ExUrbe

Like Pulling Teeth?
Freedom of Information in the Liverpool City Region

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INTRODUCTION

1.1 In 2013, a Liverpool City Region local authority was the only council in the UK to undergo monitoring by an independent body because of its persistent failure to respond to Freedom of Information (FOI) requests – whereby 'anyone has the right to ask public authorities for any information'[1] – within the required time frame. The Office of the Independent Commissioner (ICO) noted that Wirral Metropolitan Borough Council had been singled out as it had exceeded the twenty day time limit for responding to requests, by a significant margin, on numerous occasions.[2]

1.2 This was not the first time that Wirral Council's compliance with Freedom of Information legislation had been called into question. Similar concerns had been raised three years earlier, leading to the very same scrutiny process.

1.3 This second time around, in 2013, Information Commissioner Chris Graham made clear his displeasure at being obliged to monitor the local authority for a second time:

> It is particularly disappointing to see that the advances previously made by [amongst other public bodies] Wirral Metropolitan Borough Council - which were introduced following concerns after previous rounds of monitoring - have not been continued. This is not good enough and we expect these authorities to take the necessary measures to ensure that they are meeting their obligations under the Freedom of Information Act. We will provide support and advice where we can, but reserve the right to take further action if they fail to step up to the mark.[3]

1.4 This protracted business concerning Wirral Borough Council has continued into 2014 and we shall examine its unfolding in this report.

1.5 The ongoing saga – along with intermittent media reports of less than sparkling practice on the part of other local councils in the sub-region, as well as our own direct experience – spurred ExUrbe on to 'shine a light' upon local government compliance (or otherwise) with the Freedom of Information Act (FOIA) across the Liverpool City Region. How well are our local authorities 'doing' openness and transparency? Do they comply with both the letter and the spirit of the Act? Are their systems and procedures 'user-friendly' and efficient?

[1] 'Freedom of Information requests'. House of Commons Library Standard Note. 11 July 2013

[2] Jolyon Stone, ICO Lead Information Governance Officer. casework@ico.org.uk. ICO response to information request [Ref. IRQ0523462] E-mail. Sent 6 January 2014. 2:09pm. Accessed 7 January 2014

[3] 'ICO announces list of authorities for FOI monitoring'. Press Release. 21 December 2012

1.6 By submitting our own FOI requests and examining some of those submitted by others, ExUrbe set out to produce a clear and accessible overview of the practices of local government. Some of the key questions we aimed to explore included:

- Do consistency and competence characterise the way in which the six LCR local authorities comply with FOI legislation, in terms of properly constituted responses and timeliness?

- Are clear trends identifiable concerning LCR councils' ability or willingness to implement various aspects of the FOIA; or is the Act applied differently across the sub-region, resulting in a scenario whereby the contents or timeliness of responses are contingent upon the quality of staff and procedures employed in each local authority?

- What lies behind any instances of poor practice in the LCR; erroneous or ineffective application of the Act's provisions *or* deliberate attempts at evasion?

- If indications of sub-standard practice *do* exist, are these troubling yet infrequent occurrences (which could be resolved through well-targeted intervention) or do they comprise a systemic feature of council operations in the LCR (in which case the application of mechanisms designed to ensure transparency across the sub-region may require a long-term, radical overhaul)?

- Are there examples of good or exemplary practice and – if so – how might this be effectively disseminated across the sub-region?

1.7 Ultimately, we could study but a 'snapshot' of the broader picture. It proved to be an instructive exercise – although it threw up as many new questions as answers.

1.8 Other aspects relating to transparency and accountability such as the data publication schemes or the filming, recording and broadcasting of public meetings also merit attention in their own right and ExUrbe hopes to examine these in due course.

1.9 Similarly, we have opted to focus upon local (council) government, although it ought, of course, to be acknowledged that other local authorities – the precepting bodies such as Merseyside Integrated Transport Authority or the Office of the Merseyside Police Commissioner, for example – are also subject to Freedom of Information.

THE FREEDOM OF INFORMATION ACT

2.1 Since January 2005, individuals - including UK and non-UK citizens, journalists and people acting on behalf of political parties, businesses and campaign groups - have had the right, under the Freedom of Information Act (2000), to make requests to public authorities (including central government departments, Parliament, the NHS, state funded schools and universities and local councils) for any piece of recorded information those bodies may hold.

2.2 These requests must be made in writing. They can be submitted via letter, email or online and must contain a name (although pseudonyms are often used), an address (or email address) and a clear description of the information required.

2.3 Under FOI legislation, public authorities *must* provide responses to these requests within twenty working days unless the information sought is deemed by the authority to be exempt under the Act. If the individual is unhappy with the response provided, or does not receive any response within the time frame, they can ask the organisation for an internal review. Guidelines state that internal reviews ought to take no longer than a further twenty days; the organisation is not legally bound to this time limit, however. If, following an internal review, the complainant continues to believe that his or her right of access to information is being denied, an appeal to the Information Commissioner can be made. The Information Commissioner's Office (ICO) is able to serve an 'enforcement notice' in cases where it decides a public body has breached the FOIA (2000). These notices require local councils and other public bodies to take specific steps in order to ensure that they are complying with the law.

2.4 The Act contains twenty-three exemptions, or circumstances in which a public body is not obliged to disclose information under the FOIA (2000); for example, if doing so would threaten national security or involve publishing correspondence with the royal family. Some of these exemptions are marginally more likely to apply to information requested from local authorities. Generally, councils can refuse a request for information if:

- The cost of compliance exceeds the appropriate time and cost limit (Part I Section 12). In relation to local authorities the 'appropriate limit' is £450, or 18.5 hours, per request
- The request is deemed to be vexatious (the requester is deliberately attempting to cause annoyance) or repeats an earlier request (Part I Section 14)

- The information is accessible to the requester by other means (Part II Section 21)
- Disclosing it would prejudice investigations or proceedings being conducted by public authorities (Part II Section 30)
- It would make enforcing the law problematic (Part II Section 31)
- It contains personal data (Part II Section 40)
- The information was provided in confidence (Part II Section 41)
- Supplying it would prejudice commercial interests (Part II Section 43)

2.5 Some of the exemptions contained in Part II of the FOIA (2000) – for example information accessible by other means or provided in confidence – are classified as 'absolute' exemptions. If these are properly applied, then the information held will not be disclosed by the public authority under any circumstances. However, if an exemption is considered 'qualified' instead – for example, in cases where releasing the information might prejudice investigations being conducted by public authorities or make law enforcement problematic - it is subject to a 'public interest test'. This means that a public body can:

> withhold the information if the public interest in maintaining the exemption outweighs the public interest in disclosure. The public interest here means the public good, not what is of interest to the public, and not the private interests of the requester.[4]

2.6 When the FOI departments of local authorities apply these exemptions they must consider whether or not it is in the public interest to withhold the information. We shall review some examples of borough councils employing the public interest test in a later section of the report.

2.7 The *What do They Know*? website (whatdotheyknow.com) was set up in early 2008 to aid access to public information. Run by the UK Citizens Online Democracy charity, it enables users to make and browse FOI requests to over 15,000 local and central public bodies. To date, more than 190,000 individual requests have been made via the site and it has been estimated that around 15% to 20% of requests to Central Government are made through it. This online tool has been described as "an idiot's guide to making freedom of information requests" but in our view this is a little flippant – although it cannot be described as a particularly attractive site (it looks a little dated), it is in fact very user-friendly and clearly serves the public interest.

2.8 On Merseyside, two of the local authorities – Wirral and Halton – offer an option to submit FOI requests online, via in-house forms.

[4] 'The public interest test'. ICO website. Accessed 21 January 2014

2.9 FOI legislation provides for local authorities to charge requesters for the costs of complying with requests. Typical advice to this effect might read as follows:

> In line with guidance published by the Information Commissioner's Office, the council may make a charge for the provision of information – for example in order to cover the costs of postage (in line with the relevant postal charges) or charges for printing and copying (which will reflect photocopying charges levied by the council's public libraries). You will be informed if a fee is to be applied before information is to be provided.[5]

However, we have found little evidence of councils routinely levying such fees.

2.10 Public bodies are within their rights to refuse requests for a number of reasons – because they do not hold the information sought, for example, or because collecting it would take staff too long (and thus cost too much in the way of manpower). Another fairly common ground for refusal is that the request is "vexatious" – essentially, an allegation that the requester is wasting time and resources. A colourful local example, from April 2013[6], is copied below:

> Thank you for your recent request received 24 April 2013. Your request was actioned under the Freedom of Information Act 2000 in which you requested the following information:
>
> - What is the total number of red pens bought by the council in the past year, and how many worked?
>
> Response:
>
> I can confirm that Liverpool City Council will not be providing a formal response to your request for information.
>
> - Under Freedom of Information the City Council is not obliged to respond to questions, comments or opinions. We are only required to respond to requests for information which is held in electronic, digital or had copy format. Although we are required under Section 16 of Freedom of Information Act 2000 to provide assistance to requesters, in this instance we considered this to go beyond Section 16 as we consider this email as vexatious under Section 14 of Freedom of Information Act 2000 which states that there is no requirement on Local Authorities to respond to requests which may be deemed to be seeking information which has no proven value or worth; or if it is likely to cause distress or irritation without justification, or if it is aimed at disrupting the work of an authority or harassing individuals in it. In line with the above legislation I can confirm that Liverpool City Council will not be providing any information regarding this matter or any similar requests of this nature.

The above is self-evidently a somewhat extreme example. Most would agree that such a silly request was annoying and timewasting. There is some evidence, however, of local authorities deeming a request or series of requests to be "vexatious" simply because a requester (with a legitimate but perhaps troublesome query) is persistent and will not be easily batted off.

[5] Knowsley Metropolitan Borough Council. Correspondence. FOI Request Ref: F2013.10.2248. 10 October 2013

[6] Liverpool City Council. Response to Freedom of Information Request 253547. 24 April 2013

A POTTED HISTORY

3.1 Members of the public were not able to obtain information held by public bodies prior to 2005, although the FOIA was passed in 2000 and the need for such a mechanism was being discussed amongst MPs from the mid-1970s onwards. Some guidelines about the records public bodies were obliged to make available existed long before 2005, but they were limited in scope and not enshrined in law:

> Implementation of the Act will end the role of the non-statutory Code of Practice on Access to Government Information, which is currently overseen by the Parliamentary Ombudsman. This Code of Practice applies to a much smaller number of public authorities: principally central government departments and agencies. FoI implementation will also affect the current statutory regime for the disclosure of local government information, which offers only restricted access to council papers and minutes.[7]

3.2 The publication of an FOI Bill for consultation was subject to continual delay. Labour published a white paper on FOI – 'Your Right to Know' – in December 1997. The FOI regime it outlined was widely recognised as offering radical change. It proposed that: the entire public sector (including the UK's security services) should be covered; the Information Commissioner should be given the power to compel authorities to release material and that only information judged to be capable of causing 'substantial harm' could be withheld. The pressure group, Campaign for Freedom of Information, was delighted. University of Central London's (UCL's) Constitution Unit described the proposals as 'almost too good to be true'. In January 1998, they voiced concerns about:

- Resources, on which the White Paper is completely silent;
- Commitment of other public bodies and agencies, which will not be forthcoming
- Proper consultation;
- Publicity and public information, without which requesters will not know about the Act or how to use it[8]

3.3 Later that year, the New Labour government published its draft FOI Bill. The original proposals contained in 'Your Right to Know' had been severely watered down. A report published by the Select Committee on Public Administration criticised the imprecision and weaknesses of the Government's intentions:

> We are most unhappy that the Government has been so vague about the relationship between the Freedom of Information proposals and the Data Protection Bill…
>
> the Government's decision to exclude certain bodies and classes of information altogether from the scope of the proposed Act [is] all the more regrettable.

[7] 'Freedom of information implementation'. House of Commons Research Paper. 24 November 2004
[8] 'Commentary on: the Freedom of Information White Paper'. The Constitution Unit, UCL. January 1998

> We recommend that information relating to law enforcement should not be subject to total exclusion from the Freedom of Information Act.
>
> We recommend that the Security and Intelligence Services should not be excluded from the Freedom of Information Act.[9]

3.4 The Campaign for Freedom of Information objected particularly strongly to the Government's proposed weakening of the test for information being contingent on the level of harm it could cause and the reduction in the powers of the Information Commissioner, who would be able to recommend (but not order) disclosure on public interest grounds.

> The white paper's centrepiece, the requirement that authorities wanting to withhold information must demonstrate that release would cause "substantial harm", has been dropped. They will only have to show that disclosure would "prejudice" various interests, allowing much more information to be concealed.
>
> The commissioner's role is limited to ensuring that the authority has thought about the public interest. If not, the commissioner can only make them reconsider, but cannot compel disclosure, however overwhelming the case. An authority which has been abusing its powers will be free to rebuff inquirers, so long as it remembers to mention the high priority it has attached to the public interest.[10]

3.5 The Government published its response to the Select Committee report, in which it 'batted off' most of the criticism levelled at its FOI proposals but promised to publish a revised FOI bill by the end of September 1998. However, David Clark (the minister overseeing FOI) lost his job in a Cabinet reshuffle and responsibility for FOI was transferred to Jack Straw at the Home Office. It was announced that that the Bill would not be published until February 1999. In actuality, the Government's Freedom of Information Bill was not published until 24 May that year.

3.6 The Bill was altered during the committee stages; for example, the provision of an authority's right to insist on knowing *why* a requester wanted the information was removed. However, when the Bill received Royal Assent, in November 2000, FOI campaigners argued that the legislation continued to suffer from 'substantial defects', notably:

> the fact that ministers and authorities - not the Information Commissioner - have the final word on whether information should be disclosed in the public interest[11].

3.7 Ultimately, the implementation of the FOI Act was severely delayed. The Government had initially committed to phasing in FOI legislation at a much faster pace. In 2001, the then Information Commissioner, Elizabeth France, whose new remit would involve enforcing the Act, reasoned that:

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[9] Government response to the third report from the Select Committee on Public Administration (Session 1997-98) on Your Right To Know: The Government's Proposals for a Freedom of Information Act. July 1998

[10] 'Abysmal handiwork'. The Guardian. 25 May 1999

[11] 'Freedom of Information: Queen's Speech Briefing'. 23 November 1999

> the Act should be implemented in respect of government departments on 1st October 2002 and should proceed by a series of steps ending on 1st October 2004, by which time the Act would be fully implemented.[12]

3.8 Subsequently, however, the Lord Chancellor announced that individuals' right to access information would come into force for all public authorities at once, in January 2005. The frustrated Campaign for Freedom of Information described this as 'an enormous delay of more than four years from the Act's passage in November 2000'[13].

3.9 Relatively few changes have successfully been made to FOI legislation since 2005. In 2006, the Select Committee on Constitutional Affairs published an assessment of the workings of the Freedom of Information Act in its inaugural year. The Committee extolled the virtues of the new legislation:

> We have seen many examples of the benefits resulting from this legislation and are impressed with the efforts made by public authorities to meet the demands of the Act. This is a significant success.

It pointed out that since the Act's implementation, councils had received around 70, 000 requests in total and asserted that:

> local authorities and local service providers are releasing information of real value to people's daily lives, public services and the environment.[14]

3.10 Concurrent to the Select Committee's review, the Labour Government commissioned a consultancy firm to examine the impact of the FOI Act during its first year. The Government supported the subsequent recommendation to reduce the cost of FOI:

> Include reading time, consideration time and consultation time in the calculation of the appropriate limit…above which requests could be refused on cost grounds.

3.11 A further report, carried out by the same consultants on behalf of the Department of Constitutional Affairs, reached similar conclusions. It also proposed that public bodies combine dissimilar FOI requests from the same requester, in an effort to further reduce costs.[15]

3.12 These proposals were not due to be subject to formal consultation but the Select Committee on Constitutional Affairs, Campaign for Freedom of Information and multiple MPs objected. In 2007, the Government was compelled to consult widely

[12] 'Freedom of Information'. Hansard. 5 December 2001
[13] 'Double blow to freedom of information'. The Campaign for Freedom of Information. 13 November 2001
[14] 'First year of FOI implementation'. Select Committee on Constitutional Affairs Seventh Report. June 2006
[15] 'Independent Review of the impact of the Freedom of Information Act'. Frontier Economics for the Department for Constitutional Affairs. October 2006

on this *and* on whether FOI regulations should be amended to deal with the problem of 'disproportionately burdensome requests'. However, the consultation concluded that:

> the majority of respondents opposed the proposed changes to the fees regulations…[However] local authorities, welcomed the prospect of some relief from the administrative burden of the FOI Act. Taking account of the range of responses received, the Government has decided to make no changes to existing fees regulations.

3.13 The Government said it would instead consider making non-legislative changes. By that point the legislation was considered a poisoned chalice – former Prime Minister Tony Blair later described his pursuance of FOI as the actions of a 'naive, foolish, irresponsible nincompoop'[16] – and it stayed largely off the agenda for the remainder of New Labour's term in office.

