



# **Freedom of Information Act and Environmental Information Regulation**



## **Procedures**



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## I BACKGROUND

The Freedom of Information Act (FOIA) and Environmental Information Regulation (EIR) came into full force on 1 January 2005.

Section 39 of the Freedom of Information Act (FOIA) exempts environmental information from being dealt with under the FOIA and provides that it should be dealt with under the Environmental Information Regulations (EIR).

Both deal with access to official information and gives individuals or organisations the right to request information from any public authority. All records held by an institution are potentially open to greater scrutiny by the public. This includes information held by departments and individual members of staff, archived and backed-up information.

### I.0 MAIN FEATURES

- a general right of access to recorded information held by a wide range of bodies across the public sector, subject to certain conditions and exemptions. The right includes provisions in respect of historical records which are more than 30 years old. Both FOIA and EIR not only apply to paper files, but also to information stored electronically, on CD or on video.
- in relation to most exempt information, the information must nonetheless be disclosed unless the public interest in maintaining the exemption / exception in question outweighs the public interest in disclosure.
- a duty on every public authority to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Information Commissioner. Authorities must publish information in accordance with their publication schemes. This scheme must specify:
  - classes of information which the public authority publishes or intends to publish;
  - the manner in which information of each class is, or is intended to be, published; and
  - whether the material is, or is intended to be available to the public for free, or subject to a charge.
- the Information Commissioner and Information Tribunal have wide powers to enforce the rights created and promote good practice; The Information Commissioner produces a wide range of guidance notes to aid public authorities to understand their duties under the Act. ICO website address is: [www.ico.gov.uk](http://www.ico.gov.uk)
- a duty on the Ministry of Justice to promulgate Codes of Practice for guidance on specific issues; Ministry of Justice website address is: [www.justice.gov.uk](http://www.justice.gov.uk)
- the amendment of the public records system to integrate it with the new right of access under the FOIA and EIR.

The full Freedom of Information Act can be found at:

[www.legislation.gov.uk/ukpga/2000/36/contents](http://www.legislation.gov.uk/ukpga/2000/36/contents)

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The full Environmental Information Regulation can be found at:  
<http://www.legislation.gov.uk/ukxi/2004/3391/contents/made>

## **I.1 HOW DO THE FOIA and EIR RELATE TO SYSTON TOWN COUNCIL?**

### **I.1.2 General right of access**

From 1<sup>st</sup> January 2005 both FOIA and EIR give a general right of access (subject to a number of exemptions under the FOIA and exceptions under EIR) to all types of 'recorded' information held by the Council. Any person, who makes a request to the Council for information, must be informed whether the Council holds that information and if so, that information must be supplied, subject to the request not being covered by an exemption / exception.

Most of the FOIA exemptions and all EIR exceptions (apart from those relating to personal data) have to be considered in two stages. Firstly the Council needs to decide whether the exemption / exemption applies to all or part of the information requested, and secondly, if it does apply, the Council has to decide whether it must disclose the information in the public interest, irrespective of the exemption. In the case of a few 'absolute' exemptions the Council will not have to go on to consider the public interest.

### **I.1.3 Publication scheme**

The Council is required, under section 19 of the FOIA, to adopt, maintain and disclose a publication scheme setting out how it intends to publish the different classes of information it holds, and whether there is a charge for the information.

The publication scheme is available on the Council's website and is not just a list of documents that the Council already publishes, as it describes 'classes' of information (such as minutes, reports etc).

## **I.2 AIMS OF THE PROCEDURES**

This procedure details the practice that the Council should follow in connection with the discharge of its obligations under the FOIA and EIR.

The aims of the procedure are to:

- facilitate the disclosure of information under the FOIA and EIR by setting out good administrative practices when handling requests for information;
- protect the interests of applicants by setting out standards for the provision of advice that it would be good practice to make available to them;
- ensure that the interests of third parties who may be affected by any decision to disclose information are considered by the Council;



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## Freedom of Information

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- ensure that the Council considers the implications for Freedom of Information and Environmental Information Regulation, before agreeing to confidentiality provisions in contracts.



### **I.3 RESPONSIBILITIES**

The following officers have specific responsibilities for FOIA and EIR.

- The **Town Manager** has overall responsibility for Freedom of Information Act and Environmental Information Regulation Issues.
- The **Town Manager and Deputy Town Manager** are responsible for the day-to-day tasks relating to the Freedom of Information Act and Environmental Information Regulation.

