OVERVIEW AND SCRUTINY COMMISSION
HELD ON 26 NOVEMBER 2018
(FROM 5.30 PM TO 7.19 PM)

PRESENT: Councillor Philip Broadbank (Chair), Councillors Margaret Atkinson, Bernard Bateman, Paul Haslam, Pat Marsh, Ann Myatt, Victoria Oldham, Norman Waller, Tom Watson and Robert Windass.

Late Arrivals: Councillor Bernard Bateman at 5.38 pm
Councillor Robert Windass at 5.39 pm

Early Departures: None

72/18 – APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTES:
Apologies for absence had been received from Councillors Nigel Middlemass and John Mann. Notification had been received that Councillor Paul Haslam was to act as substitute for Councillor Sue Lumby and that Councillor Robert Windass was to act as substitute for Councillor Nick Brown.

(5.31 pm)

73/18 – DECLARATIONS OF INTEREST: There were no declarations of interest.

(5.31 pm)

74/18 – MINUTES: The Minutes of the meeting of the Commission held on 12 November 2018 were presented to the Commission for approval.

Councillor Ann Myatt raised an amendment and the following text was subsequently added to the Minutes:

“It was noted that the forecast shortfall of income was also due to the inability to recruit therapists at the Turkish Baths.”

The Minutes as amended were approved as a correct record and signed by the Chair.

(Six members voted for the motion and there were two abstentions)

(5.32 pm)

75/18 – EXEMPT INFORMATION: There were no exempt information items.

(5.32 pm)

76/18 – PUBLIC ARRANGEMENTS – QUESTIONS: The following question was read out by Mr Peter Lilley in accordance with Standing Order 27:
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“On three occasions in the last month, the Legal & Governance department has objected to Public Questions I have submitted to ask at committee meetings of this Council.

Most disturbing was the decision to prohibit me from asking what I considered to be a perfectly valid question at last week’s Audit & Governance committee meeting which related to the Council’s funding of The Local Lotto; so we’re talking about the spending of Council Tax-payers’ money - the people you supposedly represent. The question was disallowed on the grounds that it contravened a Standing Order which prevents questions from being re-asked.

But surely this Standing Order was introduced on the basis that the Public Question would have been properly answered when it was first posed? Otherwise, it makes a mockery of the facility of Public Questions if the Council doesn’t properly answer a question or provides a misleading reply; and then claims the question can’t be asked again.

Public Questions are the only opportunity residents have to directly and publicly question elected members. I therefore believe that, within reason, residents should be allowed to ask whatever question they wish.

Will the Overview & Scrutiny Commission urgently consider a review of the Council’s Standing Orders which relate to the asking of Public Questions.”

The Chair of the Commission, Councillor Philip Broadbank, responded as follows:

This item will be discussed under item 7 of the agenda, the future work programme.

(5.34 pm)

SCRUTINY MATTERS AND REVIEWS UNDERTAKEN BY THE COMMISSION

77/18 – REVIEW OF THE OPERATION OF THE FREEDOM OF INFORMATION (FOI) SCHEME: The Scrutiny, Governance and Risk Manager (SGRM) submitted a written report presenting the draft findings of the review of the operation of the freedom of information (FOI) scheme including the internal review process, which had been undertaken by the Overview and Scrutiny Commission. The recommendations included in the report were subject to the agreement of the Commission prior to a final version being agreed and presented to Cabinet.

Mr Peter Lilley attended the meeting and spoke to the Commission on the draft report. Mr Lilley’s comments are detailed below:

“Since I was the person who brought this issue to the attention of the scrutiny committee 602 days ago, one would have thought I might have been allocated more
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than five minutes to comment. But since I haven’t, I will speak quickly and in note form.

My overall view of the report is that you can’t see the wood for the trees. It’s as if every single thing you ever wanted to know about the FOI process has been crammed in; but in such a way, that it’s almost impossible to see what’s important - and what’s not.

You would think that the 11 recommendations are the most important thing, but it seems to me that most, if not all of them, relate to best practice; so you might wish to question why this wasn’t happening anyway?

The glaring omission for me is that the report completely skates over the core reason why I brought this matter to the attention of your committee in the first place, namely my concerns regarding the transparency and impartiality of the FOI process and internal reviews.

I note point 4.1 states that I agreed with the scope of the report. That’s misleading. I agreed the review should look at the whole FOI process and that the Council might wish to look at how its performance compares with other councils. But the number one issue for me has always been transparency and impartiality.

This was the focus of my 20-minute presentation to this committee on April 3, 2017 (not on June 12, 2017 as it states in point 6.1 of the report). I note that my original submission has curiously been omitted from the appendix. (Must be the only thing that has been). But I’m very happy to make it available to all members.

I also find it extraordinary that this review includes the results of a bungled attempt at a public consultation exercise, but that your committee never once questioned me about the contents of my original submission.

Indeed, right from the outst, your committee seemed determined to conduct a review best suited to the Council’s needs rather than one squarely addressing the issues raised by myself. And, there have been several attempts made to obstruct, delay and water down this review. Indeed, prevent it from appearing altogether. (I’m more than happy to give you details.)

