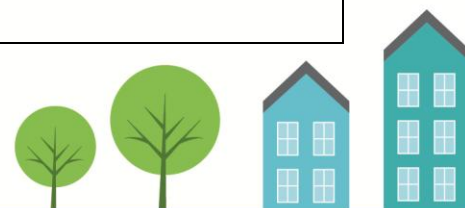


# Access to Information Policy

<b>Author</b>	<b>Cheryl Lincoln</b>
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# Access to Information Policy

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# Access to Information Policy

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# Access to Information Policy

## Policy Statement

Information is a valued corporate and public asset; the Freedom of Information Act 2000 provided the opportunity to make it more widely available and manage it more effectively. This policy covers both the Freedom of Information Act 2000 and Environmental Information Regulations 2004. This policy is a statement of what the council intends to do to ensure compliance with the legislation and applies to all council employees and elected representatives. This policy applies to all information the council processes regardless of how it was created or received, including information in the possession of third parties which is held on behalf of the council. It applies regardless of the way information is stored, or whether the information be in paper or electronic format.

This policy will be reviewed every three years, or sooner should any changes be required.



# Access to Information Policy

## 1. Access to Information

Access to Information is principally governed by four main legislative provisions:

- Data Protection Legislation – UK General Data Protection Regulation (UK GDPR) 2020 and the Data Protection Act 2018, relates to personal information held by the council and the right you have to access your own personal information. The council has a [‘Guide to Subject Access Rights’](#) in addition to a [Data Protection Policy](#)
- the [Environmental Information Regulations Act 2004](#), (EIR) enables access to environmental information held by the council. For example, information about land development, pollution levels, energy production and waste management. Requests can be made verbally or in writing. The council has 20 working days to deal with the request and provide any relevant information subject to limited exceptions. A definition of what constitutes environmental information is contained in **Appendix A**.
- the [Freedom of Information Act 2000](#) (FOI), allows the right of access to any information held that does not fall under the access regimes above. Requests must be in made in writing. The council has 20 working days to deal with a request and provide any relevant information subject to limited exemptions.
- [Part VA of the Local Government Act 1972](#), was amended in part by the [Local Government \(Access to Information\) Act 1985](#). The legislation gave the public a right of access, subject to certain exemptions, to meetings and documents of the council, committees or subcommittees. Havant Borough Council holds meetings in the evening to make them more accessible to members of the public and proactively publishes agendas and minutes of meetings, and associated information on the council’s website. Due to the specific scope of this Act, no further reference will be made to it in this policy.

All the above provide rights of access to information held with limited exception. Whilst the spirit of both the FOI Act and EIRs are the same, there are some minor differences in their application. See **Appendix A** – Environmental Information Regulations for further details. Due to the similarity between them, this policy will mainly refer to the FOI Act.

The Freedom of Information Act 2000 provides public access to information held by public authorities.

It does this in two ways:

- public authorities are obliged to publish certain information about their activities (Publication Scheme); and



# Access to Information Policy

- members of the public are entitled to request information from public authorities (Requests for Information).

## 2. Publication Scheme

Under the Freedom of Information Act all public authorities are required to adopt and maintain a publication scheme. The publication scheme is designed to increase transparency and allow members of the public to routinely access information relating to the function of a public authority. The publication scheme commits an authority to make information available to the public as part of its normal business activities. The information covered is included in the classes of information mentioned below, where this information is held by the authority.

Classes of Information:

- **Who we are and what we do.**  
Organisational information, locations and contacts, constitutional and legal governance.
- **What we spend and how we spend it.**  
Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
- **What our priorities are and how we are doing.**  
Strategy and performance information, plans, assessments, inspections and reviews.
- **How we make decisions.**  
Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.
- **Our policies and procedures.**  
Current written protocols for delivering our functions and responsibilities.
- **Lists and registers.**  
Information held in registers required by law and other lists and registers relating to the functions of the authority.
- **The services we offer.**  
Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure.
- Information in draft form.



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- Information that is no longer readily available as it is contained in files that have been placed in archive storage or is difficult to access for similar reasons.

