qualified or absolute exemptions being applied. Where exemptions are applied consideration is given to the public interest as to whether the information should be disclosed or not. Generally, exemptions are applied where the information requested relates to an individual, the information is already publically available or is to be published at a later date. On some occasions a requestor may ask for a number of pieces of information which could result in some information being provided and other information being exempted within the same request.

2.11 The chart below illustrates the number of requests where information was not disclosed due to an applied exemption.



2.12 Under the FOI Act the OPCC is required to maintain and publish a Publication Scheme. The scheme must specify classes of information which the OPCC publishes or intends to publish and whether or not this is freely available to the public or if there will be a charge. The OPCC maintains such a scheme and it is published on the OPCC website within the Freedom of Information Section.

2.13 In addition the Commissioner is required under the Elected Local Policing Bodies (Specified Information) Order 2011 to publish information in relation to the following:

- Who they are and what they do
- What they spend and how they spend it
- What their priorities are and how they are doing
- How they make, record and publish their decisions
- What policies and procedures govern the operation of the office of PCC
- Public disclosure of a register of interests

2.14 The OPCC endeavours to be as open and transparent as possible with regards to the work it and Commissioner carries out. By taking this approach it also enables members of the public to access such information and therefore negate the need for the public to request information via the FOI Act.

<u>Data Protection Act – Subject Access Requests</u>

2. 15 The purpose of the Data Protection Act is to:

i) Make provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information;

ii) Protect individuals from the use of incorrect information about them whether that information is automatically processed or held manually in a `*relevant filing system';*

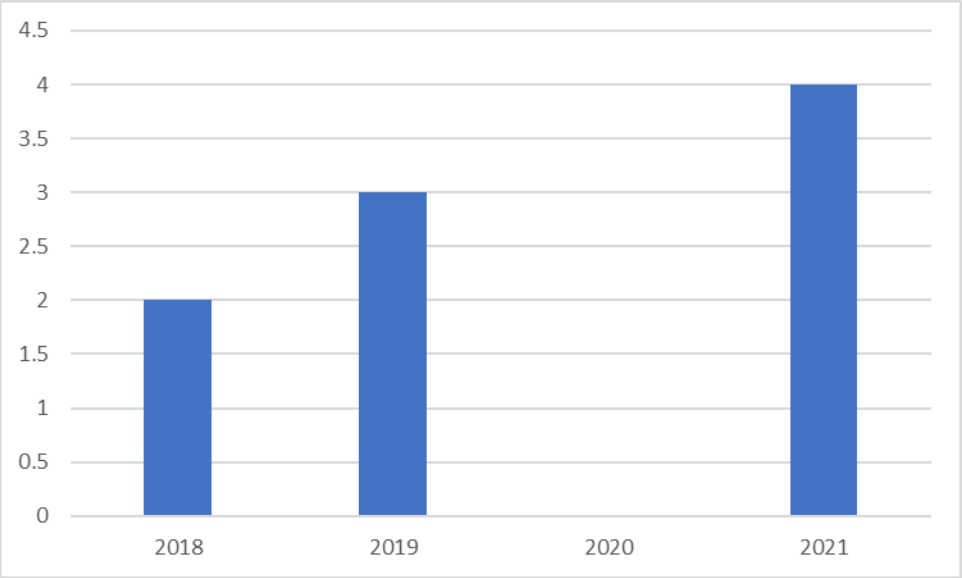
iii) Protect individuals from the improper use of correct information held about them;
iv) Provide individuals with the right to know of and correct such information held about them and to claim compensation in situations where they suffer damage or distress as a result of the loss, destruction or unauthorised disclosure of data;
v) Ensure UK compliance with the European Directive on the protection of individuals in regard to the processing of their personal data.

2.16 The Data Protection Act applies whenever *personal* data is processed by a Data Controller in accordance with the Act. The Police and Crime Commissioner is the Data Controller for Cumbria Office of the Police and Crime Commissioner (OPCC). The OPCC is required to ensure that before any personal data is processed there is a legal basis for that processing. The Act requires that all personal data is maintained in accordance with the 8 Data Protection Principles, unless an exemption applies. The OPCC collates, stores and processes data in accordance with legislation and the Data Protection Act (DPA) Policy and procedures.

2.17 Section 7(1) of the Act gives individuals the right to access their personal data and they can do this by making a Subject Access Request (SAR) in writing and paying a fee. An applicant is entitled to:

- Be told whether any personal data is being processed;
- Given a description of the personal data, the reasons it is being processed and whether it will be given to any other organisations or people;
- Given a copy of their personal data; and
- Given details of the source of the data (wherever this is available).

2.18 Below is a chart detailing the number of Subject Access Requests received in the last 3 years. As can be seen, the OPCC does not as a matter of course receive or deal with large quantities of SAR's.



2.19 The Act requires that Subject Access Requests for information are dealt with within one month. This timescale commences the day after the request is received. The table below illustrates the number of requests received by the OPCC and how they were dealt with in comparison with previous years.

YEAR	N° of Requests Received	Within 40 days	Over 40 days	Request withdrawn	ICO Appeals
2018	2	2	0	0	0
2019	3	3	0	0	0
2020	0	0	0	0	0
2021	4	4	0	0	0

3. Joint Data Protection Officer

3.1 With the introduction of the Data Protection Act 2018 and the General Data Protection Regulations (GDPR) on 25 May 2018, the OPCC was required to appoint a Data Protection Officer. Their role is to inform and advise the Data Controller of their obligations under the UK GDPR and other relevant data protection laws; and be the first point of contact for the Information Commissioner.

3.2 A Data Protection Officer monitors compliance with data protection laws, including managing internal data protection activities, advise on data protection impact assessments, train staff and conduct internal audits. To enable them to carry out this role they must have professional experience and knowledge of data protection law proportionate to the type of processing carried out by the organisation.

3.3 The legislation allows for an individual to be appointed as a Data Protection Officer by more than one data controller, taking into account of their organisational structure and size. With this in mind, the Office of the Police and Crime Commissioner agreed that they would have a Joint Data Protection Officer (JDPO) with the Constabulary.

3.4 This arrangement has worked well since its introduction with the OPCC receiving professional support and guidance from the appointed JDPO. It has also enabled oversight of both organisations to identify any issues or trends.

3.5 A Personal Data Breach guidance document was developed to allow all members of staff to be aware of the requirements when reporting a breach. Any breaches in relation to information once identified must be notified to the Joint DPO within 72 hours, who will then deal with them appropriately.

3.6 On a six-monthly basis the OPCC Deputy Chief Executive, the Joint DPO and the OPCC Governance Manager meet to discuss any identified issues, emerging trends and themes. It also ensures knowledge and processes are up to date.

4. Implications

4. 1 Financial - failure by the OPCC to comply with legislation could lead to financial penalties up to 20m Euros.

4.2 Legal – Freedom of Information Act, Data Protection Act and the General Data Protection Regulations are statute and the OPCC is thereby required to comply with them. Failure to do so could lead to financial penalties or legal proceedings.

4.3 Risk - should the OPCC fail to ensure that it processes and stores data in line with legislation it risks heavy financial penalties, adverse publicity and potential litigation.

4.4 HR / Equality - the new legislation has increased the rights of individuals to have their information processed fairly and where necessary removed.

4.5 I.T. – the OPCC website has been updated to ensure that it complies with legislation.