

BRIEFING NOTE – FREEDOM OF INFORMATION

- Freedom of Information Act 2000 – section 19
- A revised Publication Scheme is to be adopted from 1st January 2009.
- The aim is to encourage maximum disclosure but also to reduce the burden on local authorities
- One Model Publication Scheme for every public authority.
- Information Commissioner appointed by the Queen – responsible for administering the provisions of the Freedom of Information and Data Protection Acts.

How well is your organisation proactively releasing information?

Model Publication Scheme

There is an absolute duty to adopt and maintain a Publication Scheme which is intended to ensure the proactive release of information, and play a crucial role in supporting and providing greater openness and transparency across the public sector.

The Information Commissioner has produced a template for a Publication Scheme appropriate to Parish Councils and Parish Meetings. It sets out the information that should be included in the Publication Scheme. It is very straightforward, however, it is important that the documents contained in the Publication Scheme are, so far as possible, easily accessible in the event of a request for information.

This template/ information can be obtained from their website – www.ico.gov.uk

If a Parish Council/Meeting does not adopt a Publication Scheme then the Information Commissioner can issue an enforcement notice.

The Publication Scheme, which must be adopted by each Parish Council/ Parish Meeting, does not have to be submitted to the Information Commissioner for approval, unless any of the information contained in the Model Scheme has been deleted. However additions can be made to the Model Scheme and these do not require approval.

The Information Commissioner will assume that each Parish Council/Parish Meeting has adopted the Model Publication Scheme. However, if the Information Commissioner receives a complaint the first thing he will ask to see is the Publication Scheme – so be warned!

Who can make a request?

Any individual, anywhere in the world.

The Clerk must inform anyone requesting information whether the information is held and then communicate it promptly.

If the information is not held, a Refusal Notice should be issued setting out the grounds for not complying, with an explanation and advice on appeals. A Parish Council/Meeting will need to have in place a 'complaints process' to deal with any appeal. Ultimately the final arbiter will be the Information Commissioner.

A Request for Information can be refused if it falls within one of the exceptions/exemptions set out in the legislation; however the public interest test will be applied.

Requests for Information can be considered vexatious – usually if there are more than 17 requests which are exactly the same. The Information Commissioner has issued guidance on this.

Can you recover costs?

There is no flat rate fee. If the assessment of the cost exceeds £450 then there is no requirement to comply. Costs are based on £25 an hour; however be warned the Information Commissioner will test this....18 hours is a lot of time. It is not unreasonable to expect that filing of papers/documents will be in order and the Information Commissioner will not be sympathetic if a significant time is spent searching for papers/documents.

In the unlikely event that the costs of collating the information does exceed £450, and the information is provided, there will be a right to charge the full cost. Before making any charge, a Fees Notice must be sent to the Requestor.

A charge can be made for disbursements, such as photocopying and postage, arising from complying with any request for information; however, there must be a written scale of charges, and if a charge is to be made a Fees Notice must be sent to the Requestor within 20 days of the receipt of the request for information.

How much time do we have to comply with a request for information?

- Any request should be responded to promptly, but should take no longer than 20 working days. It is good practice to acknowledge promptly, and advise if information is available. Information should be provided promptly as well – if contained in the Publication Scheme there would be an expectation that the information is easily accessible, and should not need anywhere near 20 working days. Other requests for information may take the full 20 working days. There may be the rare exception that the information will take longer than 20 working days to supply.

If a Fees Notice is issued the time for compliance stops until payment is received. The full 20 working days restarts on receipt of the fee.

Repeated Requests

If a request has been complied with and another identical request, or one substantially the same, is received it does not have to be complied with, unless a reasonable time has elapsed – each case will rest on its own facts. See Information Commissioner guidance.

Data Protection Act

If someone makes a request for personal information about themselves or others the Freedom of Information Act does not apply. It is a DPA matter and should be handled as a Subject Access Request.

Anne Bott,
Hedleys Solicitors -LLP
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