3.14 In May 2010, the Coalition Agreement contained a somewhat vague commitment to ensuring that the FOIA (2000) applied to a greater number of public bodies:

> We will extend the scope of the Freedom of Information Act to provide greater transparency.[17]

3.15 However, the Government's progress in this area has been almost non-existent. In January 2011 the Ministry of Justice announced a consultation on the Freedom Bill, which would extend the Act to cover additional bodies, for example the Association of Chief Police Officers, UCAS and companies 'wholly owned by any number of public authorities'. Alongside this measure, the Coalition proposed 'increasing the independence' of the ICO by giving him or her more control over the appointment of staff, making the appointment process more transparent and limiting the post-holder to a single, five year term. In 2012, the Justice Select Committee carried out post legislative scrutiny, to assess the Act's effectiveness and to see whether any alterations ought to be made. [18]

3.16 The Coalition has largely ignored the Committee's final recommendations – which included the application of statutory time limits to internal reviews and the public interest test and an outright rejection of the proposal made by one Conservative MP to force individual requesters to disclose their identity – and appears to have focussed (in the same vein as the previous government) on reducing the workload of the public bodies concerned. In an attempt to cut costs it has proposed drawing together unrelated requests, emanating from the same group, made to a single local authority in the space of three months. The £450 threshold would apply to these groups of requests instead of individual ones.

[16] 'Why Tony Blair thinks he was an idiot'. BBC News. 1 September 2010
[17] 'The Coalition: our programme for government'. 10 May 2010
[18] 'Opening up public bodies to public scrutiny'. Ministry of Justice. 7 January 2011

3.17 Unsurprisingly, the proposal has not exactly been welcomed by proponents of robust FOI legislation. It appears somewhat at odds with the Ministry of Justice's priorities and recommendations:

> The cost of administering the Act has been described as its "Achilles heel". However, the cost to public authorities must be weighed against the greater accountability the right to access information brings. In addition, there is evidence of both direct cost savings, where a freedom of information request has revealed erroneous public spending, and an indirect impact whereby public authorities know that they will be exposed to scrutiny as a result of the Act and use resources accordingly. We have recommended a limited reduction in the amount of time an organisation has to spend on each request to reduce the burden on hard-pressed public bodies to allow them to take greater advantage of the exemption in section 12, although we expect a rigorous cost-benefit analysis to be carried out by the Government before the exact time limit is determined.[19]

3.18 As FOI Officer Bilal Ghafoor pointed out recently in an article published by the Democratic Audit think tank:

> In practice this means that local groups (such as those fighting fracking or changes to the NHS) and local newspapers will be able to submit only a very small number of FOIs before they have to wait three months for the aggregation period to elapse. Will this help democracy?[20]

3.19 The emphasis on saving money also conflicts with the Information Commissioner Christopher Graham's recently expressed views on the subject:

> Gosh, isn't it terrible, democracy is terribly expensive. And transparency and accountability are terribly expensive, and we'd save an awful lot of money if we closed it all down. Come on! Freedom of Information is actually saving billions of taxpayer pounds because it's driving out bad practices. The 'blush test' is saving a lot of money and it's also enabling policymakers, civil servants and citizens to get the best deal: it's driving down costs.[21]

3.20 In October 2013, a broad spectrum of seventy-six organisations from the large and national (the British Institute of Human Rights, Guardian News and Media and the Taxpayer's Alliance) to the small and local (Inclusion London and JUST West Yorkshire) signed a petition co-ordinated by the Campaign for Freedom of Information calling on the Government to drop its proposal to cut costs in this way. The proposals remain under consideration however. Despite sizeable opposition to the measure, it is not difficult to see why - from the case studies and primary research which follow - local authorities are likely to welcome the proposed change, as was the case when similar changes were proposed by New Labour. Our findings suggest that, amongst the LCR local authorities at least, there is a tendency to consider FOI as little more than 'one big (burdensome) headache'.

[19] 'Post-legislative scrutiny of the Freedom of Information Act 2000 First Report of Session 2012–13'. July 2012
[20] 'Freedom of Information in Britain is being subtly (but perceptibly) eroded'. Democratic Audit. 20 January 2014
[21] 'Interview: Christopher Graham'. Civil Service Weekly. 27 September 2013

FOI IN PRACTICE ACROSS THE LIVERPOOL CITY REGION

Good practice speaks for itself. In terms of Freedom of Information, it is evident when requests meet with full, timely and accessible responses. It is important to acknowledge that there are plenty of occasions when the LCR local authorities demonstrate sound performance of this kind.

Below we outline some illustrative examples of what we consider to be *poor* or *problematic* practice from across the Liverpool City Region. They are not exhaustive but they *are* typical, in so far as those we have selected tend to be symptomatic of common institutional approaches and attitudes across the board.

Halton Borough Council

4.1 FOI requests on the subject of vacant commercial properties are submitted to Halton Borough Council on a regular basis via the 'What Do They Know' website. They tend to comprise a request for details of the properties themselves and for information on the ownership of these properties. A typical example is as follows:

From: Paul Norris
23 April 2012

Dear Halton Borough Council,

Could you please provide me with the following information under the Freedom of Information Act 2000.

1. The addresses and a brief description (eg, shop, office, etc), BA reference and rateable value of all vacant commercial premises with a current rateable value over £40,000 within the Halton Borough Council area

and

2. The names and addresses of the organisations or companies who are liable to pay rates at the premises referred to in (1)

Yours faithfully,

Paul Norris

4.2 Staff dealing with FOIs at Halton Borough Council do not provide original answers in response to requests on this subject. The same 'template' answer is always used, whereby the provision of information is refused on multiple grounds regardless of the specific content of the request. Firstly, this generic response

contends that disclosure may encourage criminal damage (Section 31(1) of the FOIA):

> It is believed that providing this information would increase the risk of theft and criminal damage to any vacant premises identified and it could also facilitate the use of such addresses for the purposes of fraud. In considering the balance of public interest, it is accepted that there is some public interest in transparency but it is considered that this is outweighed by the prejudice that would be caused to the prevention of crime.

4.3 Secondly, information is refused on the grounds that it may involve the publication of data which has been provided to the authority in confidence (Section 41 (1) of the FOIA):

> Having given due consideration to this matter, it is believed that that the there is no overriding public interest in disclosing this information. Ratepayers have provided information under a statutory obligation and, justifiably, expect that it will be used for the purposes for which it was collected, treated confidentially and not be released into the public domain without their prior permission.

4.4 Additionally, Halton Council attempts to consolidate its position via this template response, by adding that if they *were* to disclose the information then this:

> will increase reticence from liable parties in the future provision of such information to Halton Borough Council. Such resistance from ratepayers would be likely to have a detrimental impact on the collection of non-domestic rates within the Borough in forthcoming years.

4.5 Arguably, this final reason for refusal is a matter of opinion rather than a substantiated fact and - in any case - is irrelevant to the proper application of FOI legislation.

4.6 Somewhat bizarrely, the Council feels it necessary to *further* justify its refusal to provide the information by asserting, in what comes across as a slightly churlish manner, that ‘we don’t have it and even we did have it we wouldn’t give it to you anyway’:

> Even it is was accepted that this information could be provided, which for the avoidance of doubt, I can confirm that it is not, any accounts for individuals, and the addresses of premises owned by such parties, would need to be excluded from any information supplied. However, it should be noted that the actual details of owners are not routinely kept for the purposes of collecting non-domestic rates and are not readily available without further investigation.

4.7 Halton Borough Council’s application of these exemptions appears directly at odds with the way in which other LCR councils apply the FOI Act (2000) on the same subject. In May 2011, a requester submitted the following to Halton Borough Council:

> *From: Cian O'Carroll*
> *9 May 2011*

Dear Halton Borough Council,

Please provide a list of all properties within your area which are currently classed as vacant for business rates purposes which have a rateable value of over £3,000.

Please provide the address of the property, a description (ie shop, office, factory etc), the contact details of whoever is responsible for the property (ie landlord/owner, tenant who has vacated but still has a lease in place etc) (kindly note where this is an individual I do not require this information, please blank out where appropriate), the RV and the date that the property was last occupied.

If any of the above make it impossible for you to provide the information, please provide as much as you are able to.

I require this information in Excel format.

Yours faithfully,

Cian O'Carroll

4.8 Halton issued their standard template refusal in response. In contrast, Liverpool and Wirral Councils - to whom exactly the same request was submitted by the same individual - provided the information sought in full.[22] They made no mention of the potential for criminal damage and merely redacted names and addresses of specific individuals to avoid releasing confidential information. In the example above, the requester is aware of the need to be very specific in his request for information whereas in the first example, the requester was comparatively imprecise – but this may not have made much difference in the case of Halton, which appeared determined to apply a generic, template refusal in response to the phrase 'vacant premises', regardless of the specific content of the request and despite the practices of other local authorities in the sub-region.

4.9 It is understandable that local authorities wish to comply with requests efficiently, especially when they receive multiple requests on the same subject and – as is often argued – it is important to retain an element of formal distance between the requester and the public body. Nevertheless, this example suggests the use of a convenient template and the lack of 'bespoke' consideration of cases on their individual merit can jeopardise the fair and proper implementation of the Freedom of Information Act (2000).

4.10 Moreover, the lack of consistency across the board means that accessing information becomes little more than an inequitable 'postcode lottery', with the likelihood of an individual obtaining the information he or she seeks a matter of geographical 'pot luck'.

[22] 'Cian O'Carroll'. List of FOI requests. [Accessed 15 January 2014) https://www.whatdotheyknow.com/user/cian_ocarroll_3

Knowsley Borough Council

4.10 In summer 2013, FOI requests were submitted to all of the LCR local authorities on the subject of the recording of council meetings, designed to coincide with the publication of new DCLG guidelines on transparency. The following request was submitted to Knowsley Metropolitan Borough Council:

From: Gerry
5 July 2013

Dear Knowsley Metropolitan Borough Council,

I note that Eric Pickles MP, the Communities and Local Government Secretary, has published new guidance which explicitly states that Councils should allow the public to overtly film council meetings. Will constituents or any stakeholder now as a matter of course be allowed to film and record council meetings, and tweet during them (this is of course without causing disruption to proceedings)?

This should present no cost to the Council. And, may I ask, has the Council already invested in the equipment to provide webcasts, and if so, what additional costs they foresee for providing webcasts vs. providing braille copies to blind constituents or literature, leaflets and verbal correspondence in a range of different languages?

Yours faithfully,

Gerry

4.11 Knowsley was, to say the least, evasive in its responses to this request. Initially, the local authority failed to comply with the twenty working day time frame and subsequently provided the following (very brief) response:

The council is currently finalising its policy regarding filming, recording and tweeting at council meetings. The council currently considers any request on an individual basis. The council has not made any investment into any equipment to provide webcasts. All public council documents can be found on the website and can be translated into different formats and languages on request.

4.12 Quite reasonably, the requester interpreted this reply as overly vague and pressed the local authority further: 'Can you please clarify when your finalised policy will be passed by committee?'. Knowsley Borough Council treated this as a separate request for information and did not provide further information until 10 September 2013, when it stated that:

The council's policy on filming, recording and social media reporting of public council meetings has recently been approved under delegated authority by the Deputy Chief Executive in consultation with the Cabinet Member with Portfolio for Corporate and Customer Services. This policy is now in place and a copy can be found on the council's website by clicking here. The council will allow filming, recording and/or social media reporting of public council meetings as long as prior permission has been sought and granted. Each request will be dealt with on an individual basis.

4.13 Arguably, this response was also ambiguous and left a lot of decisions – on whether filming, recording and/or social media reporting would ultimately be allowed - down to the council of the day, rather than providing coherent guidelines to which the council could be held to account. There followed some disagreement between the requester and Knowsley Borough Council over whether the link to policy provided by the local authority actually worked. The requester eventually located the information on the council's website for himself and submitted further requests asking about; the existence of an appeals process if the ability to record was refused; a suggestion that it might be more 'simple' to just allow all meetings to be recorded; and an enquiry as to whether, in the event that recording was prevented, the circumstances would be recorded in the minutes of the meeting. In response to each question, Knowsley responded in a way which could potentially be understood to give the council most leverage:

> There is no formal appeal process in place should an application for filming, recording or tweeting be refused…
>
> The Council has adopted the new Council policy which makes its position clear on the issue…
>
> There is no legal requirement for such a statement to be made in the committee minutes of the relevant meeting.

4.14 It is obviously a matter for individual councils to decide how best to apply the new DCLG guidelines. However, it is not unreasonable to conclude that, in this particular case, Knowsley Council's FOI department appears overly cautious and evasive when being asked about a 'hot' political issue, especially one directly affecting the public's ability to hold elected officials to account.

Liverpool City Council

4.15 In August 2013, Liberal Democrat Councillor Pat Maloney helped draw attention to the (previously made) observation that the operations of the Liverpool City Region 'Cabinet' are so secretive that the best chance he – as an elected representative - had of securing information from the body was via FOI request.

4.16 He submitted a request for information, via email, to Liverpool Council requesting 'Copies of the Liverpool City Region 'cabinet' agenda documents, presentations and minutes'. When the response came through, Cllr Pat Maloney publicly expressed his concerns thus:

> I had to read it several times to understand what they were telling me: that the reason for their secretiveness was, in fact, secret. If somebody had told me this was a response written by Sir Humphrey in Yes Minister I would have believed it.
>
> Here we have a group of senior councillors meeting in private to discuss things that affect all of our lives, but we are not entitled to know any details. It's a strange form of open democracy to me. I asked the question because if the new Combined Authority carries on in the same secretive way,

it does not auger well for the democratic process, which should embrace openness and transparency.[23]

4.17 Liverpool City Council's FOI officials provided a verbose response to the request when outlining their reasons for refusing to provide the information. They contended that minutes and agendas of Cabinet meetings were exempt from disclosure as a result of:

> Section 36(2)(b) which states that information is exempt from disclosure if, in the reasonable opinion of a qualified person (in this instance Liverpool City Council's City Solicitor), disclosure would breach or inhibit one, or more of the following:
>
> The free and frank provision of advice, or
>
> The free and frank exchange of views for the purposes of deliberation
>
> Information may be exempt under section 36(2)(b)(i) or (ii) if its disclosure would, or would be likely to, inhibit the ability of Local Authority staff and others to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation. The rationale for this is that inhibiting the provision of advice or the exchange of views may impair the quality of decision making by the Local Authority.

4.18 The FOI officials at Liverpool City Council felt it would be helpful to define the terms 'inhibit', 'advice', 'exchange of views' and 'deliberation' in order to further explain the reasons behind their refusal to provide this information. A key example they provided concerning the City Council's refusal to provide the information requested was as follows:

> when deliberating budgetary reductions Local Authorities must examine each and every option which may potentially be available to them. The fact that such unpopular options may be discussed could detrimentally affect such discussions if the advice provided were to be disclosed.

4.19 Liverpool City Council then applied the 'public interest test', contending (unsurprisingly) that its decision to refuse to provide agendas and minutes for Cabinet meetings was justified, due to the potential for a 'chilling effect' to take place, whereby disclosing internal discussions would impede the 'free and frank' exchange of views in the future'. Apparently in the instance of Cabinet meetings – but *not* in the instance of the public's ability to hold senior elected representatives to account via FOI legislation – 'the loss of this frankness and openness would damage the quality of advice and deliberation and lead to poorer decision making'. Nevertheless, by the admission of Liverpool City Council's FOI officials:

> However, to counter this as part of the public interest test public officials are expected to be impartial and robust when giving advice, and not easily deterred from expressing their views by the possibility of future disclosure. It is also possible that the threat of future disclosure could actually lead to better quality advice. Nonetheless, chilling effect arguments cannot be dismissed out of hand.
>
> It is only right that Local Authorities are open to public scrutiny and the City Council recognizes this. However, it would be remiss of the City Council not to acknowledge the importance of

[23] Councillor Pat Maloney. Liverpool Confidential. 10 September 2013.

tackling difficult issues and making unpopular decisions, which are becoming more and more commonplace.

4.20 According to the official guidance for local authorities on the Information Commissioner's Office Model Publication Scheme, it is expected that 'Agendas, officers' reports, background papers and minutes of council committee, sub-committee and standing forum meetings' are made available 'at least for the current and previous three years'. At the very least, as is the case concerning the minutes of council or committee meetings across the sub-region, what prevents the publication of minutes and agendas with 'confidential' information redacted?

4.21 Notwithstanding the Council's decision not to provide agendas and minutes, the use of generic, dubious 'chilling effect' arguments about Freedom of Information legislation to bolster what appears to concerned observers to be the evasion of public scrutiny in this way is particularly objectionable. There is a serious need to ensure that the wrong impression is not given regarding the relationship between the Council's paid FOI officials and the elected officials sitting on the single-party Liverpool City Region 'cabinet' committee. It is imperative that the behaviour of a small number of individuals at a local level does not make a complete mockery of due process.

4.22 The local councillor was neither the only – nor the first – individual to request, under FOI, copies of the agendas and minutes of the LCR 'Cabinet' meetings. One of our trustees (a former Cabinet Office Minister) did so in June 2013 and the response he received was very similar – identical in parts – to that later received by Cllr Maloney. We agreed to publish an essay on this – 'FOI: Time for our own Drive for Glasnost'. It is reproduced verbatim, below:

If ever there was a misnomer, it was to name an Act of Parliament as the Freedom of Information Act. From its earliest days, the then Bill was subject to a continual barrage of amendment and dilution, to ensure that as little information as possible escaped from the grasp of the Establishment, at both a national and at a local level.

A recent request submitted to Liverpool City Council - No. 262971 – exemplifies all that is wrong with the Act, and with the culture of government, locally and nationally.

