



# **ISLE OF WIGHT COUNCIL**

## **ACCESS TO INFORMATION**

### **POLICY 2005**





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## **INTRODUCTION**

The Isle of Wight Council ("the Council") adopts this policy to outline its approach and commitment to new access to information legislation. This policy facilitates the efficient, effective and strategic use of Council's information to deliver its corporate objectives and Best Value service. This policy will be reviewed periodically, to ensure it reflects any changes to existing legislation and incorporates any new legislation.

It is as important to manage the Council's information, as it is to manage its financial, property and human resources.

The purpose of this policy is to ensure that the provisions of the Freedom of Information Act 2000 ("the FOI Act") and the Environmental Information Regulations 2004 ("EIR's") are adhered to as well as any guidance issued under Section 45 of the Freedom of Information Act 2000. Both regimes are to be in force on 1<sup>st</sup> January 2005. The Council further seeks to ensure compliance with both the Human Rights Act 1998 ("HRA") and the Data Protection Act 1998 ("DPA") which protect the privacy of personal information held by the Council.

This policy reflects the current code of practice under the FOI Act which is a supplement to the provisions of the Act only and is not a substitute for its legislation. The Council recognises, however, that although it is not legally binding, failure to comply with the code may lead to the failure to comply with the FOI Act and adverse comment made in any report to Parliament by the Commissioner, contempt of court or enforcement notice proceedings against the Council.

The Isle of Wight Council manages a myriad of information in the performance of its duties. Unmanaged data viewed out of context is meaningless and therefore, the Council strives to manage its information in the most meaningful manner to provide the most efficient, effective and informed service.

Information becomes a more valuable resource daily and the world is now recognising the importance of good information management. New mediums for the dissemination of information are now available such as through the Internet. The Isle of Wight Council creates, collects and manages an enormous quantity of valuable information for the benefit of the public. The public therefore, have the right to readily access this information to the fullest extent as allowed by the law.

Not least, as a result of legislative changes due to come into force on the 1 January 2005, there will be a dramatic cultural change within the Council to only refuse to allow access to information when there is a justified reason to do so. There will, in future, be a presumption in favour of disclosure to promote a transparent, open and accountable Local Government.

The Council's Data Protection Officer will take the lead role and be responsible for the provision of advice, guidance and training regarding Freedom of Information, Data Protection and the Environmental Information Regulations. This will be achieved with the support of the Council's Legal Services.

Heads of Service will be responsible for ensuring operational compliance with this policy within their own departments and for decision making with regard to refusing requests for information, with guidance from Legal Services where applicable.

Departmental information guardians (DIG's) will be responsible for the dissemination of guidance relating to Access to Information throughout their directorates. These individuals



will be responsible for the co-ordination of information requests within the service/department in accordance with the Councils policy's and procedures. They will be a quality control contact within the service/department for internal and external queries relating to the management of information.

All Officers will have responsibility for ensuring that requests for information are dealt with in accordance with this policy.

The Councils compliance, with the new legislative access rights, will be audited internally and subject to scrutiny by the Information Commissioner on complaint.

### **ACCESS REGIMES**

Access to information is principally governed by three main legislative provisions:

- The Data Protection Act 1998 relates to personal information held by the Council.
- Environmental Information Regulations 2004 enable access to environmental information held by the Council.
- The Freedom of Information Act 2000 allows the right of access to any information held.

All provide rights of access to information held with limited exception. Whilst the spirit of both the FOI Act and EIR's are the same, there are some minor differences in their application. Due to the similarity between them, this Policy will refer to the FOI Act alone unless there are differences. Therefore, information which is not personal to the applicant (Data Protection request), or in relation to the environment (see Appendix B – Environmental Information Regulations 2004) will be a Freedom of Information request. The main differences are highlighted in this policy below. However, the generic term of Request for Information ("RFI") is used to cover the provisions of the FOI Act and EIR's. The term SAR (Subject Access Request) is used to describe the access regime under the Data Protection Act 1998.

The Freedom of Information Act received Royal Assent on the 30 November 2000. The rights of access under this Act will come into force on the 1 January 2005. The Council has already produced a Publication Scheme in accordance with the Act and this dictates some of the information that is currently available to the public, its location and whether there is a charge.

The Freedom of Information Act allows anyone to request information from the Isle of Wight Council after the 1 January 2005, regardless of his or her age, nationality, location, motive or history. Any information held by the Isle of Wight Council is eligible for release. However, a limited number of exemptions may be applied to protect some information that truly warrants such protection. The FOI Act requires that all requests must be in writing (including e-mails); to state clearly what information is required; and state the name of the applicant and an address for correspondence. EIR's differ slightly in that an official request may be made by way of verbal request. It is therefore essential that such requests are logged and monitored.

On receipt of a request for information (RFI) the Council must respond as soon as possible and not later than 20 working days after receiving the request.



The reply to the request should confirm or deny whether or not the Isle of Wight Council holds the information, unless such confirmation or denial would, in itself, disclose exempted information. If an exemption does not apply, the Council will provide the information that has been requested. If an exemption does apply, the Council will explain why the information cannot be provided, quoting a statutory exemption and the reasoning behind it.

If information requested is contained within the Isle of Wight Council's Publication Scheme, the request will not be treated as a formal RFI (see Appendix C – The Publication (Public Information) Scheme/Catalogue). The customer can obtain the information as specified in the Scheme, which will also dictate whether and how much the Authority will charge for providing the information. If the information requested is not contained within the Publication Scheme, the Authority may charge a fee as laid down in regulations. If the fee is not paid, the Council can refuse to supply the information.

A request for information may only be refused if an exemption under the FOI Act applies. The reply to the request will state which exemption the Council relies on and the reasoning behind it and will provide details to the requester of the Internal Complaints and Review Process. Any application for a review of a Council's decision or failure to fulfil its statutory duty under the FOI Act and EIRs, should be directed to the Information Management Team, Isle of Wight Council, 3rd Floor, County Hall, Newport, Isle of Wight, PO30 1UD. If, after an Internal Review/Complaint, the Council still refuses the request, the requester has the right to seek a review by the Information Commissioner.

