

<b>For Information</b>	
<b>Public</b>	<b>Public</b>
<b>Report to:</b>	<b>Joint Audit and Scrutiny Panel</b>
<b>Date of Meeting:</b>	<b>24<sup>th</sup> July 2019</b>
<b>Report of:</b>	<b>Chief Constable</b>
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<b>Agenda Item:</b>	<b>15</b>

## **Force Assurance report on compliance with Freedom of Information and Data Protection requests – quarter 1 and quarter 2 2019**

### **1. Purpose of the Report**

- 1.1 The purpose of this report is to provide the Joint Audit and Scrutiny Panel (JASP) with data on the legislative compliance for information requests under the Freedom of Information Act (FOIA) and Data Protection (DP) Act legislation for Q1 & Q2 2019.

### **2. Recommendations**

- 2.1 It is recommended that members of the JASP note the monitoring statistics for Q1 & Q2 2019 in relation to information requests processed by Nottinghamshire Police in line with Freedom of Information and Data Protection legislation.

### **3. Reasons for Recommendations**

- 3.1 To enable the Audit and Scrutiny Panel to fulfil its scrutiny obligations to oversee and consider Freedom of Information and Data Protection Information Request Compliance.

### **4. Summary of Key Points**

- 4.1 As a public authority, Nottinghamshire Police has a legal responsibility to respond to information requests received and processed in line with Freedom of Information Act and Data Protection legislation. These requests are processed and completed by the Information Request team.
- 4.2 The legislative deadlines for the Acts are:-
- Freedom of Information - 20 working days
  - Data Protection Subject Access - 1 month, although this can be extended by an additional 2 months should the request be complex in nature.

- 4.3 In the calendar year 2019 (as of 13/06/2019) the Force has received 649 valid Freedom of Information Act requests and 230 valid Data Protection Subject Access requests (SARs) as shown by the table below:

**Table 1: Number of FOIAs and SARs 2016 – 2019 for Nottinghamshire Police**

	2016	2017	2018	2019*
<b>Valid FOI's Received/Assigned</b>	1239	1247	1273	649
<b>Invalid FOI's Received/Not assigned</b>	7	6	64	60
<b>Total FOI</b>	<b>1246</b>	<b>1253</b>	<b>1337</b>	<b>709</b>
<b>Valid SAR's Received/Assigned</b>	284	319	391	230
<b>Invalid SAR's Received/Not assigned</b>	78	81	86	76
<b>Total SAR</b>	<b>362</b>	<b>400</b>	<b>477</b>	<b>306</b>

- 4.4 Based on figures recorded on our Cyclops (request management) system, this represents an increase in total FOI requests received in 2019 of 20.17% (when based on total FOI requests received in the same time period in 2018, i.e. 01/01/2018-13/06/2018) and an increase in total SARs received of 69.06%. The respective increases from 2017 to 2018 (as reported in our previous report) were 6.7% for FOI and 19.5% for SARs respectively.
- 4.5 The increase in SAR figures can be largely attributed to the removal of the £10 fee and the more accessible nature of making a subject access request under General Data Protection Regulation (GDPR), which now includes verbal requests.
- 4.6 Additionally, adjustments to legal aid funding now means that payments for Police disclosure in respect of private family court proceedings are being refused funding because these can be obtained for free under the GDPR right of access provisions. Consequently, many requests, which would previously have been made as Court Order instructions and which would have been chargeable, are now being made as an SAR and are being dealt with without cost to the applicant (but not without cost to the organisation).
- 4.7 The workload demand is also compounded by the reduction of the statutory deadline for provision of disclosure in respect of SARs from 40 calendar days to 1 calendar month. We are also finding that requests are becoming more complex and voluminous in nature due to increased social awareness of GDPR and right of access provisions.
- 4.8 The Information Request team is responsible for receiving, validating and recording requests for information under both the FOIA and DPA. This includes

Court Orders served upon the Force. The team is responsible for interrogating the relevant Force systems in order to research records available in relation to requests, manually review each record and judge its appropriateness for disclosure in line with the Acts mentioned above.

4.9 Any exemptions prohibiting disclosure are applied by the Information Request officer based on expert knowledge of the Acts. Any exempt information is redacted from disclosure and reasoned arguments recorded. Any public interest arguments are conducted by the relevant Information Request Officer and recorded accordingly.