### **I.4 CONTACT DETAILS**

#### **Mail Address**

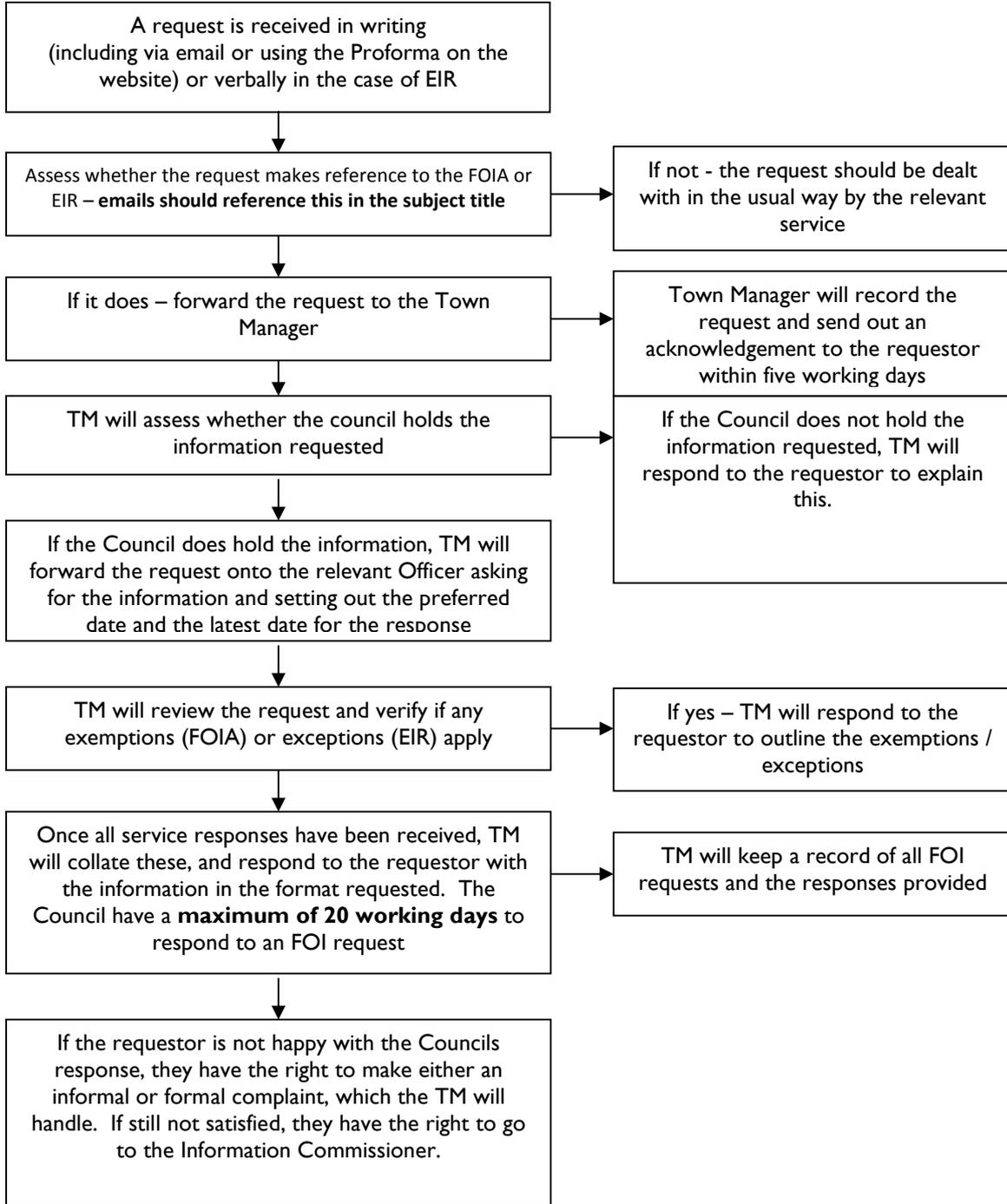
Town Manager  
Syston Town Council  
School Street  
Syston  
Leicester. LE7 1HN  
Telephone: 0116 2607150

#### **Email Address**

[catherine@systontc.org.uk](mailto:catherine@systontc.org.uk)



### I.5 OVERVIEW OF PROCESS





## 2 REQUEST FOR INFORMATION

### 2.0.1 Who may make a request for information?

A request for information under the FOIA or EIR can be made by any person, regardless of age, nationality or location, including a limited company or other legal person. The applicant does not need to be a UK national or resident. There is no need to state the purpose for the application. The identity of the applicant is only of concern to the Council, apart from enabling it to deal with the application, in relation to vexatious or repeated requests where the Council can refuse to comply. If personal information is requested and the applicant is the subject of the personal information, the provision of the Data Protection Act 1998 ('the DPA') will apply.

### 2.0.2 What information will be available?

Any information held by a public authority is eligible for release. However, a number of exemptions / exceptions may be applied to protect information properly kept confidential

### 2.0.3 Dealing with Information Requests

#### **Normal transactional requests**

Everyday requests received, such as requests relating to the status of a transaction, should be processed as normal.

