

**Access to Information Policy  
(Freedom of Information Act and  
Environmental Information Regulations)**

May 2020

Final for approval

***We speak your language***

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Polish

***Mówimy Twoim językiem***

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French

***Nous parlons votre langue***

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Spanish

***Hablamos su idioma***

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Slovak

***Rozprávame Vaším jazykom***

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Chinese

**我们会说你的语言**

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Bolsover District Council on

**01246 242424** or

North East Derbyshire District

Council on **01246 231111**

## CONTROL SHEET FOR ACCESS TO INFORMATION POLICY

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## **USEFUL LINKS**

Final for approval

## **1. INTRODUCTION**

The Freedom of Information Act 2000 (FOIA) gives a right of access to information held in any recorded form, electronic or paper.

It does this in two ways:

- Public authorities are obliged to publish certain information about their activities; and
- Members of the public are entitled to request information from public authorities.

The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities.

The Regulations do this in two ways:

- Public authorities must make environmental information available proactively;
- Members of the public are entitled to request environmental information from public authorities.

The Regulations apply only to the environmental information held by public authorities. The Freedom of Information Act gives people access to most other types of information held by public authorities.

The Regulations and the Freedom of Information Act do not give people access to their own personal data (information about themselves), such as their council tax records or housing file. Individuals have a right of access to information held about them under the General Data Protection Regulations (the GDPR) and the Data Protection Act 2018 (the DPA 2018). The Councils have a separate Data Protection Policy.

Bolsover District Council and North East Derbyshire District Council ('the Councils') recognise that compliance with information access legislation will support openness and transparency in the public sector.

## **2. SCOPE**

This policy applies to all employees, unpaid volunteers/work experience placements and elected members. In certain circumstances it will apply to contractors working for the Councils.

The policy will be made available to the public.

## **3. THE PRINCIPLES OF THE POLICY**

The policy has been produced to ensure compliance with the relevant legislation and to ensure customers gain appropriate access to information on request.

## **4. THE POLICY STATEMENT**

### **4.1 FREEDOM OF INFORMATION**

The Freedom of Information Act 2000 makes provision for the disclosure of information held by public authorities. In line with the Act the Councils aim to create a climate of openness with all customers and improve access to information about the Councils.

The Councils believe that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is covered by data protection legislation.

The Councils believe that public authorities should be allowed to discharge their functions effectively. This means that the Councils will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure. Exemptions are covered in more detail in section 4.1.3.

This policy will be underpinned by operational procedures and guidance.

The Councils have a duty to provide employees and elected members with training and development to assist and support them in understanding and complying with the Freedom of Information Act (FOIA).

#### **4.1.2 General Rights of Access**

Section 1 of the Act gives a general right of access to recorded information held by the Council, subject to certain conditions and exemptions. Any person making a request for information to the Councils is entitled:

- To be informed in writing whether the Council holds the information of the description specified in the request; and
- If the Council holds the information, to have that information communicated to them in the format they require (if reasonable).

This is referred to as the 'duty to confirm or deny'.

Information is 'held' by the public authority if it is retained for the purposes of the public authority's business. Purely personal, political, constituency, or trade union information, for example, will not be 'held' for the purposes of the Act.

The Councils understand that under section 77 of the Act that it is a criminal offence to alter, deface, block, erase, destroy or conceal any information held with the intention of preventing disclosure following a request under the Act for information.

In accordance with section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the requester and an address for correspondence (email address is acceptable as well as postal), and

describing the information required. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted to the Council by electronic means, is received in legible form and is capable of being used for subsequent reference.

The Councils will maintain corporate systems and procedures to process requests made under the Act.

#### **4.1.3 Conditions and Exemptions**

The duty to confirm or deny and provide information is subject to certain conditions and exemptions. Under section 1(3) the duty does not arise where the Councils:

- Reasonably require further information in order to identify and locate the information requested; and
- Has informed the applicant of that requirement.

The Councils will make reasonable efforts to contact the applicant for additional information regarding their request if required.