4.10 The Information Request team currently comprises of:

- 3.6 x FTE staff members including 1 Manager and 2.6 FTE disclosure officers dealing with FOIA and DPA.
- 2 further staff members who facilitate timely and consistent disclosure of information and documents from the police, into the Family Justice System and conduct 'Police checks' on behalf of Social Care.

#### 4.11 **Freedom of Information (FOI)**

The Force monitors compliance and provides quarterly statistics for Freedom of Information to the NPCC Central Referral Unit based in Hampshire. These statistics are collated from all Forces including Police Scotland and the Metropolitan Police Service. Regional and national statistics are produced and circulated to all Forces on a quarterly basis.

#### 4.12 Current Demand Levels: FOI

- The graph shown at **Appendix 1** shows that Nottinghamshire Police receives similar numbers of FOI requests to the national average. This puts the Force in the upper quartile of Forces in terms of the numbers of requests received.
- The graph shown at **Appendix 2** shows that Nottinghamshire Police close less FOI requests per quarter than the national average and have almost double the numbers of those closed outside of the legislative timescale. In terms of the National picture – this shows the Nottinghamshire performance falling within the lower quartiles of the national statistics, a significant factor affecting the performance levels is the current staffing levels of the team which has been shown, via workload profiling, to be under resourced to meet the demand.

A number of efficiencies in procedure have been looked at in terms of the management of FOI requests at the initial stages of processing. This includes a more effective triaging system, however the implementation of these new

efficient processes is dependent on the recruitment of the additional resources as identified and agreed as part of the IM Restructure Business Case.

#### 4.13 **Subject Access Requests (SAR)**

The Information Request team process SARs received under Data Protection legislation for information held by Nottinghamshire Police. National Statistics are not routinely circulated from the National Subject Access Group.

#### 4.14 **Current Demand Levels: Subject Access Requests (SAR)**

- The graph shown at **Appendix 3** shows that Nottinghamshire Police receive on average 110 SARs per quarter and respond to 85 with an average of 37 responses sent outside of the legislative timescale.

This performance level is affected by the complexity and size of requests, especially those relating to email records. Requests are becoming increasingly more detailed, complex and voluminous in nature as the social awareness of information rights increases. As the same resources deal with both FOI and SAR requests the current resourcing level and size of backlog is again a factor. Any improvement in performance level and reductions of backlogs is again dependent on the recruitment of the additional resources as identified and agreed as part of the Information Management Restructure Business Case.

#### 4.15 **Court Orders**

The Information Request Team also discloses information in relation to Court orders which can be received from any court in the UK and Ireland for Child Care, Private and Family Proceedings. In 2019 to-date Nottinghamshire Police received 256 Court orders in total; this is an increase of 20.19% on the number of orders received in the corresponding period in 2018.

#### 4.16 **Current Demand Levels: Court Orders**

The graph at Appendix 4 shows that Nottinghamshire Police receives on average 115 Court Orders per quarter. The majority of all Court Orders received have been responded to within the order deadline during 2019 as they are prioritised over other types of request.

The chart also shows a downward trend in the number of Court Orders being received over the last 2 quarters, which is potentially due to the issues discussed within point 4.6 regarding changes to legal aid funding. This may account for the associated rise in SAR numbers received over the same period.

Requests for Court orders are always prioritised due to the risk of delays on cases being managed through the Family Court system if timely checks are not completed. This prioritisation impacts on the corresponding delays to the other types of request such as FOIs and Subject Access requests.

### **Other types of Information requests**

4.17 The Information Request Team also provide responses for many other types of disclosure, all of which have to comply with the principles of the FOIA and DPA legislation but may have different timescales (see table below).

**Table 2: Data Protection General Requests Categories**

Category	Description	Time scale
Insurance	Validation of details in relation to crimes for insurer to settle claim	30 working days
Home Office	UK Border Agency and Immigration requiring confirmation and details of Police involvement for those wishing to stay in the country	40 calendar days
Housing Confirmation	Local and Social housing requiring confirmation of the reason given by the person who has presented to them as homeless.	10 working days
Housing General	As above but require more specific detail	40 calendar days
Insurance Appendix E	Insurance companies requiring information in relation to a claim that they believe is fraudulent	40 calendar days
NHS	General Medical Council, Nursing Midwifery Council require details of a registered practitioner who has been involved with the police to consider their fitness to practice	40 calendar days
Legal proceedings	Private legal proceedings such a personal injury claims	20 working days
Other Police Forces	Request from other forces for information held by Nottinghamshire Police	No set timescale as soon as is practicable
Schedule 2, Part 1, Paragraph 2: Crime and Taxation	Requests from other prosecuting bodies such as DWP, local authorities and RSPCA	20 working days

