

# Freedom of Information and Environmental Information Requests Policy and Procedures

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### Comments and Suggestions

We welcome feedback from our readers, as it helps us improve future versions of this document. If you have any comments or suggestions, please contact [DPO@southglos.gov.uk](mailto:DPO@southglos.gov.uk)

# 1. Background

The Freedom of Information Act 2000 (“FOI”) and the Environmental Information Regulations 2004 (“EIR”) are intended to promote a culture of openness and accountability amongst public authorities by providing rights of access to the information held by them. It is expected that these rights will allow better public understanding of how public authorities carry out their duties, why they make the decisions they do and how they spend public money. Along with Human Rights, Data Protection legislation and the Environmental Information Regulations, FOI aims to build a culture of rights and responsibilities for citizens and contribute to the delivery of better public services. FOI applies to public bodies, but also bodies who discharge public functions.

## 2. The Information Commissioner

FOI and EIR are overseen by the Information Commissioner's Office (“ICO”), the independent body with responsibility for enforcing the Freedom of Information Act 2000, Data Protection Act 2018 and Environmental Information Regulations 2004. Both the ICO and the Ministry of Justice produce guidance on FOI, including three Codes of Practice (including datasets) providing guidance to public authorities generally on the implementation of the Act.

## 3. The right to know

FOI expands the public's right to know information held by the council.

The Act creates two key principal obligations for public authorities, from which other obligations stem:

1. Each public authority must adopt and maintain a publication scheme, setting out details of information it will routinely make available, how the information can be obtained and whether there is any charge for it. Each public authority should publicise the fact that information is available to the public under the scheme and should make sure the model scheme, guide to information, and schedule of fees are all available on the website, public notice board, or in any other way we normally communicate with the public

South Gloucestershire Council complies with requests for the information that it holds unless an exemption from disclosure applies. Public authorities have a maximum of twenty (20) working days to respond to a request, however there are circumstances when this time limit can be extended.

### Key points:

- On 1 January 2005 the Freedom of Information Act 2000 (FOI) came fully into force. Since that date, all public bodies need to ensure that they are able to comply with requests for information under FOI in 20 working days.
- Any request for information may be a request under FOI. The council has a duty to provide advice and assistance to persons requesting information. All staff will need to be aware of FOI and how the council deals with requests.
- FOI requires openness and transparency in public bodies. However, it recognises the need to protect sensitive and confidential information in certain circumstances and provides for exemptions. These exemptions allow public bodies to withhold information if disclosure would cause harm, prejudice certain interests, or violate data protection laws.
- A request for information may only be refused where a specified exemption applies. We can automatically withhold information because an exemption applies only if the exemption is 'absolute'. This may be, for example, information we receive from the security services, which is covered by an absolute exemption. Even where certain exemptions apply, information may still be released if it is in the public interest to do so.
- The council can charge a fee for complying with a request for information but it is not required to do so. This fee would only be for aspects such as postage and photocopying etc. The fee must be calculated according to FOI regulations and the requester must be notified of the charge before the council provides the information.
- There are prescribed time limits for responding to requests for information.
- A good record management system and appropriate induction and training will help us meet the FOI obligations.

## 4. The Data Protection Act 2018 and Freedom of Information Act 2000

Personal data (information which identifies living individuals) requested by that individual is exempt under the Freedom of Information (FOI) Act. This request should be dealt with under the Data Protection Act 2018. Individuals must, therefore, continue to make a 'subject access request' under the Data Protection Act using the Subject Access Request form with appropriate identification. Staff should refer to the Subject Access Policy, Procedure and Form on the Governance Intranet site. Personal information requested by third parties is also exempt under the FOI Act where release of that information would breach the Data Protection Act.

If a request is made for a document (e.g. department minutes or policy), which, if released, would breach the Data Protection Act, these may be released after blanking out the personal information. Requests for information may include

personal and non-personal information. In most cases a single request could be divided and placed in the two different response procedures. In the council, data protection (subject access requests) should be responded to within one calendar month and are currently free.