The council has produced a Publication Scheme in accordance with the FOI Act. If information requested is contained within the council's publication scheme, the request will not be treated as a formal request (see **Appendix B** – The Publication (Public Information) Scheme). The customer can obtain the information as specified in the Scheme, which will also dictate whether and how much the council will charge for providing the information.

## 3. A request for information

All the above access regimes provide a right to access recorded information, not specifically documents. The information may be contained in reports, policies, letters, emails etc., together with other information that has not been requested. The information may be extracted from relevant documents and provided in a different format, in accordance with the appropriate legislation.

The generic term of Request for Information (RFI) is used for formal requests for all information held by the council, irrespective of which access regime is appropriate. See **Appendix C** – What is a Request for Information?

Requests for personal information are dealt with separately under the Data Protection legislation see <https://www.havant.gov.uk/data-protection>.

Anyone is entitled to request information from public bodies, regardless of their age, nationality, location, motive or history. Any information held by the council is eligible for release. However, a limited number of exemptions may be applied to protect some information that truly warrants such protection.

### 3.1 Valid Requests

Requests should be made in writing, this can either be in hard copy or electronically; state clearly what information is required; and state the name of the applicant and an address for correspondence. Whilst requests for 'environmental information' may be made verbally, under the EIRs, applicants will be encouraged to submit written requests to avoid any misunderstanding of the request.

Applicants must provide their real name and not use a pseudonym. Requests may be submitted by organisations but must include the official company name.



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Both email and postal addresses are acceptable. Public authorities do not have to comply with requests that do not meet the above requirements.

Requests can also be made via social media (e.g. X (Twitter) and Facebook) however, we may require further information to fully complete this request. To enable us to respond to any request fully we require an email or postal address where we can send a reply.

The response to a request will confirm whether or not the council holds the information, unless confirming whether or not the information is held would disclose exempted information. If an exemption does not apply the council will provide the requested information. If an exemption does apply, the council will explain why the information cannot be provided, quoting a statutory exemption and the reasoning behind it.

A request for information may only be refused if an exemption under the relevant legislation applies. In some cases, only some of the information will benefit from an exemption, in such cases the exempt information will be redacted (removed/blacked out) from that provided. The response will state which exemption the council relies on and the reasoning behind it and will provide details to the requester of the Internal Complaints and Review Process.

The council will not provide assistance to applicants whose requests are vexatious within the meaning of Section 14 of the FOI Act (see **Appendix F - Refusing a Request for Information**)

## 3.2 Clarification

Where the council receives an unclear or ambiguous request for information it has a duty to provide help and assistance and we will offer to help the requester clarify the request. The council will answer a request based on what the requester has actually asked for, and not on what it thinks they would like. Examples of unclear or ambiguous requests might be where there is more than one objective reading of the request, or the actual request suggests that other information would be of more use.

## 4. Time Period for Compliance

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



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The 20 working days starts from either the day after the council receives the request, or the day the authority receives the further information or clarification it reasonably requires to identify and locate the information requested.

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

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

If the council is considering applying an exemption which requires consideration of the public interest test, the council may need further time beyond the normal 20 working day limit. In this instance the council will notify the applicant that the request for information engages the public interest test and will provide an estimate of a date by which it expects to reach a decision.

## 5. Charging Fees

### 5.1 Compliance costs

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

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

- I. determining whether it holds the information requested,
- II. locating the information or documents containing the information,
- III. retrieving such information or documents, and
- IV. extracting the information from the document containing it.

In determining the total cost, the council will charge £25 per hour per person for staff time regardless of their seniority. If the cost of the request exceeds the £450

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

## **5.2 Communication Costs – Disbursement Costs**

Regardless of whether the fee limit is exceeded, the council may issue a fee notice for the cost of communicating the information, disbursements will normally be charged where the estimated total cost exceeds £5. This would also include the cost of putting the information in the applicant’s preferred format, so far as this is reasonably practicable, as set out in section 11(1) of the FOI Act; reproducing any document containing the information, e.g. photocopying or printing; and postage and other forms of communicating the information.

