

Woking Borough Council
Freedom of Information Act 2000
Procedures for Handling Requests

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1.0 INTRODUCTION

- 1.1 This guidance has been produced to help staff understand the requirements of the Freedom of Information Act 2000 (“the Act”), and to handle requests for information under the Act.
- 1.2 The guidance is consistent with the Lord Chancellor’s Code of Practice, issued under Section 45 of the Act, on the discharge of public authorities’ functions under Part 1 of the Act.

2.0 BACKGROUND TO THE FREEDOM OF INFORMATION ACT 2000

- 2.1 The Act is intended to promote a culture of openness and accountability amongst public authorities by giving people rights of access to information held by those authorities.
- 2.2 A “public authority” is defined by the Act, and includes, but is not restricted to, central and local government, the police, the National Health Service, schools, colleges and universities.
- 2.3 The Act imposes two main obligations on the Council.
- 2.4 The first obligation is that the Council has to adopt and maintain a publication scheme which sets out details of information it will routinely make available, how the information can be obtained and whether there is a charge for it. The Council’s publication scheme, which was adopted in December 2002, came into operation in February 2003. It will be reviewed after it has been in operation for two years.
- 2.5 The second obligation is that from 1 January 2005, any person who makes a request to the Council for information must be informed whether the Council holds that information and, subject to certain exemptions, be supplied with that information. The Council will normally have a maximum of twenty working days to respond to requests.
- 2.6 As individuals already have the right of access to information about themselves under the Data Protection Act 1998, the effect of the Act is to extend this right to allow public access to all types of information held by the Council.

3.0 INFORMATION COVERED BY THE ACT

- 3.1 All requests for information that are not covered by the Data Protection Act 1998 or the Environmental Information Regulations 2004 are covered by the Act.
- 3.2 “Information” includes information recorded in any form (e.g. a document, a computer record or a photograph).
- 3.3 The Data Protection Act 1998 covers personal data, i.e. information that relates to a living individual.
- 3.4 The Environmental Information Regulations 2004 cover environmental information, i.e. information on:-
- (a) the state of the elements of the environment (such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms) and the interaction among those elements;
 - (b) factors (such as substances, energy, noise, radiation or waste, emissions, discharges and other releases into the environment) affecting or likely to affect the elements of the environment referred to in (a) above;
 - (c) measures (such as policies, legislation, plans, programmes, environmental agreements) and activities affecting or likely to affect the elements and factors referred to in (a) and (b) above, as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) above; and
 - (f) the state of human health and safety, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements referred to in (a) above or, through those elements, by any of the matters referred to in (b) and (c) above.
- 3.5 The Act only applies to information “held” by the Council. This is information relating to the Council’s activities which:-
- has been created by the Council, or
 - has been received by the Council from another body or person, or
 - is held by another body or person on the Council’s behalf.

If the Council does not “hold” the information, it is not required to create or acquire it to answer the request.

4.0 REQUESTS FOR INFORMATION

4.1 A request for information under the Act should:-

- be in writing (this includes e-mails)
- include the name and address of the person making the request (this can be an e-mail address)
- describe the information sought.

4.2 The person requesting the information does not have to:-

- refer to the Act
- say why they want the information.

5.0 COMPLYING WITH REQUESTS FOR INFORMATION

- 5.1 In practice, most requests for information will relate to information that is readily available. The Council has decided that these cases should be dealt with on a “business as usual” basis, i.e. outside the framework adopted for dealing formally with requests under the Act. This approach avoids the need for a bureaucratic and expensive process to be added on top of those that already exist to deal with requests for information, e.g. the Customer Care Code.
- 5.2 Requests for information that require a great deal of research, or which are otherwise outside the “norm” should be dealt with in accordance with the procedure contained in this document. Service Heads are responsible for ensuring that the procedure is followed in respect of all such requests for information relating to their service area.
- 5.3 Unless one or more of the exemptions or qualifications apply (see paragraphs 6 and 7 below), the Council must comply promptly, and in any event within twenty working days, with a request for information. The Council must do two things. First, it should inform the applicant in writing whether it holds the information described in the request (“the duty to confirm or deny”). Second, if that is the case, the Council has to communicate that information to the applicant (“the duty to communicate”).
- 5.4 Manner of communicating information to the applicant
The Council can normally comply with a request for information by communicating it to the applicant by any means which are reasonable in the circumstances. The only exception is when the applicant, on making his request for information, has expressed a preference for communication by any one or more of the following means:-
- the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
 - the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
 - the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