## 5. Environmental information

1. The Environmental Information Regulations 2004 give access to information held by public authorities that relate to the environment. These regulations, enforced by the Information Commissioner's Office (ICO), aim to promote transparency and public participation in environmental matters. A wide range of information is covered including the state of water, air, fauna, flora, land, built environment, noise, human health and safety, environmental discharges or any analysis of these. Public authorities have twenty (20) working days to comply with requests for access.
2. A reasonable fee can be charged for supplying environmental information. However, there are no national fee guidelines available and so charging will be in accordance with the council's fees and charges policy for environmental information as set out in Appendix 5. This will be applied bearing in mind that the council has a duty to encourage access to environmental information, and to advise and assist requesters. There is a presumption in favour of disclosure.
3. The FOI Act provides a specific exemption for these types of requests, so that they can be dealt with as environmental information requests (EIR). The environmental regulations exemptions are slightly different and more limited than those in the Freedom of Information Act. They include public safety, confidentiality, protecting economic interests and where requests are manifestly unreasonable. The council may extend the response period to 40 working days if reasonable to do so because of the complexity and volume of a request. Further advice on the current regime can be obtained from the [Department for Environment, Food and Rural Affairs \(DEFRA\)](#) website, and Legal Services.
4. Requests may be submitted as letters, emails or even via social media (provided they meet the requirements of section 8 of the FOI Act by providing a requester's name and address for correspondence, and a clear request for information), but staff must make it clear to requesters which rules are being followed. Full details should be recorded on the request file and on the LGSO Dynamics System. EIR Requests do not have to be in writing, so are more easily made than FOI requests. Staff should ensure that they make a written record of these requests so that all parties are clear about what is being requested.

## 6. Existing rights of access and access points

1. Much information is already publicly available. Some is required to be made available under earlier legislation including the Local Government Acts, the Local Government (Access to Information) Act 1985, the Environmental Information Regulations 2004 and the Data Protection Act 2018. Other information is

routinely made available in the interests of open, accountable and effective local government, generally through the council's website [www.southglos.gov.uk](http://www.southglos.gov.uk). Information is also available at One Stop shops and Libraries.

2. Information already available includes council meetings, council minutes and papers, planning and building information, the electoral register, statutory registers, information about council services, policies, press releases, job vacancies and a wide range of guides and leaflets. The council's website also provides links to external bodies who can provide services. For more information visit the FOI section of the [DEFRA](#) website.

## 7. The codes of practice

The council is under a duty to comply with the three codes of practice published by the Ministry of Justice.

The Section 45 Code on the discharge of public authority functions covers:

- (a) the provision of advice and assistance by public authorities to any requester seeking information;
- (b) the transfer of requests by one public authority to another which may hold the information;
- (c) consultation with anyone to whom the information relates, or those likely to be affected by a disclosure of information;
- (d) the inclusion of terms relating to disclosure of information in contracts entered into by public authorities; and
- (e) the provision of a complaints procedure.

## 8. The Section 46 code on records management

A Code of Practice setting out views on desirable practices for the keeping, management and destruction of the records of relevant authorities. It states that compliance with FOI will only be as good as the records management systems in place. Failing to comply with the code could also mean that a public authority is failing to adhere to a number of related statutory provisions. The record management functions should be recognised as a specific corporate programme, with a clear overall policy backed by sufficient resources and accessible at all levels of the council. The code further stipulates:

- (a) sufficient staff time and resources committed to records management
- (b) a system of active management which begins when records are created



- (c) clear disposal policy and lifecycles of records
- (d) management of electronic records
- (e) The council's record management policy complies with these Codes.

DEFRA has published a Code of Practice for EIR which is similar to the FOI Codes of Practice. The EIR Code is published on [DEFRA's](#) website.

## 9. Datasets

1. Section 102 of the Protection of Freedoms Act 2012 adds new provisions to the FOIA (in particular sections 11 and 19) regarding datasets.
2. The new provisions are about how information is released, rather than what information is released. They only relate to information that the public authority holds as a dataset, which is a defined term in the new provisions. They are about the re-use of those datasets that the public authority provides in response to a request or under a publication scheme. There is no new duty to provide any information in response to an FOIA request that was not previously accessible, and there are no new exemptions from that duty.
3. If the council is providing information that constitutes a dataset and the requester has expressed a preference to receive the information in electronic form, the council must provide it in a re-usable form so far as reasonably practicable.
4. A dataset is a collection of factual information in electronic form to do with the services and functions of the authority that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.
5. A re-usable form means that the dataset is in a machine-readable format and based on open standards.
6. Factors that can affect whether it is reasonably practicable to provide the dataset in re-usable form include the time and cost of conversion, technical issues and the resources of the council.
7. If the dataset is a relevant copyright work, the council must provide it under the terms of a specified licence. A relevant copyright work is one for which the council owns the copyright and database rights, and which is not a Crown copyright or Parliamentary copyright work.
8. The Open Government Licence (OGL) is the default licence for datasets that can be re-used without charge; other licences (the Non-Commercial Government Licence and the Charged Licence) are available where that is not appropriate.
9. The council may charge a fee for communicating the information and a fee for making the dataset available for reuse. There are new fees regulations dealing with making the dataset available for re-use. There is no re-use fee if the dataset is provided under the OGL or the Non-Commercial Government Licence.

