

Cairngorms National Park Authority

INTERNAL AUDIT REPORT

Freedom Of Information

January 2020

LEVEL OF ASSURANCE

Design	Operational Effectiveness
Moderate	Moderate



CONTENTS

Executive Summary	3
Detailed Findings and Recommendations	9
Observations	15
Appendices:	
I Staff Interviewed	16
II Definitions	17
III Terms of Reference	18

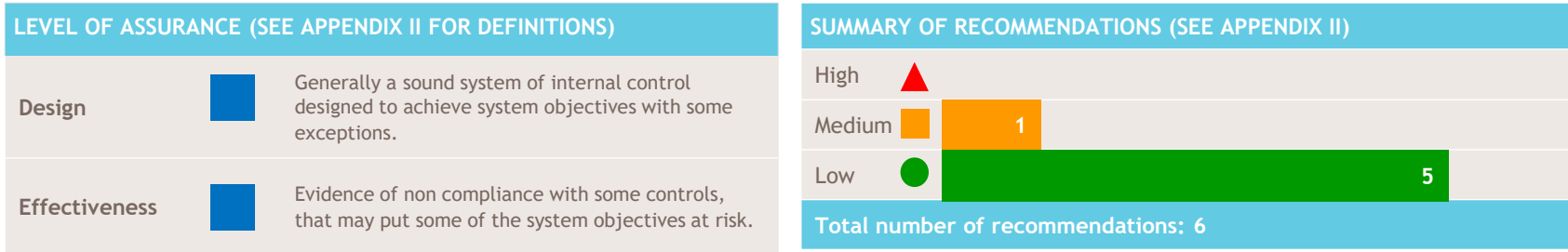
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DISTRIBUTION LIST	
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EXECUTIVE SUMMARY



OVERVIEW

Background

As part of the 2019-20 Internal Audit Plan, it was agreed that we would carry out a review of the arrangements in place at Cairngorms National Park Authority (CNPA) to manage the requirements under the terms of the Freedom of Information (Scotland) Act (FOISA).

CNPA is required to comply with FOISA and Environmental Information (Scotland) Regulations 2004 (EIR). These regulations create a public ‘right of access’ to information held by public authorities. EIR is a separate regime governing access to information defined as ‘environmental’. Public Authorities are required to respond to requests within 20 working days from receipt of the request. A key difference between FOISA and EIR is that requests for environmental information can be made orally, they do not have to be in written format. However FOISA requests must be made in writing.

The Director of Corporate Services (DCS) has over-arching responsibility for FOI and EIR requests. The Office Services Manager (OSM) is responsible for the day to day management of FOI & EIR requests and responding to FOI requests. The Personal Assistant (PA) of the DCS is responsible for the administrative side of FOI requests.

The FOI team meet on a fortnightly basis to discuss FOI requests.

The number of FOI & EIR requests which were responded to in the last quarter and whether they met the 20 working days deadline is reported to the Board via the Corporate Performance updates in June and December each year.

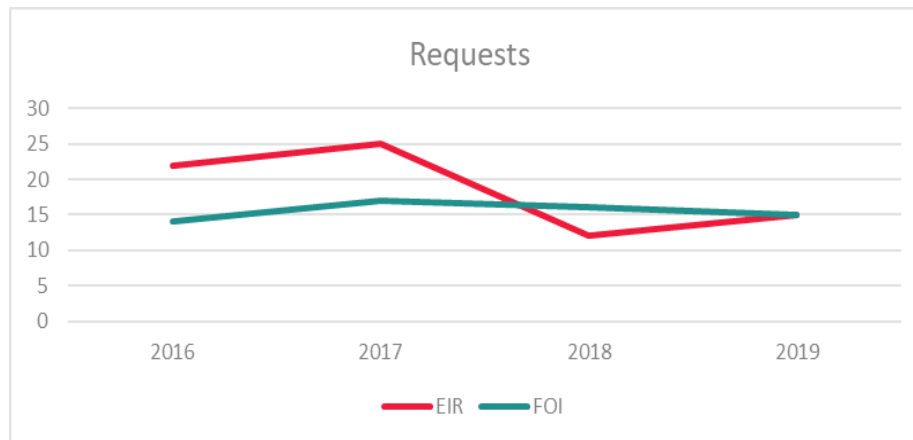
From discussion with the FOI team it is felt there is sufficient capacity to meet the requirement of the Act. However, resourcing can be difficult as the level of resource taken by an FOI can be difficult to predict, especially where the request is for large volumes of information and requires multiple staff to collate and FOI requests typically need to be completed whilst those responsible for this are undertaking their other day to day duties, or when multiple requests are received within a short space of time.

