

Overview and Scrutiny Management Board Public Forum



Date: Thursday, 2 November 2023

Time: 6.00 pm

Venue: The Bordeaux Room - City Hall, College Green,
Bristol, BS1 5TR

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The whole of the meeting would be filmed (except where there are confidential or exempt items) and the footage will be available for two years. If you ask a question or make a representation, then you are likely to be filmed and will be deemed to have given your consent to this. If you do not wish to be filmed you need to make yourself known to the webcasting staff. However, the Openness of Local Government Bodies Regulations 2014 now means that persons attending meetings may take photographs, film and audio record the proceedings and report on the meeting (Oral commentary is not permitted during the meeting as it would be disruptive). Members of the public should therefore be aware that they may be filmed by others attending and that is not within the council's control.

Please note that the views and information contained within these public statements are those of the individuals concerned and not of the Council.

By participating in public forum business, we will assume that you have consented to your name and the details of your submission being recorded, published online and within the minutes.

Issued by: Lucy Fleming, Democratic Services

City Hall, Bristol, BS1 5TR

E-mail: democratic.services@bristol.gov.uk

Date: Wednesday, 25 October 2023



Public Forum

6. Public Forum

Up to 30 minutes is allowed for this item

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Any member of the public or Councillor may participate in Public Forum. The detailed arrangements for so doing are set out in the Public Information Sheet at the back of this agenda. Public Forum items should be emailed to scrutiny@bristol.gov.uk and please note that the following deadlines will apply in relation to this meeting:-

Questions - Written questions must be received 3 clear working days prior to the meeting. For this meeting, this means that your question(s) must be received in this office at the latest by 5 pm on **Friday 27th October 2023**.

Petitions and Statements - Petitions and statements must be received on the working day prior to the meeting. For this meeting this means that your submission must be received in this office at the latest by 12.00 noon on **Wednesday 1st November 2023**.



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Public Forum Questions

Ref	Name	Topic
Q1	Dan Ackroyd (Attendance TBC)	Bristol Beacon
Q2	Sid Ryan (Attending)	Performance Metrics (FOI)

Public Forum Statements

Ref	Name	Topic
S1	Sid Ryan (Attending)	Performance Metrics (FOI)

PUBLIC FORUM - QUESTIONS**Question 1 – Dan Ackroyd**

Regarding the Bristol Beacon, is the "lessons learned" report still on track to be published in February 2024?

Response from Head of Capital Projects

Yes - I can confirm the Lessons Learnt is still on programme to be available at the end of February 2024.

Question 2-3 – Sid Ryan

Question 2. Is the committee satisfied that quarterly CLB style performance meetings are going to drive any change in FOI performance?

Response from Chair of OSMB

As the Lead Director commented (p17 of the Q1 2023-24 Performance Report) the new approach to reviewing compliance issues is intended to help address the 'culture of deprioritisation' by allowing a continued focus on those core fundamental tasks. While it remains to be seen whether the pilot CLB style meetings will have a direct causal impact on the performance of FOI related metrics, I welcome the opportunities this should provide to address those cultural issues. As with any pilot the outcome should be assessed for effectiveness in due course and I would invite Performance Officers to comment on its progress as part of the standing reports to OSMB. FOI performance will continue to be monitored through the quarterly performance reports to OSMB, with any continued failure to improve noted and raised.

Question 3. Is the committee satisfied that % compliance with the 20 working day deadline is a useful metric? And is there any concern it creates perverse incentives?

Response from Chair of OSMB

As the metric you have identified is the one currently being scrutinised by the ICO with their practice recommendations, with no other concerns raised by them around the application of other provisions, as Chair I am satisfied with the continued use of this metric. I am also reluctant to recommend expanding the capture of new metrics as the improvement plan is unfunded (as you identified) therefore this would divert resource from supporting the improvements required. I note, however, that other OSMB Members may disagree and I welcome a discussion on this point.

PUBLIC FORUM - STATEMENTS

Statement 1: Sid Ryan

I asked a public question at the recent Cabinet meeting where this report was first presented, and was very disappointed to hear that BPPM516 was not supported by any funding, additional staffing or better case-management software.

It seems unlikely that better processes alone are going to make an impact. And that BCC risks improving its timescale compliance only by compromising on the quality of its responses, or by more unfunded work being pushed from the FOI team out to the officers managing the bulk of the data gathering resulting in illusory efficiency.

Most of all I'm concerned about an attitude that the BCC thinks the FOI system has been hijacked by special interest groups. If that is how it sees requesters then it is no wonder the service is so disrespected and neglected.

In terms of practical steps to improve the service, and to improve the Committee's ability to scrutinise it, I'd suggest BCC revise its performance metrics. Compliance with the 20 working day deadline is perhaps the least important thing you could be measuring, and it is the easiest to game.

FOIA's Section 10, and the 20 working day limit, is [one of](#) about five procedural requirements BCC must comply with for every request, with a further 25 provisions which need to be correctly applied whenever BCC refuses to disclose information. It is not sensible for BCC to record its performance about only one of these dozens of stipulations on how FOI requests should be handled.

As I understand it, BCC could not tell you how many requests were refused because the request was deemed 'too costly to comply with' under Section 12, or how many times it has applied the exemptions Section 14 'vexatious', or Section 43 - Commercially Sensitive Information, or Section 35 - Policy Formulation.

So BCC can't even start to report on what actually matters - whether it is curtailing its citizens right to information lawfully. What BCC should report is how many times it has tried and failed to apply exemptions. How many times its decisions have been overturned, and for what and who signed off on it.

A performance metric based on how often BCC is wrongly refusing requests incentivises officers to actually answer the question, or at least to have a very good reason why not to. Which is what we want. A performance metric based on speed incentivises illegitimate and impolite refusals, which is more of the problem BCC already has.

Cllr Cheney said that BCC would not be able to perform a root cause analysis to determine whether FOIs were being unlawfully processed. That is not what I am suggesting yet. Firstly, BCC is going to start gathering the appropriate performance metrics for the full scope of FOIA's requirements, not just Section 10.

Mayor Rees challenged me to find a way to pay for a better FOI service. That's simple. If BCC refused fewer requests and worked with applicants rather than insulting them, it would annoy people less and it would get less requests. It's the refusing that is usually the most expensive, not the providing.

Secondly, BCC is now on the Information Commissioner's watchlist, and he is incentivised to crack the whip. It is certainly what I will be encouraging him to do. BCC is frankly *lucky* that more of its FOIs do not get escalated to the ICO and then to Information Tribunal, and I suspect this is a cost that BCC has not yet quantified.

If the quality of BCCs responses to requesters does not go up significantly it is exposing itself to significant legal risk, and as BCC well-knows significant financial outlay and reputational damage should it try and take a case to Information Tribunal and fail to impress the judge,

To conclude, I think OSMB should be looking very sceptically at the crude FOI 'performance metric' it has been provided, and has to question whether an unfunded improvement programme is really credible. BCC should be making efforts to record and analyse its application of and success rate with the other provisions of FOIA, which are likely to be subject to legal challenge.