10. Under its publication scheme a public authority should publish datasets that have been requested, and any updated versions it holds, unless it is satisfied that it is not appropriate to do so.
11. Factors that can be taken into account when deciding whether it is not appropriate include whether the information is exempt and the cost and effort of publishing in a re-usable form.
12. Complaints that the council has not met its duties under the dataset provisions will be dealt with by the Information Commissioner, in consultation with the National Archives as appropriate.
13. The dataset provisions do not apply to the Environmental Information Regulations, but the council should also take account of regulation 6 of the EIR in relation to form or format.
14. When dealing with a request involving a dataset, the council should first consider whether the information is exempt from disclosure under any FOIA exemption. In particular it should consider whether any personal data may be disclosed.
15. The council must also ensure that they own the copyright and database rights in a dataset before licensing it for re-use.
16. If staff require any guidance on whether or not a dataset should be released, they should contact Legal Services who will consider whether any third party Intellectual Property rights are involved.

## 10. The publication scheme

The council has a publication scheme that lists the categories of information it regularly publishes. This is a statutory requirement. This helps the council to organise its information, so that the public can have easy access. Also, information can be efficiently organised and developed within the council.

There are seven classes of information in The Publication Scheme. These are:

### Who we are and what we do

Organisational information, structures, locations and contacts.

### What we spend and how we spend it

Financial information about projected and actual income and expenditure, procurement, contracts and financial audit.

## What our priorities are and how we are doing

Strategies and plans, performance indicators, audits, inspections and reviews.

## How we make decisions: decision-making processes and records of decisions

## Our policies and procedures

## Lists and registers

### Services provided by the council

Information about the services the council provides including leaflets, guidance and newsletters.

With a few exceptions, the contents of our publication scheme can be downloaded from the council's website at [www.southglos.gov.uk](http://www.southglos.gov.uk). These are also available in hard copy form from the council's offices. The scheme is also available on request in large print or on audio tape. If the requester's first language is not English, the council can arrange for translators to provide the information in a range of languages.

All publications on the council's website may be freely downloaded unless otherwise indicated. Most printed publications are available free of charge, but a charge may be made at rates decided from time to time for others. Requesters should contact the council for further information.

The Information Commissioner requires that we continually develop our publication scheme by adding information and expanding the categories. Departments should publish documents continuously through departmental web editors and authors. This Information should also be made available on the website. By doing this, requesters can have access to it 24 hours a day and this will reduce written FOI requests that require the 20-day response time.

## 11. The right to request information

A valid FOI request:

- should be in writing. This can include via e-mail, letter, fax, or social media, provided it meets the requirements of section 8 of the FOI Act by providing a requester's name and address for correspondence, and a clear request for information. Note that where a requester is unable to apply in writing – for example due to disability – an FOI request can be made verbally; the details should be clarified with the requester to enable a written record of the request to be logged. A copy of this written record should be provided to the requester.
- should state the enquirer's name and correspondence address (email addresses are allowed).
- should describe the information requested - there must be enough information

- to be able to identify and locate the information.
- does not need to mention the words "Freedom of Information".
- can come from anywhere in the world.

In most cases, the requester will be entitled to be told whether the council holds the information (this is known as "the duty to confirm or deny") and, if so, to have access to it. Access can include providing extracts of a document or a summary of the information sought, or access to the original document. However, the Act recognises the need to preserve confidentiality of sensitive information in some circumstances and sets out a number of exemptions, which can limit the duty to supply information alone, or both the duty to supply information and the duty to confirm or deny.

The application can be sent in the form of any written communication, but staff should encourage requesters to send an email to:

[freedomofinformation@southglos.gov.uk](mailto:freedomofinformation@southglos.gov.uk)

If a requester telephones the council and a member of staff writes down a freedom of information request on the basis of that conversation, which also counts as a legitimate freedom of information request. A valid request should contain the above information, if it does not we can contact the requester and request a fuller application. While this is being done, time does not begin to run.

## 12. Telephone requests

- Telephone enquiries can be dealt with over the telephone where they are relatively straightforward. They can be dealt with immediately or with a return call.
- The council has a duty to advise and assist requesters so members of staff should point the individual to the publication scheme, website or some other access point to gather the information.
- Telephone enquiries can become FOI requests if the staff member records the request in writing and the customer has requested information that falls within the Act. Also, if the requester sends or delivers it to the council or to any member of staff, a valid FOI request begins.
- EIR requests do not have to be in writing and can be properly received by the council when the requester verbally describes the information needed. Staff must take care to ensure that they give the requester the opportunity to formally apply for the information or set down the verbal request into a written record and begin to process it as soon as possible.

## 13. The council must ‘hold’ the information

Information has a wide meaning and includes hard copy (paper files), digital and electronic information.

“Holding” information means information relating to the business of the council:

- the council has created, or
- the council has received from another body or person, or
- held by another body on our behalf.

If the council does not hold the information, staff should not create it or acquire it just to answer the request. Although, a reasonable search should be made before confirming that we do not hold information that the council might normally be expected to retain and make available.