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

This may include:

- summarising the information;
- providing the applicant with a copy (for example by photocopying or printing);
- allowing the applicant reasonable opportunity to inspect a record containing the information;
- producing material in an applicant’s preferred format (for example by putting it onto a memory stick, CD, DVD etc.); or
- translating information into a different language at the request of the applicant.

However, public authorities are not obliged under the FOI Act to translate documents if this would not be “reasonably practicable”.

The council reserves the right to charge the costs of retrieving documentation from offsite storage.

No charges will be applied by the council where the costs incurred arise from meeting our obligations under the Equality Act 2010 (e.g. providing information in Braille or in large type), unless the original document is a priced publication. In



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this case, the charge for the alternative format will not exceed the cost of original publication.

Normally information supplied electronically will not involve a cost unless hard copy information has been specifically converted for this purpose.

## 5.2.1 Postage and Printing Costs

Applicants may be expected to meet printing and postage costs. The cost of an A4 photocopy or printed sheet will be charged at 10p per sheet and postal costs will be based on current Royal Mail costs depending on the size and weight of the package as published on their website: [Royal Mail prices | Royal Mail Group Ltd.](#)).

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

Under EIR a charge can be made, provided that, it does not exceed the costs reasonably attributable to the supply of the information, see **Appendix E** for charges under EIR. The council will ensure that charges are based on the costs of retrieval and production of the information and, in any case, will calculate and advise the applicant of any fee due before the request is met. These fees however, do not apply to material made available under the council's publication scheme; to information which is reasonably accessible to the applicants by other means (Section 21 of the FOI Act); where provision is made by or under any enactment as to the fee that may be charged by the public authority for disclosing the information.

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

## 5.3 Aggregated costs

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

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

- I. two or more requests for information must have been made to the same public authority;
- II. they must be either from the same person, or from 'different persons who appear to the public authority to be acting in concert or in pursuance of a campaign' (section 12(4)(b) of the FOI Act);



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- III. the requests must relate to the same or similar information; and they must have been received by the public authority within a space of 60 consecutive working days.

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

## 5.3.1 Time Limits and Charging

The council usually has 20 working days to respond to requests for information. If disbursement costs apply for responding to a request under the 'appropriate limit' an estimated Fees Notice will be issued.

Once the Fees Notice has been issued, the clock stops, and the applicant has three months to pay the charge. The request lapses after 3 months if the charge remains unpaid. Only when payment has been received and has cleared does the clock restart, and work begins on collating the information.

The Fees Notice will usually be issued before any costs are incurred in preparing to answer the request.

Although the council is not legally compelled to do so, if it chooses to answer a request exceeding the cost limit it will:

- issue a Fees Notice if charging a Fee
- seek to provide the information in the format requested by the applicant
- answer the request as quickly as it can

## 5.3.2 Refunds

If the actual cost of answering the request turns out to be greater than the estimated amount charged, the additional cost will be borne by the council. There is no provision for another Fees Notice to be issued.

If the actual cost is lower than the amount charged, the council will refund the excess amount where this is greater than £5.00.

Care will be taken to ensure that estimated fees are as accurate as possible to prevent over or under charging.

## 5.3.3 Payment of Fees, Disbursements and VAT

If a charge applies, the estimated fees and/or costs of supplying the information, will be payable in advance



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If the requested information is available from another non-public authority source, then VAT is chargeable. In all other cases VAT is not chargeable.

## 6. Transferring Requests for Information to Another Public Authority

If the council receives a request for information that it does not hold, but it is aware that the information is held by another public authority, the council will provide as much assistance as possible to the applicant in the transfer of their request to the authority which holds the information. This may be by simply contacting the applicant and directing them to the appropriate public authority who holds the information, by suggesting that another application be made direct to the authority which holds the information or, if details are known, providing the applicant with contact details.

If the council holds any of the information that has been requested, it shall treat that part of the request as an official request for information and process it accordingly. The council shall inform the applicant of the information it does not hold at the earliest opportunity and provide as much assistance as is reasonable to enable the applicant to locate it elsewhere. All requests for information held by another public authority, will be contacted as soon as possible so that no undue delay is suffered by the applicant. The time period for compliance does not start until that part of the request is received by the public authority that holds the relevant information.