6.0 EXEMPTIONS

- 6.1 The Act contains a number of exemptions to all or some of the rights granted by it. These are divided between “absolute” exemptions and “non-absolute” exemptions.
- 6.2 Absolute exemptions enable the Council to refuse to comply with a request for information covered by those exemptions.
- 6.3 Non-absolute exemptions require the Council to undertake a balancing exercise before deciding whether to comply with a request for information covered by those exemptions. In particular, the Council needs to determine whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing whether it holds the information and/or disclosing that information “(the public interest test)”. This creates a presumption in favour of disclosure.
- 6.4 The Act does not prevent disclosure where an exemption applies. There may be reasons to disclose the information even though the Council could successfully argue that it was not obligated to do so.

6.5 Absolute Exemptions

The following absolute exemptions may apply to requests made to the Council:-

- Information accessible to the applicant by other means

This exemption covers information which is reasonably accessible to the applicant otherwise than by request under the Act. Information is reasonably accessible if it is included in the Council’s Publication Scheme, or if it is information which the Council, or another person, is obliged by law to communicate to the public on request. Information may be reasonably accessible even if it is only accessible on payment.

Even if this exemption applies, the Council still has to comply with the duty to confirm or deny. The applicant should also be advised how he can obtain the information sought, e.g. by directing him to the relevant part of the Publication Scheme (including, where possible, details of where the information can be found on the Council’s web-site).

- Court Records

This exemption covers information that is only held by the Council by virtue of it being contained in a document (a) filed with a court for the purpose of court proceedings, (b) served on, or by, the Council for the

purpose of court proceedings or (c) created by a court for the purpose of court proceedings.

The exemption also covers information that is only held by the Council by virtue of it being contained in a document submitted to, or created by, a person conducting an arbitration or a statutory inquiry, for the purposes of the arbitration or inquiry.

- Personal Information

This exemption covers information if it is personal data and the applicant is the data subject of that information. The result of the exemption is that the request should be dealt with as a subject access request under the Data Protection Act 1998.

There are other exemptions that may apply if the information sought is personal data and the applicant is not the data subject of that information. Broadly speaking, disclosure should not be made if this would breach any of the data protection principles. In such cases, advice should be sought from Peter Bryant, Principal Solicitor.

- Information Provided in Confidence

This exemption covers information obtained by the Council where its disclosure would constitute an actionable breach of confidence.

- Information whose Disclosure is Prohibited

This exemption covers information if its disclosure by the Council (a) is prohibited by legislation, (b) is incompatible with an European Community obligation, or (c) would be in contempt of court.

6.6 Non-Absolute Exemptions

The following non-absolute exemptions may apply to requests made to the Council provided the public interest test is satisfied:-

- Information intended for future publication

This exemption covers information which the Council proposes, at the time the request was made, to publish in the future. It must also be reasonable, in all the circumstances, to withhold the information from disclosure until the date of publication.

- Information relating to investigations and proceedings conducted by the Council

This exemption covers (a) information held by the Council for the purposes of criminal investigations and proceedings or (b) information obtained by the Council from confidential sources for the purposes of

its functions relating to criminal investigations and proceedings, and civil proceedings arising out of such investigations brought by the Council.

- Information relating to law enforcement

This exemption covers information if its disclosure would, or would be likely to, prejudice:-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty,
- (e) the exercise by the Council of its functions for any of the

following purposes:-

- (i) ascertaining whether any person has failed to comply with the law,
 - (ii) ascertaining whether any person is responsible for any improper conduct,
 - (iii) ascertaining whether circumstances which would justify regulatory action pursuant to any enactment exist or may arise,
 - (iv) ascertaining the cause of an accident,
 - (v) securing the health, safety and welfare of persons at work,
 - (vi) protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.
- (f) any civil proceedings brought by the Council which arise out of an investigation conducted for any of the purposes mentioned in (e) above, or by virtue of powers conferred by any enactment.

