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AUDIT COMMITTEE

BORDERS COLLEGE REGIONAL BOARD

Subject: Data Protection and Freedom of Information Annual Report 2022/23	**Purpose:** **For Approval** ☐ **For Discussion** ☐ **For Information** ☒
Prepared by: Kirsty Robb, Vice Principal – Finance & Corporate Services	**Date of Committee: 5 October 2023**

Purpose: To provide the Committee with details of the activity relating to Data Protection and Freedom of Information for the period 1 April 2022 to 31 March 2023.

Executive Summary:
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).

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.

Key items:
The attached report provides information on Borders College FOI activity for the year from 1 April 2022 to 31 March 2023.

Borders College received 27 FOI requests in 2021/22, all but one of which were responded to within the statutory 20-day response deadline. No requests for review were submitted.

Questions that Members should ask themselves when reading the paper:
Is the College meeting the standards of the Scottish Information Commissioner?

Linked to Strategic Ambition(s):
Take a leading role in enabling an inclusive, resilient and sustainable Scotland
Choose an item.
Performance Measures:
Recogise nationally as a progressive organisation

Linked to Strategic Risk Register: 3a - Information Management Choose an item.	
Recommendation: The Committee is asked to note the report**.**	
Previous Committee Approvals: N/A	
For publication ☒	**Not for publication** ☐ **If not, why not?**

Freedom of Information Annual Report 2022/23

1. Background

The Scottish Information Commissioner is responsible for enforcing and promoting freedom of information (FOI) law in Scotland:

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This report provides information on Borders College FOI activity for the year from 1 April 2022 to 31 March 2023.

2. Volume of activity

The overall volume of requests for information under the FOI reduced during COVID but 2022/23 has seen a rise back to pre covid levels both across the college sector and within Borders College.

	College Sector	Borders College
2017/18	1,070	29 (2.7% of total)
2018/19	778	29 (3.7% of total)
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)

3. Response times

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 expect in 2020/21 and in 5 of the 6 years meets the reporting 20-day target on more than 90% of occasions.

	College Sector	Borders College
2017/18	87.0%	100%
2018/19	90%	100%
2019/20	91%	100%
2020/21	87%	75% (3 delayed)
2021/22	82%	92% (1 no response)
2022/23	86%	96% (1 delayed)

4. Refusing a request

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 2022/23 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. Requests for review or appeal

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 2022/23 Borders College had no requests for review and no appeals to the Commissioner.

6. Types of information requested

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 hardware
Funding for Mental Health in colleges

Senior Salaries
Student funding
Counselling services
Violence at work
E Commerce Business courses
Renewable courses

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

7. Publication Scheme

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

8. Conclusion

Borders College received 27 Freedom of Information Requests in 2022/23, all but one of which were responded to within the statutory 20 day response deadline. No requests for review were received.

Kirsty Robb
Vice Principal Finance and Corporate Services
5 October 2023