The information sought was straightforward – the number of times the Liverpool City Region Cabinet had met, and copies of the agendas and minutes for those meetings. We did receive the first item requested, being told that the City Region Cabinet had met "on 13 occasions since May 2012, the latest meeting was held on 21 June 2013 (sic)".

However, what was discussed and decided at those meetings was not, apparently, for public disclosure. I was given two pages of closely-typed A4 pages of newspeak – in the name of Liverpool City Council's City Solicitor – in an attempt to justify their refusal to comply with my request.

The City Solicitor apparently believes that the business of these meetings – financed by the council tax payer, conducted ostensibly on their behalf, by their elected representatives, is not for public consumption, and is exempted from disclosure under Section 36(2)(b) of the Act.

In a nutshell, she claims that disclosure would (and I quote) -

"breach or inhibit one or more of the following:

1. the free and frank provision of advice
2. the free and frank exchange of views for the purposes of deliberation."

There you have it. We cannot know what they say, or what subjects they discuss, in case they or their officers are constrained in what they might say. God forbid that the council tax payer should know what the people whom they elect, or the public servants whose salaries they pay, are up to. Their profound thoughts and words are not to be shared with the people.

The letter actually gives a startling example of how little they wish to have light shone upon their decisions and processes: "For example, when deliberating budgetary reductions, Local Authorities must examine each and every option which may potentially be available to them. The fact that such unpopular options may be discussed could detrimentally affect such discussions if the advice provided were to be disclosed."

This argument has *nothing* to do with the public interest; it has *everything* to do with the secrecy and the protected interests of political leaders and officers. This is in direct contradiction to all democratic principles – and contrary to the spirit of transparency and accountability which ought to be the hallmark of local government.

It is time for our own drive for glasnost.[24]

4.23 We then shared our trustee's surprise and concern to discover, in mid-September 2013, that Liverpool City Council had at some point had a change of heart. Our trustee wrote to the Information Commissioner's Office as follows, copying us into his communication:

On 21 June 2013 I submitted a FOI request to Liverpool City Council, requesting disclosure of the agendas and minutes relating to meetings of the Liverpool City Region Cabinet, a group comprising the six elected leaders of Halton, Knowsley, Liverpool, Sefton, St Helens and Wirral Councils. The request was (belatedly) refused – on what grounds I cannot tell you, so unintelligible (and, I would argue, fallacious) was the response. However, I reluctantly accepted the reply and took no further action. The full exchange of correspondence is available online via this link:
https://www.whatdotheyknow.com/request/liverpool_city_region_cabinet#incoming-413226

In August 2013 the think tank of which I am chair of trustees ran a comment piece I had written on the subject. I trust you will find it self-explanatory:
http://www.exurbe.org.uk/#!freedom-of-information/csh9

On 10 September 2013, a local online magazine ran a piece about the attempts of a local councillor to obtain very similar information to that which I had sought. The article was entitled: *Q: 'What do our council leaders discuss in secret meetings? A: Not telling you, it's a secret, comes 1,200-word reply*. I am taking the liberty of providing a link to the piece – which again, I trust you will find self-explanatory:
http://www.liverpoolconfidential.co.uk/News-and-Comment/Q-What-do-council-leaders-discuss-in-secret-meetings

This week I discovered, quite by chance, that at some point since mid-September, Liverpool City Council has seen fit to start publishing 'Summary Agendas' of the LCR Cabinet Meetings. Those currently online are dated June-September 2013 inclusive. They are not very convincing as agendas – indeed, they seem to be retrospective synopses of the meetings in question – but their

[24] 'Freedom of Information: Time for our own Drive for Glasnost'. Peter Kilfoyle. August 2013

appearance *does* appear to tacitly (if belatedly) acknowledge the legitimacy of my request and that of the local councillor. You will, I hope, agree that this development can in no way be made to square with the garbled obfuscation I received back in summer. If the reasons given for failure to disclose, following my original FOI request, were justified and lawful, then they surely apply *now* – nothing has changed in the interim, as far as I am aware. Conversely, in light of the subsequent publication of these agendas, it is difficult not to conclude that the original refusal was *not* justified and perhaps even *not* lawful.

When not only I, but an elected *councillor*, was unequivocally refused information that was within days or weeks deemed to be in the public interest after all, there is surely something culturally or systemically wrong. It appears, at very best, to reveal an unacceptably cavalier attitude towards the letter and spirit of the Freedom of Information Act, with Liverpool City Council simply shifting goalposts to suit.[25]

Sefton Borough Council

4.24 In early 2012, the following seemingly simple FOI request was submitted to Sefton Borough Council:

From: Barry Almond
19 January 2012

Dear Sefton Borough Council,

please supply the following information. Since the council began in 1974 how many c.c.js (County Court Judgements)(if any) have been entered against the council in this period.

Yours faithfully,

Barry Almond

4.25 However, the 20 day time frame elapsed and no response from Sefton Council was forthcoming. The requester asked for an internal review on 3 March 2012. Two days later, Sefton Council provided the following refusal notice:

From: Richard Roscoe
Sefton Borough Council
5 March 2012

Dear Mr Almond,

I have reviewed our response to your request and I have to apologise for our failure to contact you within the allocated time. This was caused by an internal error in processing. We have now clarified this and the situation should not arise again.

Unfortunately our response is very limited. Our Legal department inform me that the Council does not hold details of what CCJs have been received by the Council over that period and that to

[25] 'Query Regarding Liverpool City Council and FOI Compliance'. Letter from Peter Kilfoyle to Information Commissioner's Office. 16 December 2013

provide you the information we would have to go outside the Council, which the Act does not oblige us to do.

4.26 The requester initially hoped to obtain information for the last thirty eight years. In light of this, the following suggestion provided by Sefton's then Information Security and Data Protection Officer was not particularly useful:

I can however tell you that the details of all CCJs issued over the last 6 years can be obtained from the Ministry of Justice's website at [1]www.trustonline.org.uk . Anything above 6 years will unfortunately not be available on this website because of their retention policy.

4.27 The response to this request for information appears to have been severely delayed due to inefficient processes at Sefton Council's FOI department. The suggestion that the requester ought to visit the Ministry of Justice's website conveys the impression that, in the eyes of those who deal with FOI requests at Sefton Borough Council, some form of response – even one which is unhelpful and uncalled for – is better than providing nothing at all.

St Helens Borough Council

4.28 An interesting case arose last year, when an individual submitted the following request for information, on the subject of council house waiting lists, to St Helens Metropolitan Borough Council:

From: Gary Tumulty
25 June 2013

Dear St Helens Metropolitan Borough Council,

How many people in the Billinge and Senly Green ward of St Helens are on the housing list, to move in, or move out? Can you provide the list for the past 3 years right up to current date. If this is not possible for the one ward then please provide details for the whole of St Helens

Yours faithfully,

Gary Tumulty

4.29 St Helens Council provided the following response:

From: Contact Centre
St Helens Metropolitan Borough Council

26 June 2013

Thank you for contacting St Helens Council,

We do not have any social housing, it is organised by 'Under One Roof' or Helena Partnerships. You would need to contact them for this enquiry. Contact telephone numbers are; 01744636363/01744637383.

Kind regards
The Contact Centre

4.30 This is noteworthy because, at the early stages of Coalition government in 2011, then Housing Minister Grant Shapps made clear his intention to make housing providers – such as Helena Partnerships - subject to the Freedom of Information Act. However, Shapps was moved in a Government reshuffle and the proposal did not come to fruition. As it stands, housing associations – which have received and continue to receive a substantial amount of public funding – are not subject to the Freedom of Information Act and do not have a statutory obligation to respond to requests.

4.31 If the requester *had* approached the housing association, his ability to obtain the information would not be guaranteed. This case is thus a good example of the problem Shapps was attempting to broach whereby providers of social housing receive significant public investment yet mechanisms for public scrutiny are lacking. More broadly, it is a manifestation of Information Commissioner Christopher Graham's current concerns that, as 'private sector contractors increasingly take responsibility for public service delivery, the scope of FOI will not keep up'[26].

4.32 More fundamentally, councils do – or certainly ought to – collate and analyse information relating to housing demand, housing waiting lists and homelessness, which is what the original request was about.

Wirral Metropolitan Borough Council

4.33 In June 2011, the following request was submitted to Wirral Metropolitan Borough Council. The local authority's response was drawn out over more than a year.

From: Paul Cardin
20 June 2011

Dear Wirral Borough Council,

… I cannot locate a webpage, or find information anywhere else, detailing the registered interests of senior council officers. These senior officers make important decisions on the public's behalf on a daily basis. I feel it is very much in the public interest to know precisely the extent of undeclared associations these officers possess. These may be ties to people, businesses, charities, organisations, et al. who may stand to gain from favourable council decisions. This may have been in the past, is happening now or may occur in the future.

[26] 'Interview: Christopher Graham'. Civil Service World. September 2013

Please forward a full and comprehensive list of the names and interests of council officers as follows:

The Chief Executive, his direct reports and the direct reports of these senior officers. Please include the heads of department and those such as senior planning officer. Anyone who has delegated authority from members should also be declared.

Please provide any and all personal interests they have, such as ownership of property, family associations, business interests, shareholdings and membership of organisations that may conflict with their decision-making role. Such a list would run along similar lines to the one you currently display for Wirral's councillors, and would I suggest be available for inspection on the website, and personally at the Town Hall in the near future.

Please make the list retrospective for the last 5 years, in order that the public can examine the decisions made, the officers involved and check against the list of interests at that particular time. Any conflict can then be highlighted and acted upon as required, in the public interest,

Yours faithfully,

Paul Cardin

4.34 Initially, the Council did not acknowledge that it had even received the request. It then failed to reply within the required 20 working days. On 26 July, it provided the following holding response, stating that work to obtain the information requested had not yet been undertaken:

… Officers do complete a Conflict of Interest form as either a nil return or with relevant details, which are reviewed by their line manager in line with our Conflicts of Interest procedure. I have spoken to the Departments within the Council to ascertain how the paper conflict of Interest forms are held, once completed. The forms are completed and held within the Personal file of each employee. I have asked each Department to review the conflict of interest forms that relate to senior officers a detailed below and to extract any information which falls into the categories you have listed below.

4.35 The requester stated that 'the "Paper Conflicts of Interest Forms" you refer to, to be completed by ALL / or all Senior employees will be entirely relevant to this request' and asked for copies of them. The Council quickly provided these. The requestor thanked the Information Manager, but pointed out that the bulk of the information requested had still not been delivered:

Thanks for providing the two forms. Your co-operation is much appreciated.

In the event that any confusion or misunderstanding should arise, the provision of these two forms does not mean the request has been satisfied.

On the contrary, please read through the entire FOI request and carefully scrutinise the information I've sent to date. Please note the remaining unaddressed questions, the partial responses that you have provided so far, and attempt to address the outstanding points, and gather the required information before making it public.

As stated, please make the closer detail, referring to Senior Officers' interests, retrospective for the last 5 years.

4.37 Wirral Council did not even attempt to respond to his request until 16 August , and this response was vague and insufficient:

> Thank you for your request for information which is shown below. At the beginning of each Committee meeting the people on the Committee are asked to consider whether they have personal or prejudicial interests in connection with any item(s) on the agenda in front of them and, if so, to declare them and state what they are. In addition to this, Officers of the Council are asked to complete a yearly conflicts of interest form, these are reviewed by their senior manager. Consideration is then given, if there is any action which needs to be taken with regard to any declarations made.
>
> Application for employment forms for the Council also ask the applicant to declare if they have any relationship to any existing employee or elected member of the Council, and state what that relationship is.
>
> The list of Senior Officers and Personal recorded Interests is shown below:-
>
> Steve Maddox - Ex Chief Executive - Clerk to Merseyside Passenger Transport Authority; Governor of Wirral Metropolitan College; Governor of Black Horse Hill Junior School.
>
> Jim Wilkie - Chief Executive - Governor of Wirral Metropolitan College; Wife is employed by Wirral Community NHS Trust
>
> David Taylor Smith - Deputy Director of Finance - Board member of Leasowe Community Homes

4.38 The requester asked for an internal review on 16 August, on the grounds that 'your response is completely inadequate and doesn't address the points I listed and added to on 26th July'.

4.39 Wirral Council did not acknowledge this request for an internal review until 3 October 2011, despite repeated inquiries into whether the review was occurring and, if so, upon what date it would be complete. Wirral Council attempted to justify the disproportionate length of time being taken on the grounds that the authority had a heavy workload:

> The internal review will be carried out as soon as is possible and practical, in relation to the work load currently being undertaken by Surjit [Head of Legal and Democratic Services].

4.40 As the requester correctly stated:

> As you should be fully aware, "workload", "practical" or "possible" considerations are no justification for missing the deadlines specified within the Act. Once again, this council is late, and accordingly, I will approach the Information Commissioner to appeal this request, (Internal Review now 10 working days overdue and no sign of it appearing any time soon).

4.41 By spring the following year, no internal review or data had materialised:

> *From: Paul Cardin*
> *28 April 2012*

I would appreciate an update on the progress you've on this request, lodged almost a whole year ago.

It all seems to have ground to a halt. I have recently made the relevant councillors aware of this request in the hope that they will be able to put a rocket under your department,

kind regards as always,
Paul Cardin

4.42 By summer 2012, Wirral Council had still failed to provide the data requested or any information pertaining to an internal review. The requester lodged an appeal with the ICO:

From: Paul Cardin
15 July 2012

It is now over a year since I lodged this Freedom of Information request with your department.

It is also over two months since I reminded you you had not carried out the internal review. But I have received no response whatsoever.

This morning, I have lodged an appeal with the Information Commissioner's Office. I will also update LGA troubleshooter Mr Michael Frater, who is being sent separate updates which list the unaddressed requests and describe the extremely poor performance of your department,

Yours sincerely,
Paul Cardin

4.43 Almost comically, the requester received an 'out of office' notice from the Information Manager:

I am out of the office on leave until Monday 16 July 2012, I am picking up my emails so will respond if the matter is urgent.

Jane Corrin
Information Manager

4.44 In August 2012, the ICO – unsurprisingly – found that Wirral Metropolitan Borough Council had breached the FOIA (2000) as it failed to provide the information it held in response to this request. Astonishingly, the local authority still failed to provide *all* of the information required. After 16 months they eventually provided the information in full - albeit not in the format requested.

4.45 This is a clear example of particularly bad practice on the part of Wirral Metropolitan Council. Initially, it acknowledged neither the request nor the request for an internal review. It responded outside the statutory time frame to the original request, with a severely inadequate partial response. It was able to provide a response to a subsidiary question - some basic, non-potentially-damaging blank conflict of interest forms – within a single day, yet in autumn 2012 still had not responded to the requester's call for an internal review of its processes, save an inadequate attempt to justify why this was so late.

4.46 It almost beggars belief that, even after the ICO demanded that Wirral Council disclose the information it was withholding - in full - the local authority defied the body. The remainder of the data still had to be ascertained in a rather dogged manner by the requester. In the face of Wirral Council's prolonged obfuscation, a less experienced requester would almost certainly – and understandably – have given up at an earlier stage.

COUNCIL PERFORMANCE: COMPLIANCE

5.1 In order to gain an overview of how Freedom of Information is processed around the sub-region, ExUrbe thought it would be instructive to seek information via our own FOI requests. We subsequently submitted two separate sets of explicit requests to each of the six Liverpool City Region local authorities via the 'What Do They Know' website.

5.2 We used clear and simple language in the requests and in all other correspondence with the local authorities. We requested an internal review in the event of a piece of information being overdue.

5.3 On 3 September 2013, we submitted the following request to Halton, Knowsley, Liverpool, Sefton, St Helens and Wirral borough councils:

Could you please advise:

i) How many freedom of information requests have been submitted to the Borough Council in the last 24 months; and

ii) How many of them have been made through the WhatDoTheyKnow website and how many direct?

5.4 On 11 September 2013, we asked a further set of questions:

iii) In the last 24 months, how many freedom of information requests did the council respond to within the statutory 20 working days?

iv) In the last 24 months, how many freedom of information requests were overdue and by how long?

v) In the last 24 months, how many freedom of information requests were refused; and what was the most common reason for refusal?

vi) In the last 24 months, how many freedom of information requests were complied with fully; and how many were partially complied with?