- Information relating to health and safety

This exemption covers information if its disclosure would, or would be likely to, endanger the physical or mental health or the safety of an individual.

Environmental Information

This exemption covers information which is subject to the Environmental Information Regulations 2004.

- Information subject to legal professional privilege

This exemption covers information to which a claim for legal professional privilege could be maintained in legal proceedings.

- Information relating to commercial interests

This exemption covers information if (a) it constitutes a trade secret or (b) its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the Council).

- Information that would prejudice the effective conduct of public affairs

This exemption covers information which, if disclosed, would or would likely inhibit:-

- (i) the free and frank provision of advice, or
- (ii) the free and frank exchange of views for the purpose of deliberation, or
- (iii) the effective conduct of public affairs.

The exemption only applies if the reasonable opinion of the Council's Monitoring Officer (i.e. Alan Harrison, Borough Secretary and Solicitor) or, in his absence, the Chief Executive, is that any of the above effects would, or would be likely to, follow from a disclosure.

7.0 QUALIFICATIONS

7.1 The obligation on the Council to comply with a request for information is qualified in the following circumstances:-

- Where a fee notice is served by the Council

The Council may give the applicant a fees notice specifying the fee charged by the Council for complying with its duty to confirm or deny, and its duty to communicate. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 prescribe the fees that may be charged for responding to requests for information. With the exception of disbursements, no charge may be imposed if the cost of responding to a request is less than £450.00. Staff time is to be costed at £25.00 per hour. Disbursements are defined by the Regulations and cover the cost of supplying copies, or summaries, of documents, and postage etc. If the cost of complying with a request exceeds £450.00, the Council can charge a fee based upon the time spent dealing with it (costed at £25.00 per hour) and disbursements.

The Council has decided, where it is permissible under the Regulations, to charge a fee for dealing with requests for information that have to be dealt with formally under the Act, i.e. those that are outside the "norm", or which require a great deal of research.

A fee notice should be given to the applicant within twenty working days of his request for information.

The effect of a fee notice is that the period between the date that the notice is given to the applicant and the date that the fee is received by the Council does not count towards the twenty working days limit for responding to requests for information under the Act.

If the applicant indicates that he is not prepared to pay the fee, consideration should be given to whether there is any information that may be of interest to the applicant that is available free of charge.

- Where the cost of compliance exceeds the "appropriate limit"

The Council is not under an obligation to comply with a request for information if it estimates that the cost of complying would exceed the "appropriate limit". This limit is prescribed by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 and is currently £450.00.

If the Council decides to supply such information, it may charge a fee based upon the time spent dealing with it (costed at £25.00 per hour) and disbursements.

If the Council decides not to supply such information, consideration should be given to providing an indication of what information could be supplied within the cost ceiling.

Whether the information is supplied will depend upon the particular circumstances of the case.

- Vexatious and repeated requests

The Council is not obliged to comply with a request for information that is (a) vexatious, or (b) identical or substantially similar to a previous request made by the same applicant, unless a reasonable period has elapsed between the two requests.

8.0 REFUSING A REQUEST FOR INFORMATION

8.1 If the Council decides not to comply with a request for information because one of the absolute exemptions applies, it should give the applicant a notice which:-

- states that fact,
- specifies the exemption that applies, and
- states (if not apparent) why the exemption applies.

This notice should be served on the applicant within twenty working days of receipt of the request for information.

8.2 If the Council decides that one of the non-absolute exemptions applies and that the public interest in maintaining the exemption outweighs the public interest in disclosure, it should give the applicant a notice which:-

- states that fact,
- specifies the exemption that applies,
- states (if not apparent) why the exemption applies, and
- gives reasons why the public interest in maintaining the exemption outweighs the public interest in disclosure.

This notice should be given to the applicant within twenty working days of receipt of the request for information.