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

## 7. Consultation with Third Parties

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

If the consent of a third party is required prior to disclosure of information, the council will seek to consult with that third party, with a view to seeking their consent to the disclosure, at the earliest opportunity, unless such a consultation is not practical. The consultation may assist the Authority to determine whether an exemption under



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the FOI Act applies to the information requested, or the views of the third party may assist the Authority to determine where the public interest lies under Section 2 of the FOI Act. If the cost of consultation with the third party is disproportionate, the council may consider it not appropriate to undertake that consultation.

The council will not undertake consultation, if it does not intend to disclose the information for some other legitimate ground under the terms of the FOI Act or the views that the third party could have no effect to the decision of the Authority, or that no exemption applies. A refusal to consent to disclosure by a third party will not on its own mean that information cannot be disclosed.

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

## 8. Contracts

The council will refuse to include contractual terms which purport to restrict the disclosure of information held by the council in relation to the contract beyond the restrictions permitted by the FOI Act. Unless an exemption under the FOI Act applies in relation to any particular part of the contract, the council will be obliged to disclose that information in a response for a request regardless of the terms of any contract. The council will further reject confidentiality clauses as to the terms, the value and performance of the contract unless this is justified and in accordance with the FOI Act. Where exceptionally it is necessary to include non-disclosure provisions in the contract, the council will seek, at the earliest interval, to agree with the contractor a schedule of the contract that clearly identifies the information which should not be disclosed. However, even if such schedule is drafted, the restrictions on disclosure may be overridden by the obligations under the FOI Act. Further, whilst an exemption may apply while the contract is relatively new, the lapse of time may negate the applicability of the exemption.

The council will not hold information in confidence which is not, in fact, confidential in nature. Information is confidential in nature if the disclosure of such information would be an *actionable breach of confidence*.

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



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## 9. Refusal of Request

If the council refuses a request for information relying on an exemption, it will notify the applicant which exemption has been claimed and, unless it is obvious, why that exemption applies. If the reasoning behind the exemption, or the exemption itself, results in the disclosure of information which would itself be exempt, then the council may not provide that reason. See **Appendix F** – Refusing a request for information.

If the council claims that the public interest (See **Appendix G** – The Public Interest Test) in maintaining the exemption outweighs the public interest in disclosure, then the council must state this in its decision letter, together with the public interest factors it has considered and formed a material part of the decision.

The council will maintain a central record for monitoring purposes of all information that has been withheld and will proactively audit decisions made routinely to ensure that such refusals are justified and reasonable.

## 10. Appeals Process (Internal Review)

Any person that perceives that the Council is not complying with its statutory duty may use this appeals process, known as an 'Internal Review'. The internal review process must first be utilised before a referral is made to the Information Commissioner. A request for an Internal Review may be made in the following circumstances:

- If the requester believes the council is not following its publication scheme;
- requests that have not been properly handled;
- where the applicant is dissatisfied with the outcome of the request; or
- where the issue is such that it cannot be resolved informally in discussion with the team dealing with the request.

Every response to a request for information will detail how to request an internal review. A request for an internal review must be made by the original applicant and within 40 days of the information request response.

The request for internal review should highlight which aspect of the response the requester is not satisfied with. The internal review should relate to at least one of the areas of complaint set out below.

1. Complaint about the way the request was handled:
  - Our failure to respond within 20 working days or explain why longer than 20 working days was required;



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- Our failure to provide proper advice and assistance;
  - Our failure to provide information in the requested format; or
  - Our failure to properly explain any reasons for refusing the request.
2. Request an internal review about:
- Information which has been incorrectly refused;
  - An exemption or exception has been applied incorrectly;
  - Information stated as not held is indeed held; or
  - Information is missing from the original response.

Review requests purely seeking clarification will not be managed as a formal review. Instead, clarification will be provided as a supplementary response to the original request.

If additional information is being sought, it may be treated as a new request and logged and responded to accordingly.