## Income Generation from Information requests

4.18 The Information Request Team generate income from some types of information request:

**Table 3: Nottinghamshire Police income generation from information requests 2016-2019:**

Income £	2016	2017	2018	2019*
SAR	£2,060.00	£2,240.00	£910	£0.00
Court	£12,576.70	£18,436.28	£13,850.85	£13,733.00
Insurance	£13,376.61	£15,448.30	£9,985.30	£11,030.40
Private/Civil	£7,086.00	£5,106.60	£2,411.90	£4,389.50
DP Gen	£2,402.00	£1,955.90	£789.30	£4,020.50
<b>Total</b>	<b>£37,501.31</b>	<b>£43,187.08</b>	<b>£27,947.35</b>	<b>£33,173.40</b>

Figures compiled from Cyclops – additional income received electronically (i.e. via BACs) is recorded in Finance

The removal of the £10 SAR fee and the more accessible nature of SARs have also prompted many organisations to encourage individual service users to use the SAR process rather than making requests under other parts of the Data Protection Act where charges can still be applied.

The first 2 quarters of 2019 show an increase in income generated across all areas and further research is required to understand the reasons behind these areas. We are monitoring these figures with the Finance department as part of the Information Management Unit budget review.

### **Current Risks and Mitigations**

- 4.19 Continued delays in responding to FOI/SAR requests outside of the legislative timescales also results in an increase of demand in the form of telephone calls from individuals chasing their requests and complaints being made.
- 4.20 A continuous trend of delays to requests may increase the possibility of scrutiny by the Information Commissioners Office that could ultimately lead to some regulatory action.
- 4.21 A business case to restructure the Information Management Unit including additional resources to manage demand was presented and agreed at Force Executive Board on 14th January 2019. A consultation period has now finished and it is hoped the implementation of the new structure and a recruitment exercise will take place by the end of July 2019

- 4.22 A post implementation review of the restructure will take place and reported as part of the next annual Nottinghamshire Police Information Management, Freedom of Information and Data Protection update.

## **5 Financial Implications and Budget Provision**

- 5.1 There are no direct financial implications for this year outside of what has been identified in the IM Restructure Business Case

## **6 Human Resources Implications**

- 6.1 People Services resources are required to support the consultation and recruitment process following on from the IM restructure business case.

## **7 Equality Implications**

- 7.1 There are no equality implications.

## **8 Risk Management**

- 8.1 Any risks relating to the FOI/DP function are identified on the Information Management Risk Register and managed locally. The Senior Information Risk Owner (DCC Barber) monitors all relevant risks via the Information Management Board.

## **9 Policy Implications and links to the Police and Crime Plan Priorities**

- 9.1 Links to Police and Crime Plan 2018 – 2021:

9.1.1 **Transforming Services** and Delivering Quality Policing: The benefits of providing a good service to the public by responding to external DP and FOI requests fully and on time will support the Commissioners pledge to improve confidence and satisfaction in policing services. It will also reduce complaints to both the Information Commissioners office and PSD and reduce the resources required to respond to this failure demand.

9.1.2 **Demand for Service:** As stated in the PCP 2018-2021 “Calls for service to the Force remain significantly higher than average and are increasing in Nottinghamshire against the backdrop of reduced Police officer and staff capacity. The service also records more incidents than an average force” The higher demand recorded in Nottinghamshire aligned with the records management issues that sees the Force retaining data for longer periods, especially those relating to IICSA and UCPI, also increases the amount of data

that needs to be searched on and returned when queried leading to additional time to read and redact requests appropriately.

- 9.1.3 **Governance & Accountability** As stated in the PCP 2018-2021 “To discharge this accountability the Commissioner and senior officers must put in place proper procedures for the governance and stewardship of the resources at their disposal” Both Data Protection and FOI legislation identify roles and responsibilities accountable for the legislative compliance against the Acts. The Information Commissioner would assess the governance processes in place if the Force was to come under their scrutiny following an event such as a number of complaints or a data breach.

## **10 Changes in Legislation or other Legal Considerations**

- 10.1 The General Data Protection Regulations (GDPR) including the Data Protection Act 2018 is now applicable in the UK from 25 May 2018.
- 10.2 An extension to the FOI Act is currently being debated in Parliament which seeks to add to the authorities who are subject to FOI legislation. The bill would include Social Housing and Children’s Safeguarding Boards (amongst others). It would also make information held by contractors acting on behalf of public authorities subject to FOI Act. If the changes to the Contractors information are implemented this could significantly add to FOI demand already in place. A second reading of the Bill is being heard in Parliament on a date to be announced.