EXECUTIVE SUMMARY

OVERVIEW

Background

The number of FOI requests has remained fairly static over the last four years. The number of EIR requests has declined slightly over the last four years. In 2019, there were 15 FOI and 15 EIR requests. However this does not take into consideration the complexity of the cases and the amount of staff time taken to compile the responses.



CNPA has a Freedom of Information Policy which was last updated in January 2019. CNPA also has FOI guidance notes for staff. Both are available on the CNPA shared drive.

Where staff are contacted by individuals requiring information whether face to face or telephone and it is not information they can easily supply, the individual is asked to submit the request in writing. Around 90% of CNPA's FOI requests come to the general enquiries email and are forwarded on to the FOI team. Only a handful of requests a year are directed to staff.

The PA to the DCS will log the request on the FOI or EIR Register and will send a letter of acknowledgement to the requestor. The OSM determines whether the request is FOI or EIR and will initially assess any exemptions. The OSM will contact the appropriate staff member(s), and their directors to help identify the information requested if it is not already on CNPA's website.

The OSM will collate responses from staff and send the formal reply.

EXECUTIVE SUMMARY

OVERVIEW

Background (continued)

The Director of Corporate Services has been involved with FOI and responding to requests since the Act's enactment in 2002. The OSM started their role in November 2019 and has previous experience working with FOI and EIR and has attended data protection and GDPR training in January 2020. As there have not been significant recent changes to legislation in FOI, they have not identified any further training requirements to support their specific role.

New starters are required to complete an information management e-learning course as part of their induction which includes detail on FOI. All staff were required to complete an FOI e-learning course in October 2017.

If a requestor is unhappy with the way their request has been handled, the requestor can ask CNPA to complete an internal review. Most appeals are normally made where an exemption has been applied. An expression of dissatisfaction or a request for review must be made in writing to the DCS within 40 working days of the formal response to the initial request for information and provide details of the reasons for requesting the review.

Following a request for a review, the DCS carries out a full review of the initial request for information to determine whether all relevant information has been identified; the response provided is in accordance with the regulations; to investigate the specific reasons for the applicant's appeal and carry out any further investigation deemed necessary.

If the requestor is unhappy with the output of the review, the requestor can appeal to the Scottish Information Commissioner (SIC).

CNPA has had 2 cases where the requestor has appealed to the SIC. One in 2019 and one in 2015. In both cases the outcome sat with the requestor and related to EIR exemptions. Details of the cases are available on the SIC website.

In response to the 2019 case, CNPA has added a '*Statement of Assumptions*' section in their formal response letter to deal with differing expectations and understandings encountered between the requestor and CNPA staff.

Every quarter CNPA submits a return to the Scottish Information Commissioner (SIC) on the number of FOI and EIR requests they have had, whether any exemptions have been applied and whether SIC are reviewing any requests.

EXECUTIVE SUMMARY

OVERVIEW

Scope and Approach

Our review assessed whether:

- There is sufficient capacity in place at CNPA to meet the requirements of the Act and the volume of FOI requests that are submitted;
- There are clear lines of responsibility within CNPA and the governance arrangements are sufficient to meet the requirements of the Act;
- Internal arrangements are detailed and there are clear guidelines in place across CNPA regarding the FOISA processes and the requirements that this places on departments;
- Staff have been provided with sufficient levels of training to allow them to deal with any FOI matters that may arise and they have a clear understanding of their responsibilities;
- Procedures clearly outline the protocols in place for any discussions with the Information Commissioner's Office; and
- ICO decisions are reported and remedial actions taken to address any issues raised.

Our approach was to conduct interviews to establish the controls in operation for each of our areas of audit work. We sought documentary evidence that these controls are designed as described. We sought to gain evidence of the satisfactory operation of the controls to verify the effectiveness of the control through use of a range of tools and techniques.

A de-brief meeting was undertaken before completing the review to discuss findings and initial recommendations.

Good Practice

During our review, we identified a number of areas of good practice as follows:

- New starters are required to complete an FOI e-learning course as part of their induction;
- Regular KPI reporting to the board includes an update on FOI requests and 20 working days deadline being met;
- The FOI Team meet on a fortnightly basis to discuss FOI requests;
- Clear roles and responsibilities within the FOI Team; and
- Use of standard template letters for acknowledgement of requests and responding.