Under section 2 of the Act the Councils do not have to comply with this duty if the information is exempt under the provisions of Part II of the Act sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Councils will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.

Exemptions also provide an option to claim an exclusion from the duty to confirm or deny whether the information is held. This duty will be considered separately to the duty to provide information and will only be used for particularly sensitive information.

The duty to confirm or deny and provide information does not arise if a fees notice has been issued to a requester and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the requester (section 9 FOIA).

The duty to comply with a request for information does not arise if the Councils estimate that the cost of compliance with the request would exceed the appropriate limit (section 12 FOIA). The Councils will work with requesters to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the information in accordance with the provisions under the Act (section 13)

The Councils are not obliged to comply with a request for information if the request is vexatious. Where the Councils have previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequently identical or similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request (section 14 FOIA). The Councils will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests. The Councils will work to the guidance provided by the Information

Commissioners office regarding repeated or vexatious requests. The Councils have set out their approach to vexatious complainants in their Compliments, Comments and Complaints Policy and this will be considered also noting that the request itself (and not the requester) needs to be considered vexatious.

#### **4.1.4 Charges and Fees**

The Act does not allow public authorities to charge a flat fee for requests. Communication costs, such as for photocopying, printing and postage can be recovered. Other costs such as for staff time spent searching for information cannot be charged for unless other relevant legislation authorises this. The Councils will adhere to these provisions.

If the cost of complying with the request would exceed the “appropriate limit”, or ‘cost limit’ (section 12) then the Councils can offer to supply the information and recover their full costs (including staff time), rather than refusing the request (see section 4.1.3).

In all cases where the Councils choose to charge a fee, a fees notice will be issued to the requester as required by section 9 of the Act. Requesters will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them. The Councils are not required to make the requested information available if the fee is not paid within this period.

#### **4.1.5 Time limits for compliance with requests**

Public authorities must respond to requests for information promptly and within 20 working days following the date of receipt of the request (section 10 FOIA). The Councils have established systems and procedures in place to meet this timescale. On occasion the Councils may need to seek an extension and will do so in accordance with the regulations and advise the requester in writing.

If the information requested by the requester incurs a charge or a fee and the requester has paid this in accordance with section 9(2), the working days in the period from when the requester received the fees notice to when they paid will be disregarded for the purposes of calculating the 20th working day following receipt.

If the Councils choose to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within 20 working days informing the requester of this decision.

#### **4.1.6 Means by which information will be conveyed**

When a requester, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- The provision to the requester of a copy of the information in permanent form or in another form acceptable to the requester;
- The provision to the requester of a reasonable opportunity to inspect a record containing the information, and



- The provision to the requester of a digest or summary of the information in permanent form or in another form acceptable to the requester;

The Councils shall, in so far as is reasonably practicable, give effect to that preference in accordance with section 11 of the Act.

In determining whether it is reasonably practicable to communicate information by a particular means, the Councils will consider all the circumstances, including the cost of doing so. If the Councils determine that it is not reasonably practicable to comply with any preference expressed by the requester in making their request, the Councils will notify the requester of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.

#### **4.1.7 Refusal of requests**

As indicated under 4.1.3, the duty to confirm or deny and provide information does not arise if the Councils:

- Under section 2 of the Act apply an exemption under Part II of the Act,
- Have issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the requester;
- Under section 12 of the Act estimate that the cost of compliance with the request for information exceeds the appropriate limit;
- Can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

If the Councils choose to refuse a request for information under any of the above clauses, the requester will be informed of the reasons for this decision within 20 working days. As set out in section 17(7) of the Act, the requester will also be informed of the procedures for making a complaint about the discharge of the duties of the Council under the Act and the rights of appeal to the Information Commissioner conferred by section 50 of the Act.

If the Councils are, to any extent, relying on a claim that:

- Any provision of Part II (relating to the duty to confirm or deny) is relevant to the request; or that information is exempt information.

A notice will be issued within twenty working days under section 17 of the Act which:

- States that fact;
- Specifies the exemption in question; and
- States (if that would not otherwise be apparent) why the exemption applies;
- Gives details of the Council's complaints procedure and how to appeal to the Information Commissioner.