I also believe this committee completely failed to take advantage of what for me should have been the focal point of the whole review: the meeting on February 19, 2018 when I expected you to work your way through an agreed list of pertinent, probing questions. Instead, Ms Elgot and Mr Kemp were vaguely invited to explain their view of the FOI process which they did with the aid of a very poor Powerpoint presentation. There was no sense at all of the two officers being closely questioned. Of course I understand that this can feel a bit awkward; but isn’t it one of the key roles of the scrutiny committee to ask awkward questions of officers and Cabinet members?

The sort of questions I wanted asked were:

- Do you regard residents who submit FOIs as a pain in the backside - or do you go out of your way to assist them?
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- Do you always provide straightforward and comprehensive answers to FOIs. If not, why not?
- Since there are 23 different exemptions, doesn't that provide a convenient excuse for not revealing information?
- Who decides what is, or isn't, in the public interest? And how does that conflict with the Council’s claim to be totally committed to openness and accountability?
- Is it possible for the Chief Executive or a Cabinet member to seek to influence the response to an FOI request?

As for the Internal Review process, I believe there also needed to be much more searching questions, such as: whether it’s right for the legal department to be overseeing internal reviews into complaints about the legal department?

I believe it’s absolutely vital that the residents of this Borough should have 100% trust and confidence in the way the legal department processes FOI requests (and indeed the way it deals with other important matters such as Public Questions and Code of Conduct complaints.)

This report offered the opportunity to provide that reassurance and/or clearly identify areas where improvements are needed but sadly, you ducked so many of the key questions.

I note that this is a draft report. In which case, my recommendation would be that you delay approving this report and forwarding it to Cabinet until you have completed a new section which deals head-on with the issues of transparency and impartiality in relation to FOIs.”

In response to a question from Councillor Pat Marsh to Mr Lilley about what aspect on the report he felt was watered down, he responded that the issue of transparency/impartiality had not been touched on. In response to a question from Councillor Victoria Oldham, Mr Lilley agreed that commercially sensitive information should be withheld but that there should be a time limit after which information should be provided. In response to a question from the Chairman Mr Lilley stated that he was not aware of any other Council’s that had arrangements in place that would satisfy his comments about openness and transparency.

The SGRM then introduced the report. It was stated that the report was a draft based on the agreed scope and the evidence received. It was the Commission’s report and the recommendations were drafted for discussion and agreement by the Commission. Each section of the report was introduced and questions and comments were then invited for each part.

The following comments were made:

Benchmarked CIPFA Nearest Neighbours

Paragraph 5.4 – In response to a question from Councillor Norman Waller on whether other organisations other than local authorities were reviewed for best practice, the SGRM stated that the review focused on comparisons with the
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Council’s Chartered Institute for Public Finance and Accountancy (CIPFA) Nearest Neighbours as these were the most comparable organisations against a number of key indicators.

The Freedom of Information Act

Paragraph 6.4 – Councillor Paul Haslam noted that the Commission be mindful to paragraph 6.4 of the report which stated that the Freedom of Information Act does not apply to requests which would mean the creation of new information or giving an opinion or judgement that had not already been recorded.

Who is responsible for responding?

Paragraph 6.33 – Councillor Pat Marsh queried the appropriateness of legal services being responsible for responding to/coordinating FOI requests, it was noted that this was similar to other local authorities reviewed. It was also stated that previously the Commission had looked at inviting members of the public who had submitted FOI requests to a future meeting to provide feedback on their experience of the process but it was agreed at the time to undertake a survey of respondents.

Recommendation 1 – The Commission agreed with the wording in the recommendation that further information about the ICO guidance and FOI legislation should be made available on the Council’s website.

It was agreed that further emphasis should be provided on the development of a simple plain English FOI policy. It was also discussed that all FOI requests and responses made could be provided on the Council’s website and it was noted that this would increase the transparency of the Council and may reduce the number of FOI requests made. Councillor Ann Myatt stated that this could include a search facility and a frequently asked questions area.

How are requests received?

Paragraph 6.36 – Councillor Victoria Oldham queried whether responses to FOI requests were provided in an electronic format. The SGRM stated that he thought that they were usually responded to in the format they were submitted (letter/email/webform etc.) but agreed to provide a written response.

The Commission agreed with Recommendation 2 however, Councillor Paul Haslam requested that the recommendation included reference to the central FOI log and this was agreed. It was confirmed the central FOI log was coordinated within the legal and governance service. The following amended Recommendation 2 was therefore agreed:

Recommendation (2)

Central FOI Log

a) Ensure that the Central FOI log records where requests are received (e.g. via letter/email/web-form)
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The Commission agreed Recommendation 3:

Recommendation (3):

Code of Practice

a) The Council should review the updated code of practice and implement any required changes to meet the social media requirements as detailed in the section Rights of Access paragraph 1.16

Publication Scheme and website

Recommendation 4 – Councillor Paul Haslam requested that this recommendation include that the website would be “regularly” reviewed and would be updated in response to “feedback from the public” and this was agreed. The following recommendation was therefore agreed:

Recommendation (4):

Website improvements:

The FOI/Publication Scheme part of the website should be regularly reviewed and updated in response to feedback from the public. This would ensure that appropriate information is published in accordance with the model publication scheme and kept up to date

The Commission agreed Recommendation 5:

Recommendation (5):

Code of Practice

b) The Council should publish and report compliance statistics in accordance with paragraph 8.5 of the Code of Practice

Requests by Department/Service

Paragraphs 6.61 & 6.64 – Councillor Pat Marsh requested that the report included a recommendation requiring the reporting of the number of FOI requests per department and service and the themes around exemptions used to be included in the corporate quarterly performance reports. It was agreed that this would be a new recommendation and included in the report.