5.5 Details as to compliance with our requests are mapped out in the table on the following page.

Compliance of LCR local authorities with our requests for information

Note that this table is primarily concerned with the FOI *process*, not the nature or quality of the responses

LIVERPOOL CITY REGION LOCAL AUTHORITY	i. How many FOI requests have been submitted to the Borough Council?	ii. How many of them have been made through the 'What Do They Know' website and how many direct?	iii. How many FOI requests did the council respond to within the statutory 20 working days?	iv. How many FOI requests were overdue and by how long?	v. How many FOI requests were refused; and what was the most common reason for refusal?	vi. How many FOI requests were complied with fully; and how many were partially complied with?
Halton	Provided information in full on 4 September	Stated that they did not hold the information requested	Provided information in full on 1 October	Provided first part of information but stated that they do not record the length of time for which requests are overdue	Provided first part of information. Did not give the most common reason for refusal	Provided information in full on 1 October
Knowsley	Provided information in full on 9 September	Stated that they do not collate this information	Knowsley Borough Council's response to our second request was late, so we requested an internal review. Subsequently, Knowsley Council stated that 'the cost of complying with this request exceeds the "appropriate limit" of time taken under Section 12 of the FOIA 2000'			
Liverpool	Provided information in full on 4 September	Stated that they do not collate requests into any kind of grouping and that doing so to fulfil this FOI request would exceed the appropriate time limit under Section 12	Provided information in full on 26 September	Provided first part of information but stated that 'reconciliation and configuration' of the second part would exceed the appropriate time limit under Section 12 of the FOIA 2000	Provided information in full on 26 September	Provided information in full on 26 September

Sefton	Refused to provide information on 5 September on the grounds that 'the council does not centrally monitor FOI requests which are monitored by separate individuals and departments.' Gave an estimate	Stated that they do not hold this information, 'but you can find out for yourself from the 'What Do They Know' website	Refused to provide this information, too. On the 14 October they stated that: 'As we explained in our response to your earlier request in September we do not centrally monitor FOI requests which are handled by separate individuals and departments so we cannot tell you how many we received in the time scale mentioned'			
St Helens	Provided information in full on 4 September	Provided information in full on 4 September	Provided information in full on 23 September	Provided information in full on 23 September	Provided information from March 2013 only, on the 23 September, stating that 'We do not hold this information for the last 24 months'	
Wirral	Initially responded on 13 September but provided information from April 2012 only. After being asked why this was the case, on 20 September Wirral Council stated that it had 'reviewed its response and apologies as there does appear to be an error with the information provided' as the information was extracted from their current electronic system only (rather than their pre-electronic system too). Wirral Council then provided the information in full	Stated that 'Wirral Council can direct you to the What Do They Know Website where this information is available'.	Stated that 'to provide information prior to April 2012 would require manual checking. This checking would take officers over the 18.5 hours allowed under the FOI Act'. It provided a figure from 1 April 2012 onwards only	Again, provided information from 1 April 2012 only	Advised that 'providing this information would involve a manual extraction of the system which would take in excess of 18.5 hours'. Gave an 'in general' response to the second part of the question	Stated that they categorised this information differently and asked whether ExUrbe would still like the information in that format. We responded affirmatively but the information is still outstanding at February 2014

Key points on the ways in which LCR local authorities complied with our requests for information

5.6 All of the local authorities apart from Sefton Borough Council were eventually able to provide us with a solid statistic in response to the straightforward question: 'How many Freedom of Information requests have been submitted to the Borough Council in the last 24 months?'

5.7 In September, Sefton claimed that 'We do not centrally monitor FOI requests, which are handled by separate individuals and departments, so we cannot tell you how many we received in the time scale mentioned'. The Council's then Data Protection and Information Security Officer did provide us with a 'rough estimate' for requests submitted to the Council but simultaneously admitted that this figure was inadequate by stating that 'if you include ordinary departmental requests for information, which are also covered by FOI, then the number will be far greater'[27]. In January 2014, ExUrbe received an email from Sefton Council's current 'Caldicott Guardian & Information Governance' official providing an informal 'guesstimate [of 2000] adding together those that come in via the Information e-mail plus those that go direct to Dept managers'[28].

5.8 Initially, a complete response from Wirral Council to this question was not forthcoming. As shown in the table, the Council first provided information for a shorter time frame than requested. When we pointed this out they apologised, attributing the error to a change in the way requests are processed. They provided the correct information a week after their original response.

5.9 All except one of the councils refused our request asking how many FOI requests over the previous 24 months had been made through the 'What Do They Know' website. All did this on the grounds that they did not collate this information as it is available elsewhere – i.e. by undertaking a manual count on the website, to which some local authorities were 'helpful' enough to direct us. Interestingly, St Helens *was* able to provide us with this information.

5.10 Regarding the first of our second set of questions Halton, Liverpool and St Helens borough councils provided information (relatively swiftly and in full) on how many FOI requests the councils responded to within 20 working days. In contrast, Knowsley Council refused to comply with the first part of the request (and indeed the remainder of it) on cost grounds. Sefton Council also refused to respond to this, and to the other parts of the second request, on the same basis as before:

[27] 'FOI request statistics'. FOI Request Response from Sefton Borough Council. 13 September 2013. Accessed 7 January 2014

[28] Ben Heal, Caldicott Guardian and Information Governance Official. Ben.Heal@sefton.gov.uk. E-mail. Sent 6 January 2014

'we do not centrally monitor FOI requests which are handled by separate individuals and departments so we cannot tell you how many we received in the time scale mentioned.' Finally, Wirral Council contended that providing a figure from further back than April 2012 would exceed the 18.5 hour time limit and gave us information from this point in time only.

5.11 Just one of the six LCR local authorities – St Helens – provided us with a complete set of information in response to the question 'How many Freedom of Information requests were overdue and by how long?'. Halton and Liverpool Councils provided responses to the first part of the question but stated that they do not record the length of time for which requests are overdue. Once again, Wirral Council provided information from April 2012 only and Knowsley and Sefton Councils refused to comply on the grounds of cost and organisational structure respectively.

5.12 Liverpool was the sole local authority to respond in full to our request for information on the subject of how many FOI requests were refused and what the most common reason for refusal was, over the last twenty four months. Halton provided a response to the first part of the question and St Helens provided information from March 2013 only. Knowsley and Sefton refused to provide the information on the aforementioned grounds. Wirral asserted that a full calculation would take too long and provided a 'general response' instead.

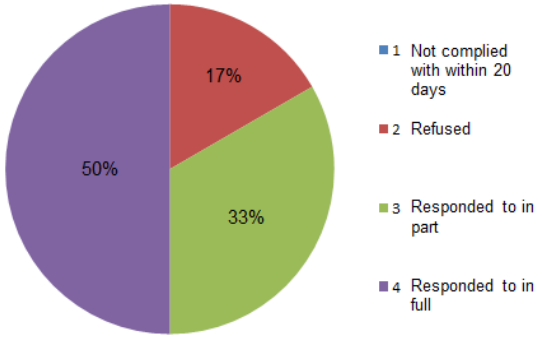
5.13 Finally, Halton and Liverpool councils provided us with the full amount of information requested on the subject of the number of FOI requests fully and partially complied with over the 24 months. Knowsley, Sefton and St Helens refused on the same grounds as before. Wirral Council sought clarification on the meaning of this request, stating that they held the information but classified it differently and enquiring whether we would still like it. We told them we would 'obviously' still like to receive the requested information but they have, so far, failed to provide this.

5.14 The graphics over the page depict the quality of the compliance with our FOI requests according to the following indicators:

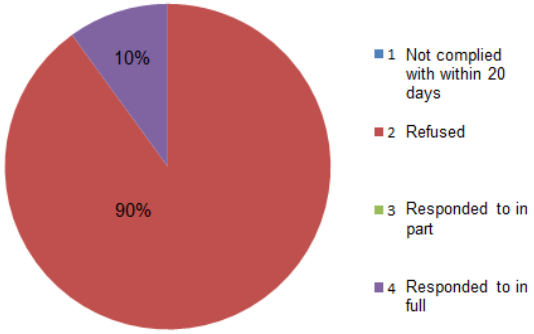
- Response delayed (i.e. not complied with within the twenty day limit)
- Request denied
- Response provided in full
- Response provided in part

Compliance of LCR local authorities with our requests for information

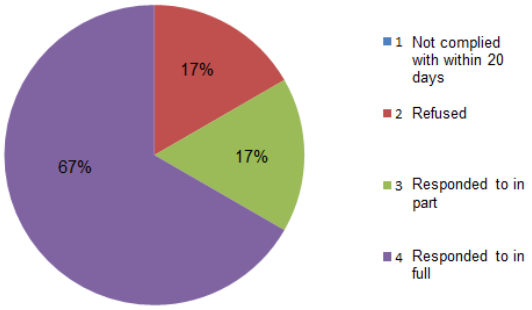
Halton



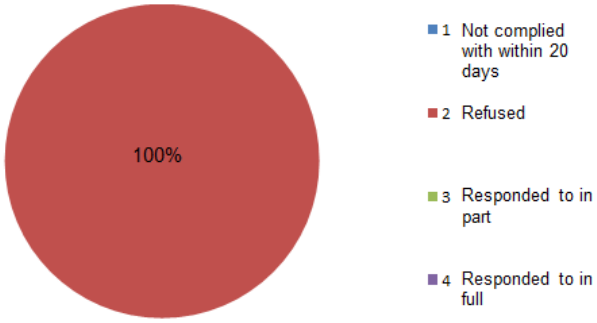
Knowsley



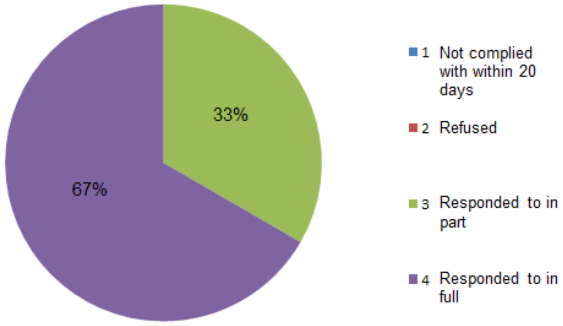
Liverpool



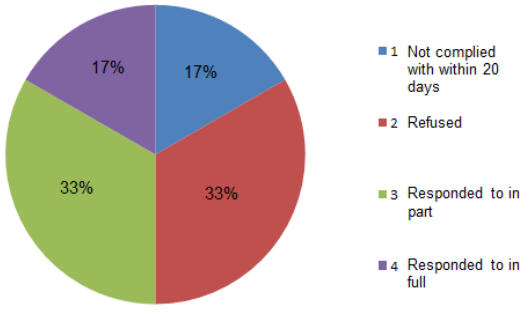
Sefton



St Helens



Wirral



Summary Findings

- **St Helens Metropolitan Borough Council** and **Liverpool City Council** interpreted the FOIA (2000) in a way which enabled them each to comply fully with two thirds of our requests. St Helens endeavoured to provide at least part of the information in response to every question and Liverpool did the same in response to all questions bar Question ii on the subject of how may FOI requests were submitted via the 'What Do They Know' website (which, in fairness, *was* the one question where the information was available elsewhere).

- **Halton Metropolitan Borough Council** also provided a great deal of the information we requested but stated that it was unable to respond to two of our questions in full. The sole question it refused to answer in its entirety was Question ii, in accordance with the FOIA (2000) and in line with all LCR local authorities bar St Helens.

- **Wirral Metropolitan Borough Council** provided at least some of the information requested in response to half of ExUrbe's requests. Like most other local authorities, it refused to provide information in response to Qii. However, it also completely refused to provide an answer to Qv. (on the number of requests refused and reasons behind this) and was the sole local authority not to provide a response to one of our questions within the twenty day time frame.

- **Sefton Metropolitan Borough Council** and **Knowsley Metropolitan Borough Council** refused or were unable to comply with the majority of our requests. Sefton refused to supply statistics across the board and following a response to the first part of our first request Knowsley also declined to provide further information.

Information provided by the LCR local authorities in response to our requests

LIVERPOOL CITY REGION LOCAL AUTHORITY	i. How many FOI requests have been submitted to the Borough Council?	ii. How many of them have been made through the WhatDoTheyKnow website?	iii. How many FOI requests did the council respond to within the statutory 20 working days?	iv. How many FOI requests were overdue and by how long?	v. How FOI requests were refused; and what was the most common reason for refusal?	vi. How many FOI requests were complied with fully; and how many were partially complied with?
Halton	1299	125	170	170 Stated that they do not record information 'by how long'	164 No reason for refusal	870 fully; 249 partially
Knowsley	1703	170	INFORMATION NOT PROVIDED	INFORMATION NOT PROVIDED	INFORMATION NOT PROVIDED	INFORMATION NOT PROVIDED
Liverpool	3201	424	2599	477 No mention of how long	169. 'The most common exemptions applied were section 12 (1) cost of compliance exceeds appropriate limit, section 40 personal information and	1872 fully; 681 partially

					section 21 information accessible by other means	
Sefton	Estimated 1000 per year 'across the whole organisation but if you include ordinary departmental requests for information, which are also covered by FOI, then the number will be far greater'	INFORMATION NOT PROVIDED	INFORMATION NOT PROVIDED	INFORMATION NOT PROVIDED	INFORMATION NOT PROVIDED	INFORMATION NOT PROVIDED
St Helens	1662	142	1251	264 Average response time 30 days	Since 06/03/2013, 27 requests have been refused. The most common reason for refusal is that the data requested was not held by the Authority	Since 06/03/2013, 319 requests resulted in full disclosure and 45 resulted in partial disclosure
Wirral	2351	665	1073 (from start April 2012)	379 (from start April 2012) No mention of average response time	INFORMATION NOT PROVIDED	INFORMATION NOT PROVIDED

COUNCIL PERFORMANCE: FINDINGS

- Please note that our totals are necessarily approximate.

- As expected, Halton - as the LCR local authority with the smallest population - received the fewest requests (1229) in the 24 month period 31 August 2011 – 1 September 2013. Liverpool, as the core city with the largest population, received the most FOI requests (3201) by a substantial margin. Interestingly, however, in the LCR at least, the number of FOI requests a council receives does not always increase relative to population size. Knowsley has a far smaller population than St Helens, yet far more requests for information were submitted to Knowsley Metropolitan Borough Council than St Helens Metropolitan Borough Council during the 24 month period.

- It is interesting to note the proportion of FOI requests submitted via whatdotheyknow.com, over the two year period in question (August 2011 – August 2013):

LOCAL AUTHORITY	% OF REQUESTS SUBMITTED VIA WDTK?
Halton	9.6%
Knowsley	9.9%
Liverpool	13.2%
St Helens	8.5%
Sefton	Insufficient information provided to calculate with any certainty
Wirral	28.3%

The average rate – around 10% - appears to be quite consistent.

That Wirral bucks the general trend may be partly due to the spotlight that has been thrown upon issues surrounding FOI and the Council over the past few years. The borough also has a number of self-styled citizen 'watchdogs' who have helped to draw attention and scrutiny to the practices and performance of the local authority.

Liverpool, as a core city, is naturally likely to attract more requests from both within and without the local authority area.

It is important to recognise that these are approximations based upon third party data and loose manual counts. However, our findings are logical and bear comparison with estimates provided by other parties on the proportion of requests made through the online facility.

- Just three councils told us how many requests they had responded to within 20 working days over the last 24 months. On the basis of the information provided, Liverpool City Council performed best, responding to 81.2% in a timely manner. Halton responded to 78.6% of requests and St Helens to 75.3% within statutory time limits.

- The same three councils provided us with statistical information on the number of FOI requests classified as overdue. Between 1 August 2011 and September 2013, 13% of responses to requests submitted to Halton Borough Council and 15% of those submitted to Liverpool City Council were overdue. By a small amount, St Helens Borough Council performed most poorly (of those councils who provided the information) with 15.9% of requests submitted to that local authority receiving overdue responses.

- The sole local authority which provided us with information on the length of time for which requests were overdue was St Helens: they stated that these overdue requests had an average response time of 30 days. Wirral's failure to respond in a timely fashion to 379 requests from the beginning of April 2012 only (over a time period of eight months less than other LCR councils) suggests a very poor performance if this is projected proportionally over the complete time scale.

- Halton Borough Council refused to provide information in response to 12.6% of the requests it received over the 24 month period. Liverpool City Council refused to provide information for less than half that amount: 5.3% of cases. Liverpool and St Helens were the only councils to provide the most common reasons for refusal. Liverpool Council stated that it tended to refuse requests on the grounds that it was too expensive, involved personal information or regarded information accessible in other ways. St Helens stated that the most common reason for refusal in that borough was that the 'data requested was not held by the Authority'.

- Finally, in terms of responding *in full* to requests for information, Halton Council managed this in 70.8% of cases over the 24 month period. According to the information they provided, Liverpool City Council responded in full to just 57.1% of cases within that time frame. Both councils responded to around a fifth of requests *in part* only during this time frame: Halton Council partially responded to 19.2% of all requests and Liverpool City Council did the same in response to 21.3% of the requests it received.

- What becomes very self-evident from all of this is that the local authorities are not collecting and organising data according to consistent, like-for-like systems and procedures.

THE METROPOLITAN BOROUGHS: TWO CASE STUDIES

[CASE STUDY #1]
LIVERPOOL CITY COUNCIL and LIVERPOOL DIRECT LIMITED

6.1 Liverpool Direct Limited (LDL) is a public private partnership - or 'PPP' – set up between Liverpool City Council and British Telecom (BT). It is a prime example of the outsourcing of local government services to private sector organisations – in this case, a large corporate communications operator.

6.2 LDL is described as follows on its dedicated website:

> Established in 2001, Liverpool Direct Limited is jointly owned by Liverpool City Council and BT. It was set up to transform failing or poor council services and provide only the very best in the public sector. It began with only 250 staff and delivered revenue and benefits services, Information, Communications and Technology (ICT), human resources and payroll and a small call centre operation. Since its launch, Liverpool Direct Limited has not only delivered service excellence but has helped to build the reputation of the City of Liverpool and Liverpool City Council. The company has grown considerably over the past ten years and now offers a wide range of services including:
>
> - Benefits Service
> - Revenues Service
> - ICT Service
> - Web and Geodata Services
> - Contact Centre
> - Careline
> - One Stop Shops
> - Human Resources, Pensions and Payroll
> - Learning and Development
>
> Today, the business has an annual a turnover of over £80m and employs over 1,300 people. Our customer base has grown from one single customer to over 350 organisations and companies (including schools). This remarkable growth and success has been based on significant and sustained capital investment, with high quality staff supported by high quality ICT and by the ethos of 'placing the customer at the heart of the organisation'.