Where the Councils are considering applying an exemption and have not yet reached a decision as to the application of an exemption, the notice will indicate that no decision as to the application of an exemption has been reached. It will contain

an estimate of the date by which the Council expects that a decision will have been reached.

As outlined in the Cabinet Offices' Code of Practice issued under section 45 of the Act, such estimates should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the requester will be given a reason(s) for the delay and offered an apology by the Council. If the Council finds, while considering the public interest, that the estimate is proving unrealistic, the requester will be kept informed.

The Councils have the right to refuse to deal with questionnaires or surveys which purport to be Freedom of Information requests but which ask for perceptions or views rather than information held.

#### **4.1.8 Duty to provide advice and assistance**

The Councils will provide advice and assistance, so far as it would be reasonable to expect the Councils to do so, to persons who propose to make, or have made, requests for information. This is a duty under section 16 of the Act and supports the Councils' aim of providing excellent services and equality.

#### **4.1.9 Transferring requests for information**

If the Councils believe that some or all of the information requested is held by another public authority, the Councils will consider what would be the most helpful way of assisting the requester with their request. In most cases this is likely to involve providing the requester with contact details for that authority.

The Councils will not transfer any requests without the consent of the requester as they may object to their details being passed on. Where the Councils are unable to advise the requester which organisation may hold the information, the Councils will consider what advice, if any, it can provide to the requester to enable them to pursue their request.

#### **4.1.10 Consultation with Third Parties**

The Councils recognise that there will be circumstances when it should consult third parties about information held in scope of a request in order to consider whether information is suitable for disclosure. These may include:

- When requests for information relate to persons or bodies who are not the requester and/or the public authority; or
- When disclosure of information is likely to affect the interests of persons or bodies who are not the requester or the authority.

The Councils will consult third parties where there are contractual obligations which require consultation before information is released. In other circumstances the Councils will endeavour to consult third parties as good practice where the information is likely to affect their business or private interests. The Councils recognise that third parties who have created or provided the information held by the Councils may have a better understanding of its sensitivity and will give their

comments appropriate weight. The views of third parties will be particularly relevant in cases where it is necessary to consider the prejudice and public interest tests.

The Councils also recognise that they are not required to accept views provided to them from third parties about whether or not information should be released. It is ultimately for the Councils to take the final decision on release following any consultation it undertakes. The Councils will endeavour as best practice to give third parties advance notice or to draw it to their attention as soon as possible if the decision is to release the information.

The Councils may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Councils will consider the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:

- The Councils do not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- The views of the third party can have no effect on the decision of the Council, for example, where there is other legislation preventing or requiring the disclosure of this information; and
- No exemption applies and so, under the Act's provisions, the information must be provided.

Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation that can express views on behalf of those parties, the Councils will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Councils may consider that it would be sufficient to consult a representative sample of the third parties in question.

#### **4.1.11 Contracts**

When entering into a contract with a third party it is likely that both the Councils and the contractor will hold information about the contractual arrangements. If a contractor holds information relating to the contract on behalf of the Council, this information should be considered in the same way as information held by the Council and so will be subject to the Act. Such information would include where a public authority is using a contractor to store records or where a contract stipulates that certain information about service delivery is held on behalf of an authority for Freedom of Information purposes.

When entering into a contract the Councils and the contractor should agree what types of information they consider will be held by the contractor on behalf of the Council and indicate this in the contract or in an annex or schedule. Consideration will also be given to putting in place appropriate arrangements for the Council to gain access to the information if a request is made under the Act. These arrangements may include:

- How and when the contractor should be approached for information
- How quickly the information should be provided

- How any disagreement about disclosure between the Council and the contractor will be addressed
- How any request for internal review or subsequent appeal to the Information Commissioner will be handled
- The contractor's responsibility for maintaining adequate systems for record keeping in relation to information held on behalf of the Council
- Where the Council itself holds the requested information, the circumstances under which the Council must consult the contractor about disclosure.