### **AN OFFICIAL REQUEST**

The Council provides a wide range of information routinely, and will continue to do so, with only certain requests being treated formally under FOI, EIR or Data Protection. Please refer to Appendix A (What is a request for information?), for clarification as to which requests will trigger an official request for information (RFI) or Appendix G (Is it a Data Protection Act, Environmental Information Regulations or Freedom of Information Request? Flow Diagram), as to which legislation affords the right of access. The FOI Act requires that a request for information must be made in writing, which may include a request transmitted by electronic means, that is received in a legible form and is capable of being used for subsequent reference. However, EIR's allow a request for information to be made verbally. If a person is unable to articulate their request in writing the Isle of Wight Council will provide advice and assistance to assist formulating their request.

1. An applicant may wish to consult another person or agency such as the Law Centre/Citizen's Advice Bureaux who may be able to assist them with their application or make the application on their behalf;
2. The applicant could approach the Information Management Team at the address above who may provide appropriate assistance;
3. In exceptional circumstances, the Council may offer to take details of the application over the telephone and send a note to the applicant for confirmation, which once verified by the applicant and returned, would constitute a written request for information.
4. The applicant may apply online using the Council's online application form. The Council will then acknowledge receipt of the request, by sending a copy of the information request form to the applicant, by their stated preferred communication medium, after allocating a unique reference number. If the application form has



been completed incorrectly, or the applicant wishes to change the form in any way, they may contact the council quoting the reference. If the new request is materially different and is not a minor amendment, this will constitute a new request.

The Council will not provide assistance to applicants whose requests are vexatious within the meaning of Section 14 of the FOI Act (see Appendix E – Refusing a Request for Information).

If the Local Authority considers that the cost of compliance would exceed the appropriate limit, as set out under regulations made under Section 12(4) of the FOI Act, the Authority will not be bound to continue processing the request. However, the Council may consider, on a discretionary basis, what information could be provided within the cost ceiling with the agreement of the applicant.

### **ADVICE AND ASSISTANCE**

The Council fully supports the principles of the FOI Act and will seek to comply with its terms to the fullest extent. However, if the information sought is not described in a way which would enable the Council to identify and locate it, or the request is ambiguous, the Council will seek clarification and the 20 day request period will be stayed.

The Council will provide reasonable assistance to the applicant, to help clarify the nature of the information sought, and contact will be made to clarify the request at the earliest opportunity, normally by telephone, fax or e-mail, if these contact details are known. The Isle of Wight Council will not seek to determine the motivation or aims of the applicant for requesting the information, as it recognises this is entirely irrelevant to the decision.

The Council has a duty to provide advice and assistance to applicants under Section 16 of the FOI Act. If the applicant fails to provide enough information for the Council to reasonably locate what they require, the Council can request that further details are provided. This duty is to provide advice and assistance “so far as it would be reasonable to expect the Authority to do so”. The Council will strive to provide as much assistance as possible to enable the information to be reasonably located. If the applicant still fails to describe the information in a way which would enable the Authority to identify and locate it, the request will be halted until such time as the applicant is able to provide further information.

The Isle of Wight Council’s procedure for dealing with requests for information is outlined below. These procedures outline the Council’s processes for dealing with requests for information including the transfer of requests to another authority (see page 8) and consultation with third parties (see page 8) and access under Data Protection.

Any queries regarding this policy, or access to information within the Isle of Wight Council, should be directed to:-

The Information Management Team  
Legal and Democratic Services



Third Floor  
County Hall  
Newport  
Isle of Wight PO30 1UD  
E-mail: [Information@iow.gov.uk](mailto:Information@iow.gov.uk)  
Tel no: 01983 823226/823222

## **TIME PERIOD FOR COMPLIANCE – 20 WORKING DAYS**

The Council must inform the applicant in writing whether it holds the information requested and, if so, communicate that information to the applicant promptly, but not later than 20 working days after receipt of the request. Non-working days are identified as being all Saturdays and Sundays and all recognised public bank holidays.

The 20 working day time period starts either the day after the Council receives the request or the day the authority receives the further information it reasonably requires to identify and locate the information requested.

The date of receipt is the date the Council actually receives the request. If the request is by way of email then it is the date the email arrives in the recipient's mailbox.

However, if an automated out of office message provides instructions on how to redirect the message, then the Council will not be considered to have received the request until it is re-sent to the alternative contact given. Similarly, if a request for environmental information is made, and an answer phone message provides an alternative contact point, then the date the clock starts will be when contact is made with the alternative contact point.

## **PROMPT REPLIES TO REQUESTS**

The Council are required to comply with all requests for information promptly and not later than the end of the 20 working day period. However, the Council would not expect every application for information to take 20 working days and will, where possible, provide it at the earliest opportunity from the date of the request.

If the Council are considering applying an exemption which requires the consideration of the public interest test, the Council may need further time beyond the normal 20 working day limit. In this instance, the Council will notify the applicant in writing that the request for information engages the public interest test (see Appendix F – The Public Interest Test) and will provide an estimate of a date by which it expects to reach a decision. These estimates shall be realistic and reasonable in the circumstances of the particular case, taking account of such things as the need to consult third parties. If the estimate given proves to be unrealistic, the Council will notify the applicant at the earliest opportunity and apologise for any further delay, giving a new realistic estimate of when the decision will be issued.

## **CHARGING FEES**

### **Compliance costs**

The Council may charge a fee, in accordance with the fees regulations made under Section 9, 12 and 13 of the FOI Act. The fee that may be charged for production of the information requested is shown in Appendix D (Charging fees). If the total cost of the request is less than £450 then no fee will be charged except for possible communication costs (see below).