EXECUTIVE SUMMARY

OVERVIEW

Key Findings

Notwithstanding the areas of good practice noted above, we also identified a number of opportunities for improvement with FOISA & EIR arrangements as follows:

- **FOISA & EIR Requests:** A sample of 6 FOI & EIR requests were tested to ensure responses were provided in line with legislation and CNPA Policy. The following inconsistencies were found: one instance where the template acknowledgement letter was not used, and one request which should have been treated as a data subject access request under GDPR rather than FOISA;
- **Response Time:** Over the last four years there were three FOI requests and six EIR requests which did not meet the required 20 working days response timeline. Four of these the responses were 1 day late, three were between 3 and 5 days, one was 12 days and one was 20 days;
- **Policy Review:** The FOI policy does not document the policy owner or when it is next due to be reviewed. The FOI guidance was last updated in Dec 2012. The Policy and guidance does not refer to job titles consistently. The Policy and guidance refers to individuals who no longer work for CNPA and uses acronyms with no explanation;
- **Clarification Procedures:** There is no documented policy regarding communication with the requestor including asking for a clarification, consideration of whether the clarification is reasonable and communicating deadlines for responses to clarifications to the requestor;
- **Complete Information:** There is no guidance in place for staff on how to perform searches for information;
- **Publication Scheme:** The Publication Scheme has not been recently reviewed, it was last updated in 2015. There are many links which are no longer available or relate to older versions of reports. It does not have a policy owner or state how regularly it should be reviewed;

Conclusion


We can offer moderate assurance over the design and operational effectiveness of the FOISA arrangements at Cairngorms National Park Authority, however, the noted findings should be addressed to enhance the arrangements further.

EXECUTIVE SUMMARY

RISKS REVIEWED GIVING RISE TO NO FINDINGS OF A HIGH OR MEDIUM SIGNIFICANCE

- ✓ Inadequate capacity to meet the requirements of the Act;
- ✓ Inadequate lines of responsibility and governance arrangements to meet the requirements of the Act;
- ✓ Training is not sufficient to inform staff and Members around their responsibilities;
- ✓ Internal Review Process and/or engagement with the ICO is not sufficiently robust;
- ✓ There is no debrief of ICO decisions to determine whether procedures require to be amended.

DETAILED RECOMMENDATIONS

RISK: Ineffective internal arrangements to receive information from departments in an accurate and timely manner			
Ref.	Finding	Sig.	Recommendation
1	<p>FOISA & EIR Requests</p> <p>CNPA has a FOI Policy in place for staff to follow when dealing with and responding to FOI & EIR requests.</p> <p>A sample of 6 FOI & EIR requests were tested to ensure responses were provided in line with legislation and CNPA Policy. The following inconsistencies were found:</p> <ol style="list-style-type: none"> 1. There was one instance where the template acknowledgement letter was not used. 2. There was one request which should have been treated as a data subject access request under GDPR rather than FOISA <p>There is a risk CNPA is not processing data subject access requests correctly.</p> <p>Additionally there is a risk CNPA FOI processes are not consistently applied.</p>		<p>CNPA should consider the use of flow charts to outline its processes and requirements, and communicating these to ensure consistent application of the processes.</p> <p>We recommend refresher GDPR training to understand the nuances between GDPR and FOI.</p>
MANAGEMENT RESPONSE		RESPONSIBILITY AND IMPLEMENTATION DATE	
Agreed.		<p><i>Responsible Officer: Office Services Manager</i></p> <p><i>Implementation Date: July 2020</i></p>	

DETAILED RECOMMENDATIONS

RISK: Ineffective internal arrangements to receive information from departments in an accurate and timely manner			
Ref.	Finding	Sig.	Recommendation
2	<p>Response Time</p> <p>FOISA and EIR requires public authorities to respond within 20 working days from receipt of the request.</p> <p>Over the last four years there were three FOI requests and six EIR requests which did not meet the required 20 working days response timeline. Four of these the responses were 1 day late, three were between 3 and 5 days, one was 12 days and one was 20 days.</p> <p>Staff who are tasked with finding the information that has been requested are required to provide the information to the FOI team so as to give the FOI team time to collate and review the information and prepare a response within the required response timeline. The Personal Assistant to the Director of Corporate Services monitors staff collating information and sends reminder emails.</p> <p>There is a risk CNPA does not have adequate procedures in place to enable compliance with legislation.</p>	●	<p>We recommend CNPA update their procedures which include asking the requestor whether the request can be narrowed to allow the deadline to be met.</p>
MANAGEMENT RESPONSE			RESPONSIBILITY AND IMPLEMENTATION DATE
Agreed			<p><i>Responsible Officer: Office Services Manager</i></p> <p><i>Implementation Date: July 2020</i></p>