The council's Record Retention Policy and Schedules should be used to check each department's own corporate list of file retention. If information has been destroyed or erased in line with this policy and other good record management procedures in the area of work, we no longer hold the information, even if the record is still held in backup. Therefore, the council should respond to the request informing the requester that the information is

no longer held. This only applies where records were destroyed prior to receipt of the request, however, and staff should be aware that under section 77 of the FOI Act it is a criminal offence to alter, deface, block, erase, destroy or conceal any information held by the council with the intention of preventing disclosure following a request for the information.

## 14. Response times for written requests and the system for processing requests

The response time begins when a request is received by the council. Day one of the request is the first working day following receipt of the written application into the council. A request is received when a valid application is delivered to any part of the council or to any member of staff. Council staff should reply promptly and within the prescribed limit of 20 working days. Sometimes the clock is stopped temporarily, for example where the requester is required to give more information to enable Staff to respond, or while staff members wait for a fee to be paid. Requests can be sent to the council in any written form.

Most requests are received in the [freedomofinformation@southglos.gov.uk](mailto:freedomofinformation@southglos.gov.uk) mailbox where they will be received by each department's FOI Monitor. We recommend that requesters use this email address as it is the quickest and most accessible way of submitting requests. Using the council's One Stop Shops and applying via the council's website are also encouraged. FOI Monitors and all staff must be prompt in passing requests to the relevant departments, work groups or individuals (lead officers). The following is some guidance service areas/departments can use when managing a FOI request: [Guide to managing an FOI request | ICO](#)

## 15. The role of FOI monitors

- FOI monitors within an organization are responsible for managing, recording, and tracking Freedom of Information (FOI) requests, ensuring compliance with legal timescales and procedures, and providing support and guidance to staff involved in responding to information requests. They also flag sensitive issues, update publication schemes, and contribute to overall FOI compliance and public trust by helping the organization respond effectively to requests for information. It is the responsibility of the service area whether any exemptions apply.
- Departments should co-operatively allocate responsibility for requests that involve a number of departments. Transfers between departments should be done only to and from named officers with clear instructions including a timetable and any special features that must be considered. A lead department and a lead officer must be agreed at the earliest opportunity.

- All responses from lead officers will be loaded onto the LGSO Dynamics database along with the time taken in replying to the request.

## 16. The role of lead officers

- A lead officer should be appointed and is responsible for collecting, preparing, sending, recording and dealing with follow-up correspondence for each request. Lead officers should be those with responsibility for the requested information, the officer who holds it, uses it most or has a clear thorough understanding of it. Lead Officers role also includes handling FOI requests and liaising with the Information Governance team.
- Lead officers should liaise with their direct line manager where necessary before sending information and provide the department's FOI Monitor who holds a central list of requests on the LGSO Dynamics database with a copy of the proposed response for quality review purposes.
- In complex cases (e.g. those involving exemptions or consultation with third parties), lead officers should consult their Head of Service, Director or Legal Services before releasing information.
- In multi-department requests which require input from officers in a number of related or unrelated service areas, the IG Team will normally be who holds most of the information requested and is responsible for collating information or is the main focus of the requester's correspondence. As a last resort, the Head of Legal, Governance and Democratic Services will choose a lead officer where agreement cannot be reached between departments.
- If it appears that the 20 days will not be fulfilled because gathering the information is complicated or exceptional services are required (e.g. complex consideration of exemptions, complex pagination, special copying or translation), the relevant IG Team should write to the requester to set a reasonable extension to the response date.

## 17. Requests from media organisations

The Act allows media organisations (like any individual or company) to request information from the council. Media organisations include magazines, newspapers, websites, blogs, news organisations, radio stations and television stations.

These requesters should be directed to our publication scheme and website if the information they request has already been made public. However, where a written request concerns a yet undisclosed matter, the Strategic Communications Team should be contacted. While the information is being gathered, most requests will not need to be transferred to the section but, where the media make requests in writing, specific advice must be sought from Strategic Communications at the earliest opportunity. This rule should

also apply to known freelance journalists. Furthermore, where a request relates to a current “hot” topic or controversial area, even if the requester is not known to be a journalist, it is good practice to share it with the Strategic Communications Team due to the possibility of the answer finding its way to the press regardless.

Departments are still responsible for fulfilling these requests but must do so in consultation with Strategic Communications. No information should be released without consultation where the requester is a media organisation or the information requested concerns a contentious issue or one that has been recently in the media. All decisions made about the request and any agreed information to be released must be recorded on the LGSO Dynamics database. All staff must read and follow the council’s Media Protocol.

## 18. Transferring a request to another body

In cases where another public authority is likely to hold the requested information, staff should advise the requester to contact that organisation for themselves. Staff should answer all other parts of such a request in respect of information that it holds.