In determining whether the cost of compliance exceeds the limit, the Council will be guided by the charging regulations that set out what may be taken into account. The costs are limited to those that the Council reasonably expects to incur in:

- determining whether it holds the information requested,
- locating the information or documents containing the information,
- retrieving such information or documents, and
- extracting the information from the document containing it (including editing or redacting information).

In determining the total cost, the Council will charge £25 per hour per person for staff time regardless of their seniority.

If the cost of the request exceeds the £450 limit ("the appropriate limit"), the Council will either waive the fee, issue a fee notice for the total cost, or refuse the request. The Council will, on a case-by-case basis, as part of its duty to advise and assist, liaise with the applicant to determine if the original request might be amended to concentrate the application to reduce the cost of compliance.

#### Communication Costs

Regardless of whether the fee limit is exceeded, the Council may issue a fee notice for the cost of communicating the information. This would also include the cost of putting the information in the applicant's preferred format, so far as this is reasonably practicable, as set out in section 11(1) of the FOI Act; reproducing any document containing the information, e.g. photocopying or printing; and postage and other forms of communicating the information. The Council will charge for photocopying in line with the pricing structure located at Appendix I.

The costs that can be taken into account under communication costs may also be dependent on the applicants desired method of communication (section 11(1) of the FOI Act). This states that public authorities have a duty to give effect to an applicant's preferred format for receiving information, so far as this is reasonably practicable. This may include:

- summarising the information;
- providing the applicant with a copy (for example by photocopying or printing);
- allowing the applicant reasonable opportunity to inspect a record containing the information;
- producing material in an applicant's preferred format (for example by putting it onto CD-Rom, video or audio cassette); or
- translating information into a different language at the request of the applicant. However, public authorities are not obliged under the Act to translate documents if this would not be "reasonably practicable".

Please refer to the step-by-step guide in Appendix D as to the process for determining if a fee is to be charged.

Under EIR a charge can be made, provided that it does not exceed the costs reasonably attributable to the supply of the information. The Council will ensure that charges are based on the costs of retrieval and production of the information and, in any case, will calculate and advise the applicant of any fee due before the request is met. Subject Access Requests under the DP Act will continue to be charged at the statutory £10 limit.

These fees however, do not apply to material made available under the Council's publication scheme; to information which is reasonably accessible to the applicants by other means





(Section 21 of the FOI Act); where provision is made by or under any enactment as to the fee that may be charged by the public authority for disclosing the information.

The fees regulations only provide legislative provision to charge for the request and it will be entirely at the Council's discretion to waive the fee, especially if the cost of issuing an invoice would be disproportionate to the fee to be collected.

#### Aggregated costs

In certain situations, the costs of answering more than one request can be added together, or aggregated, for the purposes of estimating whether the appropriate limit would be exceeded in relation to any one of those requests. This only applies to requests under the Freedom of Information Act.

The Regulations state that requests can only be aggregated in the following circumstances:

- two or more requests for information must have been made to the same public authority;
- they must be either from the same person, or from 'different persons who appear to the public authority to be acting in concert or in pursuance of a campaign' (section 12(4)(b) of the FOI Act);
- the requests must relate to the same or similar information; and
- they must have been received by the public authority within a space of 60 consecutive working days.

This provision is intended primarily to prevent individuals or organisations circumventing the appropriate limit by splitting a request into smaller parts.

#### **TRANSFERRING REQUESTS FOR INFORMATION TO ANOTHER PUBLIC AUTHORITY**

If the Council receives a request for information that it does not hold, but it is aware that the information is held by another public authority, the Council will provide as much assistance as possible to the applicant in assisting the transfer of their request to the authority which holds the information. This may be by simply contacting the applicant and directing him to the appropriate public authority who holds the information, by suggesting that another application be made direct to the authority which holds the information or, if details are known, providing the applicant with contact details. If the applicant indicates to the Council that they do not object to the transfer of the request to the other public authority being made, the Council will, at their discretion, transfer the request to that public authority direct. However, the Council will notify the applicant if this is to be done.

If the Council holds any of the information that has been requested, it shall treat that part of the request as an official request for information and process it accordingly. The Council shall inform the applicant of the information it does not hold at the earliest opportunity and provide as much assistance as is reasonable to enable the applicant to locate it elsewhere.

All transfer of requests and contacts with applicants who have requested information that is held by another public authority, will be contacted as soon as possible so that no undue delay is suffered by the applicant. The time period for compliance does not start until that part of the request is received by the public authority that holds the relevant information.



If the Council is unable to provide any advice or assistance as to where the applicant might direct a further application for the information, or if it is inappropriate for those details to be provided, the Council will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

### **CONSULTATION WITH THIRD PARTIES**

The Isle of Wight Council recognises that the disclosure of information may affect the legal rights of a third party. The Council recognises the importance of the Data Protection Act ("the DPA") and the Human Rights Act and this policy is written in accordance with their terms. The Council further recognises that unless an exemption is provided for in the FOI Act it will be obliged to disclose that information in response for a request.

If the consent of a third party is required prior to disclosure of information, the Council will seek to consult with that third party, with a view to seeking their consent to the disclosure, at the earliest opportunity, unless such a consultation is not practical.

The consultation may assist the Authority to determine whether an exemption under the FOI Act applies to the information requested, or the views of the third party may assist the Authority to determine where the public interest lies under Section 2 of the FOI Act.

If the cost of consultation with the third party is disproportionate, the Isle of Wight Council may consider it not appropriate to undertake that consultation. The Council will further not undertake consultation, if it does not intend to disclose the information for some other legitimate ground under the terms of the FOI Act or the views that the third party could have have no effect to the decision of the Authority, or that no exemption applies.

A refusal to consent to disclosure by a third party will not on its own mean that information cannot be disclosed.