6.3 Others would be far less effusively positive in their description of the company. Sealed under a Liberal Democrat administration and renewed under a Labour one, the LDL partnership has proven hugely controversial from the outset, characterised by complex legal and contractual arrangements surrounding ownership, governance and the employment, pay and conditions of staff. Moreover, serious concerns have been repeatedly raised over whether the BT deal is *costing*, rather than *saving*, Liverpool City Council – whilst actually offering unsatisfactory levels of customer service. Certainly, there have been alarming

allegations of BT creaming off vast amounts of profit from the enterprise and of Liverpool taxpayers being 'had'.

6.4 In late 2010, for example, shortly before the Council was due to recommit to the LDL service between 2012 and 2017, the local press carried an alarming report:

> Liverpool council is being overcharged £10m a year by BT for its hugely controversial IT and call handling operation, according to a damning investigation. The council probe, which has cost more than £250,000, also found if officials terminated the contract, it could save £23m a year. The bleak assessment of the Liverpool Direct Ltd (LDL) contract also stated BT has been "excessively marking up" the cost of equipment not specified in the original deal, which was signed in 2001. … The report, written in June, stated its purpose was to improve the £70m-a-year contract and squeeze better value out of the contract. But it also made clear "significant savings" could be achieved by terminating the deal in 2012 and bringing the services back in house. If the council finished the contract in 2012, it would save £82m over the next four years and £23m annually thereafter, the report stated. Its verdict was clearly at odds with previous assertions from the council that the city would be left £20m out of pocket if it ended the deal.[29]

Note that the Council launched the probe after an earlier external IDeA report in 2008 'stated bills for the LDL deal were "opaque" and "lacked transparency", raising doubts about whether the council as getting value for money.'

The leader of Liverpool City Council at the time – Joe Anderson, now mayor of the city – "declined to comment", although he had previously been a vocal critic of the partnership when in opposition. The contract was duly renewed in 2012, although clearly the relationship was not a happy one:

> Liverpool Council will extend its most expensive and controversial contract until 2017 – in exchange for a batch of concessions worth £27m. Tomorrow, Liverpool's ruling Labour cabinet will agree to continue its £70m-plus annual joint venture Liverpool Direct Limited with BT to run its IT, call centres and revenues and benefits. But it will receive a series of concessions saving £27m over the next six years, and BT will agree to drop a threat to sue the council for £56m.[30]

6.5 Significantly:

> Council chief executive Ged Fitzgerald admitted, if the council were starting from scratch, it would not be doing the deal, and said: "It's probably fair to say we would not start from where we are, but we are where we are. This is probably the best available situation to us".

BT appeared, in short, to have the local authority 'over a barrel' and the Council had little option but to go for the "least risky option". This pointed to deeper concerns about outsourcing of this type undermining local democracy.

6.6 The Lancashire equivalent of LDL – One Connect Limited (OCL), a very similar partnership between BT and Lancashire County Council – created a storm of controversy in 2013, when all manner of problems emerged surrounding the questionable award of contracts, the payment of top senior OCL executives, the

[29] 'BT overcharging Liverpool council by £10m a year, report claims'. Liverpool Daily Post. 27 September 2010

[30] 'Liverpool Direct Ltd BT contract extended by Liverpool Council for five more years'. Liverpool Echo. 28 June 2011

reported failure of the partnership to secure Lancashire County Council millions of procurements savings each year, as had been promised, and – more seriously – alleged 'financial irregularities'. Following a series of debacles, the partnership was dissolved in early 2014.

6.7 Central to much of the scandal was Dr David McElhinney, chief executive of OCL, who (despite an annual salary of £40,000 plus bonuses for 2.5 days per week) received two lump sums amounting to over £600,000 in June and July 2013, just a month or so before resigning unexpectedly from his role. This curious activity sparked both municipal and police inquiries, which are still ongoing. Another key figure was Phil Halsall, chief executive of Lancashire Council Council. He resigned after having been suspended "while an investigation took place into alleged 'favouritism' being shown to Lancashire's version of LDL, One Connect, in the awarding of a fleet maintenance contract."[31] Both of these gentlemen previously worked together in senior roles at Liverpool City Council.

6.8 All of this was of considerable public interest on Merseyside, given that Dr McElhinney spent the rest of his time working as chief executive of none other than Liverpool Direct Limited. Yet Liverpool City Council remained resolutely *stumm* about the matter, insisting Dr McElhinney's arrangements in Lancashire were entirely separate, despite the fact that one payment of nearly £93,000 for work for that county "was made through Liverpool Direct and has been recharged to One Connect". The lines were clearly extremely blurred. As the leader of the Liverpool Liberal Democrats put it: "It's a shame we have to look to Labour in Lancashire for openness and transparency about Liverpool's affairs".

6.9 More recently, the LDL deal has drawn criticism from Government, with an emphasis upon the lack of transparency surrounding it:

> A Government minister condemned Liverpool council's controversial deal with BT, saying city leaders have not been getting value for money. … Local government minister Brandon Lewis said: "Liverpool must justify its spending to its hard-working families. The public are entitled to know what council are doing with taxpayer's money. That is why this government has required every council to publish all their spending over £500. This includes contracts and tenders. It is clear that Liverpool is not getting value for money and could get more for less.[32]

6.10 Former councillor Lord Storey – who led the council at the time the partnership was originally forged – said:

> Initially it [the deal] was very successful and held up as a model of good practice, but some of the excesses of the last few years are not.[33]

Crucially, Lord Storey pointed out:

[31] '£500k payments to LDL boss part of Lancs police probe'. Liverpool Daily Post. 1 November 2013
[32] 'Minister says Liverpool must justify BT deal'. Liverpool Echo. 24 October 2013
[33] ibid

Whoever it is who tries to find out faces smoke and mirrors, and I'm glad the truth is coming out now.

6.11 The purpose of this case study is not to examine the many complex, substantive issues that surround BT's partnership with Liverpool City Council – though these are intriguing and troubling and merit thorough examination elsewhere – but to illustrate the local FOI processes it has engendered.

6.12 Since 2008 – and probably earlier – a small group of interested individuals have sought with dogged tenacity to access information about LDL, its management, its governance and its finances. There is no way of ascertaining the identities, interests, motivations or agendas of these persons (indeed, two or more may be the same individual applying pseudonymously) – although by rights this ought essentially to be academic where FOI is concerned, as local authority officers are meant to be both identity and motive 'blind'.

6.13 What is remarkable is the extent to which FOI has been used (with very mixed results) in a bid to elicit information. Via the *What Do They Know*? website alone, in excess of 85 requests have been submitted since 2009. In chronological order, beginning with the most recent first, we have listed, with links, those we have identified as being directly or indirectly related to LDL. They are dated according to the last activity or communication that took place and the outcome is indicated using the tricolour 'traffic light' system employed by the website (although these may not be entirely current/accurate, as requesters are relied upon to update entries as developments occur). The main outcome alternatives are as follows:

Positive Response:	Successful/Partially Successful
Negative Response:	Refused/Long Overdue/Information Not Held
Pending Response:	Awaiting Response/Awaiting Classification/Awaiting Internal Review

THE REQUESTS

Payments to LDL [16 Jan 2014]: Awaiting Response
https://www.whatdotheyknow.com/search/LDL/all?page=1&query=LDL

1.25% payment for 3rd party work by LDL [14 Jan 2014]: Long Overdue
https://www.whatdotheyknow.com/request/125_payment_for_3rd_party_work_b#outgoing-326239

Agreement between Lancashire County Council & Liverpool City Council [10 Jan 2014]: Information Not Held

https://www.whatdotheyknow.com/request/agreement_between_lancashire_cou#comment-46515

McElhinney Secondment to LDL [6 Dec 2013]: Successful
https://www.whatdotheyknow.com/request/mcelhinney_secondment_to_ldl

Copy of letter dated 28 April 2011 acknowledging joint arrangements for the employment of David McElhinney to manage OCL and LDL [4 Nov 2013]: Successful
https://www.whatdotheyknow.com/request/copy_of_letter_dated_28_april_20

Payments to David McElhinney since 2008 [29 Oct 2013]: Refused
https://www.whatdotheyknow.com/request/payments_to_david_mcelhinney_sin#outgoing-309013

ICT Service Desk [28 Oct 2013]: Awaiting Classification
https://www.whatdotheyknow.com/request/ict_service_desk_17#incoming-444121

Chief Executive LDL [24 Oct 2013]: Successful
https://www.whatdotheyknow.com/request/chief_executive_ldl#outgoing-308025

Legal obligations of staff answering FOI questions [19 Oct 2013]: Successful
https://www.whatdotheyknow.com/request/legal_obligations_of_staff_answe#comment-44277

Organogram, pay and staff numbers [13 Aug 2013]: Refused
https://www.whatdotheyknow.com/request/organogram_pay_and_staff_numbers#comment-42132

LDL potential legal claim [4 May 2013]: Information Not Held
https://www.whatdotheyknow.com/request/ldl_potential_legal_claim#outgoing-271946

Computer Software [19 Dec 2012]: Information Not Held
https://www.whatdotheyknow.com/request/computer_software_85#incoming-343617

Decision to shred LDL Board Meeting minutes [15 Dec 2012]: Partially Successful
https://www.whatdotheyknow.com/request/decision_to_shred_ldl_board_meet#outgoing-242760

Joint Venture Agreement [7 Dec 2012]: Awaiting Internal Review
https://www.whatdotheyknow.com/request/joint_venture_agreement#outgoing-241349

LDL refresh proposal [8 Nov 2012]: Successful
https://www.whatdotheyknow.com/request/ldlrefresh_proposal#incoming-329697

GIS Software [7 Nov 2012]: Partially Successful
https://www.whatdotheyknow.com/request/gis_software_155#incoming-329172

Financial information received by LCC from LDL [5 Nov 2012]: Awaiting Internal Review
https://www.whatdotheyknow.com/request/financial_information_received_b#comment-32290

Details of Income Received from LDL for third party work [5 Nov 2012]: Long Overdue
https://www.whatdotheyknow.com/request/details_of_income_received_from#comment-32289

LDL Board Meetings [5 Oct 2012]: Information Not Held
https://www.whatdotheyknow.com/request/ldl_board_meetings#outgoing-227013

Annual General Meetings [26 Sep 2012]: Information Not Held
https://www.whatdotheyknow.com/request/annual_general_meetings#outgoing-225372

Governance of LDL [24 Sep 2012]: Refused
https://www.whatdotheyknow.com/request/governance_of_ldl#comment-31022

Revenue Share from SIA and other contracts [23 Sep 2012]: Long Overdue
https://www.whatdotheyknow.com/request/revenue_share_from_sia_and_other#outgoing-224788

Payments to LDL 2010/11 [21 Sep 2012]: Refused
https://www.whatdotheyknow.com/request/payments_to_ldl_201011#incoming-314613

Payments to LDL 2009/10 [7 Sep 2012]: Awaiting Internal Review
https://www.whatdotheyknow.com/request/payments_to_ldl_200910#outgoing-221344

Procurement of SIA Contract Centre Services [20 Aug 2012]: Partially Successful

https://www.whatdotheyknow.com/request/procurement_of_sia_contact_centr#incoming-307875

Reports and documentation about LDL provided to Ernst & Young in June 2010 [14 August 2012]: Partially Successful
https://www.whatdotheyknow.com/request/reports_and_documentation_about#outgoing-216715

Number of FTE staff employed servicing the SIA Contract during 2011/12 [16 July 2012]: Information Not Held
https://www.whatdotheyknow.com/request/number_of_fte_staff_employed_ser#comment-29357

Responsiveness to FOI requests [14 July 2012]: Successful
https://www.whatdotheyknow.com/request/responsiveness_to_foi_requests#outgoing-210886

BT Contract Rentals (BTCR) due diligence [3 July 2012]: Partially Successful
https://www.whatdotheyknow.com/request/bt_contract_rentals_btcr_due_dil#comment-29107

Invoices in relation to LDL services [29 June 2012]: Partially Successful
https://www.whatdotheyknow.com/request/invoices_in_relation_to_ldl_serv#outgoing-208643

Freedom to procure [14 June 2012]: Information Not Held
https://www.whatdotheyknow.com/request/freedom_to_procure#comment-28715

Third party clients of LDL [14 June 2012]: Refused
https://www.whatdotheyknow.com/request/third_party_clients_of_ldl#comment-28703

Joint Ventures [2 June 2012]: Information Not Held
https://www.whatdotheyknow.com/request/joint_ventures_2

BTCR lease - who paid? [2 June 2012]: Partially Successful
https://www.whatdotheyknow.com/request/btcr_lease_who_paid#outgoing-204639

Responsibilities and budget of Divisional Manager for Policy and Partnerships [3 May 2012]: **Successful**

https://www.whatdotheyknow.com/request/responsibilities_and_budget_of_d#incoming-278859

Third party revenue [24 Mar 2012]: Partially Successful
https://www.whatdotheyknow.com/request/third_party_revenue#outgoing-192013

Lease arrangements with BTCR [7 March 2012]: **Partially Successful**
https://www.whatdotheyknow.com/request/lease_arrangements_with_btcr#comment-26094

LDL Catalogue [11 February 2012]: **Partially Successful**
https://www.whatdotheyknow.com/request/ldl_catalogue#outgoing-182846

Investigations into Liverpool Direct Limited [31 January 2012: Refused
https://www.whatdotheyknow.com/request/investigations_into_liverpool_di

Minutes of LDL Board Meetings [29 January 2012]: **Information Not Held**
https://www.whatdotheyknow.com/request/minutes_of_ldl_board_meetings#outgoing-180186

£32 million investment by LDL [26 January 2012]: Information Not Held
https://www.whatdotheyknow.com/request/32_million_investment_by_ldl#incoming-247941

Related Party Transactions 2009/10 [19 January 2012]: Successful
https://www.whatdotheyknow.com/request/related_party_transactions_20091#outgoing-176576

LCC staff seconded to LDL [17 January 2012]: Successful
https://www.whatdotheyknow.com/request/lcc_staff_seconded_to_ldl#outgoing-176007

Has the LDL Contract extension been signed [7 January 2012]: Successful
https://www.whatdotheyknow.com/request/has_the_ldl_contract_extension_b#outgoing-174178

Assets owned by LDL [7 January 2012]: Refused
https://www.whatdotheyknow.com/request/assets_owned_by_ldl#outgoing-174177

Flow of money related to 3rd party work [23 December 2011]: Partially Successful

https://www.whatdotheyknow.com/request/flow_of_money_related_to_3rd_par#outgoing-171856

Governance arrangements for LDL [21 December 2011]: Successful
https://www.whatdotheyknow.com/request/governance_arrangements_for_ldl#incoming-237771

Pensions for seconded staff part 2 [16 December 2011]: Refused
https://www.whatdotheyknow.com/request/pensions_for_seconded_staff_part#incoming-236641

2011 LDL accounts [10 December 2011]: Refused
https://www.whatdotheyknow.com/request/2011_ldl_accounts#outgoing-169644

Emails between Ged Fitzgerald and David McElhinney [8 December 2011]: Partially Successful
https://www.whatdotheyknow.com/request/emails_between_ged_fitzgerald_an#comment-23665

Leasing arrangements LDL Part 2 [6 December 2011]: Withdrawn By Requester
https://www.whatdotheyknow.com/request/leasing_arrangements_ldl_part_2#outgoing-168795

Staff salaries over £100,000 [1 December 2011]: Partially Successful
https://www.whatdotheyknow.com/request/staff_salaries_over_100000#incoming-232149

Correspondence between Colin Hilton and David McElhinney [29 November 2011]: Refused
https://www.whatdotheyknow.com/request/correspondence_between_colin_hil#outgoing-167265

Senior Officers - A Requirement to Declare and Register Personal Interests [27 November 2011]: Partially Successful
https://www.whatdotheyknow.com/request/senior_officers_a_requirement_to_3#comment-23392

Insurance cover for LDL directors employed by LCC [23 November 2011]: Information Not Held
https://www.whatdotheyknow.com/request/insurance_cover_for_ldl_director#incoming-229745

Quarterly accounts for LDL [22 November 2011]: Information Not Held
https://www.whatdotheyknow.com/request/quarterly_accounts_for_ldl#comment-23214

£1m Sponsorship [21 November 2011]: Successful
https://www.whatdotheyknow.com/request/1m_sponsorship#outgoing-165402

Back Office Systems - Provider Names and costs [21 November 2011]: Successful
https://www.whatdotheyknow.com/request/back_office_systems_provider_nam_171#incoming-228900

Income received from LDL during Financial Year 2010/11 [18 November 2011]: Partially Successful
https://www.whatdotheyknow.com/request/income_received_from_ldl_during#comment-23129

Pensions for seconded staff [18 November 2011]: Successful
https://www.whatdotheyknow.com/request/pensions_for_seconded_staff#outgoing-164911

BT legal claim of £56 million [18 November 2011]: Information Not Held
https://www.whatdotheyknow.com/request/bt_legal_claim_of_56_million#outgoing-164887