As good practice these arrangements should be set out in the contract or in a related Memorandum of Understanding.

Requests for information held by contractors on behalf of a public authority should be answered by the Councils. Contractors will be instructed to pass on any requests received directly or advise the requester to direct their request to the Council.

Where contractors deliver services on behalf of the Council the contract will make clear that contractors will need to fully assist the Council with their obligations under the Act. The contract should also include details of how non-compliance with these obligations will be dealt with.

The Councils may be asked to accept confidentiality clauses when entering into a contract with a third party. The Councils will give careful consideration as to whether these agreements are compatible with their obligations under the Act and the public interest in accountability. The Councils are aware of the legal limits placed on the enforceability of such confidentiality clauses and the importance of making sure that the public can gain access to a wide range of information about contracts and their delivery. The Councils are also mindful of their broader transparency obligations to publish regular details of spending, tenders and contracts on external suppliers.

#### **4.1.12 Accepting information in confidence from Third Parties**

The Council will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with the exercise of any of the Council's functions and it would not otherwise be provided.

The Council will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons and compatible with the Councils' obligations under the Act.

#### **4.1.13 Complaints about the discharge of the duties of the Council under the Act**

The Councils will deal with complaints about the discharge of their duties under the Act, including the handling of requests for information under their Compliments, Comments and Complaints Policy and associated procedures. The policy is published on the Councils' websites.

These complaints will usually be dealt with as a request for an "internal review" of the original decision. As required under section 17(7) of the Act, the Councils will notify requesters of their internal review process and also of their right to complain

to the Information Commissioner under section 50 if they are still dissatisfied following the outcome of the Council's internal review.

The Councils will observe the usual practice to accept a request for an internal review made within 40 working days from the date a public authority has issued an initial response to a request.

Requests for internal review will be acknowledged and normally responded to within 20 working days of receipt. If an internal review is complex and/or requires consultation with third parties then longer may be needed to consider the issues and respond. In these instances the Councils will inform the requester and provide a reasonable target date by which to respond. It is best practice for this to be no more than an additional 20 working days and the Councils will adopt that practice wherever possible.

#### **4.1.14 Corporate Record Retention and Disposal Schedule**

The Councils have a Corporate Record Retention and Disposal Schedule to ensure compliance with the Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000. The schedule can be provided to customers on request.

Council records should be kept for as long as they are needed for statutory, business and historic purposes. After which they should be disposed of in accordance with the information they contain i.e. confidential records including those containing personal data destroyed securely.

The aim of the retention schedule is to provide a consistent approach to the way the Councils handle their records, and provides a clear set of guidelines to staff.

A record can be defined as '*information, in whatever medium, received or created by an organisation in the course of its business, and retained by that organisation as evidence of its activities or because of the information contained*'.

#### **4.1.15 Publication Schemes**

Under section 19 of the Act public authorities are required to produce and maintain a publication scheme. The purpose is to increase transparency and allow members of the public to routinely access information relating to the functions of a public authority.

The Councils publish their scheme documents on their websites. The document details what information is published, the format in which the information is available, who to contact to obtain the information and whether or not a charge will be made for the provision of that information.

The Councils review their publication schemes every three years.

The Councils will also publish details of their performance on handling requests for information under the Act (compliance statistics) as recommended for public authorities with over 100 Full Time Equivalent (FTE) employees.

#### **4.1.16 Data Transparency**

The Councils will publish information in accordance with the Local Government Transparency [Code](#) 2015.

Information published on the Councils data transparency web page will be published under the UK Open Government [Licence](#).

#### **4.1.17 Datasets**

Sections 11, 11A, 11B and 19 of Part 1 of the Act provide additional rights in relation to the disclosure and in some cases, re-use of datasets.

The dataset provisions are intended to ensure that public authorities make datasets, either in response to a Freedom of Information request or proactively under a publication scheme, in a way that allows them to be re-used. They create a duty to provide datasets in a re-usable form and under licensing conditions that permit re-use. A re-usable format is one that is machine readable, such as Comma-separated Value (CSV) format and based on open standards.