The Isle of Wight Council will only accept information from third parties in confidence if that information would not otherwise be provided to the Council to assist the delivery of the Council's functions. Again the Council will not agree to hold information received from third parties in confidence if it is not confidential in nature.

### **CONTRACTS**

The Isle of Wight Council will refuse to include contractual terms which purport to restrict the disclosure of information held by the Isle of Wight Council in relation to the contract beyond the restrictions permitted by the FOI Act. Unless an exemption under the FOI Act applies in relation to any particular part of the contract, the Isle of Wight Council will be obliged to disclose that information in a response for a request regardless of the terms of any contract.

The Isle of Wight Council will further reject confidentiality clauses as to the terms, the value and performance of the contract unless this is justified and in accordance with the FOI Act. Where exceptionally it is necessary to include non-disclosure provisions in the contract, the Council will seek, at the earliest interval, to agree with the contractor a schedule of the contract that clearly identifies the information which should not be disclosed. However, even if such schedule is drafted, the restrictions on disclosure may be overridden by the obligations under the FOI Act. Further, whilst an exemption may apply whilst the contract is relatively new, the lapse of time may negate the applicability of the exemption.

The Council will not hold information in confidence which is not, in fact, confidential in



nature. Information is confidential in nature if the disclosure of such information would be an actionable breach of confidence.

If a non-public body is contracted with the Council to provide a service that is a function of the Isle of Wight Council, then they may be deemed to be part of the Council for the purposes of the FOI Act and will be bound by the terms of the FOI Act like any other public authority.

### **REFUSAL OF REQUEST**

If the Council refuses a request for information on reliance of an exemption, it will notify the applicant which exemption has been claimed and, unless it is obvious, why that exemption applies. If the reasoning behind the exemption, or the exemption itself, results in the disclosure of information which would itself be exempt, then the Isle of Wight Council may not provide that reason.

If the Council claims that the public interest in maintaining the exemption outweighs the public interest in disclosure, then the Council must state this in its decision letter, together with the public interest factors it has considered and formed a material part of the decision.

The Council will maintain a central record for monitoring purposes of all information that has been withheld and will proactively audit decisions made routinely to ensure that such refusals are justified and reasonable. This collated central record will be held by the Information Management Team in Legal and Democratic Services, Third Floor, County Hall, Newport, Isle of Wight, PO30 1UD.

### **APPEALS**

The Council have adopted an internal appeals procedure. Any person that perceives that the Council is not complying with its statutory duty may use this appeals procedure. The internal appeals process must first be utilized before a referral is made to the Information Commissioner.

An appeal may be made with regards to the Council not following its publication scheme, on requests that have not been properly handled, or on requests where the applicant is dissatisfied with the outcome of the consideration of the request, or where the issue is such that it cannot be resolved informally in discussion with the departmental information guardian dealing with the request.

The Council's appeals procedure process is shown at Appendix H (Appeals Procedure) and the appeal form can be viewed at [www.iwight.com/information](http://www.iwight.com/information) or obtained from the Information Management Team at the address above, where completed forms should be also be sent.

The Council will consider any expression of dissatisfaction in response to their reply to a request to be an appeal. If the applicant requests that they do not wish the matter to go through the appeal procedure, then it will be withdrawn.

Any review of a decision made relating to a request for information, will be reviewed by a person who was not party to the original decision.

If, following the review, the original decision is reversed and information is now disclosed, the reasons for the reversal will be notified to the applicant together with the information



requested. This will be done at the earliest opportunity.

If the decision to refuse disclosure is upheld, the reasons for the refusal will be notified to the applicant. If, having exhausted the internal appeals procedure, the applicant is still dissatisfied, they shall be made aware of their right to apply to the Information Commissioner at:-

The Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

Tel No: 01625 545700  
Fax No: 01625 545510



## **Appendix A - WHAT IS A REQUEST FOR INFORMATION?**

The Isle of Wight Council routinely provides information as part of its normal Council functions on a day-to-day basis. The new access regimes under Environmental Information Regulations, Freedom of Information Act and Data Protection Act are so broad that they have the potential to encapsulate most of what the Isle of Wight Council does routinely.

This guidance note therefore sets out what the triggers will be for engaging the official process for dealing with requests for information under the above legislation.

The following will not, as a general rule, engage the official RFI process:

- If the information is reasonably accessible to the public by such means as it being published on the Internet, noted in the publication scheme, or available for inspection, then this will not routinely trigger a request for information. This may include information leaflets, published reports or general information on the internet.
- Information that is released as part of the Isle of Wight Council's normal business process. The Council routinely provides information as part of their day to day processes, for example job application forms or information relating to case work. The new processes are not intended to replace existing business systems that are functioning adequately.
- Correspondence that is not a request for information.
- Requests that do not include a name and address for correspondence (or an email address).

It is important for all staff to recognise official RFI's at an early stage. These requests must be directed to the relevant Departmental Information Guardian who will enter the details into the official Council's system for managing requests. This is to ensure that the Council can comply with the request within the legislative time periods and to enable sufficient monitoring and auditing of the Council's compliance.

Examples of when official requests for information should be logged are:

- Requests that consciously engage any or all of the information access regimes. Those requests being, for example, requests which specifically mention their right of access under FOIA, DPA or EIR's.
- Where the public authority requires further information from the applicant in order to identify and locate the information requested.
- Requests that will not receive a reply within ten working days from the date of request.
- Requests which result in information being withheld for any reason under an exemption or exception from the right of access.
- Requests that are not processed because the public authority estimates the cost of compliance would exceed the appropriate limit.



- Requests that are not processed because the public authority considered the request to be vexatious or repeated.
- Requests for information that relate to information that is contained in a transferred public record, which may include where information is held by another public authority either as author or as recipient.
- Requests that may prejudice third parties and/or the Isle of Wight Council, its Members or its staff.



