

BRIEFING NOTE

FREEDOM OF INFORMATION

The Legislation

The Freedom of Information Act 2000 became law on the 30th November 2000 and widened a right of public access to all types of 'recorded' information held by public authorities which includes town and parish councils.

Public authorities are obliged to disclose all information, written/ audio/ visual. Information held by councils can only be withheld from the public in very limited circumstances, if there are lawful reasons to do so.

Such reasons are in the form of exemptions set out in the Data Protection Act 1998 and the Freedom of Information Act 2000. In most cases disclosure of information will be subject to a 'public interest test'.

Exemptions

Some exemptions will be **qualified** exemptions, however they will always be subject to a public interest test. Does the interest of the public outweigh the reasons for keeping the matter in exempt? Examples of **qualified** exemptions include information intended for future publication, matters of commercial interests, legal professional privilege.

Some exemptions will be **absolute** exemptions and will not be subject to a public interest test. An **absolute** exemption will always constitute a proper reasoning for withholding information or refusing to confirm whether or not the information exists. **Absolute** exemptions include information accessible to applicants by other means, information provided in confidence, personal information.

(see Part II of The Freedom Of information Act for full details of exemptions)

Private Meetings and Private Material

The application of the legislation goes beyond formally kept records and has the potential to include anything written down or handed out at 'private' meetings, anything recorded privately, or anything received by council officers or members in connection with council business. The same rules apply to any matter that falls within the exempt categories.

Publication Schemes

Every Council must adopt a Publication Scheme to be approved by the Office of the Information Commissioner.

A Publication Scheme will list all documents and information that is readily available to the public (council agendas, minutes of meetings, reports to councillors); background papers to important decisions that affect the public (eg, the siting of a mobile mast); PR material; and material printed for external and internal use.

Any Publication Scheme should contain classes of information which are published or are intended to be published, how they are to be published and details of any fees.

Written Requests

Any request must be

- In writing (includes electronic means)
- Legible
- Capable of subsequent reference
- Contain the name and address of the Requestor
- Describe the information required.

Response to Requests

A Council must-

- Say whether the council holds the information
- Communicate the actual information
- Satisfy the request within 20 working days

Right of Appeal

If a council does not comply with a Request to provide information within the statutory deadline, the Requestor can appeal to the council, usually the Mayor/Chairman. If the Requestor is not satisfied with the Response they can appeal to the IOC.

Multi-requests

17 or more requests for information which are very similar can be aggregated and treated as a single request. There are two advantages to this approach. If the estimated time taken to comply with the requests exceeds 18 hours a council can refuse the request (section 12(1) of the FOIA). If however the time taken does not exceed 18 hours a council does not have to sort the information into 17 or more different sections.

Such multi requests could, in certain circumstances, be regarded as vexatious. (section 14 of the FOIA).

Fees and Charges

There is a right to make a reasonable charge for photocopies only. A reasonable charge would be between 10p and 20p on A4 copy , double for A3. Councils should

consider carefully whether or not to make a charge finding a balance between the need to be open and accountable and spending public money on excessive requests. Whilst not essential, it would be helpful to have a formal council decision setting out the council's policy on charging for photocopies.

Other Fees and Charges must be set out in a Council Policy and guidance should be sort from the IOC on the parameters for charging to avoid any claims that the charges are prohibitive.

IOC contact details –0131 225 6341.

And finally remember,

The FOIA is all about being open and accountable with the public.
Decisions behind closed doors should be rare
It is good for democracy!

Anne Bott
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