The council will have 20 working days to respond to a request for an FOI internal review. The council will have 40 working days to respond to a request for an EIR internal review, however will endeavour to respond within 20 working days where possible. If the applicant requests that they do not wish the matter to go through the appeal procedure, then it will be withdrawn. Any review of a decision made relating to a request for information, will be reviewed by a person who was not party to the original decision. If, following the review, the original decision is reversed and information is now disclosed, the reasons for the reversal will be notified to the applicant together with the information requested. This will be done at the earliest opportunity. If the decision to refuse disclosure is upheld, the reasons for the refusal will be notified to the applicant.

If, having exhausted the internal appeals procedure, the applicant is still dissatisfied, they shall be made aware of their right to apply to the Information Commissioner at:

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

Tel No: 0303 123 1113  
Make a [Complaint](#)



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For complaints other than those listed above, please see the council's general [complaints procedure](#).

Any queries regarding this policy, or access to information within the council should be directed to:

The Information Governance Team  
Havant Borough Council  
Public Service Plaza  
Civic Centre Road  
Havant  
Hampshire  
PO9 2AX

Email: [governance@havant.gov.uk](mailto:governance@havant.gov.uk)

## 11. Additional Questions

While we are committed to being open and transparent, any additional questions stemming from responses may be treated as new requests for information and responded to within 20 working days.

## 12. The Re-use of Public Sector Information Regulations 2015 (RPSI)

An individual, a company or other organisation is entitled to take information the council has produced and republish it or use it to produce a new product or resource, often by combining it with other information. This is sometimes, though not always, on a commercial basis. RPSI is intended to encourage [re-use of public sector information](#).

## 13. Data Transparency

We are committed to being open and transparent about how we work, our decision-making processes and how we provide our services. As part of this commitment, and in line with the Government's Transparency Code we have increased the amount of data that we routinely publish.



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The council's data within the scope of the Local Government Transparency Code (2015) can be found [here](#). All the information published in accordance with this Code is available for re-use under the terms of the Government Open License for Public Sector Information details of which are available on our [website](#).



# Access to Information Policy

## Appendix A - Environmental Information Regulations 2004

Where an access request is for Environmental Information it should be dealt with under the Environmental Information Regulations 2004 (EIR).

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

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

Environmental Information is taken to mean information that relates to:

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

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



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## Appendix B - The Publication (Public Information) Scheme

The council will endeavour to be as transparent and open as possible. There will be a presumption in favour of public access to all information held, unless there is a statutory or compelling business reason against publication. The more information that is pro-actively made available via the scheme the better. It will demonstrate the council's willingness to adopt an open approach to its business and will also help to reduce the number of 'one off' access requests that would otherwise involve staff in the potentially resource-hungry activities of locating, retrieving, collating, editing, reproducing and dispatching information.

For the scheme to work as effectively as possible all staff will need to accept some responsibility for identifying existing or new information that may be suitable for inclusion. Such information should be brought to the attention of the service information champion, who will determine, in conjunction with senior management as necessary, whether the information should be included. When considering the best medium of publication of new information, the council are committed to using electronic means in the first instance.

General criteria for inclusion: The focus should be on information that is known to be of public interest, and/or contributes to the principle that the council's activities and decision-making processes should be seen to be open and transparent, e.g. internal policies and procedures, codes of practice, strategies, plans, minutes of key meetings, etc.

What type of information may be suitable?

- Committee agendas, reports and minutes that are already routinely made publicly available.
- Records of other senior management team and other meetings that contain background information in respect of decision-making processes and which would be in the public interest.
- Strategies, service plans, business plans, policy documents, codes of practice, procedural documents, consultation documents and other information that would fall into this category.
- Any documentation that explains how the council assesses whether an individual is eligible for service provision, e.g. assessment criteria, eligibility criteria information.
- Information that the council already knows is regularly requested.

What type of information may not be suitable?

Whilst it is clearly desirable to make as much information pro-actively available as possible it is also essential that the published information is properly managed and



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maintained. There is little value in information that has been superseded, is out of date or obsolete or simply no longer relevant. Teams need to be mindful of the potential resource requirements of managing large quantities of published information and ensure that they have made arrangements to maintain it in good order.