Advice provided by Cherie Booth, QC [18 November 2011]: Partially Successful
https://www.whatdotheyknow.com/request/advice_provided_by_cherie_booth#comment-23083

LDL asset register [17 November 2011]: Successful
https://www.whatdotheyknow.com/request/ldl_asset_register#comment-23075

Has David McElhinney been appointed to LCC Management Team? [17 November 2011]: Refused
https://www.whatdotheyknow.com/request/has_david_mcelhinney_been_appoin#outgoing-164779

40% ownership of LDL [15 November 2011]: Information Not Held
https://www.whatdotheyknow.com/request/40_ownership_of_ldl#outgoing-164389

Leasing arrangements between LCC and LDL [15 November 2011]: Successful
https://www.whatdotheyknow.com/request/leasing_arrangements_between_lcc#comment-22960

Senior salary information [14 November 2011]: Refused
https://www.whatdotheyknow.com/request/senior_salary_information#comment-22929

Emails related to LDL Contract [4 November 2011]: Successful
https://www.whatdotheyknow.com/request/emails_related_to_ldl_contract#comment-22677

David McElhinney [30 October 2011]: Information Not Held
https://www.whatdotheyknow.com/request/david_mcelhinney#comment-22553

Strategic partnership agreement [24 October 2011]: Refused
https://www.whatdotheyknow.com/request/strategic_partnership_agreement#comment-22373

Financial information received from LCC [22 October 2011]: Withdrawn by Requester
https://www.whatdotheyknow.com/request/financial_information_received_f#comment-22333

Correspondence between David McElhinney and Information Officers [20 October 2011]: Partially Successful
https://www.whatdotheyknow.com/request/corresponence_between_david_mcel#comment-22271

Requests for investigation into Liverpool City Council LDL contract [10 October 2011]: Successful
https://www.whatdotheyknow.com/request/requests_for_investigation_into

Policy guidance to FOI staff relating to LDL [19 September 2011]: Successful
https://www.whatdotheyknow.com/request/policy_guidance_to_foi_staff_rel#outgoing-152742

City Solicitors [18 September 2011]: Successful
https://www.whatdotheyknow.com/request/city_solicitors#comment-21218

Tendering procedure for AKA Contract [9 February 2011]: Successful

https://www.whatdotheyknow.com/request/tendering_procedure_for_aka_cont#incoming-149592

Liverpool Direct BT contracts [7 January 2011]: Successful
https://www.whatdotheyknow.com/request/liverpool_direct_bt_contracts#outgoing-103774

Secret report on Liverpool BT contract [10 December 2010]: Partially Successful
https://www.whatdotheyknow.com/request/secret_report_on_liverpool_bt_co#incoming-132579

Continuous Benchmarking of Liverpool Direct contract [22 November 2010]: Awaiting Internal Review
https://www.whatdotheyknow.com/request/continous_benchmarking_of_liverp#outgoing-94462

Liverpool Direct Limited replaying of recorded calls [13 November 2010]: Successful
https://www.whatdotheyknow.com/request/liverpool_directy_limited_replay

FOI Request [24 September 2010]: Partially Successful
https://www.whatdotheyknow.com/request/foi_request_347#incoming-116925

List of Internal Audit reports [20 January 2010]: Refused
https://www.whatdotheyknow.com/request/list_of_internal_audit_reports#incoming-66211

Cost and frequency of 'LDL' away days [18 January 2010]: Partially Successful
https://www.whatdotheyknow.com/request/cost_and_frequency_of_ldl_away_d#incoming-65830

Liverpool Direct contract investigations and reports [5 October 2009]: Refused
https://www.whatdotheyknow.com/request/liverpool_direct_contract_invest#incoming-64827

IP address 168.143.161.20 [22 September 2009]: Information Not Held
https://www.whatdotheyknow.com/request/ip_address_16814316120#incoming-44970

Instructions to IPS January 2009 [4 March 2009]: Successful

https://www.whatdotheyknow.com/request/instructions_to_ips_january_2009#incoming-19214

6.14 Note that of the 86 requests identified, just 23 (slightly less than 27%) were wholly 'successful'. Responses were not forthcoming for 31 of the questions (36%), either because they were refused outright (on various grounds) or the requesters were advised the Council did not hold the information requested.

6.15 The matter of a local authority claiming not to hold the information requested is an interesting one. Sometimes the requester must simply accept the assertion in good faith. At others, the response actually reveals what might be described as questionable democratic procedures. For example, a request for information about LDL Board Meetings (notices and agendas) submitted in 2012 met with the following response:

> The City Council holds no information regarding your request and but can confirm the following:
>
> The notifications and agendas are received in paper copy format. These are subsequently shredded after each meeting.
>
> As a result the City Council cannot provide the information you have requested as we do not hold any.

As the requester rightly retorted:

> This begs the question: WHY DOES THE COUNCIL SHRED THESE DOCUMENTS? I will ask this question; you will delay past the legal limit (as you did on this occasion, and so many others) and eventually you will pass on half an answer.

6.16 It is worth pursuing this request to its conclusion, as it demonstrates well the kind of tack taken by the FOI officers at the Council, the Alice-in-Wonderland absurdity of some of their responses, the lengths they will go to avoid straightforward answers to simple questions, the culture of defensiveness (whereby the original questions are lost as the council seeks to justify its illogical responses) and the utter frustration with which the thwarted requester must deal.

6.17 In the case in question, the requester duly submitted a new request entitled 'Decision to shred LDL Board Meeting minutes':

> Q1: Was the decision to shred these documents approved by councillors? If so, please provide details of the committee which made this decision
> Q2: Please provide the names of every Liverpool City Council officer and councillor who has attended LDL Board meetings since 2009.

6.18 A fellow FOI requester commented as follows:

> This shredding business is astonishing - I've been trying to get my head round it since the answer was first published. According to the provision quoted in the original request, the Directors of LDL and the City Solicitor receive "written notice of such meeting, specifying the date, time and place

of the meeting and including an agenda indicating the business for discussion at the meeting and all supporting board papers". So it's official information - not just reminders about meetings. Agendas. Reports. So Alan Dean and Ged Fitzgerald have been shredding all this for the last two years?? And Joe Anderson will follow suit, now he is a Director?? What on earth happened to proper records, information keeping, procedure, etc. etc.? They were not appointed directors because they're clever, cute, or anything else - but as representatives of shareholder Liverpool City Council, and us, the stakeholders. So they surely needed the authorisation of the full Council (which appoints them). There is no record of any decisions about all this in the minutes of any Council meeting (full council, select committee, cabinet.....).

And as for the City Solicitor, the Council's senior legal officer, her duties, according to the most recent job description (Applicant Information Pack Veredus Ref: 12718 dated December 2011) include, among other things:

- Ensure the effective operation of decision-making and scrutiny processes and promote good governance.

- Lead on access to information, freedom of information, data protection and information management.

And with a 'Primary Focus':

- To be able to act as the "conscience" of the organisation and to uphold the standards, ethics and behaviour of Local Government and public service"

And with all that, she's shredding documents??? What do they think they are, MI5????

6.19 The eventual response was as follows:

The City Council does not hold the information you have requested. To clarify this point further in accordance with clause 9.2 the notifications and agendas are issued to the Council in paper copy format prior to the Board meeting. These are subsequently discussed at the Board meeting in detail. The practice is to return the papers back to LDL and this is due to the sensitive confidential nature of the information contained within the papers. As the Board papers are significant documents of a commercially sensitive nature they will be destroyed in a confidential manner in accordance with the destruction policy of LDL. There is no requirement for the Council to retain copies of the agenda items or Board papers as these will be held by LDL

The Council does not hold a list of every Liverpool City Council officer and councillor who has attended LDL Board meetings since 2009. However, in accordance with Section 16 of Freedom of Information Act 2000, which places a duty on public authorities to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it, we can confirm the following officers and Councillors have been on the LDL Board since 2009

2009 – Cllr Warren Bradley, Colin Hilton
2010 – Cllr Warren Bradley, Colin Hilton
2011 – Ged Fitzgerald, Cllr Alan Dean
2012 – Ged Fitzgerald, Mayor Joe Anderson

This concludes our response

6.20 As the determined and observant requester rightly pointed out, this shocking response did not actually answer her original question. It also conflicted with information previously given by the Council:

You haven't yet answered Q1. "Q1: Was the decision to shred these documents approved by councillors? If so, please provide details of the committee which made this decision".

Furthermore, this response is in direct contradiction to a response to a previous FOI request, in which you provided the following response:

"Please provide copies of the minutes of all LDL Board meetings which have been attended by LCC representatives since 1st January 2008".

Response:

"I can confirm that the City Council does not hold the information you have requested. To clarify when officers or Members attend the LDL Board Meeting any minutes that are produced are provided at each LDL Board Meeting, they are not produced in advance of the Meeting. At the Meeting the Officer or Member will be allowed to raise or ask for amendments to those minutes. LDL have stated that due to the commercial sensitivity of those minutes they are not to be taken away from the Meeting. Consequently copies are not held by the City Council."

… These two responses can not both be correct. Either the agendas and minutes are circulated prior to the meeting or they are not. Please perform an internal view of this response.

6.21 The Council's response – a tardy and bullish one – was as follows:

You have asked for a review of our responses and I can confirm I will undertake the review of the response that has been issued to you under our reference 221825; I will clarify the situation regarding your suggestion of contradiction on behalf of the Council.

I will address the first point in relation to whether Councillors approval was sought to shred the documents.

The response of 30 October 2012 clearly stated that there was no business need for the Council to retain a copy of the Board Minutes as a master copy will be retained and stored by LDL, any copies of the board papers will be destroyed by LDL in line with their destruction policy relating to commercially sensitive information. There is no requirement to seek Councillors approval for this.

To clarify the issue regarding what you believe is a contradiction of information sent out by the Council in relation to response sent concerning copies of Board Papers and Minutes. There may have been an element of confusion by the statement made in the first response that 'the practice is to return the papers to LDL' may have suggested the papers are taken away and then returned at a later date. However for avoidance of doubt the papers are never taken away from the Board meeting they are returned back to LDL at the end of every meeting. Therefore I do not concur that this is a contradiction.

This concludes our response to your request for a review.

6.22 The requester refused to be 'fobbed off' and wrote a riposte to the FOI officer concerned:

1. You state that "The response of 30 October 2012 clearly stated that there was no business need for the Council to retain a copy of the Board Minutes as a master copy will be retained and stored by LDL, any copies of the board papers will be destroyed by LDL in line with their destruction policy relating to commercially sensitive information. There is no requirement to seek Councillors approval for this". I think you are saying that the answer to Q1 is that the approval of councillors to shred these vitally-important documents was not sought. You could have been significantly more direct about this point, both on 30th October (when you didn't answer the question) and now. As a taxpayer, I am appalled that councillors were not asked whether it was okay to shred documents relating to £70 million pa of council expenditure and

an unknown number of millions of pounds of third party business which council staff are undertaking, on council premises, using council equipment.

2. Your claim that there is no contradiction is simply wrong. I quote from your earlier response: "To clarify this point further in accordance with clause 9.2 the notifications and agendas are issued to the Council in paper copy format prior to the Board meeting." How can you say this does not contradict your statement that "when officers or Members attend the LDL Board Meeting any minutes that are produced are provided at each LDL Board Meeting, they are not produced in advance of the Meeting"?

6.23 Having secured an internal review, the requester's only option at this stage was to approach the Office of the Information Commissioner. There is no way of confirming whether she actually did so, as this would not necessarily have been done via the *What Do They Know?* website.

6.24 Collectively, in both their quality and their quantity, these requests are instructive. Clearly, LDL is a matter of public interest, with Liverpool taxpayers shelling out tens of millions each year upon the deal – as well as being the recipients of the 'customer services' on offer. Yet Liverpool City Council has been disinclined over the years to discuss the partnership, to answer journalistic questions or – more recently, following the very serious developments in Lancashire – to throw any light upon David McElhinney's role, pay and conditions.

6.25 The Board of Liverpool Direct includes both the elected mayor of the city and the chief executive of Liverpool City Council. Yet it does not publish agendas and minutes – and as an incorporated private company, it is not required to do so.

6.26 If all else fails, the Council can resort to variations on the "commercial confidentiality" excuse, as it has done in response to many of the FOI requests listed above. This flags up a fundamental problem – largely unaddressed – with local government outsourcing to private sector concerns.

6.27 The institutional resistance demonstrated by Liverpool City Council, to mainly reasoned, intelligent and legitimate questions, speaks of a culture (conscious or otherwise) of obfuscation and stonewalling. Officers are clearly adept at using jargon and legalese to 'bamboozle' requesters – presumably in the hope said requesters will be sufficiently overwhelmed to give up. This goes directly against the grain of the 'open government' agenda.

6.28 In the case of the LDL requests, some requesters have *not* been put off and have persisted in submitting questions in order to build up a fairly detailed picture of what is going on behind the scenes. Whilst their tenacity is admirable, the question must be asked: why must individuals resort to this unhelpful, painstaking process?

[CASE STUDY #2]
WIRRAL METROPOLITAN BOROUGH COUNCIL – VARIOUS ISSUES

6.29 The most recent figures available suggest that, in line with local authorities nationally[34], the number of FOI requests submitted to Wirral Borough Council has increased dramatically since the Act's implementation nine years ago. The local authority received just 135 requests for information in 2005. In 2009 this figure had increased to 621[35] and – ExUrbe's own research indicates – the Council received a total of 2351 FOI requests in the 24 month period 31 August 2011 to 1 September 2013.

6.30 Recently, however, a response from Wirral Metropolitan Borough Council to an FOI request submitted by ExUrbe found that, between the beginning of April 2012 and the end of July 2013, the Local Authority did not respond to over a quarter of the requests it received within the statutory time frame. It stated that:

> The Council has recently been monitored by the ICO because of delays in responding to enquiries, due to a large backlog of enquiries. The current situation at Wirral is very much improved and the clearing of the backlog has improved response rates.
>
> [Between] 1/4/2012 – 31/7/2013, 1508 FOI requests received and 379 were responded to outside 20 working days. 24 requests went to internal review, 21 requests were extended.[36]

6.31 Concurrent to the ICO's announcement of its intention to monitor the local authority for a second time - in December 2012 - it emerged that Wirral Council had provided a misleading response to an FOI request relating to the amount of public money it had spent on a filming project. In response to a request for information, the Council had initially stated that:

> The expenditure for this video was in the amount of £5,722. In addition Wirral Council can confirm no other funding was spent on contracts such as this.[37]

6.32 An opposition councillor and local newspaper then discovered that other monies *were* 'spent on contracts such as this' but that this had not been disclosed in the original response. A spokesperson for Wirral Metropolitan Borough Council told the Wirral Globe:

> These videos are currently available on the council website and cost a further £7,440 to produce. The council makes no apology for making these and other investments to make sure that our vulnerable residents are more able to get involved[38].

[34] 'FOI 2000 and local government in 2010: The experience of local authorities in England'. UCL Constitution Unit. November 2011
[35] 'Thirst for knowledge: Wirral Council deluged by Freedom of Information requests'. Wirral Globe. 10 March 2010
[36] 'FOI request statistics'. Freedom of Information Request Response. 13 September 2013.
[37] 'Marketing & Advertising Agency work e.g. Mills Media'. Freedom of Information Request Response. 10 December 2012

6.33 Outraged opposition Councillor Chris Blakeley, who was partially responsible for the inquiries that had followed the initial request, asserted that:

> 'Wirral Council can confirm no other funding was spent on contracts such as this' is a lie. It is absolutely misleading and, as we can now see, totally untrue. And to then say they 'make no apology' for spending a further £7,440 than they admitted - with the same company on the same project - is an outrage. I thought we were supposed to have turned a corner as far as transparency and openness is concerned?

6.34 In the wake of this controversy – and following a second period of monitoring of the Council between January and March 2013 – the ICO concluded that the Local Authority had *not* 'turned a corner' in terms of meeting its legal obligations under the FOIA (2000). It noted:

> Although, in this case, the Commissioner considers that more formal action at this stage would be disproportionate, he has the following concerns about Wirral Metropolitan Borough Council's performance and practice:
>
> • At the close of the monitoring period there were a number of outstanding, overdue requests and internal reviews.
>
> • Throughout the monitoring process less than 75% of requests were provided with a response within the appropriate timescales.[39]

6.35 The ICO demanded that Wirral Council's chief executive sign a formal pledge designed to demonstrate the local authority's commitment to a 'culture of openness and transparency'[40]. The Council was obliged to ensure that by the end of September 2013, 85% of requests were being handled within twenty working days. Additionally, the chief executive promised to make sure: the Council had enough resources to handle requests; employees understood the FOIA and were given appropriate training if needed and that all responses identified as overdue (from 25 June 2013) were dealt with.[41] Some observers scoffed at this 'sanction', which effectively amounted to the CEO being slapped on the wrist and forced to promise to try harder.

6.36 At the time of writing, it appears that there has been some improvement in Wirral's compliance with the FOIA 2000. In a local newspaper report from August 2013, Wirral Council's Strategic Director for Transformation and Resources stated that the local authority was just about managing to keep its promise on responding to FOI requests in a timely manner:

> We are starting to see the positive outcomes of our intense activity in this area. Our latest figures show the council met the ICO's target, with 86% of requests responded to within 20 working days.