#### **Publication Scheme**

A request for information under the publication scheme provisions can be made in writing (including e-mail), by telephone or in person at the Council reception desk.

It is in the Council's interests to include as much of the regularly produced information as possible in the Publication Scheme. Such information is exempt from the FOIA and EIR rules and requirements. (ie if it is available for access on the Council website or similar, the requester can be directed to this).

#### **Data Protection Act**

All such requests should be forwarded to the Town Manager for further processing.

### 2.0.4 Advice to persons making requests for information

General advice and assistance to Council staff and persons making requests for information, under the FOIA and EIR, is available from the Council's Publication Scheme. Council staff working in contact with the public may need to draw the FOIA and EIR to the attention of potential applicants who appear unaware of it.

Generally, advice and assistance should be provided to an applicant:



- to clarify unclear requests;
- to provide the information requested in an acceptable format;
- to narrow responses which exceed the cost limit;
- when exemptions have been applied; and
- when the applicant's request has been transferred to another public authority because the information is held by it.

### 2.0.5 General Right of Access

**A request for information under the FOIA must be made in writing** including emails and the [proforma available on the website](#). **The request must also state the name of the applicant, and an address for correspondence** (an email address is acceptable). **Emails must include "FOI Request" in the Subject Title.**

**EIR requests can also be made verbally**

Where a person is unable to frame their request in writing, the Council will ensure that appropriate assistance is given to enable that person to make a request for information. Such assistance might include advising that another person or agency could assist them e.g. Citizens advice bureau, referral to their local Councillor, or by taking a note of a telephone conversation and then sending the note to the applicant for confirmation. Providing advice and assistance amounts to good customer service and helps to fulfil the Council's equalities duties and the Council should ensure that staff are aware of this and can identify and deal with requests correctly.

Both acts requires the Council to provide advice and assistance so far as it is "reasonable to expect" you to do so but there is nothing to stop you from providing advice and assistance beyond the requirements of the Act.

#### **The request must state clearly what information is required.**

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 will, as far as practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested. (Council staff should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant). The applicant must be contacted as soon as possible, and the Council must be prepared to explain to the applicant why they are asking for more information.

We must be flexible in giving assistance and this could involve:

- outlining the different kinds of information that might meet the applicant's needs
- providing access to detailed catalogues / indexes
- setting out a general response
- setting out the options for further information that could be provided.



In seeking to clarify what is sought the Council will bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the Council for the use of applicants.

If, following the provision of such assistance, the applicant still fails to describe or clarify the information requested in a way that would enable the Council to identify and locate it, the Council will take no further action in response to that request. The Council should, however:

- provide what information it can as a result of the details already provided
- explain why the request cannot be taken any further and
- provide details of the authority's complaints procedure and the applicant's rights.

#### **2.0.6 Form of the information**

The applicant may request that the information be supplied in any form. However, the Council may take into account the cost of supplying the information in this form before complying with the request. In particular, the applicant may ask for information in permanent form, in summary form, or for permission to inspect records containing the information.

Requests to supply the information in Braille or audio format, in large type, or translated into another language should be pursued with the applicant including the costs of these alternative formats.

#### **2.0.7 Vexatious or Repeated Requests**

Neither the FOIA or EIR specifically limit the number of requests an applicant can make. However, section 14 of the FOIA states that a public authority can reserve the right to refuse any vexatious or repeated requests. This may include repeated requests from the same person for the same information, or requests which are intended to disrupt the Council's work.

Where the Council is not required to comply with a number of related requests because the cumulative cost of complying with the requests would exceed the cost threshold, the Council will consider whether the information could be disclosed in another, more cost-effective, manner, for example, publication on the Council's website. See guidance on [Exemptions / Exceptions in section 4.](#)



## 3 Responding to Requests

### 3.0 Responding to requests

The Council will reply to the applicant confirming or denying whether or not they hold the information. It will disclose any information relating to the application that has been successfully identified and for which it does not wish to claim an exemption or exception, or it will explain to the applicant why it cannot take the request any further and will not provide the information, quoting an exemption under the FOIA or exception under the EIR. In either case, details of the Council's FOI complaints procedure and the applicant's rights under the Act will be provided.

#### 3.0.1 Timeliness in dealing with requests for information

##### General requests

The Council must supply the information as soon as possible, and not later than twenty working days after receiving the request. The Council will always try to meet requests as quickly as possible and will aim to satisfy most requests within ten working days.

EIR requests can be extended to a maximum of 40 days if the request is particularly complex, however where possible, the 20 day limit should be adhered to.

Where the applicant has to pay for the information requested, the Council are not obliged to disclose information until the fee has been paid. The applicant has three months starting from the date on which the Council gave notice of the fees, to pay the fee before the request lapses.