## **11 Details of outcome of consultation**

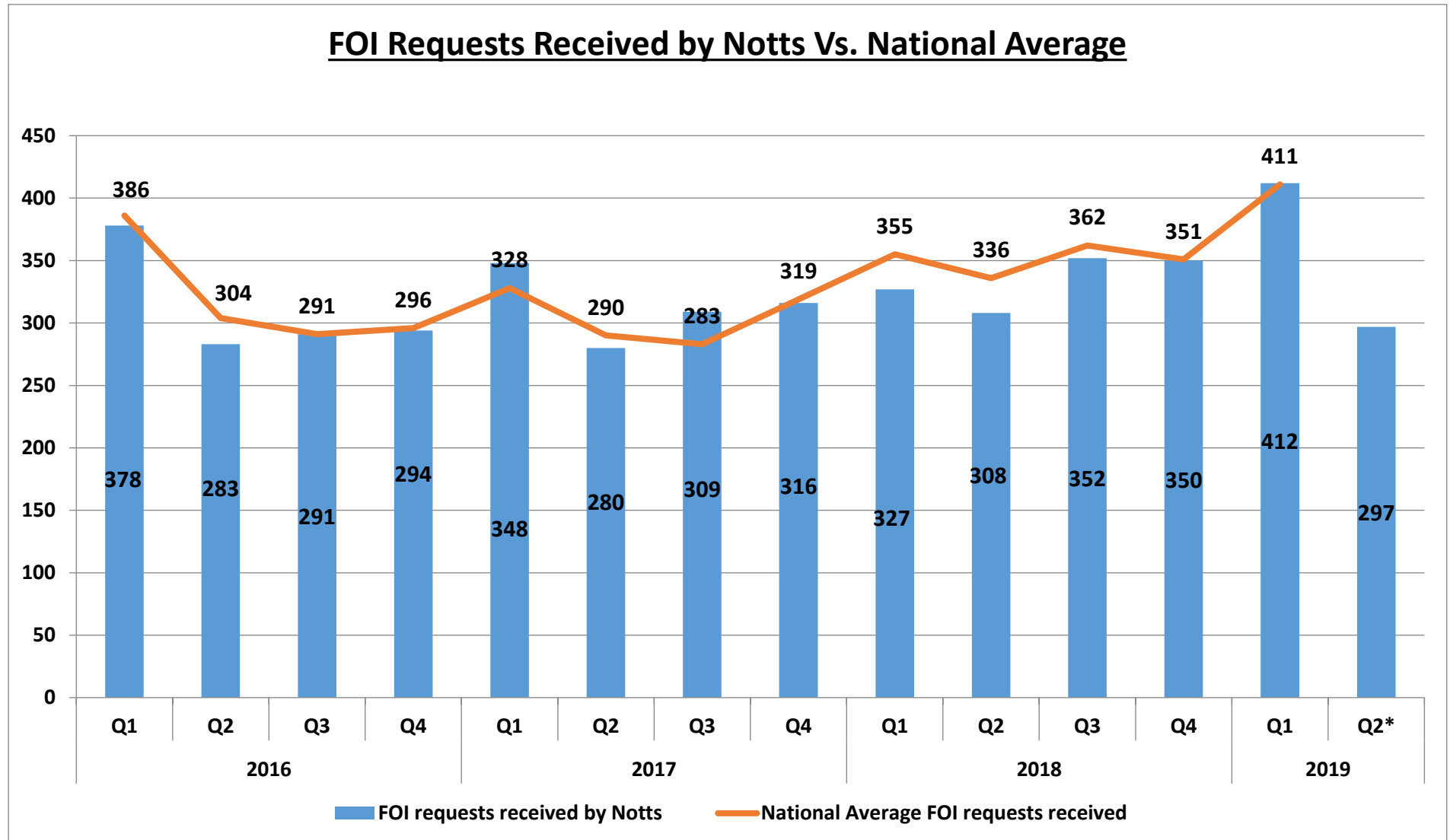
- 11.1 Any issues in relation to Freedom of Information and Data Protection compliance are monitored through the Information Management Board chaired by the Deputy Chief Constable.

## **12. Appendices**

- 12.1 Appendix 1 – FOI requests received.
- 12.2 Appendix 2 – FOI requests disclosed.
- 12.3 Appendix 3 – subject access requests.
- 12.4 Appendix 4 – Court orders.