Where another organisation holds the information on the council’s behalf, staff should contact that organisation to get the information, and pass it to the requester, unless the organisation holding the data is also a third party which could be affected by the release of the information requested, in which case see paragraph 23.1 below.

## 19. Charging for FOI requests

For most information requested there will be no charge, in line with the council's policy of openness and accessibility. However, we may charge in line with the FOI Fees Regulations. Fees should not be charged for information that was freely available before the Freedom of Information Act came into force. Also, a charge must not be levied in order to discourage applications. Most Freedom of Information requests will be free.

The Fees Regulations do not apply to material made available under the council's publication scheme or to information that is reasonably accessible to the requester by other means, even if by those means it is accessible only on payment. It also does not apply where the council is required to provide and charge for information under other legislation.

### Charging under the fees regulations

Public authorities may charge for fulfilling FOI requests. If charges are to be made for releasing information, the FOI Fees regulations must be followed.

The general costs that can be charged (for all FOI Requests) are called disbursements. In order to calculate these, the following can be considered:



- (a) cost of producing the information in the requested format
- (b) cost of copying the information
- (c) cost of postage

**Staff time** or time taken to consider exemptions **must not be considered here**.

These applicable charges are often smaller than the cost of processing therefore they are frequently waived.

Time taken to redact data can be charged for, but that aspect of the charge cannot be considered when calculating if the request would exceed the appropriate limit (see 16.4 below).

Public authorities are not required to fulfil requests that are estimated to be higher than the appropriate limit. This is **£450** for local authorities. The regulations set an hourly rate of £25 for all officers. Therefore, if a request will take more than **18 hours** or **two and a half** work-days, we can reject the request for information. In calculating the time that the request will take, only the following must be taken into account:

- (a) time spent determining whether the information is held
- (b) time spent locating information or document containing it
- (c) time spent retrieving the information or document containing it
- (d) time spent extracting information from a document

**Requests that will exceed the appropriate limit** can be refused. However, a good practice option is to liaise with the requester to reduce the cost of their request below the appropriate limit. Most requests will be capable of being scaled down to provide a reasonable response within the limit. If the request falls (or is scaled back to fall) within the appropriate limit, the regulations allow the council to make a charge that includes:

- (a) Staff costs in deciding whether information is held
- (b) Staff costs in locating, retrieving and extracting the information
- (c) Disbursements and staff costs in informing a requester that information is held

Each department's normal hourly fee rates should be used to estimate all FOI fees if these sums are at or less than £25 per hour. Fees over the appropriate limit are not restricted therefore if a requester insists on a request that falls outside the appropriate limit the council can request payment of all its costs related to fulfilling the request.

Where two or more requests are received by the council from the same person or different individuals within 60 days that appear to form part of concerted action or a campaign, the costs of these entire requests can be aggregated. A single estimated sum can be calculated that takes account of all the requests. The requester or all requesters in the group should be informed that such a decision has been made.

## Existing charging policies and fees notices

In most cases departments should make all items it has placed in the publication scheme available to the public free of charge or in line with their existing charging policies. The document that lists existing or historic charging frameworks should be made available to the public. (See Appendix 5).

To be fair to requesters, a notice of the costs must be sent to the requester. This letter or invoice ("Fees Notice") pauses the response time on the day the letter is sent. When payment is received the clock restarts. If the requester does not pay the fee within **three months** their FOI request can be closed and the requested material not sent to the requester.

## 20. Applying exemptions

Under FOI there are only four reasons for not complying with a request for information:

- one or more of the exemptions apply
- the information is not held
- the cost threshold is reached (£450)
- the request is considered vexatious and/or repeated

FOI specifies a series of exemptions, of which perhaps 15 in total are likely to be used by local authorities. These exemptions are intended to protect sensitive or confidential information. Council staff are likely to use only a few of them.

The **exemptions** staff are most likely to use are:-

- (a) information accessible by other means
  - i) Information available from your publication scheme or website, for example, or
- (b) that other legislation requires you to give personal information
  - i) A request for personal information is covered by the Data Protection Act (DPA) 2018. Individuals may continue to make a "subject access request" under the DPA. If this applies the council's subject access form should be used.
- (c) Information provided in confidence (confidential information)
- (d) Environmental information

Environmental Information Regulations enquiries are ones which relate to air, water, land, natural sites, built environment, flora and fauna, and health, and any decisions and activities affecting any of these. These can therefore include enquiries about

recycling, phone masts, school playing fields, waste, building regulations and traffic pollution. These regulations set a response time of **20 working days** (which can be extended to 40 working days for complex EIR requests) and **a fee may be charged**.

- (e) Information intended for future publication
- (f) Investigations and proceedings conducted by public authorities
- (g) Law enforcement
- (h) Commercial interests.