DETAILED RECOMMENDATIONS

RISK: Ineffective internal arrangements to receive information from departments in an accurate and timely manner			
Ref.	Finding	Sig.	Recommendation
3	<p>Policy Review</p> <p>It is good practice for policies and procedures to be reviewed and updated on a regular basis to ensure the expectation of staff is clear and relevant.</p> <p>The FOI policy does not document the policy owner or when it is next due to be reviewed. The FOI guidance was last updated in Dec 2012, although the FOI Policy was reviewed in January 2019.</p> <p>The Policy and guidance does not refer to job titles consistently.</p> <p>The Policy and guidance refers to individuals who no longer work for CNPA and uses acronyms with no explanation as to what they are, for example GIS officer and CIM.</p> <p>There is a risk there are not clear policies and guidelines in place regarding FOISA processes and requirements.</p>	●	<p>We recommend the FOI policy and guidance are updated on a regular basis and document the policy owner and when it is next due to be reviewed.</p> <p>We recommend the Policy and Guidance are updated, refer to job titles and explain acronyms.</p>
MANAGEMENT RESPONSE		RESPONSIBILITY AND IMPLEMENTATION DATE	
Agreed		<p><i>Responsible Officer: Office Services Manager</i></p> <p><i>Implementation Date: July 2020</i></p>	

DETAILED RECOMMENDATIONS

RISK: Ineffective internal arrangements to receive information from departments in an accurate and timely manner			
Ref.	Finding	Sig.	Recommendation
4	<p>Clarification Procedures</p> <p>It is good practice to have a clearly documented policy on the process to follow when seeking a clarification from a requestor to ensure CNPA remains compliant with FOISA & EIR.</p> <p>There is no documented policy regarding communication with the requestor including asking for a clarification, consideration of whether the clarification is reasonable and communicating deadlines for responses to clarifications to the requestor.</p> <p>There is a risk there are not clear policies and guidelines in place regarding FOISA processes and requirements.</p>	●	We recommend CNPA creates guidance for clarifying requests-
MANAGEMENT RESPONSE			RESPONSIBILITY AND IMPLEMENTATION DATE
Agreed			<p><i>Responsible Officer: Office Services Manager</i></p> <p><i>Implementation Date: July 2020</i></p>

DETAILED RECOMMENDATIONS

RISK: : Ineffective internal arrangements to receive information from departments in an accurate and timely manner			
Ref.	Finding	Sig.	Recommendation
5	<p>Complete Information</p> <p>FOISA requires that where an individual requests information that CNPA have but do not already publish they provide the requestor with the relevant information (with some exceptions).</p> <p>CNPA does not have systems in place which allow searches for information to be completed centrally. Therefore a search for the information needs to be done by staff who have the system access for the information that is being requested.</p> <p>There is no guidance in place for staff on how to perform searches for information.</p> <p>There is a risk CNPA does not provide all relevant information for an EIR or FOI request and therefore is not compliant with legislation</p>	●	We recommend CNPA creates guidelines for staff when searching for information for FOISA & EIR requests, such as how to undertake keyword searches in records
MANAGEMENT RESPONSE		RESPONSIBILITY AND IMPLEMENTATION DATE	
Agreed		<p><i>Responsible Officer: Office Services Manager</i></p> <p><i>Implementation Date: July 2020</i></p>	

DETAILED RECOMMENDATIONS

RISK: Inadequate lines of responsibility and governance arrangements to meet the requirements of the Act			
Ref.	Finding	Sig.	Recommendation
6	<p>Publication Scheme</p> <p>The FOISA requires every public authority to have a publication scheme, approved by the Information Commissioner’s Office (ICO), and to publish information covered by the scheme.</p> <p>CNPA Publication Scheme is available on its website. The Publication Scheme has not been recently reviewed, It was last updated in 2015. There are many links which are no longer available or relate to older versions of reports.</p> <p>It does not have a policy owner or state how regularly it should be reviewed.</p> <p>There is a risk the public are not aware of the documents which CNPA publish.</p>	●	<p>We recommend CNPA review and update its Publication Scheme.</p> <p>We recommend CNPA reviews all information it holds with an aim to publish as much as possible to ensure transparency and reduce FOI requests.</p>
MANAGEMENT RESPONSE		RESPONSIBILITY AND IMPLEMENTATION DATE	
Agreed. Longer implementation date suggested to reflect work that may be involved in reviewing breadth of information publications.		<p><i>Responsible Officer: Office Services Manager</i></p> <p><i>Implementation Date: December 2020</i></p>	

OBSERVATIONS

1. FOI Training

It is good practice for staff to complete refresher training on FOI on a regular basis.