8.3 If the Council decides that one of the non-absolute exemptions applies, but needs more than twenty working days to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure, it should give the applicant a notice which:-

- states that fact,
- specifies the exemption that applies,
- states (if not apparent) why the exemption applies,
- states that the Council has not yet decided whether the public interest in maintaining the exemption outweighs the public interest in disclosure, and
- gives an estimate of the date by which the Council expects a decision will have been concluded.

This notice should be given to the applicant within twenty working days of receipt of the request for information.

The Council is then under a duty to reach its decision within a reasonable time. If the Council decides that the public interest in maintaining the

exemption outweighs the public interest in disclosure, it should give to the applicant a separate notice setting out the reasons for such a decision.

- 8.4 A central record of refusals to supply information is kept by the Borough Secretary and Solicitor who will monitor whether applications are being properly considered, and that the reasons for refusal are sound. Details of any refusal should therefore be sent to him.

9.0 PROVISION OF ADVICE AND ASSISTANCE

- 9.1 The Council is required by the Act to provide reasonable advice and assistance to applicants for information.
- 9.2 Staff should bear in mind that not everyone will be aware of their rights under the Act, and they will need to draw these to the attention of potential applicants who appear unaware of them.
- 9.3 Where a person is unable to frame their request for information in writing, staff should ensure that appropriate assistance is given to enable that person to make a valid request for information. This might include:-
- advising the person that someone else (e.g. Citizens' Advice Bureau) may be able to help them with the application, or make the application on their behalf;
 - in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).
- 9.4 Where the applicant does not describe the information sought in a way which would enable the Council to identify or locate it, or the request is ambiguous, the Council should, as far as practicable, provide assistance to enable the applicant to describe more clearly the information requested. The aim of providing assistance would be to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the impression that the applicant is obliged to disclose the nature of his interest or that he will be treated differently if he does. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought. Appropriate assistance in this instance might include:-
- providing an outline of the different kinds of information which might meet the terms of the request;
 - providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;
 - providing a general response to the request setting out options for further information which could be provided on request.

- 9.5 If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable it to be identified and located, there is no requirement to seek further clarification. The Council should disclose any information relating to the application which has been successfully identified and found for which it does not wish to claim an exemption. The applicant should be advised why the request cannot be taken any further and be provided with details of the Council's complaints procedure and his rights, under the Act, to apply to the Information Commissioner for a decision whether his request for information has been properly dealt with by the Council (see paragraph 12.2 below).
- 9.6 Where the applicant indicates that he or she is not prepared to pay the fee notified in any fees notice given to the applicant, the Council should consider whether there is any information that may be of interest to the applicant that is available free of charge.

10.0 TRANSFERRING REQUESTS FOR INFORMATION

10.1 A request can only be transferred where the Council receives a request for information which it does not hold, but which is held by another public authority. If the Council holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The applicant should be advised that the Council does not hold part, or all, of the requested information (whichever applies).

10.2 If the Council considers that some or all of the information requested is held by another public authority, it should consider what would be the most helpful way of assisting the applicant with his request. In most cases this is likely to involve:-

- contacting the applicant and informing him that the information requested may be held by another public authority;
- suggesting that the applicant re-applies to the public authority which holds the information;
- providing the applicant with contact details for that authority.

10.3 In some cases, it may be more appropriate to transfer the request to the other public authority. If so, the Council should consult the other authority with a view to ascertaining whether it does hold the information. A request (or part of a request) should not be transferred without confirmation by the second authority that it holds the information.

10.4 Before transferring a request for information to another authority, the Council should consider:-

- whether a transfer is appropriate; and if so
- whether the applicant is likely to have any grounds to object to the transfer;

If the Council reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant. The applicant should be told that the request has been transferred.

10.5 Where there are reasonable grounds to believe an applicant is likely to object, the Council should only transfer the request to another authority with his or her consent. If there is any doubt, the applicant should be contacted with a view to suggesting that he makes a new request to the other authority.

10.6 Where a request or part of a request is transferred from one public authority to another, the receiving authority must comply with its obligations under the Act in the same way as it would for a request that is received direct from an

applicant. The time for complying with such a request will be measured from the day that the receiving authority receives the request.