The 20 working day deadline also includes cases where a public authority needs to consider where the public interest lies in respect of an application for exempt information. Although there is no statutory time limit on the length of time the Council may take to reach a decision where the public interest must be considered, the Information Commissioner expects that the 20 working day target will be met.

If the Council exceeds the 20 working day deadline, it will apologise to the applicant and explain the reason(s) for the delay. The Council will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

Any response to the applicant should also refer to the complaints procedure, including how to make a complaint.

##### Publication scheme

The Council will always try to meet requests as quickly as possible and expects to satisfy most requests for Publication Scheme information within ten working days. If a fee is payable, the



Council's ten day target remains the same but it aims to provide the requested information in ten days from when it receives payment, instead of when it receives the request.

### 3.0.2 Transferring requests for information

A request will only be transferred where the Council receives a request for information that it does not hold but which is held by another public authority. If the Council is in receipt of a request and holds some of the information requested, a transfer will only be made in respect of the information it does not hold.

Normally the Council will only transfer a request with the consent of the applicant. All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done.

If the Council receives a request and it is aware that all or part of the information is held by another public authority, there are a number of ways that an applicant can be assisted:

- contact the applicant and inform them that the information is held by another authority; and
- offer to transfer the request to that authority upon authorisation from applicant; or
- suggest the applicant reappplies to the authority which you believe may hold the information and provide them with the contact details for that authority.

In some cases the Council may decide to transfer the request directly to the other public authority. If this is the case, the Council should:

- consult the other authority with a view of finding out whether it does in fact hold the information;
- consider whether a transfer is appropriate; and if so
- consider whether the applicant is likely to have any grounds to object to the transfer.

### 3.0.3 Consultation with third parties

In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the DPA. The Council will remember that **unless an exemption provided for in the FOIA or exception under the EIR applies in relation to any particular information, they will be obliged to disclose that information in response to a request. It is therefore, highly recommended that the Council take appropriate steps to ensure that such third parties and those who supply information to the Council, are aware of its duty to comply with FOIA and EIR and that information will have to be disclosed upon request unless an exemption / exception applies.**



Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence), the Council will consult that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate.

Where information constitutes “personal data” within the meaning of the DPA, the Council should have regard to such information and the interplay between the FOIA and EIR and the DPA in such cases <sup>1</sup>.

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

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

Consultation will be unnecessary where:

- the Council does not intend to disclose the information relying on some other legitimate ground under the terms of the FOIA or EIR;
- the views of the third party can have no effect on the decision of the Council, for example, where there is other legislation preventing or requiring the disclosure of this information;
- no exemption / exceptions apply and so the information must be provided.

Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation which can express views on behalf of those parties, the Council may, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Council may consider that it would be sufficient to consult a representative sample of the third parties in question. The fact that the third party has not responded to consultation does not relieve the Council of its duty to disclose information under the FOIA and EIR, or its duty to reply within the time limits specified.

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.. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

### **3.0.4 Accepting information in confidence from third parties**

The Council will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Council’s functions and it

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<sup>1</sup> Section 40 of Freedom of Information Act



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

### **3.0.5 Public Sector Contracts**

When entering into contracts with non-public authority contractors, the Council will (wherever possible) reject non-disclosure clauses relating to the contract, terms, its value and performance. Where it is necessary to include non-disclosure provisions in a contract, the Council will consider agreeing with the contractor a schedule of the contract that clearly identifies information that should not be disclosed. However, the Council is aware that any such restrictions on disclosure could potentially be overridden by its obligations under the FOIA or EIR, as described above. The Council cannot contract out of its responsibilities under the FOIA or EIR unless information is covered by an exemption / exception it must be released if requested.

Only information that is in fact confidential or which could prejudice a commercial interest if released, can be withheld. It is worth noting that the commercial interest exemption is subject to the public interest test i.e. does the public interest in maintaining the exemption must outweigh the public interest in disclosing the information.

In relation to new contracts, the Council should at the start of any procurement exercise, inform contractors about the public right of access to information. The Council should be very careful when negotiating confidentiality clauses. By agreeing to wide definitions of what constitutes confidential information or information which might prejudice commercial interest, the Council may place itself in a dilemma when faced with a request for information covered by such a clause: to breach its statutory obligation or to ignore a contractual clause.

### **3.1 Data Protection Act**

Any request for information held by/on behalf of the Council is technically an FOI request in the first instance.

#### **Data Protection Act 1998**

Where a request for information is about personal details for a living individual the request is potentially an exemption under the FOIA or exception under EIR and will be processed in line with subject access rights under the Data Protection Act 1998.

Where a request contains information that is partially exempt, and covered by the Data Protection Act, and partially covered by the FOIA / EIR the request will be split with the two parts being processed separately under the relevant rules. The applicant should be informed as soon as possible of this action.