## 21. List of exemptions

There are 23 exemptions listed in the Act. 17 of these are called **Non- absolute (qualified) exemptions** and eight are called **Absolute exemptions** (note that two – s36 and s40 – fall into both categories).

Non-absolute exemptions require the council to consider the public interest in disclosing information. The public interest in withholding information must be weighed against the public interest in disclosing the information. The greater public interest will dictate whether the information is retained or disclosed.

Where absolute exemptions apply there is no obligation to disclose the information or to consider the public interest in possible disclosure. Generally, there will be no requirement to confirm or deny whether the council holds such information. Therefore, the council can remain silent as to existence of such information.

Where exemptions apply, be they absolute or qualified, the duty to confirm or deny will not arise if doing so would in effect disclose the exempted information, or would prejudice the issue underlying the grounds for exemption. The Non-Absolute / Qualified Exemptions.

The majority of exemptions fall into this category:

Section of The Act	Exemption Reason
s22	Information intended for future publication
s24	National security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not arise)
s26	Defence
s27	International relations
s28	Relations within the United Kingdom
s29	The economy
s30	Investigations and proceedings conducted by public authorities
s31	Law enforcement

s33	Audit Functions
s35	Formulation of government policy, etc
s36	Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords)
s37	Communications with Her Majesty, etc and honours
s38	Health and safety
s39	Environmental information
s40	Personal information (an authority is only required to consider release in the public interest: where the information concerns a third party and a 'Section 10 Notice' under the Data Protection Act 2018, applies to that information; where the information concerns a third party, who would not be entitled to access that information himself because a 'subject access exemption' applies to it under the Data Protection Act 2018.)
s42	Legal professional privilege
s43	Commercial interests

Where a public authority considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the council must inform the requester of its reasons, unless to do so would mean, in effect, releasing the exempt information.

## 22. The absolute exemptions

These are the exemptions where, if the exemption applies, it is not necessary to go on to consider disclosure in the public interest:

Section of the Act	Exemption Reason
s21	Information accessible to a requester by other means
s23	Information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals mechanism against such certificates)
s34	Parliamentary privilege (a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliaments, in respect of the House of Lords is conclusive proof that the exemption is justified.)
s36	Prejudice to effective conduct of public affairs (only applies to information held by House of Commons or House of Lords)

s40	Personal information (where the requester is the subject of the information. The requester already has the right of 'subject access' under the Data Protection Act 2018; where the information concerns a third party and disclosure would breach one of the Data Protection Principles.
s41	Information provided in confidence.
s44	Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court
s32	Court records, etc

A fuller explanation of these exemptions is available in Appendix 4. All exemptions quoted in a response to a request for information should be agreed with the departmental FOI Monitor and Legal Services.

## 23. Public interest

The public interest is not necessarily the same as that which may be of interest to the public. It may be irrelevant that a matter is the subject of public curiosity. In most cases it will be relatively straightforward to decide where the balance of the public interest in disclosure lies. However, there will inevitably be cases where the decision is a difficult one. Applying such a test depends to a high degree on objective judgement and a basic knowledge of the subject matter and its wider impact in the council and wider implications.

### Applying the public interest test

When applying the test when exemptions are considered, the council is simply deciding whether in any particular case it serves the interests of the public better to withhold or to disclose information. In short, unless it is in the public interest to withhold the information, it has to be released. In considering what is in the public interest the following (non-exhaustive) list is useful:

<b>For Disclosure</b>	<b>Against Disclosure</b>
Is disclosure likely to increase access to information held by the council?	Is disclosure likely to distort public reporting or be misleading because it is incomplete?

<b>For Disclosure</b>	<b>Against Disclosure</b>
Is disclosure likely to disclose the reasons for a decision or allow individuals to understand decisions affecting their lives or assist them in challenging those decisions?	Is premature disclosure likely to prejudice fair scrutiny, or release sensitive issues still on the internal agenda or evolving?
Is disclosure likely to improve the accountability and transparency of the council in the use of public funds and help to show that it obtains value for money?	Is disclosure likely to cause unnecessary public alarm or confusion?
Is disclosure likely to contribute to public debate and assist the understanding of existing or proposed policy?	Is disclosure likely to seriously jeopardise the council's legal or contractual position?
Is disclosure likely to increase public participation in decision-making?	Is disclosure likely to infringe other legislation e.g. Data Protection Act, Defamation, Copyright?
Is disclosure likely to increase public participation in political processes in general?	Is disclosure likely to create a controversial precedent on the release of information or impair your ability to obtain information in the future?
Is disclosure likely to bring to light information affecting public safety?	Is disclosure likely to adversely affect the council's proper functioning and discourage openness in expressing opinions?
Is disclosure likely to reduce further enquiries on the topic?	If a large amount of information on the topic has already been made available, would further disclosure shed any more light or serve any useful purpose?