In view of this it is worth thinking initially about excluding information that:

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

Some tips about publishing information

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

The publication scheme is intended to be organic and to grow and must be kept up to date. It shall be the teams' responsibility to update their respective parts of the scheme, and to notify the Information Governance Team of any changes made.



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## Appendix C - What Is a Request for Information?

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

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

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

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

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

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

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



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



# Access to Information Policy

## Appendix D - Charging Fees

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

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

### Step 1.

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

If information is exempt from FOI, then FOI fees will not apply. In many cases, the council will not know if the information is exempt until the information has been located and checked. However, the council may well know immediately upon receipt of the request that the information is exempt, usually because it is reasonably accessible to applicants elsewhere. For example, if the information has to be made available under the terms of another Act or is available through the authority's publication scheme, it is automatically exempt from FOI. If information has to be provided under the terms of another Act, fees should be charged in line with the provisions in that Act.

Authorities wishing to charge for information that is made available through the publication scheme should make clear whether charges will apply as part of the scheme.

FOI fees will not apply in either case. The council would need to contact the applicant to inform him or her that the information is exempt in the usual way.

### Step 2A.

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

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

### Step 2B.

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



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

If these conditions are met, the cost of the requests can be added together when calculating whether the appropriate limit has been met.

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

## **Step 3.**

### **Calculate the appropriate limit.**

The appropriate limit is £450 for public authorities, with staff costs calculated at a rate of £25 per hour or 18 hours. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. They cannot take account of the costs involved with considering whether information is exempt under the Act.

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

## **Step 4.**

### **Requests costing less than the appropriate limit.**

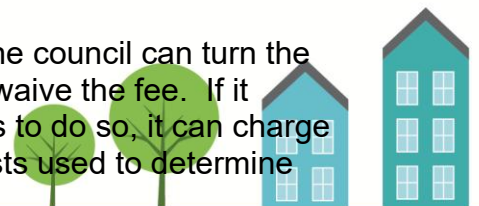
If a request would cost less than the appropriate limit, the council can only charge for the cost of informing the applicant whether the information is held, and communicating the information to the applicant (e.g. photocopying, printing and postage costs).

- Now go to step 6.

## **Step 5.**

### **Requests exceeding the appropriate limit.**

If a request would cost more than the appropriate limit, the council can turn the request down, answer and charge a fee, or answer and waive the fee. If it decides to charge a fee, and does not have other powers to do so, it can charge on the basis of the costs outlined in step 3 (i.e. those costs used to determine



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whether the appropriate limit was met), as well as the cost of informing the applicant whether the information is held and communicating the information to the applicant.

- Now go to step 6.

## Step 6.

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

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



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## Appendix E: Schedule of Charges for requests under the Environmental Information Regulations (EIR)

Under EIRs a reasonable charge may be made for supplying information. This may include the actual costs of staff time taken to locate information and put it in an appropriate format for release, and the costs in transferring the information to the requestor.

### What can be charged?

There are two types of activity under EIR that public authorities can charge for:

- 1) The cost of staff time spent locating, retrieving and extracting the information;
- 2) The costs incurred when printing or copying the information and sending to the applicant; and

The council must be able to demonstrate why a charge in a particular case is reasonable. The council must provide a breakdown of charges so the requestor can understand the basis for the fee.

### What cannot be charged for?

There are three costs the council cannot charge for:

- A. The costs of maintaining a register of information or a database;
- B. Overhead costs (e.g. wider staff overheads); and
- C. Staff time spent reviewing and redacting information (although there are cases where staff time in this instance can be taken into account when considering if a request is Vexatious/Manifestly Unreasonable due to excessive burden on staff resource and time).

In addition, the ICO is clear that requestors should not be unfairly penalised in cases where the authority has failed to keep records in a reasonably accessible state. Therefore, where the council's systems prevent easy access to information purely because of records management issues, staff should fully consider whether it is appropriate to charge.

We also cannot charge requestors for inspecting the information or accessing public registers or lists of environmental information, neither can the council make a charge specifically for allowing access to the information in situ.

EIRs do allow the council to make a charge to recover the costs of locating the information and collating it in order to make it available for inspection. A charge made for locating and collating information to be inspected must be 'reasonable'.