### **3.1.1 Recording Requests and Refusals of Requests**

The Town Manager will keep a record of requests received and processed in order to:

- Track all requests received
- Manage the process, including contacts with applicants and the relevant services
- Ensure the 20 day response period is met
- To provide statistics on requests received and processed
- To track information refused with reasons for so doing
- To record information that may be required for complaints
- To assess whether there are any repeated requests for information
- To track time / costs spent on processing requests in case they can be claimed back

## **4 Exemptions / Exceptions**

### **4.0 REFUSAL OF A REQUEST**

Where the Council does not disclose the requested information or does not confirm/deny whether the information exists or is held, a refusal notice should be issued.

A refusal notice should be issued as soon as possible and no later than 20 working days from receipt of the request. It must be clear, specific and explain the Council's decision and reasons for withholding information. The notice must also contain the Council's complaints procedure and the right of appeal to the Information Commissioner's office.

For monitoring purposes the Council will keep a record of all applications where either all or part of the requested information is withheld.

Where the Council does not hold the information requested, a formal refusal notice is not required but the Council must confirm in writing within 20 days that it does not hold the information which has been requested.

### **4.1 EXEMPTIONS - FOIA ONLY**

The FOIA lists 23 exemptions from the rights of access under the Freedom of Information Act (see table below). If information is properly exempt then there is no right of access to it under the Act. The Act distinguishes between Absolute and Qualified exemptions.

If an absolute exemption applies there is no obligation under the Act to consider the request for information further.

If a qualified exemption (class or prejudiced based) applies, it is subject to the public interest test. Qualified exemptions do not justify withholding information, unless, following a proper assessment, the balance of the public interest comes down against disclosure.



Also under the FOIA, section 12 provides an exemption where the cost of compliance exceeds an appropriate limit. See section 5 [Charging Fees](#) for further details.



#### 4.1.1 Absolute exemptions

<b>FOIA Section</b>	<b>Exemptions to FOI</b>
21	The information is accessible to the applicant by other means. This covers information included in the publication scheme and other information that the Council has to make available to members of the public, whether free of charge or on payment.
23	Information supplied by, or relating to bodies dealing with security matters. Information supplied to the Council by a number of listed bodies, including the Security Services, GCHQ etc. (A certificate signed by a Minister of the Crown would be needed as evidence of its exemption).
32	Court records etc. Information contained in documents placed in the custody of a court, or documents served on or by the council for the purposes of proceedings in a particular matter, or documents created in a court.
40	Personal information. Where a request for information is about personal details for a living individual held electronically (or is recorded with the intention that it should be processed by electronic means or is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system) the request is an exemption under the FOIA (see 2.5) and will be processed in line with subject access rights under the Data Protection Act 1998.
41	Information provided in confidence. Information obtained from any other person (including another public authority) and the disclosure of the information would constitute a breach of confidence actionable by that person or other person.
44	Prohibitions on disclosure. Information whose disclosure is prohibited by or under any enactment, incompatible with any Community obligation or would constitute to be punishable as a contempt of court.
34	Parliamentary privilege. Information that would infringe the privileges of either House of Parliament
36	Prejudice to effective conduct of public affairs. Information held by a Gov't department or the National Assembly of Wales not covered by 21 above, and info. Held by any other public authority that if disclosed would, or would likely to, prejudice : <ul style="list-style-type: none"> <li>• Collective responsibility of Ministers of the Crown, or the NI and Wales Assemblies</li> <li>• The free and frank provision of advice or views, or</li> <li>• The effective conduct of public affairs</li> </ul>



**4.1.2 Qualified exemptions**

<b>FOIA Section</b>	<b>Exemptions to FOI</b>
22	Information intended for future publication. Information held by the Council with a view to its publication (whether determined or not), that was already held with such a view when the request was made and it is reasonable that the information should not be disclosed sooner.
30	Council investigations and proceedings. Information at any time held in relation to an investigation conducted by the council to ascertain if an individual should be charged with an offence, or lead to the council instituting criminal proceedings.
31	Law enforcement. Information not falling under 3 above but whose disclosure would prejudice for example, prevention or detection of crime, apprehension or prosecution of offenders, the assessment or collection of any tax or duty etc.
33	Audit functions. Information held by the council in relation to the audit of the accounts of other public authorities, or the examination of the economy, efficiency and effectiveness with which other public authorities use their resources, and whose disclosure would prejudice the exercise of any of the authority's functions
38	Health and safety. Information whose disclosure would, or would be likely to, endanger the physical or mental health of an individual or endanger the safety of an individual.
39	Environmental information. Environmental \Information is exempt from FOIA regulations and should be processed under the Environmental Information Regulations 2004
42	Legal professional privilege. Information in respect of which there is a claim to legal professional privilege.
43	Commercial interests. Information whose disclosure would prejudice the commercial interests of any person (including the Council)
24/25	National Security. Information that does not fall to be exempt under point 14 above is exempt if required for the purpose of safeguarding national security. (A certificate signed by a Minister of the Crown would be needed as evidence of its exemption).
26	Defence. Information is exempt if its disclosure would, or would be likely to, prejudice the defence of the British Isles or colonies, or the capability, effectiveness or security of the armed forces.
27	International relations. Information likely to prejudice relationships between the UK and any other state or organisation / court, the interests of the UK abroad. Also any information confidentially obtained from an international state or organisation.
28	Relations within the UK. Information likely to prejudice relationships between any UK administration (e.g. UK Gov't, National Assembly for Wales) and any other such administration.
29	The economy. Information likely to prejudice the economic interests of the UK or the financial interests of any administration.