Paragraph 6.71 – It was discussed that it was important that the Council provided a full explanation of why information was withheld if an exemption was relied upon in response to an FOI request. It was agreed to include a new recommendation in the report that the Council should always provide an explanation if an exemption was used.
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Reasons for refusal

Paragraph 6.75 – In response to a question from Councillor Victoria Oldham regarding the use of an exemption where cost of compliance exceeds the appropriate limit, the SGRM agreed to provide further details in a written response.

The Commission agreed Recommendation 6:

Recommendation (6):

FOI log

b) Ensure that the use of exemptions and partial refusals is completed in the FOI log at the time response is sent

c) The use of exemptions should be discussed with the Legal Assistant (Debt and Information Law)

Timescales for response - What are the target/set timescales?

The Commission agreed Recommendation 7:

Recommendation (7):

Report the Council’s performance in responding to FOI requests within 20 working days as part of the corporate quarterly performance reporting process

How does the Council perform?

Paragraph 6.88 – The Commission considered paragraph 6.88 in which respondents to the customer survey stated that they were not advised about the delay and kept informed about the process, it was agreed that a new recommendation should be included to ensure that requesters are advised about delays in responses.

Recommendation 8 – Councillor Paul Haslam requested that this recommendation should be considered further to include the monitoring of requests that were sent outside 20 working days and this was agreed.

General

Recommendation 9 – Councillor Pat Marsh requested that the recommendation to record the sources of FOI requests (where possible) in the central FOI log should also include reference to this being reported corporately quarterly – this was agreed.

Councillor Paul Haslam requested that a new recommendation should be included that all Councillors are provided with the FOI log to review FOI requests made and responses provided – this was agreed.

Ensuring consistency across the Council
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Paragraph 6.107 – In response to a question from Councillor Norman Waller on whether Officers reviewed the FOI log for similar requests, the SGRM confirmed that it was and that Officers ensured that the most up to date information was provided.

Recommendation 10 – It was agreed that further consideration should be made to Recommendation 10 which suggested that all responses to FOI requests should be provided by the Legal Assistant (Debt and Information Law).

How are internal reviews undertaken?
   - What is the policy/process?

Paragraph 6.114 – It was noted that the Council and it's CIPFA Nearest Neighbours had internal review processes in place but these were not documented formally. It was agreed that a new recommendation be included in the report that the Council should document a formal written internal review process.

   - Who undertakes internal reviews?
   - Could there be potential conflicts of interest?

Paragraph 6.124 – Councillor Victoria Oldham requested that the table was split between 2016/17 and 2017/18 in the final report and this was agreed. Following a question regarding the internal review process if an FOI request was made to the Chief Executive, it was agreed to provide a written response.

Paragraphs 6.122 – 6.132 – Councillor Pat Marsh stated that internal reviews at the Council could be conducted by another organisation/other local authorities. Upon a vote being taken, six Members voted that the internal review process should continue as detailed in the report and four Members voted that the Council should consider involving organisations/other local authorities in the internal review process. As a result, the section in the report regarding internal reviews was therefore agreed.

ICO Referrals

The Commission agreed Recommendation 11:

Recommendation (11):

The number of decision notices received from the ICO should be included as part of the quarterly performance report

It was stated that the recommendations coming out of the report would improve the FOI process at the Council which could in turn reduce the number of FOI requests made. It was also noted that it was the aim of the Council to be open and transparent.
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It was then **agreed** that the suggested comments and amendments be included in the report and brought back to a future meeting of the Commission prior to being submitted to Cabinet.

(5.34 pm – 7.09 pm)

78/18 – **OVERVIEW AND SCRUTINY COMMISSION FUTURE WORK PROGRAMME**: The Scrutiny, Governance and Risk Manager submitted a written report presenting the current draft Work Programme for the Commission.

The Commission considered Mr Lilley's request for a review into the Council's Standings Orders in relation to public questions as detailed at Minute 76/18. In response, the Commission considered that further information was required prior to agreeing to take it forward as a piece of work. It was also noted that General Purposes Committee was in place to review the Council's Constitution.

(7.09 pm – 7.14 pm)

**MATTERS HOLDING THE EXECUTIVE/PARTNERS TO ACCOUNT**

79/18 – **FORWARD PLAN OF KEY DECISIONS**: Members considered the latest Forward Plan of key decisions.

(7.14 pm – 7.17 pm)