### Other good practice points

- Potential or actual embarrassment to, or loss of confidence in, the council, staff or strategic partners is NOT necessarily a valid factor.
- The fact that the information is technical, complex to understand and may be misunderstood may not of itself be a reason to withhold information.
- The potential harm to an individual of releasing information will reduce over time and should be considered at the time the request is made rather than only by reference to when the relevant decision was originally taken.
- The balance of the public interest in disclosure cannot always be decided based on whether the disclosure would cause harm, but on other considerations, such as the need to preserve confidentiality of internal discussions.

- A decision not to release information may be perverse i.e. would a decision to withhold information because it is not in the public interest to release it, itself result in harm to public safety, the environment or a third party?

Staff will need to record the answers to these questions and the reasons for those answers. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. Staff must decide how important each factor is in the circumstances and go on to make an overall assessment.

## 24. Vexatious or repeated requests

The FOI Act states that there is no obligation to comply with vexatious or repeated requests. A vexatious request is one that is likely to cause disproportionate irritation or is made without a serious purpose. This means a request that is manifestly unreasonable and would require a substantial diversion of resources or otherwise undermine the work of the council. This argument for not complying with a request need not only be used as a last resort, but should be used in cases where the request:

- Is disproportionate or causes disproportionate irritation or is made without a serious purpose.
- Is burdensome, or the gathering of the data is likely to cause unjustified disruption.
- Has been received from a requester with a personal grudge against the council or a member or employee of the council, and there are reasonable grounds for believing the request may have been motivated by that grudge.
- Is persistent for information which has already been provided, or where it has already been explained that it is not possible to provide the requested information.
- Is likely to harm the public interest if the information is provided.

In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the council and weighing this against any evidence about the purpose and value of the request.

Following consultation within the department and with Legal Services, the requester must be told that the council cannot provide the information (unless it has already given the same individual a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one).

If the cost of compliance is the only or main issue, it should first be considered whether section 12 of the FOI Act applies (there is no obligation to comply where the cost of finding and retrieving the information exceeds the appropriate limit). If another exemption is also being used, the reasons should be explained. If this exemption is non-absolute, information about how the public interest test has been applied and the factors considered must be communicated.

The definition of vexatious differs from the definition in the council's Unreasonably Persistent Complainants and/or Unreasonable Complainant Behaviour Procedure, which is based on guidance by the Local Government Ombudsman. Therefore, a course of conduct by a requester could meet one standard but not the other. However, in most serious cases a course of conduct could meet the definitions laid down by both regimes. For freedom of information requests, the vexatious and repeated conduct must relate to the requester's making of information requests itself and does not focus too much on the general conduct or behaviour of the requester.

The EIR rules have a similar provision called manifestly unreasonable requests. Lead officers should seek legal advice if any request appears to fall within this definition.

Where a request for information has previously been answered, the council is not obliged to comply with a subsequent identical or substantially similar request from the same requester, unless a reasonable interval has elapsed since the previous request.

Where a request has been classed as vexatious or repeated, it should be ensured that the salient details are recorded appropriately on the LGSO Dynamics database.

Note that while requests can be deemed vexatious, applicants cannot. Therefore if one requester makes a request which is refused on the grounds it is vexatious, and the same requester subsequently makes another request, it cannot be dismissed out of hand and must be considered as if it was a new request from an unknown requester – though this does not necessarily preclude the possibility that the new request in and of itself might also be deemed vexatious.

Section 17(6) of the FOI Act states there is no need to issue a new refusal notice if the authority has already given one to the same person for a previous repeated request and it would be unreasonable to issue another one.

## **25. Information that has already been made public**

If the information requested is already in the public domain, for instance through the Publication Scheme, the enquiry can be treated as exempt under section 22 of the Freedom of Information Act, namely, "information accessible through other means." However, staff must direct the enquirer to the information and describe how to gain access. This could be done verbally or in writing, but this must be recorded internally as evidence of compliance with the Act.

## **26. Handling requests that appear to be part of an organised campaign**

When calculating the costs of complying, the costs of all related requests received within 60 working days from the same person – or from people who seem to be working together – can be aggregated. Where an authority is not required to comply



with a number of related requests because the cumulative cost of complying with the requests would exceed the "appropriate limit" (i.e. cost threshold) prescribed in Fees Regulations, the council should consider whether the information could be disclosed in another more cost-effective manner. For example, the department should consider if the information is such that publication on the website, and a brief notification of the website reference to each requester, would bring the cost within the appropriate limit.

## 27. Third parties affected by disclosure

Consultation with third parties may be required if their interests could be affected by release of the information requested, and any such consultation may influence the decision. Third parties may include council partners, contractors, temporary staff, central government departments, local voluntary bodies, companies or individuals. In some cases the request could be transferred to the third party in full, or be edited by them before information is eventually released by the council. Even in cases where third parties are consulted in this process, responsibility for the decision whether or not to release the information remains with the council.