[38] 'Extraordinary row engulfs council's 'misleading' claims over video costs'. Wirral Globe. 18 December 2012
[39] 'Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR) Undertaking'. Wirral Metropolitan Borough Council Website. Accessed 4 December 2013
[40] ibid
[41] ibid

6.37 Wirral Council's response to an FOI request on the subject, provided in December 2013, *does* indicate an improved service[42]:

	FOIs received	Response within 20 days	%
Nov-12	78	52	66.60%
Dec-12	51	27	52.90%
Jan-13	102	72	70.60%
Feb-13	120	87	72.50%
Mar-13	112	83	72.80%
Apr-13	109	88	80.73%
May-13	110	90	81.82%
Jun-13	106	95	86.79%
Jul-13	131	114	87.02%
Aug-13	107	94	87.85%
Sep-13	96	82	85.41%
Oct-13	118	106	89.83%

6.38 The final report of the Wirral Improvement Board – a partnership between Wirral Council and the Local Government Association, designed to oversee progress following substantial external criticism of the way in which the local authority was operating – was published towards the end of November 2013. On the subject of FOI, it noted that:

> Wirral had one of the highest numbers of Freedom of Information requests in the country, and the timeliness of responses was poor, leading to a requirement in this last year by the Information Commissioner for Wirral to achieve an audited 85% response rate over a three year period. At the time of writing this report, that standard has been met.

6.39 More broadly, the report heaped praise on the Council, for improvements in the form of:

> promoting a culture of openness rather than secrecy. This is encouraging discussions about how to face difficult challenges which are robust, open, honest and constructive. Decisions are made in a transparent way, and information is more easily available to the public.

6.40 Just prior to the publication of the report, in a meeting held on 15 November 2013, members of the public were invited to provide feedback on the quality of the Council's services, including those relating to openness and transparency. The response was overwhelmingly critical. Local political blogger John Brace made a series of contributions, from the very specific – for example a question about why, when a report into the claims of ex-Council employee and whistle blower Martin Morton (who was forced out of his job after raising concerns about the council's financial exploitation of vulnerable people in its care) was published, it was missing fourteen appendices – to more general questions on the Council's improved compliance with FOI legislation:

[42] 'FOI requests received/overdue'. Freedom of Information Request Response. 1 December 2013

> Although Wirral Council is meeting its target of responding to 85% of Freedom of Information Act requests within twenty days during the Information Commissioner Office's monitoring period, a greater proportion of Freedom of Information Act requests have been turned down. If memory serves me correctly, this has been achieved by dedicating greater human resources to responding to Freedom of Information Act requests. This raises the questions, are these resources temporary and only for the Information Commissioner Office's monitoring period…and how does refusing a greater proportion of Freedom of Information Act requests tally with the administration's stated desire to be more "open and transparent"?

6.41 Similarly, other members of the public were keen to emphasise the need for Wirral Council's initial, slight improvements in the timeliness of its response rate to FOIs to be 'broadened out' into sustained progress in relation to the issue of increasing the Council's transparency overall:

> ...reference is made to FoI requests and the 85% target being achieved. This is measured over a very narrow timescale and makes no reference to any challenges to response that may have been received. Given Wirral's poor performance in this area surely continued oversight is required to ensure this is consistent and representative of anticipated future performance.

6.42 In a similar vein, another member of the public stated that:

> I would contest that the 'war' has been won when so many legacy issues remain outstanding, but to 'win the peace' when there has been such a breakdown in trust between the local authority and its residents is it not time for the Local Authority to adopt a corporate charter reflecting the Nolan Principles to embrace the expected standards in public life?

6.43 Appendix 3 details how, at the end of the meeting, former employee and whistle blower Martin Morton perhaps best expressed the majority of contributing residents' concerns about the Council's supposed improvements:

> culture change is not just about process, but requires fundamental change in behaviours. [Martin Morton's] concern was the improvements identified in the review were very much about process.

6.44 ExUrbe sincerely hopes that this slight improvement in response rate *can* be sustained and strengthened to the point that Wirral Borough Council will not have to undergo monitoring by the ICO for a third time.

SOME ANALYSIS

POST CODE LOTTERY?

7.1 In terms of their capacity (or willingness) to comply with ExUrbe's FOI requests in a comprehensive manner, there was considerable variation between the LCR local authorities. The practices of Liverpool and St Helens councils could, with regards to providing the information *we* sought, often be described as consistent: overall both complied with 67% of requests in full and on time. In response to some of our subsidiary questions there were disparities: St Helens responded in full to the query on the subject of how many FOI requests had been submitted via the 'What Do They Know' website, whereas Liverpool refused to do so (although it is worth pointing out that in this respect, St Helens was an anomaly amongst *all* of the LCR borough councils). Conversely, St Helens responded to the second half of the second request for information in part only. Liverpool responded to these subsidiary questions in full.

7.2 Additionally, it is difficult to compare the extent to which Liverpool and St Helens provided complete responses to FOI requests over the twenty four month period outlined, as only Knowsley and Liverpool councils provided this information (in full) in response to ExUrbe's request. According to its own calculations, Liverpool City Council's FOI department responded in full to 58.5% of all the FOI requests it received over this period. St Helens responded to 319 requests in full from the beginning of March 2013 only. That local authority's FOI department initially provided the *total* number of requests it received over the full 24 month period so a robust comparison between St Helens and the other local councils cannot be made.

7.3 Nevertheless, on the basis of our primary research, the FOI departments within Liverpool and St Helens local authorities appeared – at first glance – slightly more able (or determined) to locate the information we requested in comparison to their counterparts across the LCR. In terms of population, Liverpool City Council is the largest local authority and St Helens is the third largest in the sub-region; both employ a huge number of staff accordingly. Cuts to back office staffing levels made by LCR local authorities (as a result of austerity measures imposed by central government) *are* likely to have impacted on council departments which deal with FOI. However, it is not possible to ascertain the exact number of staff employed within the respective council FOI teams. It is fair to assume that the number of staff in each of these teams rises in proportion to a borough's population (and that council's resultant workload). Relative to most other LCR local authorities it is reasonable to assume that FOI teams at Liverpool City Council and St Helens Metropolitan Borough Council are not particularly small. They are likely to contain several individuals with a broader range of expertise

than FOI teams presiding over smaller boroughs. This, in part, may be one reason that members of staff employed by Liverpool and St Helens councils were able to provide more comprehensive responses to ExUrbe's requests than their counterparts across the rest of the LCR.

7.4 However, size certainly does *not* go all the way to explaining the discrepancies identified via our primary research. This is perhaps most clear upon examination of the responses provided by Halton and Wirral councils' FOI teams. Halton is the sub-region's smallest borough yet it disclosed in full a substantial amount (50%) of the information requested by ExUrbe. Wirral is the second largest borough in the sub-region; it managed to provide only a third (33%) of the information sought.

7.5 Perhaps another factor in explaining the inconsistencies is the socio-economic context. Economic inequalities in Wirral are well documented. One recent study found that children born into one particularly disadvantaged Wirral community have a lower life expectancy than people living in North Korea[43]. Accordingly, Wirral Borough Council has traditionally received much of its funding from central government grants rather than council tax. However, over the past few years, the council has been on the receiving end of some of the most severe funding cuts the country. Late last year, the Council took tentative steps towards combining some of its back office services with Cheshire West and Chester, potentially including information technology and legal services. It is difficult to see how Wirral's 'Information Management' team will stay intact if this occurs – as a 'back office' function it is likely to have been directly subject to 'streamlining' already. Halton is a comparatively affluent borough. It receives far more in council tax revenues and its income has taken less of a pounding than that of its sub-regional neighbour. Being a small but well-resourced council (Halton) rather than a large but poorly-resourced one (Wirral) is likely to be a contributing factor in a local authority's capacity to maintain a great enough number of high calibre staff to respond adequately to FOI requests.

7.6 Responses provided by Knowsley, Sefton and Wirral borough councils were less than comprehensive. Knowsley disclosed just 10% of the information we requested. The Council has fewer staff than Liverpool and St Helens and is less affluent than Halton. However, even when taken together these factors do not explain the discrepancy between some local authorities providing 67% (or even 50%) of the requested information and Knowsley disclosing just one tenth.

7.7 For instance, in response to a straightforward, coherent request for information on the subject of how many FOI requests LCR councils responded to within the statutory twenty working days, Halton, Liverpool and St Helens were able to provide the full amount of information requested on or before 1 October 2013.

[43] 'Babies in some parts of Merseyside have worse life expectancy than North Korea'. Liverpool Echo. 27 January 2014

Knowsley was far less forthcoming. After receiving no response from the local authority within the statutory time limit, ExUrbe requested an internal review. The Council then asserted in a single, brief response that answering this, and the other subsidiary questions which made up the entire second request, would take more than 18.5 hours. It applied a blanket refusal rather than responding to each subsidiary question on an individual basis, unlike the other councils in the sub-region. In response to this question, the majority of LCR local authorities appeared to promptly provide as much information as they were able. Knowsley's initial lateness – combined with a lack of explanation as to why each of the four points could not be addressed individually – suggests a lack of willingness within the Borough's FOI team to do as much as possible to supply at least some of the information. We are unable to extrapolate further on whether this is an accurate impression from our primary research, given that Knowsley refused to provide us with almost all of the information we requested on their performance over the twenty four month period.

7.8 The case study we highlighted – concerning Knowsley Council's response to a request on the subject of the recording of council meetings, submitted just two months before our own – also provides an illustration of FOI staff at Knowsley providing little assistance. However, whereas in that instance the impression gained was that the team was being deliberately evasive (in response to a request whereby information provided would have severe implications for local councillors) the team's blanket, late response to every subsidiary question contained in our second request - when all other councils bar Sefton addressed each question on an individual basis – reinforces the sense that staff at Knowsley do not always endeavour to provide as much information as possible.

7.9 Sefton Metropolitan Borough Council was unable or unwilling to disclose in full any of the information ExUrbe requested. They too provided an overarching refusal in response to our second FOI request, rather than (as other councils found to be logical and reasonable) addressing each short question in turn. Unlike Knowsley, however, Sefton responded to our request on time and offered an alternative explanation: that they do not monitor FOI requests centrally as these are handled by separate individuals and departments. This – combined with subsequent telephone and email communication with Sefton's newly appointed 'Caldicott Guardian and Information Governance' official – suggests that the local authority does not currently have an adequate, 'joined-up' system for dealing with FOI requests. The official recognised that this was the case and advised that steps were being taken in an attempt to improve the situation.

7.10 Thus a further explanation (besides size, income and calibre of staff) for the discrepancies in the ability and willingness of LCR councils to respond to FOI requests in a consistent and efficient manner could be the existence (or non-existence) of effective, centralised systems for monitoring of FOI requests. That being said, FOI legislation has applied to local authorities for nine years now. Continually neglecting to develop a structure for dealing with requests is scant

justification for failing to draw together simple information which multiple other local authorities are able to secure and disclose with ease.

7.11 Our findings indicate that, in the Liverpool City Region, a 'post code lottery' exists, whereby the quality and timeliness of a given FOI response is very much contingent upon the borough to which it is submitted. This is patently unfair.

CONTENTIOUS ISSUES → POOR PRACTICE

7.12 At all levels of government, the *potential* undoubtedly exists for elected officials to interfere with the way in which the FOI Act (2000) is applied. Elected representatives inevitably work closely with paid staff. In local government these relationships continue at every level, up to and including the relationship between a council's Chief Executive and its elected leader. What is more, according to the UCL's Constitution Unit: 'Most leaders are copied into particular [FOI] requests, though for information only'[44].

7.13 Interference with the FOI mechanism could take the form of elected officials encouraging staff to be somewhat evasive on issues surrounding particular policy areas. Additionally (according to some commentators) the application of the FOIA (2000) could a result in a 'chilling effect'. Legislation which can be used to uncover the misdemeanours of public authorities, argue some critics, can produce a 'loss of frankness and candour in debate'[45] in council and committee meetings, to such an extent that 'FOI means moving 'real' decisions to unrecorded oral briefings, or sanitised records'[46].

7.14 Motivations for political representatives' involvement in the formulation of responses to FOI requests are self-evident. Requests for information have the potential to inflict substantial personal and political damage on elected representatives, especially in cases where parties are governing with very small majorities:

> Political balance can be crucial. A 'one party state' with a large majority can survive a damaging FOI request in a way that a party with a small majority cannot.

7.15 Indeed, Wirral Council – where the Labour Party currently has a small majority of eight – demonstrated an acute awareness that FOI had been a politically

[44] Town Hall Transparency? The Impact of the Freedom of Information Act 2000 on Local Government in England'. UCL Constitution Unit. December 2011

[45] 'FOI Policy: Knowledge Base'. Information Commissioner's Office. Accessed December 2013

[46] Town Hall Transparency? The Impact of the Freedom of Information Act 2000 on Local Government in England'. UCL Constitution Unit. December 2011

sensitive area for the local authority in the past. It supplemented its response to ExUrbe's request for information - on the subject of overdue responses - with the following note:

> The Council has recently been monitored by the ICO because of delays in responding to enquiries, due to a large backlog of enquiries. The current situation at Wirral is very much improved and the clearing of the backlog has improved response rates.

7.16 Labour has a small majority in Sefton, too: it is the governing party by six seats. The Council could hardly be described as comprising a large, stable Labour majority. However, although FOI has not proved a particularly controversial topic in Sefton politics or local media, Sefton's Information Governance official expressed his concerns – following that council's FOI team's refusal to comply with *any* of ExUrbe's FOI requests – via the telephone about the potential for 'reputational damage', if Sefton were considered to fulfil the demands of the FOIA (2000) to a lesser extent than the other LCR local authorities. Councils on Merseyside *are* aware of the harm poor rates of compliance with the FOIA (2000) can cause in relation to their public image.

7.17 Given all this, it is interesting to note that some of the strongest indications of evasion in response to politically sensitive issues surround the case studies ExUrbe gathered from Liverpool and Knowsley councils; both local authorities with large majorities (Liverpool) or single party control with no opposition (Knowsley). Paid staff working in Liverpool City Council's FOI team appeared determined not to disclose the minutes and agendas of Liverpool City Region 'cabinet' meetings. The justifications they gave were extensive, convoluted and almost incomprehensible. Weeks later the Council disclosed the information requested in full on its website. *Why* this information was initially refused, if the reasoning behind this decision was robust and unrelated to political ends, is unclear. As ExUrbe has written elsewhere:

> For several years now, the Liverpool City Region 'Cabinet' – the caucus of local authority leaders who will make up the proposed Combined Authority [Board] – *have* met privately and on an ad-hoc basis. Until very recently, no agendas or minutes were published. Indeed, FOI requests submitted to Liverpool City Council in July and August 2013, seeking that these be made accessible to the public, were flatly refused on the most Kafkaesque of grounds. Since then, the Council has apparently had a change of heart – at some point around September 2013, shortly before the CA proposal was submitted to Government, it began to post 'Summary Agendas' of the meetings on its website. At least two of these were clearly posted after the event; *all* appear to have been produced retrospectively. This, in our view, makes a mockery of due process and of openness and transparency.[47]

This rapid u-turn appears to betray an unacceptably cavalier attitude to the spirit of Freedom of Information. Either the request ought not to have been refused in the first place – or the information should not have been published. Both positions cannot hold.

[47] 'Response to proposal to establish a combined authority for Greater Merseyside'. ExUrbe. January 2014

7.18 The local authorities appear to adopt different approaches to requests for potentially politically awkward or detrimental information. Whilst Liverpool City Council's FOI department provided an explanation for their refusal in a single long-winded response, the equivalent department in Knowsley appears to have adopted a different tactic – that of offering vague, ambiguous, partial or 'bitty' responses which fail utterly to address the original, simply request, or follow-up demands for clarity. It is not unreasonable to interpret these efforts at resistance as attempts to limit the mechanisms open to the public for scrutiny. Knowsley's response to ExUrbe's FOI requests did nothing to negate this impression: it refused to respond to all but one of our subsidiary questions and replied to the entirety of our second request outside of the statutory time frame. It is impossible to determine whether this particular example of bad practice can be attributed to inability or reluctance to provide the information.

7.19 Evidence collated by UCL's Constitution Unit in 2011 suggests that English councils with single figure majorities are most likely to resist requests for potentially politically damaging information, as they will be most worried about the electoral damage disclosure could cause. The Labour councils described have strong majorities; they are unlikely to be worried about *electoral* damage, especially against a backdrop of national Conservative-led coalition government. However, an apparent determination not to be subject to scrutiny (via agendas, minutes and via the recording, filming and 'tweeting' of meetings) suggests, perhaps, a reluctance to be held to account in the area of their decision making processes for fear of *reputational* damage.

7.20 More in line with expectations, perhaps, Wirral Metropolitan Borough Council's FOI team was less than forthright in providing all of the information required regarding the registered interests of senior council officers. They took over a year and a half to slowly release a small amount of the information required and refused to disclose the information in full, even after the ICO asserted that the requester was in the right and demanded that they do so. Wirral's response to our requests for information on the politically sensitive subject of the quality of their responses to FOI requests was poor, too. They provided the majority of the information in part only (it was only when pushed to explain this decision that they stated they could actually provide more of it in full) and gave an unhelpful 'stock response' following our final subsidiary question which served only to delay their actions. Despite clarifications on our part Wirral has still not disclosed the requested information.