CNPA staff completed an FOISA e-learning course in October 2017.

We recommend CNPA considers requiring staff to complete FOI refresher training on a regular basis for example every three years.

This will assist in increasing staff's awareness of FOISA and reminding them of legislation and CNPA policy.

2. Appeal Procedure

The Information Commissioner's Office states it is good practice for a public authority to have a appeal process and to ensure the review is done by someone who did not deal with the request, where possible, and preferably by a more senior member of staff.

CNPA has a documented policy in place for dealing with a request for review. The Director of Corporate Services is responsible for reviewing and responding to any requests for reviews. Due to changes in staff over the last 6 months, the Director of Corporate Services has oversight of all requests and has also been involved in responding to some requests for information.





It is good practice to have a fresh set of eyes review the request for appeal. Therefore the Directors of Corporate Services involvement in the initial response to FOI requests should be kept to a minimum where possible.




APPENDIX I - STAFF INTERVIEWED

NAME	JOB TITLE
David Cameron	Director of Corporate Services
Vicky Walker	Office Services Manager
Laura Byers	Personal Assistant to the Director of Corporate Services

BDO LLP appreciates the time provided by all the individuals involved in this review and would like to thank them for their assistance and cooperation.

APPENDIX II - DEFINITIONS

LEVEL OF ASSURANCE	DESIGN of internal control framework		OPERATIONAL EFFECTIVENESS of internal controls	
	Findings from review	Design Opinion	Findings from review	Effectiveness Opinion
Substantial 	Appropriate procedures and controls in place to mitigate the key risks.	There is a sound system of internal control designed to achieve system objectives.	No, or only minor, exceptions found in testing of the procedures and controls.	The controls that are in place are being consistently applied.
Moderate 	In the main there are appropriate procedures and controls in place to mitigate the key risks reviewed albeit with some that are not fully effective.	Generally a sound system of internal control designed to achieve system objectives with some exceptions.	A small number of exceptions found in testing of the procedures and controls.	Evidence of non compliance with some controls, that may put some of the system objectives at risk.
Limited 	A number of significant gaps identified in the procedures and controls in key areas. Where practical, efforts should be made to address in-year.	System of internal controls is weakened with system objectives at risk of not being achieved.	A number of reoccurring exceptions found in testing of the procedures and controls. Where practical, efforts should be made to address in-year.	Non-compliance with key procedures and controls places the system objectives at risk.
No 	For all risk areas there are significant gaps in the procedures and controls. Failure to address in-year affects the quality of the organisation's overall internal control framework.	Poor system of internal control.	Due to absence of effective controls and procedures, no reliance can be placed on their operation. Failure to address in-year affects the quality of the organisation's overall internal control framework.	Non compliance and/or compliance with inadequate controls.

Recommendation Significance	
High 	A weakness where there is substantial risk of loss, fraud, impropriety, poor value for money, or failure to achieve organisational objectives. Such risk could lead to an adverse impact on the business. Remedial action must be taken urgently.
Medium 	A weakness in control which, although not fundamental, relates to shortcomings which expose individual business systems to a less immediate level of threatening risk or poor value for money. Such a risk could impact on operational objectives and should be of concern to senior management and requires prompt specific action.
Low 	Areas that individually have no significant impact, but where management would benefit from improved controls and/or have the opportunity to achieve greater effectiveness and/or efficiency.

APPENDIX III - TERMS OF REFERENCE

BACKGROUND

As part of the 2019-20 Internal Audit Plan, it was agreed that we would carry out a review of the arrangements in place at Cairngorm National Park Authority (CNPA) to manage the requirements under the terms of the Freedom of Information (Scotland) Act (FOISA).

PURPOSE OF REVIEW

To assess and review the design of controls and their effectiveness with regards to meeting FOISA requirements.

KEY RISKS

Based upon the risk assessment undertaken during the development of the internal audit operational plan, through discussions with management, and our collective audit knowledge and understanding the key risks associated with the area under review are:

- Inadequate capacity to meet the requirements of the Act;
- Inadequate lines of responsibility and governance arrangements to meet the requirements of the Act;
- Ineffective internal arrangements to receive information from departments in an accurate and timely manner;
- Training is not sufficient to inform staff and Members around their responsibilities;
- Internal Review Process and/or engagement with the ICO is not sufficiently robust; and
- There is no debrief of ICO decisions to determine whether procedures require to be amended.

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