## **Appendix B - ENVIRONMENTAL INFORMATION REGULATIONS 2004**

Where an access request is for Environmental Information it should be dealt with under the Environmental Information Regulations 2004 (EIR). The public has had a right of access to environmental information under these regulations since 1992, however the regulations have been recently been revised. The new regulations will come fully into effect on 1<sup>st</sup> January 2005 and are explicitly referred to within the Freedom of Information Act 2000.

The new regulations have been written to take account of FOI legislation and as such share many common elements, however a few notable differences exist in that:

- a. requests can be verbal or in writing;
- b. there is no pause in the 20 day response time whilst charges for the supply of information are being negotiated;
- c. there is no upper limit for charges above which a request can be refused;
- d. there is no fee structure but charges must not exceed the costs reasonably attributed to the supply of the information;
- e. the response time can be extended in line with the regulations in the case of complex or voluminous requests; and
- f. the public interest test (Appendix F) is applied in each potential case of refusal based on an exemption.

Environmental Information is taken to mean information that relates to:

- a. the state of the elements of the environment such as:
  - Air and atmosphere
  - Water
  - Soil
  - Land
  - Landscape and natural sites, wetlands and coastal and marine areas
  - Biological diversity and its components including genetically modified organisms.
- b. the interaction between the elements in (a) above;
- c. factors such as substances, energy, noise, radiation or waste;
- d. emissions, discharges and other releases into the environment;
- e. environmental measures such as policies, legislation, plans, programmes and agreements;
- f. cost benefit and other economic analyses and assumptions used in environmental decision making; and
- g. the state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are affected by anything above.

Routinely produced environmental information and specialist reports should wherever possible be included within the Publication Scheme.



## **Appendix C - THE PUBLICATION (PUBLIC INFORMATION) SCHEME/CATALOGUE**

The Council will endeavour to be as transparent and open as possible. There will be a presumption in favour of public access to all information held, unless there is a statutory or compelling business reason against publication.

The more information that is pro-actively made available via the Council's Publications Scheme the better. It will demonstrate the Council's willingness to adopt an open approach to its business and will also help to reduce the number of 'one off' access requests that would otherwise involve staff in the potentially resource-hungry activities of locating, retrieving, collating, editing, reproducing and dispatching information.

For the catalogue to work as effectively as possible all staff will need to accept some responsibility for identifying existing or new information that may be suitable for inclusion. Such information should be brought to the attention of the departmental information guardians, who will determine, in conjunction with senior management as necessary, whether the information should be included in the catalogue.

When considering the medium of publication of new information, the Council are committed to using electronic means in the first instance.

### **General criteria for inclusion:**

The focus should be on information that:

- Is known to be of public interest,  
  
and/or
- Contributes to the principle that the Council's activities and decision-making processes should be seen to be open and transparent, eg internal policies and procedures, codes of practice, strategies, plans, minutes of key meetings, etc.

### **What type of information may be suitable?**

- Committee agendas, reports and minutes that are already routinely made publicly available.
- Records of other senior management team and other meetings that contain background information in respect of decision-making processes and which would be in the public interest.
- Strategies, service plans, business plans, policy documents, codes of practice, procedural documents, consultation documents and other information that would fall into this category.
- Any documentation that explains how the Council assesses whether or not an individual is eligible for service provision, eg assessment criteria, eligibility criteria information.
- Information that the Council already knows is regularly requested.





## Appendix C – continued

### What type of information may not be suitable?

Whilst it is clearly desirable to make as much information pro-actively available as possible it is also essential that the catalogue is properly managed and maintained. There is little value in information that has been superseded, is out of date or obsolete or simply no longer relevant. Departments need to be mindful of the potential resource requirements of managing large quantities of published information and ensure that they have made arrangements to maintain it in good order. In view of this it is worth thinking initially about excluding information that:

- Has a very short shelf life and/or will require frequent updating.
- May be of interest to the public, but which is **not** in the public interest. These two things are not the same.
- Is largely exempt and will require major editing/redacting (editing or revising a piece of writing) to make it suitable for inclusion.

### Some tips about publishing information

- It may be possible to anticipate requests, particularly where there are major local issues that are likely to attract public attention. In these cases it would be sensible to include background papers and information in the catalogue from the outset.
- Consider whether or not information that is sensitive or exempt can be included within appendices, so that the main body of the report can be included in the catalogue. Considering the structure of reports in this way will make access requests easier to respond to in the long run. Remember a whole report is not exempt if just a few paragraphs contain sensitive material.
- When information is produced or generated consider whether it is appropriate for inclusion within the scheme and if it is follow the procedures to make sure this happens.

Remember that the catalogue is a 'living' index of current information that the Council believes to be in the public interest and which promotes openness and transparency of decision-making. The publication scheme is intended to be organic and to grow and must be kept up to date. It shall be a departmental responsibility to up-date their respective parts of the scheme, and to notify the Information Management Team of any changes made.



## **Appendix D - CHARGING FEES**

Guidance on the application of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

### **Step by step guide to Freedom of Information Act fees**

The following two pages summarise the main steps public authorities need to go through when considering whether to charge for a Freedom of Information (FOI) request.

#### **Step 1.**

Do you know in advance if the information is exempt for the purposes of the FOI Act?

If information is exempt from FOI, then FOI fees will not apply. In many cases, authorities will not know if the information is exempt until the information has been located and checked. However, authorities may well know immediately upon receipt of the request that the information is exempt, usually because it is reasonably accessible to applicants elsewhere. For example, if the information has to be made available under the terms of another Act or is available through the authority's publication scheme, it is automatically exempt from FOI. If information has to be provided under the terms of another Act, fees should be charged in line with the provisions in that Act. Authorities wishing to charge for information that is made available through the publication scheme should make clear whether charges will apply as part of the scheme. FOI fees will not apply in either case. The authority would need to contact the applicant to inform him or her that the information is exempt in the usual way.

#### **Step 2A.**

Do you wish to calculate whether the cost of the request would exceed the appropriate limit?