PARTIAL RESPONSES AND 'GUESSTIMATES'

7.21 In multiple LCR boroughs, there is a worrying tendency to disclose just part of the information requested, often without an explanation as to why the full answer has not been given. Halton, St Helens and Wirral borough councils each complied

with a third of ExUrbe's requests for information in part only. In response to ExUrbe's second request, councils tended to comply partially in the sense that (they argued) information for the full 24 month period was not easily accessible; certainly not within the constraints of an 18.5 hour time frame. For example, in response to our requests for information on the number of requests refused *and* the number of requests complied with fully and partially, St Helens stated that 'We do not hold this information for the last 24 months'. In response to questions on the subject of how many requests were responded to within the statutory 20 days and on how many requests were overdue and for how long and on the subject of refusal and most common reason for refusal, Wirral Council justified its decision to disclose part of the information only by stating that: 'to provide information prior to April 2012 would require manual checking. This checking would take officers over the 18.5 hours allowed under the FOI Act'.

7.22 Note that claims a request would require too many manpower hours to respond to must be accepted in good faith. There is no satisfactory mechanism for requesters to challenge the veracity of such a claim. With respect to our own FOI requests, we maintain that any efficiently run Council ought to have been able to respond quickly and in full – after all, each FOI request is given a unique reference number and *needs must* be logged by date (so that Councils ensure they respond within the required time frame). Totting up totals ought to have been a simple matter of some fairly quick tabulations.

7.23 Occasionally, some of the LCR local authorities did not even provide a reason for their decision to disclose part of the information requested only. For example, Halton Borough Council provided a figure for the number of FOI requests it had refused over the 24 month period. However, the department failed to address the subject of the most common reason for refusal and offered no explanation as to why the information released was incomplete.

7.24 In the case study whereby Wirral's FOI team resisted providing information on the registered interests of council officials over almost eighteen months, partial information was continually 'dripped out', rather than provided immediately and in full (as, the ICO found, should have been the case). A member of the public who was less knowledgeable about the tendency of some public bodies to obfuscate would probably have given up and settled for less, before anything resembling the full amount of information held was disclosed.

7.25 The tendency of some LCR councils to provide only part of the information requested is problematic because it is difficult to pin down reasons for partial compliance. If part of a request is deliberately ignored by a public body, this could be misconstrued by the requester as a signal that it does not hold that part of the information, when in fact the organisation is being deliberately evasive. Experienced requesters are likely to pick up on this; ordinary members of the public may accept the amount of information disclosed at face value.

7.26 Another point of concern is the tendency of some LCR councils to provide "guesstimates" or general estimates as part of their response to FOI requests. For example, Sefton Borough Council refused to provide data in response to ExUrbe's initial question - 'How many freedom of information requests have been submitted to the Borough Council?' – on the grounds that a centralised system of monitoring FOI requests is not in place. However, Sefton's FOI team deemed it appropriate to offer a general estimate of the number of FOI requests it had received. A straightforward refusal and explanation, as opposed to unsubstantiated guesstimates, may undermine the Act less. Providing guesstimates, as a less desirable but 'better than nothing' alternative to accurate statistical information, is surely not an acceptable precedent for a large local authority to set.

THE IMPERSONAL TOUCH

7.27 Ultimately, Freedom of Information is intended to assist the 'regular Joe'. In the age of 'plain English' and 'open government', it is axiomatic that communication between local government officials and members of the public seeking information ought ideally to be clear, straightforward and co-operative. The language and tone adopted need to be formal and objective, certainly, but they must also be accessible, 'human' and bespoke, if they are to accord with the spirit of the FOI Act.

7.28 In parts of the LCR, however, there is a clear tendency for FOI teams to rely on 'detached' electronic or generic processes and formats rather than addressing requests in the most logical, thoughtful manner on a case-by-case basis. This may be another reason behind the sub-regional 'post code lottery' on FOI.

7.29 Some local authorities – most obviously Halton Borough Council and Liverpool City Council – retain stock responses, which they appear to consider suitable for application whenever a particular subject arises within a FOI request. For example, our findings suggest that Halton applies a standard, template response to all requests relating to vacant commercial properties. Similarly, sections of Liverpool's lengthy response to the councillor requesting minutes and agendas from LCR 'cabinet' meetings were not only ludicrously jargonistic and obscure; great chunks of the same text were used in responses to at least one other requester. In response to the second request submitted by ExUrbe, Knowsley applied a blanket refusal notice rather than addressing each subsidiary question on an individual basis (as done by the other councils). The council's FOI team advised ExUrbe to narrow its request; yet surely the sensible 'human' solution, in the spirit of openness, would be to address each of the small questions in turn rather than assessing the request from above and rejecting it outright.

7.30 In the event that a council receives multiple requests for information on the same subject on a regular basis, it is easy to see how having stock responses could save time and money. However, if the response is being applied either erroneously *or* in an attempt to avoid providing further information *or* in a way which produces a 'post code lottery' via an inferior response to other LCR local authorities, it may be worth questioning the usefulness of template responses to a mechanism designed to enhance democracy.

7.31 In terms of written communication, the tone and language employed by members of local councils' FOI teams is clearly designed to keep the requester at arm's length. A typical example of the detached (and discouraging) tone often used by local authorities (in this instance as part of Knowsley's response to the FOI request on the recording, filming and tweeting of council meetings) is as follows: 'The Council has adopted the new Council policy which makes its position clear on the issue'. The need for an element of distance between a public body's FOI team and a requester is desirable and (as we said previously) there are instances when this relationship goes in the wrong direction, for example when informal 'guesstimates' are provided in place of official data. However, the tone and language of responses provided by LCR local authorities can sometimes be rigid and distant to a point where it would probably be quite difficult for an inexperienced requester to understand, for example, exactly why their request for information is being refused. The language and tone used ought not to be so complex and detached that it inhibits public engagement with the process.

7.32 Finally, some local councils have attributed errors, or difficulties in responding to FOI requests, to problems with the organisational and/or IT systems they have in place for dealing with them (as opposed to human error or wrongdoing). After being questioned on why it provided a partial response only to our initial request for information, Wirral Council apologised and blamed this on difficulties extracting and combining information from its electronic and pre-electronic systems. As mentioned, Sefton Council repeatedly cited the fact that it does not centrally monitor FOI requests as the reason behind its failure to provide any of the information we requested. In an email, the Council's 'Caldicott Guardian & Information Governance' official told us that:

> even before your question we recognised our shortfall in FOI systems and analytics and have visited another LA to review their dedicated software. There is currently a bid to fund this.

7.33 In the same email, the official provided a new 'decent guesstimate' in response to our initial, simple request for information on the number of FOI requests submitted to the council over a twenty four month period. Our concern is this: Sefton is a large local authority. The provision of an informal estimate in place of robust data is simply not good enough. Although the individual involved may well have been attempting to be 'helpful', it is surely imperative that staff at Sefton understand that unsubstantiated approximations are not a suitable alternative to proper compliance. Moreover, this exchange demonstrates that the calibre of staff is as important as the technology in use.

USING FREEDOM OF INFORMATION: DOs and DON'Ts

ExUrbe aims to appeal to a broad and diverse audience, not least the general public we serve as a registered charity.

To that end, we thought it might be useful to provide some no-nonsense hints and tips, based upon our own observations and experience. Members of the public who have not hitherto been particularly familiar with Freedom of Information may feel emboldened and empowered by this report to explore its possibilities and we are keen they should 'play the system' effectively and avoid some of the common pitfalls.

DO ...

- make use of Freedom of Information. Flawed as the application of the legislation often is, the intent behind the Act was to open up the workings of government to the demos. Though often used by professionals (such as investigative journalists) FOI exists for 'Joe Public'.

- think carefully, however, about what FOI is *for* – access to public information not made routinely available. If there is any chance it *is* already in the public domain, you will merely be referred to it by the FOI unit you approach.

- utilise the *What Do They Know* website. It is not a particularly alluring site but it *is* straightforward and user-friendly. Moreover, by using the site, requesters can share their requests and responses with the broader public and ensure full public exposure of the issue and public body in question.

- check from the outset that you are dealing with the right authority or organisation for your issue. Ought you to be approaching local or central government, for example? Increasingly, schools information in held by the schools themselves or central government rather than local education authorities. And housing data may be collected by councils, the DCLG, the Homes and Communities Agency or social housing providers.

- be confident and assertive when submitting written requests – FOI officers are less likely to try to patronise you if you make clear you know what you are talking about. Challenge politely but firmly responses with which you disagree or to which you object.

- keep requests – as instructed – specific and concise. Help FOI officers to help you by ensuring your requirements are crystal clear. Avoid wasting time; any ambiguity will only delay matters.

- feel free to request the information in your preferred format (for example, you might ask for data to be provided via an Excel table). As long as your preference is not too obscure, the local authority should be able to comply.

- follow the procedural order of things. A strict, step-by-step process must be adhered to and each stage exhausted before you can move on to the next. If you are unhappy with the local authority's response, for example, you must make use of their internal review process before referring the matter to the Information Commissioner's Office.

- be similarly aware of time limits when it comes to FOI communication with a public body. Tackle local government officers if they do not respond within the 20 working day time limit – they are not fulfilling their duty. Do not allow any 'follow ups' to lie fallow – you may find yourself out of time.

- know your rights in respect of the FOI Act (2000). For example you do not need to give a reason or motive for your request. You do not need to provide your real name (although this may cause complications if you ask for an internal review further down the line). Local authorities *can* charge you for administrative costs but they do not often do so – challenge them if you think they are being unreasonable or using this in order to put you off.

- make clear to FOI officers that you understand the FOI process and will not settle for unsatisfactory or half-baked responses. For example, if the local authority has provided information you didn't seek but has not actually answered your question, point this out and insist that your request be properly and fully complied with in a timely manner. Do not allow the local authority to treat this as a new request.

- persevere. It can take time and effort to pursue a request to your satisfaction but your effort should eventually pay off. Refer your request to Information Commissioner's Office level if you are dissatisfied with the handling of your request by the local authority. It will be seriously addressed.

- be aware that the increasing outsourcing of local government services to private sector concerns means that information previously available as a matter of course to the public may now – problematically – be exempt for commercial, contractual and/or legal reasons.

DON'T …

- assume that all requests for local authority information must be made under Freedom of Information. First check whether it is already available online (thanks to the data publication scheme) or contact departmental staff directly to see if they can help.

- have unreasonable expectations. Sometimes, hard-pressed FOI officers *won't* have the time and resources to comply with an overly long or complicated request – they aren't necessarily being awkward or unhelpful.

- be overwhelmed by the FOI process. It is tedious and it can be frustrating and off-putting but local authorities have staff dedicated to FOI and you have (and pay for) the democratic right to use their services.

- be put off by the bureaucratic jargon and 'legalese' used in many FOI responses. Read and absorb it carefully and seek expert interpretation and advice, if necessary. If the language used is so technical or complex as to be unintelligible, tackle the FOI unit head on – you have a right to expect a 'plain English' response.

- be fobbed off. Parse the responses you receive very carefully and if they do not make sense, go with your instincts and seek further clarification. Similarly, don't accept tardiness. FOI officers have a legal obligation to respond to requests within statutory deadlines – if a response is overdue the local authority, not you, has a problem.

- give up at the first hurdle. Yes, there is evidence of stonewalling on the part of local authority staff but sometimes, a request for more information or clarification is genuine.

- necessarily back down in the event of your request(s) being deemed vexatious. Scrutinise the local authority's justification for this and seek expert legal advice if you disagree with their rationale.

- accept partial responses (or estimates or 'guesstimates') in lieu of full, factual disclosure. Better for FOI units to refuse a request on the grounds that the information is not held, than provide data that is not evidence-based and accurate.

- be vague. Always set clear parameters for the FOI officers - provide specific criteria such as dates, for example. This will help the FOI unit to respond more clearly and helpfully to your request.

- lose sight of the focus of your original request, in the event of a drawn-out exchange of communications with the FOI unit. Doing so will only enable FOI staff to 'play semantics' and thus to waste time.

- be bullied into surrendering your anonymity or privacy if you do not wish to do so. There are different ways around your accessing the information - collecting hard copies from Council offices in person, for example – if you do not want to divulge your address.

- accept obstacles put in your way. For example, if a local authority claims to have only hard copies of a report, politely suggest that they scan a copy for you, or make one available for your personal perusal or collection.

- submit frivolous or facetious requests – "Zombie Invasion" or "Red Pens" are classic examples. These take up scarce time and resources that could be better spent responding to serious and legitimate FOI inquiries. See below.

DON'T WASTE TIME AND RESOURCES!

Whilst the following are amusing enough in themselves, they stand as evidence of the need for the public to be responsible in its own approach to FOI:

1) **'Information which is held in electronic, digital or hard copy format on usage of biscuits'**
   To Liverpool City Council from Mordecai Abel (4 February 2014)
   "Dear Liverpool City Council, Is there any information which is held in electronic, digital or hard copy format relating to how many biscuits Mayor Joe Anderson goes through?"

2) **'Not Reading FOI requests'**
   To Wirral Metropolitan Borough Council from Arthur Hurworth (29 August 2012)
   "Dear Wirral Metropolitan Borough Council, How many times has the council's FOI manager failed to read FOI requests before replying, with the wrong information to the wrong request. I bet you don't keep that on record."

3) **'Alien invasion'**
   To: Merseyside Fire and Rescue Authority from E. Jones (11 June 2011)
   "Dear Merseyside Fire and Rescue Service, Can you please furnish me with any and all information held by yourselves relating to plans to deal with an alien invasion. By alien, I mean a life-form that evolved on a planet other than Earth, and travelled here by any means possible."

CONCLUDING COMMENTS

8.1 It is always dangerous to generalise and we have largely been looking at generalities in this report. Nevertheless, we believe our investigation has thrown up some significant findings.

8.2 Undoubtedly, when it comes to Freedom of Information, there is good practice going on across the Liverpool City Region and evidence of FOI officers genuinely keen to assist the general public. At their best, the local government units tasked with responding to public requests for information are adept at providing straightforward answers to straightforward questions in a timely and efficient fashion.

8.3 Yet there is also much evidence of what can only be described as institutional obfuscation and stonewalling – The *Oxford English Dictionary* defines the verb 'to stonewall' as follows: 'to delay or obstruct (a request, process, or person) by refusing to answer questions or by being evasive' – and this has no place in any government organisation that professes to be open and democratic. Arguably, the larger and more 'corporate' the local authority (Liverpool and Wirral, for example) the better positioned they are to duck requests. We do not accept that this may be a workload issue. They are likely – or ought to be – proportionately better staffed than their smaller local authority peers.

8.4 Wirral Metropolitan Borough Council has come unstuck largely because of its failure to meet time limits. It may be the worst offender but it is by no means the only one. All too often, across the city region, obtaining information is like pulling teeth, with local government officers pushing to the time limits or simply overrunning. This matters. Time limits are set for a reason and a persistent flouting of them is not acceptable.

8.5 Far too often we have seen examples of officials patronising or 'playing games' with requesters. At times, fending off the public appears to be regarded as something of a challenge on the part of the local government officers, with communication surrounding requests descending into a battle of wills. Frequently, the aim appears to be to bat off the member of the public – to discombobulate him or her with what we have referred to elsewhere as 'Kafkaesque' responses – until he or she simply gives up in confusion or frustration.

8.6 Inconsistency is a key feature and concern, with one local authority quick to offer information which another is unable or unwilling to provide. This kind of 'postcode

lottery' flags up weaknesses in the way in which the system is devised – and surely cannot continue in the event of the establishment of a Combined Authority for the Liverpool City Region.

8.7 The Government's plans to 'rationalise' the way in which information in given (by 'bundling together' individual requests, for example) look set to reinforce an already highly unsatisfactory, already dehumanised system. As it is, local authorities rely far too readily upon pro-forma or template responses. They must not lose sight of the fact that they are meant to be providing a tax-funded *service*.

8.8 Anecdotal evidence suggests the continued austerity leading to local government service cuts has made anxious residents *more likely* to seek explanations and reassurances as to what is going on, via FOI requests. There is no sign of austerity measures ending any time soon and it is reasonable to assume that this trend will continue.

8.9 Yet the risk is that as a perceived 'back office' function, the resources available for Freedom of Information services are likely to be squeezed further as Councils seek to make additional savings. Local authorities must not try to cut corners and thus neglect their statutory FOI duties. We would argue that transparency and accountability ought always to be very much at the forefront of local democracy – but *particularly* during difficult times, when levels of political dissatisfaction and disaffection are high - and would urge the sub-regional local authorities not to pare down this important service.

8.9 We would also briefly highlight the potential *misuse* of FOI by council officials, as highlighted by our own experience. In conducting a study in 2011, for example, we contacted a Knowsley Council department direct to ask for a copy of a major public report published in the early 'noughties'. Given the age of the document, we did not necessarily expect it to have been digitalised but were confident we might be sent or directed to a hard copy. The officer to whom we spoke showed no inclination to try to assist us: "You'll have to do a Freedom of Information request," she said, without even checking to see whether the report was available or accessible. We duly did so and received – albeit many weeks later – a link to said report. Arguably, we ought not to have taken up the time of the FOI team in a bid to obtain a copy of a published report.