Where datasets are only held in non-re-usable formats, the Councils are not obliged to convert the dataset before releasing it where it is not reasonably practicable to do so.

A dataset is a collection of factual information in electronic form to do with the services and functions of the public authority that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.

Examples will include datasets comprising combinations of letters and numbers used to identify property or locations such as postcodes and references; datasets comprising numbers and information related to numbers such as spend data; datasets comprising text or words such as information about job roles.

The Councils will observe guidance contained within the Cabinet Office's Freedom of Information Code of Practice and guidance issued by the Information Commissioner's Office on datasets.

### **4.2 ENVIRONMENTAL INFORMATION REGULATIONS**

The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities.

The Regulations do this in two ways:

- public authorities must make environmental information available proactively;
- members of the public are entitled to request environmental information from public authorities.

The duty under the Regulations is to provide access to environmental information either by allowing inspection or providing copies of the information.

The Councils have a duty to provide employees and elected members with training and development to assist and support them in understanding and complying with the Environmental Information Regulations (EIR).

#### **4.2.1 General Rights of Access**

The Regulations give people a right of access to information about the activities of public authorities that relate to or affect the environment, unless there is good reason for them not to have the information. This is sometimes referred to as a presumption in favour of disclosure.

This means that everybody has a right to access environmental information. Disclosure of information should be the default – in other words, information should be kept private only when there is a good reason and the Regulations allow it.

Requesters do not need to give a reason for wanting the information. The presumption of disclosure requires the Councils to justify when refusing to disclose information.

The Councils will treat all requests for information equally and understands that information released under the Regulations is released to the world at large. This does not prevent the Councils from voluntarily giving information to people outside the provisions of the Regulations.

The Regulations cover any recorded information that the Councils hold that falls within the definition of 'environmental information'. It is not limited to official documents or information created by the Councils; it can cover, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings.

Any person making a request for environmental information to the Councils is entitled to receive that information no later than 20 working days after the Council receives the request

The Regulations stipulate that a request for environmental information does not need to be in writing. The Councils will process verbal requests for environmental information in the same way as written ones. As good practice the Councils will endeavour to confirm that they have noted the request as intended by the requester.

#### **4.2.2 Conditions and Exceptions**

The Regulations state exceptions that allow public authorities to refuse to provide requested information. Some of the exceptions relate to categories of information, for example, unfinished documents and internal communications. Others are based on the harm that would arise from disclosure, for example, if releasing the information would adversely affect intellectual property rights. There is also an exception for personal data if providing it would be contrary to the General Data Protection Regulations (the GDPR) or the Data Protection Act 2018 (the DPA 2018).

Under the Regulations, most exceptions are subject to the public interest test. This requires the Councils to balance the public interest arguments for disclosing the information against those for upholding the exception.

Regulation 12(4)(b) allows the Councils to refuse requests that are 'manifestly unreasonable'. Requests may be manifestly unreasonable if:

- dealing with a request would create unreasonable costs or an unreasonable diversion of resources; and
- an equivalent request would be found 'vexatious' if it was subject to the Freedom of Information Act.

The Councils will give due consideration to the use of exceptions under Regulations 12 and 13 when required and also to other provisions to enable the effective administration of requests.

#### **4.2.3 Charges and Fees**

The Regulations do not require charges to be made but public authorities have discretion to make a reasonable charge for environmental information (Regulation 8). Providing access to a public register or if the requester examines the information at a place made available by the authority is free of charge. The Code of Practice (EIR) suggests that the charge must not exceed the cost of producing the information unless the authority is entitled to also levy a market-based charge. The Councils will comply with these guidelines.

Where the Councils choose to charge for environmental information, a fees notice will be issued to the requester as stated in Regulation 8(4). Requesters will be required to pay advance fees within a period of 60 days beginning with the day on which the fees notice is given to them. The Councils are not required to make the requested information available if the fee is not paid within this period.