In many cases, it will be immediately obvious that the request would cost less than the appropriate limit so there will be no point in calculating whether the appropriate limit is exceeded.

#### **Step 2B.**

Are you likely to wish to aggregate two or more requests for the purpose of calculating whether the appropriate limit has been met?

Aggregation, where the cost of answering requests is added together, is not likely to happen often. It can only take place when an authority receives two or more requests from the same person, or different people acting together or as part of a campaign. The requests must be on the same or a similar subject, and be made within 60 working days of each other. If these conditions are met, the cost of the requests can be added together when calculating whether the appropriate limit has been met.

- If the answer to either of these questions is yes, proceed to step 3.
- If the answer to both questions is no, proceed to step 4.

#### **Step 3.**

Calculate the appropriate limit.

The appropriate limit is £450 for public authorities, with staff costs calculated at a rate of £25 per hour. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving



the information, and extracting the information from other documents. They cannot take account of the costs involved with considering whether information is exempt under the Act.

- If the request would cost less than the appropriate limit, go to step 4.
- If the request would cost more than the appropriate limit, go to step 5.

#### Step 4.

Requests costing less than the appropriate limit.

If a request would cost less than the appropriate limit, the authority can only charge for the cost of informing the applicant whether the information is held, and communicating the information to the applicant (e.g. photocopying, printing and postage costs).

- Now go to step 6.

#### Step 5.

Requests exceeding the appropriate limit.

If a request would cost more than the appropriate limit, the authority can turn the request down, answer and charge a fee, or answer and waive the fee. If it decides to charge a fee, and does not have other powers to do so, it can charge on the basis of the costs outlined in step 3 (ie those costs used to determine whether the appropriate limit was met), as well as the cost of informing the applicant whether the information is held and communicating the information to the applicant.

- Now go to step 6.

#### Step 6.

For all requests, authorities should have regard to the following two points:

- Duty to provide advice and assistance to applicants. All authorities are required to provide advice and assistance to applicants when answering requests. If the authority is planning to turn down a request for cost reasons or charge a high fee, it should contact the applicant, in advance, to discuss whether he or she would prefer the scope of the request to be modified so that, for example, it would cost less than the appropriate limit.
- Maximum amount that can be charged. The Act and Fees Regulations set out the maximum amount that can be charged where they apply. However, there is nothing to stop authorities charging a lesser or no fee.



## **Appendix E – REFUSING A REQUEST FOR INFORMATION**

Whilst the Freedom of Information Act provides for the right of access to information held, it also affords a number of exemptions from this right, in order to permit public authorities to withhold some or all of the information requested, where a justifiable reason exists. Requests for information that are deemed to be vexatious or repeated can also be refused.

The exemptions fall into two categories:

- those that are qualified, in that, although an exemption may apply to the information, it will, nevertheless have to be disclosed, unless it can be demonstrated that the public interest in withholding the information is greater than the public interest in releasing it; and
- those that are absolute exemptions where a public authority may withhold the information without considering any public interest arguments.

### **Absolute Exemptions**

The absolute exemptions that are most likely to apply to the Council are:

- **Information accessible by another means, (*Section 21*)**

This applies to information that is reasonably accessible to an applicant through another source, even if it is available only on payment. This type of information could be:

- Included in the Council's Publication Scheme (Appendix C)
- Information accessible through the Council's web-site
- Books, leaflets etc. published by the Council
- Information available under existing legislation, eg. Planning Applications.

The applicant should be directed to where the information can be found and may need to receive advice and assistance on how to access the information.

- **Information in court records (*Section 32*)**

This includes information in documents served for the purposes of legal proceedings, filed with a court, or held by a person conducting an inquiry or arbitration.

- **Personal information relating to the subject (*Section 40*)**

This exemption is only absolute in respect of requests by applicants to access their personal information. Such requests will continue to be dealt with under the Data Protection Act 1998.

- **Information provided in confidence (*Section 41*)**

This exemption only applies to information provided in confidence to the authority by external persons or agencies, including other public authorities, and where disclosure would result in an actionable breach of confidence. This means that the Council would need to apply the common law test for breach of confidence which includes an inherent public interest test.

The Code of Practice under Section 45 of the Act states that a public authority should only accept information in confidence from third parties if it is necessary to obtain that information in connection with any of the authority's functions.

- **Information that is prohibited from disclosure by law (*Section 44*)**



This applies to information the disclosure of which is prohibited by any legislation, or European Community obligation, or if disclosure would be a contempt of court.

### **Qualified Exemptions**

The qualified exemptions most likely to apply to the Council are:

- **Information intended for future publication (*Section 22*)**  
This applies where the Council plans to publish information in the future, normally in its Publication Scheme, and it is reasonable, at the time the request is made, not to disclose it until then. It may also apply to information relating to research projects or surveys where it would be inappropriate to release the information until the project has been completed. In other cases where information is due to be published, the applicant must be informed when such publication is planned.
- **Prejudicial to the economic or financial interests of any administration in the UK (*Section 29*)**  
This exemption applies to information that, if disclosed, would be likely to prejudice the economic interests of the Council. This may be in connection with, for example, a planned development under negotiation with third parties where there are particularly sensitive issues involved, but which promises to bring economic growth and/or significant benefits to the local community.
- **Investigations/proceedings conducted by public authorities (*Section 30*)**  
This exemption covers information relevant to criminal investigations and proceedings, and information obtained from confidential sources for criminal or civil proceedings.
- **Law enforcement (*Section 31*)**  
This exemption applies to information, the disclosure of which would be likely to prejudice:
  - the prevention and detection of crime;
  - the apprehension and prosecution of offenders;
  - the administration of justice;
  - the collection of any tax or duty (eg. Council Tax).
- **Prejudice to the effective conduct of public affairs (*Section 36*)**  
This exemption can only be applied by a 'qualified person'. This means by a minister of the Crown or a body or person explicitly authorised by a minister.
- **Health & Safety (*Section 38*)**  
This exemption applies to information which would, or would be likely to, endanger the physical or mental, health or safety of any individual.
- **Environmental Information (*Section 39*)**  
This exemption allows for the disclosure of environmental information under the Environmental Information Regulations (EIR), see Appendix B
- **Personal information relating to a third party (*Section 40*)**



Broadly speaking requests for information about someone else will be dealt with under FOI, but disclosure should not be made if it would breach any of the Data Protection principles.