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If the information is held in a system that allows for straightforward public access it is unlikely that a charge is reasonable. If a requestor asks for inspection of material that would require a significant cost to prepare for inspection, the EIRs allow the authority to make a charge.

## Schedule of Charges

Public authorities must have a published schedule of charges in order to be able to charge applicants for environmental information. However, the council recognises that it should avoid routinely charging for environmental information and should take into account wider aims of EIR. The council also recognises that some information may have a wider public value beyond the requesters own immediate interests.

Currently the council uses the following rates:

- 10p per A4 sheet (for photocopying charges)
- £25 - as the hourly rate for calculating the value of staff time. The ICO has indicated that it is reasonable for public authorities to use the same rate at which staff time should be calculated in line with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

The following are activities which the council may include under the value of staff time which will form the basis for any estimate of charging:

- Reviewing e-mails
- File checks within network storage
- Other document checks, hard copies etc
- 3rd Party Consultation: discussions/consultations with any affected 3rd party
- Liaison with other staff members
- The council's central team log/processing the request
- Final approval for accuracy of the information/'sign off'
- Time taken to determine whether the council holds the information (if not covered above)
- Time taken to locate the information (if not covered above)
- Time taken to retrieve the information (e.g. from storage) (if not covered above)
- Time taken to extract the relevant information from larger documents (not including editing/redaction) (if not covered above)

## Charging Threshold

The council will only charge for EIR requests where the time taken to comply with the request is estimated to exceed 18 hours or £450 threshold. This is the council's



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assessment of a fair threshold to allow for the majority of requests to be handled without charge (and therefore to comply with the requirement not to allow charging to be seen as a deterrent to requests), but equally to protect the council's resources against large and complex requests.

As stated above, staff should use the above schedule of costs to estimate how long it will take to comply with a request. If complying with a request will exceed the 18 hours, the requestor will be charged for the total number of hours it takes to complete the request. For example, if it is estimated that complying with a request will take 20 hours, the requestor will be charged for 20 hours, not just for the 2 hours that exceeds the threshold.

## **Manifestly Unreasonable**

Where it is estimated that complying with a request will exceed 18 hours, the council will consider whether the request is in fact 'Manifestly Unreasonable' under Regulation 12(4)(b) of EIR, and will use existing procedures for doing so; including applying the Public Interest Test and providing advice and assistance to the requestor in order to narrow down the scope of their request. The 18-hour timeframe is that used under the FOIA to determine if a request exceeds an appropriate limit.



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## Appendix F – Refusing a Request for Information

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

The exemptions fall into two categories:

- Absolute Exemptions. Where a public authority may withhold the information without considering any public test arguments.
- Qualified Exemptions. Although an exemption may apply to the information, it will, nevertheless, have to be disclosed, unless it can be demonstrated that the public interest in withholding the information, is greater than the public interest in releasing it.

### 1. Absolute Exemptions

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

- Information accessible by another means, (Section 21)  
This applies to information that is reasonably accessible to an applicant through another source, even if it is available only on payment. This type of information could be:
  - included in the council's Publication Scheme (Appendix B)
  - Information accessible through the council's website
  - Books, leaflets etc. published by the council
  - Information available under existing legislation, e.g. Planning Applications.

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

- Information in court records (Section 32)  
This includes information in documents served for the purposes of legal proceedings, filed with a court, or held by a person conducting an inquiry or arbitration.
- Personal information relating to the subject (Section 40)



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

- Information provided in confidence (Section 41)

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

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

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

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

## 2. Qualified Exemptions

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

- Information intended for future publication (Section 22)

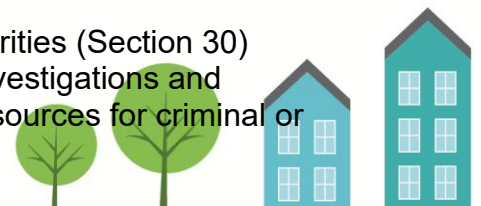
This applies where the council plans to publish information in the future, normally in its Publication Scheme, and it is reasonable, at the time the request is made, not to disclose it until then. It may also apply to information relating to research projects or surveys where it would be inappropriate to release the information until the project has been completed. In other cases where information is due to be published, the applicant must be informed when such publication is planned.