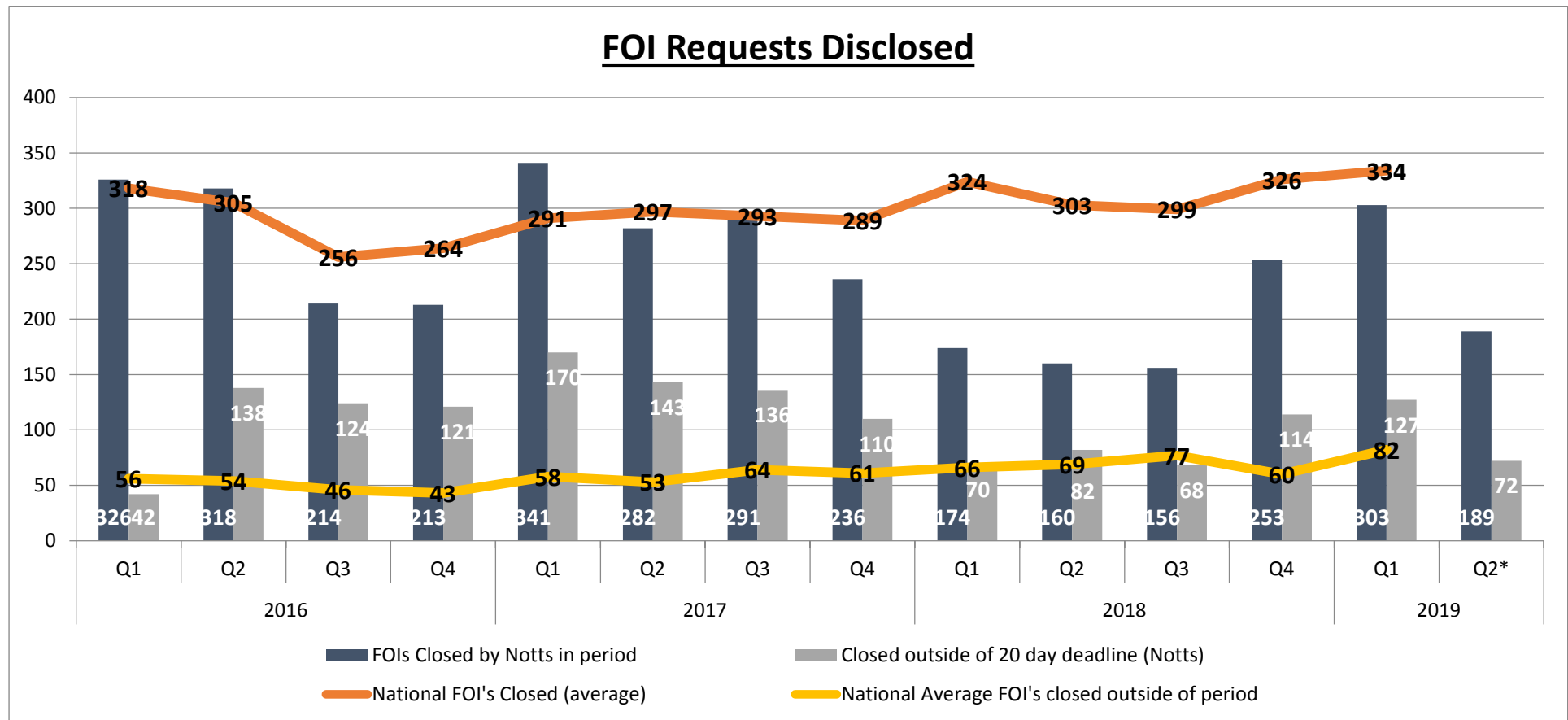


Appendix 1: Freedom of Information Act Requests – the national average of FOI requests received per quarter = 326. Nottinghamshire Police average of FOI requests received per quarter = 332.