- **Legal professional privilege (*Section 42*)**

This applies where a claim to legal professional privilege could be maintained in legal proceedings.

- **Commercial interest (*Section 43*)**

This exemption applies to trade secrets and to information, the disclosure of which would, or would be likely to, prejudice the commercial interests of any person including the authority. This is the exemption which would be relevant to most commercially sensitive information held by local authorities, however, it would need to be demonstrated how disclosure would affect the commercial interest and is further subject to a public interest test.

A full list of the exemptions under the FOI Act are available from the Information Commissioner's website at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

## **Vexatious and Repeated Requests**

### **Vexatious Requests**

In determining whether a request should be refused because it is considered vexatious account must be taken of:

- The history of requests submitted by the applicant;
- Repeat requests submitted by the application (see below); and
- Whether an applicant is habitually and persistently submitting requests where there appears to be no reasonable grounds for them to do so and where there is a strong likelihood that such requests are being made to intentionally cause harassment, divert resources and to disrupt the proper workings of the Council.

The term vexatious must be applied to the activities of the applicant based on substantiated evidence and not to the applicant themselves.

### **Repeated Requests**

In determining whether a request should be refused because it is considered to be repeated account should be taken of:

- The time that has elapsed since the previous request;
- Whether the request is identical or substantially similar to the previous request; and
- Whether the information has changed or new information has been generated. In this case it would be reasonable just to provide the new information.



## **Appendix F - THE PUBLIC INTEREST TEST**

Where the Council wishes to apply one of the qualified exemptions to prevent disclosure of the information requested, it will have to consider the public interest in maintaining the exemption.

The public interest test requires that information should be withheld under exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

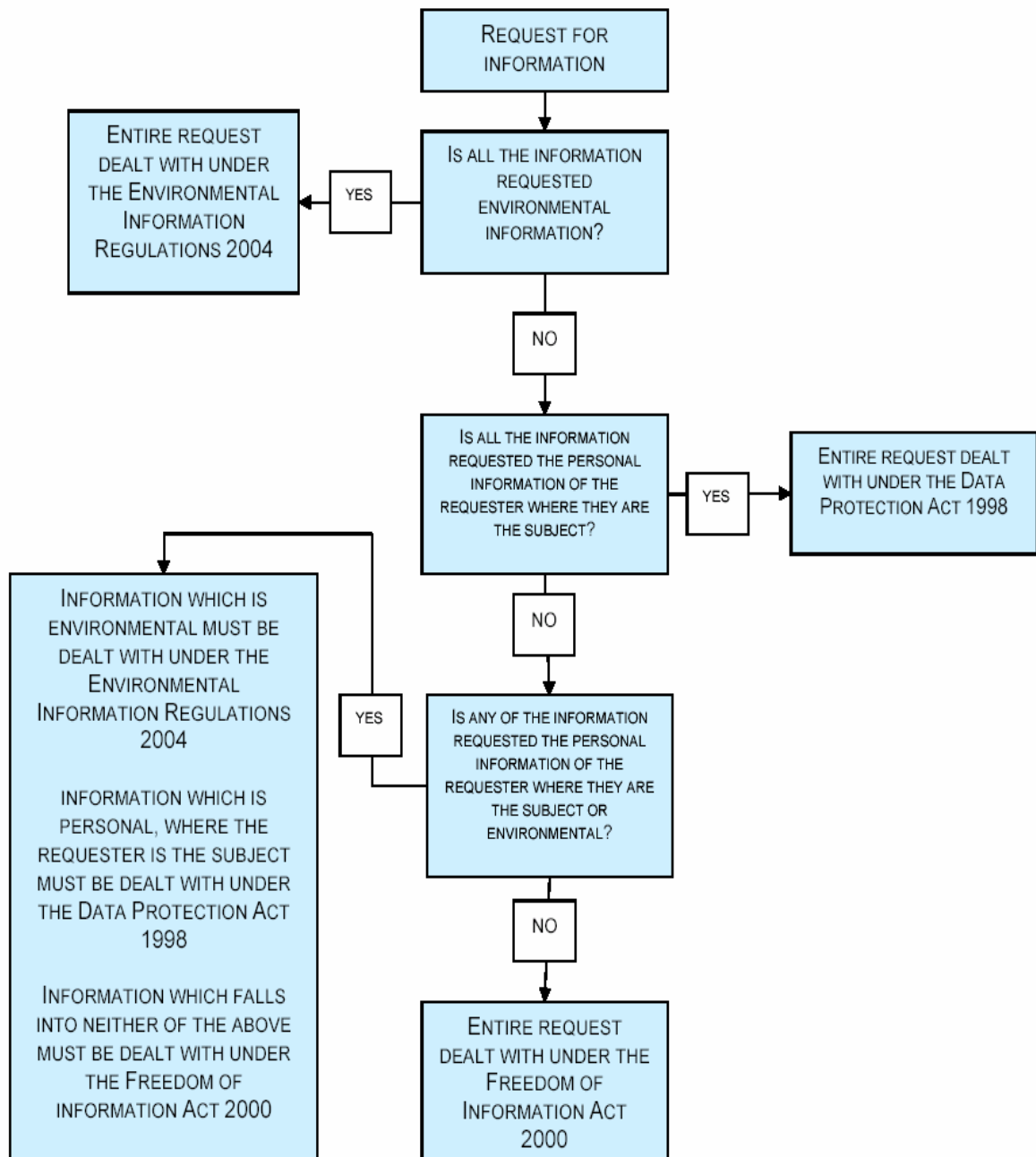
Generally, the public interest is not necessarily what the public are interested in, i.e. matters that the public may be curious about, interested in or amused by, but more about information that could benefit the wider community if it were to be made available.