#### **4.2.4 Time limits for compliance with requests**

The Councils have established systems and procedures to ensure that they comply with the duty to provide the information requested within 20 working days of a request in accordance with Regulation 5(2). The 20 working day limit can be extended to 40 working days if the complexity and volume of the information means that the 20 working day limit cannot be complied with.

If the Councils need to extend the deadline a notice shall be issued within 20 working days informing the requester of this decision. This is in accordance with Regulation 7.

If the information requested by the requester incurs a charge or a fee and the requester has paid this, the working days in the period from when the requester received the fees notice to when they paid will be disregarded for the purposes of calculating the 20th working day following receipt. This is in accordance with Regulation 8(6).

#### **4.2.5 Means by which information will be conveyed**

When a requester, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- The provision to the requester of a copy of the information in permanent form or in another form acceptable to the requester;



- The provision to the requester of a reasonable opportunity to inspect a record containing the information, and
- The provision to the requester of a digest or summary of the information in permanent form or in another form acceptable to the requester;

The Councils shall, in so far as is reasonably practicable, give effect to that preference in accordance with Regulation 6(1).

In determining whether it is reasonably practicable to communicate information by a particular means, the Councils will consider all the circumstances, including the cost of doing so. If the Councils determine that it is not reasonably practicable to comply with any preference expressed by the requester in making their request, the Councils will notify the requester of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances. This is in accordance with Regulation 6(2).

#### **4.2.6 Refusal of requests**

If the Councils choose to refuse a request for information in accordance with an exception, the requester will be informed in writing which exception has been claimed and why that exception applies, and will do so no later than 20 working days after the date of receipt of the request. This is in accordance with Regulation 14. As set out in Regulation 14(5) the requester will also be informed of the process for making a complaint about the discharge of the duties of the Council under the Regulations and the rights of appeal to the Information Commissioner conferred by Regulation 18.

If applying an exception under Regulation 12(1)(b), the Councils will, in the decision letter, state the reasons for claiming that the public interest in maintaining the exception outweighs the public interest in disclosure.

The Councils will keep a record of all notices issued to refuse requests for information.

#### **4.2.7 Duty to provide advice and assistance**

The Councils will provide advice and assistance, so far as it would be reasonable to expect the Councils to do so, to persons who propose to make, or have made, requests for information. This is a duty under Regulation 9 and supports the Council's aim of providing excellent services and equality.

The Councils will ensure that the systems and procedures that are deployed to meet the Regulation 9 duty also conform to the Code of Practice issued under Regulation 16.

#### **4.2.8 Transferring requests for information**

If the Councils believe that some or all of the information requested is held by another public authority, the Councils will consider what would be the most helpful way of assisting the requester with their request. In most cases this is likely to involve providing the requester with contact details for that authority.

The Councils will not transfer any requests without the consent of the requester as they may object to their details being passed on. Where the Councils are unable to advise the requester which organisation may hold the information, the Councils will consider what advice, if any, it can provide to the requester to enable them to pursue their request.

#### **4.2.9 Consultation with Third Parties**

The Councils recognise that unless an exception is provided for in the Regulations in relation to any particular information, it will be obliged to disclose that information in response to a request. The Councils understand that they are not obliged by the Regulations to consult on information which may be wholly or jointly owned by third parties but recognises that it may be prudent to do so.

The Councils acknowledge that, unlike the Freedom of Information Act, the Regulations contain no 'absolute' exceptions, and that lack of consent of a third party does not necessarily preclude disclosure. The Councils will disclose the information if the public interest in disclosing it outweighs the public interest in withholding it.

The Councils may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Councils will consider the most reasonable course of action for it to take in light of the requirements of the Regulations and the individual circumstances of the request.