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35	Formulation of government policy. Information held by a Gov't department or the National Assembly of Wales re formulation / development of policy, ministerial communications advice by Law Officers or the operation of any Ministerial private office.
37	Communication with the Queen and honours. Communications with the Royal family / household re the conferring by the Crown of any honour or dignity.



## 4.2 EXCEPTIONS – EIR ONLY

There are 14 exceptions from the rights of access under the Environmental Information Regulation.

All exceptions (apart from those relating to personal data) must be considered under the public interest test. Exceptions do not justify withholding information, unless, following a proper assessment, the balance of the public interest comes down against disclosure.

<b>EIR section</b>	<b>Exceptions to EIR</b>
12(3)	<p><b>Personal Data</b> If the information requested under the EIR includes third party personal data, a public authority may only disclose it in accordance with regulation 13.</p>
12(4)(a)	<p><b>Information not held when receiving a request</b> For the purposes of the EIR, information is held when it:</p> <ul style="list-style-type: none"> <li>• “is in the authority’s possession and has been produced or received by the authority; or</li> <li>• is held by another person on behalf of the authority.”</li> </ul> <p>The key issue in this exception is whether the information is held at the time “when an applicant’s request is received”.</p>
2(4)(b)	<p><b>Manifestly unreasonable</b> Volume and complexity alone may not be sufficient to make a request manifestly unreasonable. The fact that a request would be considered vexatious or repeated under FOIA does not, in itself, make a request made under the EIR manifestly unreasonable. There are no cost limits for responses to requests for environmental information; it may therefore be possible for some exceptionally costly requests to be considered manifestly unreasonable.</p>
12(4)(c)	<p><b>The request is too general</b> When a request has been made in general terms and it is difficult to determine what information the applicant actually wants, an authority does not have to disclose information. To claim the exception, an authority must follow the requirements of regulation 9(2). Where it receives a request which is “too general”, it must contact the applicant within 20 working days and help him or her to refine or clarify the request.</p>
12(4)(d)	<p><b>Material in the course of completion, unfinished documents and incomplete data</b> This exception covers most work in progress. The authority must consider the status of the information at the time of the request. When refusing a request under this exception, the authority must specify the information together with “the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed”.</p>
12(4)(e)	<p><b>Disclosure of internal communications</b> The EIR state that “internal communications include communications between government departments”. Communications between the following will not constitute “internal communications” under this regulation:</p> <ul style="list-style-type: none"> <li>• a central government department and a local authority;</li> <li>• two local authorities.</li> </ul>



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Freedom of Information

12(5)	<p>Adverse effect</p> <p>A public authority may refuse to disclose information “to the extent that its disclosure would adversely affect” one of the areas listed in this regulation. For adverse effect the harm must be at least probable rather than merely likely.</p>
12(5)(a)	<p>International relations, defense, national security or public safety</p> <p>In accordance with regulation 12(6), an authority is able to opt neither to confirm nor deny whether the information exists and is held, if this would adversely affect any of the matters listed under regulation.</p> <p>This is subject to the public interest test.</p>
12(5)(b)	<p>The course of justice, the ability of a person to obtain a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature</p> <p>The meaning of “the course of justice” is quite broad and would include the concept of legal professional privilege</p> <p>Please note, in addition, that regulation 3(3) provides that when a public authority is acting “in a judicial or legislative capacity”, it is not covered by the EIR.</p>
12(5)(c)	<p>Intellectual property rights</p> <p>An authority may refuse a request for information protected by intellectual property rights. The exception protects the rights of the authority as well as third parties. An authority must be able to demonstrate that there is a real risk that disclosure would undermine the intellectual property rights.</p>
12(5)(d)	<p>The confidentiality of the proceedings of a public authority where such confidentiality is provided by law</p> <p>A public authority cannot use this exception for environmental information that relates to information on emissions.</p> <p>The meaning of the term “proceedings” is not limited to formal proceedings and it will not include all activities of a public authority. However, it may not, for example, include papers discussed at meetings, where those have not been prepared exclusively for the purpose.</p>
12(5)(e)	<p>The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest</p> <p>A public authority cannot use this exception for environmental information that relates to information on emissions; see regulation 12(9) below.</p> <p>This exception may cover a wide range of “commercial or industrial information”. It could cover either an individual or a body or the public authority itself. For instance, it could include information supplied in relation to a tendering or procurement process and information held by regulators.</p>
12(5)(f)	<p>The interests of the person who provided the information where that person –</p> <ul style="list-style-type: none"> <li>(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;</li> <li>(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and</li> <li>(iii) has not consented to its disclosure.</li> </ul> <p>A public authority cannot use this exception for environmental information that relates to information on emissions.</p>
12(5)(g)	<p>The protection of the environment to which the information relates</p> <p>A public authority cannot use this exception for environmental information that relates to information on emissions.</p> <p>It would clearly be contradictory if disclosure of information led to damage to the environment. An example of a disclosure which could have this effect might be information relating to the nesting sites of rare birds, or the location of vulnerable archaeological sites.</p>