- 10.7 All transfers of requests should take place as soon as is practicable, and the applicant should be informed as soon as possible once this has been done.
- 10.8 Where the Council is unable either to advise the applicant which public authority holds, or may hold, the requested information, or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so), it should consider what advice, if any, it can provide to the applicant to enable him to pursue his request.

11.0 CONSULTATION WITH THIRD PARTIES

11.1 In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, e.g. where information is subject to the common law duty of confidence. It must always be remembered that unless an exemption provided for in the Act applies in relation to any particular information, it must be disclosed in response to a request.

11.2 Where a disclosure of information cannot be made without the consent of a third party (e.g., where information has been obtained from a third party and the disclosure of the information without their consent would constitute an actionable breach of confidence such that the “information provided in confidence” exemption would apply), the Council should consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable (e.g., because the third party cannot be located or because the costs of consulting him would be disproportionate).

11.3 Where the interests of the third party which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate.

Consultation should take place where:-

- the views of the third party may assist the Council to decide whether an exemption under the Act applies to the information requested; or
- the views of the third party may assist the Council to undertake “the public interest test”.

11.4 The Council can conclude that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Council should consider what is 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.

11.5 Consultation will be unnecessary where:-

- the Council does not intend to disclose the information;
- the views of the third party can have no effect on the decision of the Council, e.g. where there is other legislation preventing or requiring the disclosure of this information;
- no exemption applies and the information must be provided.

11.6 Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation which can express views on their behalf, the Council may consult with that representative organisation. If there is no representative organisation, the

Council may consult with a representative sample of the third parties in question.

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

12.0 COMPLAINTS

12.1 Any complaint relating to a request for information under the Act that cannot be dealt with satisfactorily on an informal basis should be dealt with in accordance with the Council's complaints procedure.

12.2 The complainant should also be advised that he can contact the Information Commissioner if he wishes to write to him about the matter. The Information Commissioner's contact details are:-

Information Commissioner,

Wycliffe House,

Water Lane,

Wilmslow,

Cheshire,

SK9 5AF

Tel. 01625 545745

Fax. 01625 524510

email. mail@ico.gsi.gov.uk.

12.3 The Borough Secretary and Solicitor should be advised of all complaints relating to requests for information so that he can monitor whether the Act is being applied properly by the Council.

13.0 FURTHER GUIDANCE

- 13.1 Further guidance on dealing with requests under the Act can be obtained from Peter Bryant, Principal Solicitor, or Alan Harrison, Borough Secretary and Solicitor.

14.0 SUMMARY

14.1 The full-scale implementation of the Act should not alter the way in which the Council responds to the majority of requests for information. These should continue to be dealt with in accordance with the procedures that existed prior to January 2005.

14.2 The Act will, however, impact on requests for information that are outside the “norm”, or require a great deal of research. The following is a brief summary of the main steps that need to be taken in respect of such requests:-

Step 1

Record date request received.

Step 2

Validate request, i.e. - in writing,

- includes name and address of applicant
- describes information sought.

Step 3

Check request relates to information “held” by the Council, i.e.

- created by the Council, or
- received by the Council from a third party, or
- held by a third party on the Council’s behalf.

Step 4

Collect fee.

Step 5

Consider whether any of the qualifications or exemptions apply, i.e.

- Qualifications:-
- (a) applicant not prepared to pay fee following service of fee notice;
 - (b) cost to Council would exceed £450.00;
 - (c) request is vexatious or repeated

- Exemptions
- (a) information accessible by other means;
 - (b) Court, arbitration and statutory inquiry records;
 - (c) personal information;
 - information provided in confidence;
 - (d) information provided in confidence;
 - (e) information whose disclosure is prohibited by law etc;
 - (f) information intended for future publication;

information relating to investigations and proceedings conducted by the Council;

- (g) information relating to law enforcement;
- (h) information relating to health and safety;
- (i) environmental information
- (j) information subject to legal professional privilege;
- (k) information relating to commercial interests.
- (l) information that would prejudice the effective conduct of public affairs

Step 6

Provide/refuse information.

A refusal should be accompanied by a notice setting out the basis for the refusal.

- 14.3 It should always be remembered that appropriate advice and assistance should be provided to the applicant throughout the process.