The fact that the third party has not responded to consultation does not relieve the Councils of its duty to disclose information under the Regulations, or its duty to reply within the time specified in the Regulations. In all cases, it is for the Councils, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Regulations. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

#### **4.2.10 Contracts**

When entering into contracts the Councils will refuse to include contractual terms that purport to restrict the disclosure of environmental information held by the Councils and relating to the contract beyond the restrictions permitted by the Regulations. Unless an exception provided for under the Regulations is applicable in relation to any particular information, the Councils will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

When entering into contracts with non-public authority contractors, the Councils may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Code of Practice (EIR), the Councils will reject such clauses wherever possible and explain the relevance of the public interest test. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Councils will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Councils will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Regulations, as described in the paragraph above. Any

acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

The Councils will not agree to hold information 'in confidence' which is not in fact confidential in nature. The Councils acknowledge that certain exceptions including those for commercial confidentiality, and voluntarily supplied data, are not available when the information requested is about emissions into the environment.

It is for the Councils to disclose information pursuant to the Regulations, and not the non-public authority contractor. The Councils will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Regulations) by appropriate contractual terms. In these cases, contracts or other working arrangements will be made to ensure appropriate consultation about the handling of requests for information exchanged between the parties. Any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Councils will not impose terms of secrecy on contractors.

#### **4.2.11 Accepting information in confidence from Third Parties**

The Councils will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with the exercise of any of the Councils' functions and it would not otherwise be provided. Even in these circumstances, the Councils will explain the relevance of the public interest test and the fact that there could be circumstances in which the public interest in responding to a request outweighs the desires for confidentiality of a third party.

The Councils will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

#### **4.2.12 Complaints about the discharge of the duties of the Council under the Regulations**

The Councils will deal with complaints about the discharge of their duties under the Regulations, including the handling of requests for information under their Compliments, Comments and Complaints Policy and associated procedures. The policy is published on the Councils' websites.

These complaints will usually be dealt with as a request for an "internal review" of the original decision. As required under Regulation 14(5), the Councils will notify applicants of their internal review process and also of their right to complain to the Information Commissioner under Regulation 18 if they are still dissatisfied following the outcome of the Council's internal review.

Requests for internal review will be acknowledged and normally responded to within 20 working days of receipt. The Code of Practice (EIR) does allow for 40 working days however the Councils will endeavour to work to 20 working days for consistency with FOIA internal reviews. If an internal review is complex and/or requires consultation with third parties then longer may be needed to consider the

issues and respond. In these instances the Councils will inform the requester and provide a reasonable target date by which to respond. It is best practice for this to be no more than an additional 20 working days and the Councils will adopt that practice wherever possible.

### **4.3 RE-USE OF PUBLIC SECTOR INFORMATION**

The Councils have a duty to comply with the Re-use of Public Sector Information Regulations 2015. These regulations do not provide access to the information itself. That remains available through the usual channels such as printed materials, information published on the website and through requests made under the Freedom of Information Act, Environmental Information Regulations, General Data Protection Regulation and Data Protection Act.

Re-use means using the information for a purpose other than the purpose for which the information was originally produced, including commercial purposes. This includes copying, adopting, developing, adding value, broadcasting or commercially exploiting.

The regulations apply only to information produced, held or disseminated within a public sector's body public task and for which they hold copyright.

Guidance on the regulations has been produced by the National Archives and adopted by the Councils. The guidance is published on the Councils' websites.

## **5 RESPONSIBILITY FOR IMPLEMENTING THE POLICY**

The Information, Engagement and Performance Manager who has delegated responsibility for Freedom of Information and Environmental Information Regulations, will oversee the implementation of this policy and establish processes to support the policy on behalf of the Director of Corporate Resources and Head of Paid Service.

Managers at all levels are responsible for ensuring that the employees/ unpaid volunteers and work placements for whom they are responsible are aware of and adhere to this policy. They are also responsible for ensuring that employees are updated in regard to any changes in this policy.

All employees, unpaid volunteers/work placements and elected members are obliged to adhere to this policy.

## USEFUL LINKS

The Information Commissioner's website – <https://ico.org.uk/>

### Code of Practice – Freedom of Information

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice - Minor Amendments 20180926 .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

### Code of Practice – Environmental Information Regulations 2004

[https://ico.org.uk/media/for-organisations/documents/1644/environmental\\_information\\_regulations\\_code\\_of\\_practice.pdf](https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf)

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