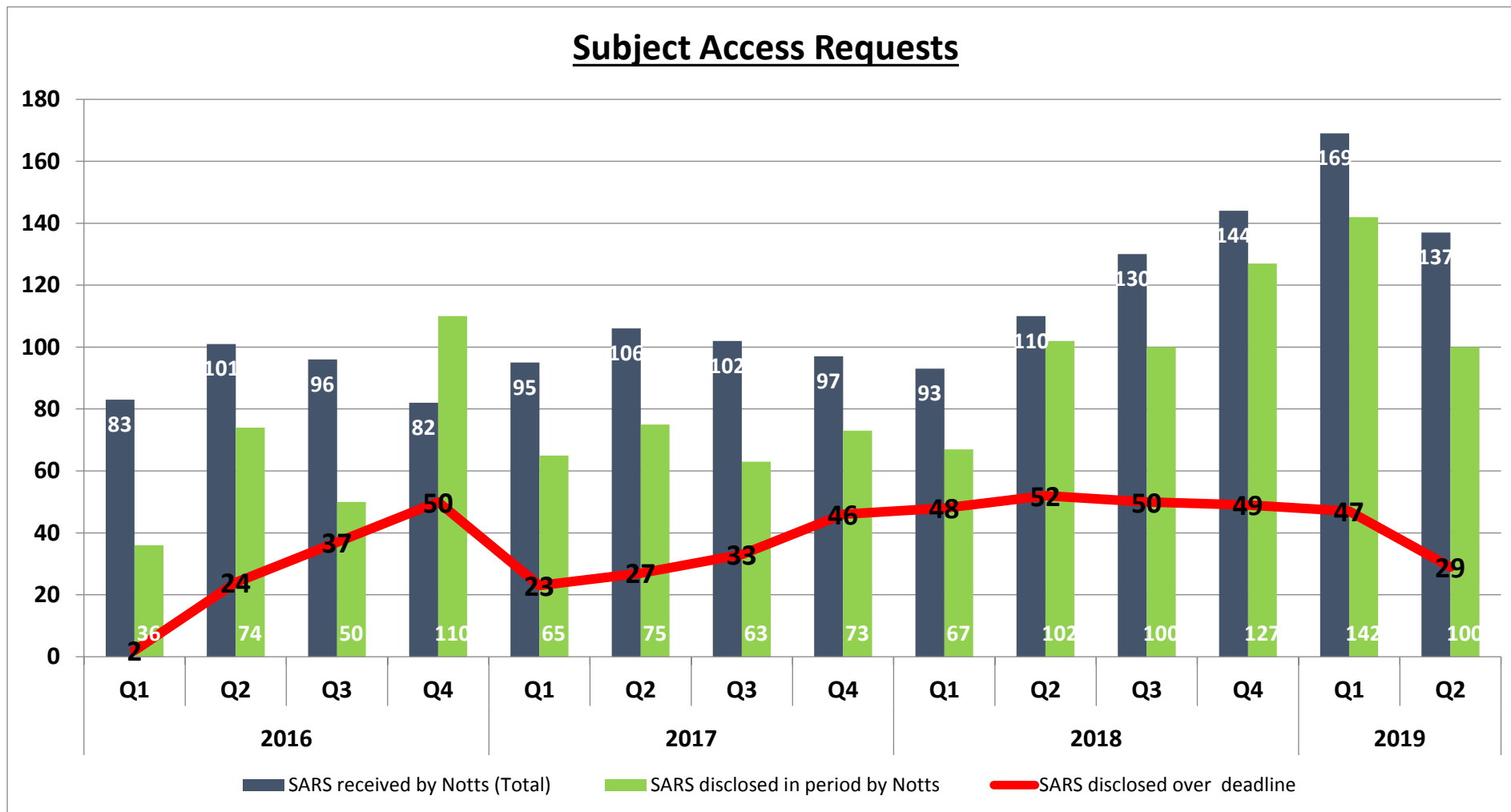


Appendix 2: FOI Closed – the national average of FOI requests closed per quarter = 300. Nottinghamshire Police closed 251 FOI requests on average over the same period.

Closed outside of 20 day timescale: the national average of FOI requests closed outside of the 20 day timescale per quarter = 61. Nottinghamshire Police closed an average of 111 FOI requests outside of the 20 day timescale on average over the same period.



Appendix 3 – Subject Access Requests – the average number of SARs received by Nottinghamshire Police per quarter = 110 and the average number disclosed per quarter = 85 of which, on average, 37 were responded to outside of the legislative timescale. National SAR statistics are not available to use as a comparator to other forces performance.



**Appendix 4 – Court Orders – The average number of Court Orders received by Nottinghamshire Police per quarter is 115. The majority of all Court Orders received have been responded to within the order deadline during 2019 as they are prioritised over other types of request. The chart also shows a downward trend in the number of Court Orders being received over the last 2 quarters – potentially due to the issues discussed within point 4.6 regarding changes to legal aid funding. This would account for the precipitating rise in SAR numbers received.**