Disclosure should be considered to be in the public interest where it would:

- Further the understanding of and participation in public debate
- Promote accountability and transparency by public authorities by public authorities for decisions taken by them
- Promote accountability and transparency in the spending of public money
- Allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions
- Inform the public of any danger to public health and safety
- Contribute to the administration of justice, enforcement of the law.

Factors such as embarrassment, risk of misinterpretation and the seniority of the Officer involved are not to be taken into account when determining the Public Interest.

**Appendix G : FLOW DIAGRAM - IS IT A DATA PROTECTION ACT, ENVIRONMENTAL INFORMATION REGULATIONS OR FREEDOM OF INFORMATION REQUEST?**

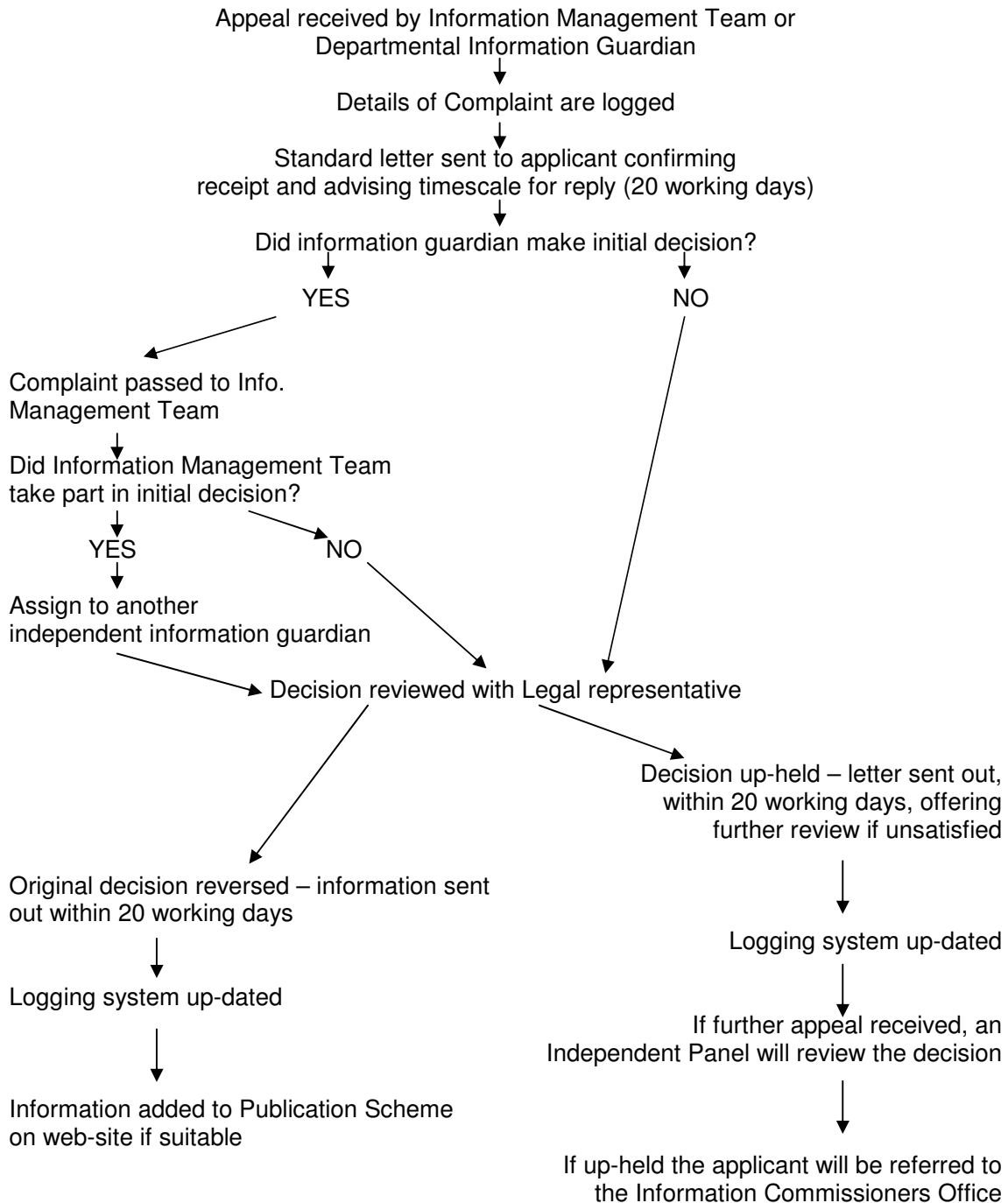


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## **Appendix H – APPEALS PROCEDURE**

### **FOR REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS**





## **Appendix I – COPYING CHARGES**

### Copying Charges\*:

#### Paper copies

For direct monochrome copies of original documents:

**Per print (A4)** £0.25

**Per print (A3)** £0.40

For monochrome prints from digital scans of documents:

**Per print (A4)** £0.50

**Per print (A3)** £1.50

For colour prints from digital scans or of original documents:

**Per print (A4)** £1.00

**Per print (A3)** £3.00

If other formats are requested then the Council will determine a reasonable fee to cover the cost of such format. The Council is mindful of its duty under the Disability Discrimination Act 1995 when calculating the cost of the format.

#### Certified copies of records

For the certification of a copy of a record, or of an extract from a record, in addition to the charge for the copy, there may be a charge for its certification dependent on the number of sheets to be certified.

\*Please note: some charges may be subject to VAT at standard rate.