- Prejudicial to the economic or financial interests of any administration in the UK (Section 29)

This exemption applies to information that, if disclosed, would be likely to prejudice the economic interests of the Council. This may be in connection with, for example, a planned development under negotiation with third parties where there are particularly sensitive issues involved, but which promises to bring economic growth and/or significant benefits to the local community.

- Investigations/proceedings conducted by public authorities (Section 30)

This exemption covers information relevant to criminal investigations and proceedings, and information obtained from confidential sources for criminal or civil proceedings.



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- Law enforcement (Section 31)

This exemption applies to information, the disclosure of which would be likely to prejudice: the prevention and detection of crime; the apprehension and prosecution of offenders; the administration of justice; the collection of any tax or duty (e.g. Council Tax).

- Prejudice to the effective conduct of public affairs (Section 36)

This exemption can only be applied by a 'qualified person'. In the case of the council this is the Monitoring Officer and the Chief Executive as deputy if the Monitoring Officer is unavailable.

- Health & Safety (Section 38)

This exemption applies to information which would, or would be likely to, endanger the physical or mental, health or safety of any individual.

- Environmental Information (Section 39)

This exemption allows for the disclosure of environmental information under the Environmental Information Regulations (EIR), see Appendix A

- Personal information relating to a third party (Section 40)

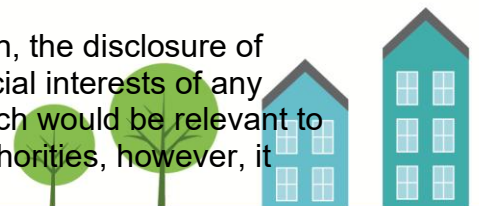
Broadly speaking requests for information about someone else will be dealt with under FOI, but disclosure should not be made if it would breach any of the Data Protection principles, or the third party has not been made aware of the disclosure.

- Legal professional privilege (Section 42)

This applies where a claim to legal professional privilege could be maintained in legal proceedings. This exemption qualifies the rights of access under the Act by reference to a particular rule of litigation. According to that rule, legal professional privilege ("LPP") protects confidential communications between lawyer and client and certain other material created for the purpose of the litigation, by way of an exception to the general rules of disclosure applicable to civil and criminal litigation. If material is subject to LPP a party does not have to disclose it during the course of legal proceedings. The identification of LPP material is a question of law and legal advice must be sought before applying this exemption.

- Commercial interest (Section 43)

This exemption applies to trade secrets and to information, the disclosure of which would, or would be likely to, prejudice the commercial interests of any person including the authority. This is the exemption which would be relevant to most commercially sensitive information held by local authorities, however, it



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would need to be demonstrated how disclosure would affect the commercial interest and is further subject to a public interest test.

A full list of the exemptions under the FOI Act are available from the Information Commissioner's website at <https://ico.org.uk>.

For EIR exceptions, rather than exemptions may apply, most exceptions are subject to the public interest test; more information can be found at <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/>

### 3. Vexatious and Repeated Requests

#### Vexatious Requests

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

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

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

#### Repeated Requests

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

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



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## Appendix G - The Public Interest Test

- a) Where the Council wishes to apply one of the qualified exemptions to prevent disclosure of the information requested, it will have to consider the public interest in maintaining the exemption.
- b) The public interest test requires that information should be withheld under exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- c) Generally, the public interest is not necessarily what the public are interested in, i.e. matters that the public may be curious about, interested in or amused by, but more about information that could benefit the wider community if it were to be made available.
- d) Disclosure should be considered to be in the public interest where it would:
  - Further the understanding of and participation in public debate
  - Promote accountability and transparency by public authorities for decisions taken by them
  - Promote accountability and transparency in the spending of public money
  - Allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions
  - Inform the public of any danger to public health and safety
  - Contribute to the administration of justice, enforcement of the law.
- e) Factors such as embarrassment, risk of misinterpretation and the seniority of the Officer involved are not to be considered when determining the Public Interest.