### 4.3 The Public Interest

A feature of both the FOIA and EIR is the extent to which decisions are required to take account of the public interest. The qualified exemptions of the FOIA and exceptions of EIR noted above are themselves subject to a public interest override. In practice, this means that in the majority of cases where a request maybe refused on the basis of a particular exemption / exception, there is a requirement to consider whether that exemption / exception should be set aside in the public interest. The FOIA and EIR recognise the rights and legitimate interests of individuals, of corporate bodies and of the public sector itself are separate from, and subservient to, the public interest.

Therefore the Council may be required to disclose information notwithstanding the fact that an exemption is in place, if the public interest in disclosure outweighs the public interest in maintaining the exemption. Where the test for public interest is required the Town Manager will carry this out as soon as possible.

The term 'Public Interest' is not defined and it is not easy to list examples where it is in the public interest not to disclose. Public interest does however support and promote the good of society as a whole rather than individual or sectional interest groups. It may include, for example:

- Promoting public debate on issues of the day
- Promoting accountability in decision making and public expenditure
- Allowing individuals to understand decisions, and in some cases assisting individuals in challenging those decisions
- Bringing to light information affecting public safety.

Public authorities should aim to make all decisions within 20 working days, including in cases where a public authority needs to consider where the public interest lies in respect of an application for exempt information.



## 5 CHARGING FEES

### 5.0 Charges

We anticipate that most requests for information will be processed free of charge. If charges are required they will be kept to a minimum and we can only recover the relevant costs of postage, printing and photocopying. 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 will consider whether there is any information that may be of interest to the applicant that is available free of charge.

#### 5.0.1 Publication Scheme

The publications are all free unless otherwise stated on the full publication list, however where information is printed off to meet an enquiry the Council reserves the right to make a reasonable copying charge, this is most likely to occur where multiple copies are requested.

#### 5.0.2 General Right of Access

The FOIA and EIR do not require charges to be made in respect of requests made under the general right of access but the Council has discretion<sup>2</sup> to charge applicants a fee in accordance with Fees Regulations made under the Act.

#### FOIA ONLY -

- When a request is received the estimated costs for processing it will be calculated to check whether it will exceed the £450 limit. The costs involved in the following activities can be included:
  - determining whether the information is held,
  - locating and retrieving it, and
  - extracting the information (including editing).
- The council can only refuse to answer a request on the grounds of cost if it would cost more than £450, which equates to about two and half days of searching time. If it is determined that the fee would exceed the £450 limit the Council will discuss with the applicant whether he or she would prefer to modify the request to reduce the cost. The council will make every effort to comply with the information request.
- If a request is estimated to cost less than £450, and there is no other basis on which it may be refused or otherwise dealt with, the council will answer the request. The maximum fee that can be charged in these cases is limited to the specified costs of postage, printing and photocopying; most of the costs in these cases will be met by the council supporting the

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<sup>2</sup> s9, 12 and 13 of the Freedom of Information Act and s8 of Environmental Information Regulation



view of the Department for Constitutional Affairs which is recommending that where the cost of communicating the information to the applicant is low, authorities should waive the charge for postage, printing and photocopying.

**EIR - There are no cost limits for an EIR request.**

All charges will be kept under review. There is no intention to charge for material that has previously been made available free of charge.

A fee payable notice will be sent out if a fee is payable.

In those cases where a fee is requested from the applicant, the twenty day response period does not start until the fee has been received. Where the applicant pays by cheque, the Council may decide to regard the fee as being received the day the cheque is received, or it may wait until the cheque has cleared. **However, the Council cannot defer the paying in of the cheque in order to delay the response.**



## 6 COMPLAINTS

The Council's FOI complaints procedure may be used by any person who perceives that the Council is not complying with its publication scheme or the provisions of the general right of access.

When communicating any decision made in relation to a request under the FOIA or EIR general right of access, the Council will notify the applicant of their rights of complaint. The Council will provide details of its FOI complaints procedure, including how to make a complaint and inform the applicant of the right to complain to the Commissioner if he or she is still dissatisfied following the Council's review.

Any written reply from the applicant expressing dissatisfaction with the Council's response to a valid request for information will be treated as a FOI complaint, as will any written communication from a person who perceives the Council is not complying with its publication scheme. These communications will be handled in accordance with the FOI complaints procedure, even if, in the case of a request for information under the general right of access, the applicant does not state his or her desire for the Council to review their decision or their handling of the application.

The complaints procedure will be a two-stage approach:

### **i) Informal Complaints Procedure**

As a first stage the applicant's complaint should be handled by the person dealing with the original application and response. This stage should be completed within 15 working days.

If the applicant is still not satisfied with the response or actions of the Council the formal complaints procedure should be followed.

### **ii) Formal Complaints Procedure**

The applicants complaint should be received in writing with such supporting evidence that they deem to be appropriate. The Town Manager will then investigate the complaint and respond within 20 working days. If the Town Manager dealt with the original application and response, (and therefore will have dealt with the informal complaint (see i. above)) the formal complaint will then be investigated by the Chairman of Council or the Vice Chairman of Council.

It is important that the formal complaints review will be handled by a person who was not a party to the original decision, where this is practicable. As indicated above this will normally be the Town Manager or if they were involved in the initial decision, the Chair or Vice Chair of Council. If this is not possible the circumstances will be explained to the applicant. Where the decision on the application was taken by someone in a position where a review cannot



realistically be undertaken, the Council may consider whether to waive the internal review procedure (and inform the applicant if this is what is decided), so that the applicant is free to approach the Commissioner.

In all cases, complaints will be acknowledged and the complainant informed of the Council's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the Council will inform the applicant and explain the reason for the delay. The complainant will always be informed of the outcome of his or her complaint. Records will be kept of all complaints and of their outcome.

Internal reviews have to be completed in a reasonable timescale and the timescales outlined above follow this principle.

Where the outcome of a complaint is that information should be disclosed which was previously withheld, the information in question will be disclosed as soon as practicable and the applicant will be informed how soon this will be.

Where the outcome of a complaint is that Council staff have not properly followed Council procedures, the Council will apologise to the applicant. The Council will also take appropriate steps to prevent similar errors occurring in future.

Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the Council's favour, the applicant will be informed of his or her right to apply to the Commissioner, and be given details of how to make an application, for a decision on whether the request for information has been dealt with in accordance with the requirements of the FOIA or EIR.

Records will be kept of all complaints and their outcome.

## **6.0 INFORMATION COMMISSIONER**

**The Information Commissioner's Office** is the independent statutory body which polices the operation of the Freedom of Information Act, as well as the Data Protection Act.

Under the Freedom of Information Act 2000 the role of the Information Commissioner is as follows:

- The Commissioner may issue general guidance on good practice, or "practice recommendations" directed at particular authorities.
- If the Commissioner has received a request for a decision or considers certain information is relevant to determine whether a public authority has complied with Part I of the Act or the Codes of Practice he may serve an information notice on any public authority requiring it to supply that information to him.
- Where the Information Commissioner considers a complaint, he will issue a decision notice setting out his view on whether the Act has been complied with. Where a breach of the Act



is identified, the notice will specify the steps which must be taken by the authority in order to comply with that requirement and the timescale for compliance.

- If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I of the Act, he may serve on the authority an enforcement notice requiring the authority to take particular steps within a specified time to comply with those requirements.
- Failure to comply with an Information, Decision or Enforcement Notice may be dealt with as though the public authority had committed contempt of court.

Full details on the Information Commissioner does can be found on their website:

[www.ico.gov.uk](http://www.ico.gov.uk)

## 6.1 The Information Tribunal

The Information Tribunal will hear appeals against notices issued by the Commissioner.

- A complainant or a public authority may appeal to the **Information Tribunal** against a decision notice. A public authority may also appeal to the Information Tribunal against an information notice or an enforcement notice served on it. On hearing the appeal the Information Tribunal may uphold the notice in its entirety, substitute an alternative notice or dismiss the notice.
- The decision of the Information Tribunal may in turn be appealed on a point of law to the High Court of Justice (England and Wales), Court of Session (Scotland) or High Court of Justice in Northern Ireland (Northern Ireland).
- Appeals from these notices can be heard by the Information Tribunal (a tribunal which is specifically for matters concerning enforcement notices or decision notices issued by the Information Commissioner).

Full details on the Information Tribunal can be found on their website:

[www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)