Generally staff will not need to consult where they are not going to disclose the information because an exemption is being claimed.

## 28. Reviewing documents before they are sent

1. Standard letters are available from the LGSO Dynamics database and can be obtained from the departmental Freedom of Information hubs.
2. All the material must be read carefully so that any information that is considered exempt is edited or removed. This could include personal details or where an exemption applies to parts of the material.
3. Editing (Redaction) can be done via Foxit. For people, requests should flow through us....
4. Where data has been redacted, it is crucial to make sure it has been done in such a way as to preclude all possibility of it being recovered by the recipient. For example, where black text is given a black background in a Word document, which is then converted into a PDF, it is still possible to highlight that passage to read the hidden text, or to copy it into another Word document.
5. When editing and sending electronic documents, staff should ensure that they maintain a full copy of the original as well as a copy of the amended version, and that the correct version has been emailed or sent manually to the requester. Generally, records should not be manipulated or amended in any way. The one circumstance where this would be permissible would be where the only redacted parts are personal information such as the names of individuals. It can be safer to include a brief explanation in the covering letter.
6. When responding to requests by providing the data in an Excel format, great care

should be taken that no confidential information is inadvertently included in hidden cells or hidden worksheets, and all such files should be checked for the presence of hidden data. To avoid such an error, wherever possible data should be copied from Excel files and pasted 'as values' in a brand-new workbook, to remove all formulae, links and hidden data. An electronic copy of the documents should be sent to the departmental FOI Monitor for review and loading onto the LGSO Dynamics database (See sections 13.1 & 13.2)

## **29. Refusing a request**

If a member of staff wishes to tell a requester that the council is not going to provide the information, they must immediately contact their departmental FOI Monitor or Legal Services for guidance. This process will check that the case has been properly considered and the reasons for refusal are sound. If it is decided to refuse a request, staff should send a refusal notice in writing giving clear reasons.

## **30. Keeping records, retaining information and tracking requests**

Departments and staff will need to keep records of all the requests received, how they were dealt with, the decisions and reasons for them; as well as reviews or appeals. Appropriate records management arrangements will support good record keeping and efficient recording.

If cases generate a review or are appealed, all decisions to withhold information will be crucial. If the Information Commissioner investigates a claim, records of all related correspondence, including reasons for the decisions will be needed. A copy of all responses to FOI and EIR requests should be held for 6 years from the date of the request by the lead officer within the records or files that held the information requested.

Each department's FOI Monitor must use and populate the council's central database with information about each request. This database is currently LGSO Dynamics.

## **31. Clarifications, reviews and ICO appeals**

### **Clarification**

The requester can respond to the lead officer to clarify the content of the response, query any ambiguity or seek any related explanation. These should be dealt with by the lead officer directly with the requester and should be completed as quickly as possible. Advice and assistance should be offered by the lead officer. Most clarifications will not begin new requests for information. However, if the requester wished to make a new request following clarification, the lead officer should help to

facilitate this and invite the requester to send the email to him or her directly, if they hold the information, or to [freedomofinformation@southglos.gov.uk](mailto:freedomofinformation@southglos.gov.uk), the FOI mailbox. The lead officer should deal with clarification effectively to avoid dissatisfaction which could lead to Reviews.

The clarification and review stages are not part of the council's complaints procedure.

## Review

Any written expression of dissatisfaction from the requester, which does not simply seek to clarify the answers provided, should be dealt with as a request for a review of the request. Reviews are mandatory for Environmental Information Requests at this stage, but optional for Freedom of Information requests. However, it is considered to be good practice to hold an internal review for the latter. If a decision is taken not to undertake an internal review, the reasons for that decision should be discussed with the appropriate departmental information governance representative and recorded, in case it is challenged by the ICO, even if those reasons are not necessarily disclosed to the requester. For both types of requests, reviews at this stage should be carried out by:

- The lead officer's line manager.
- A line manager on a similar level to the lead officer's line manager (in the same department)
- Where the issues being raised are substantial, the lead officer's service manager.
- Departments can also create a special group or panel of reviewers to carry out this function.

Refusal notices should notify requesters of the council's internal review procedure and how to access it.

If a requester complains even when the request has not been refused, an internal review should be carried out if they:

- Disagree with the council's interpretation of their request.
- Believe the council holds more information than was disclosed.
- Are still waiting for a response and are unhappy with the delay.

Reviews should be carried out flexibly, in a way that suits the nature and the type of complaint being made. Reviews can be short spot-check assessments, email exchanges with the lead officer, detailed conversations with the lead officer, or a formal written Review Summary. All Reviews must be recorded in writing and include the matters investigated, the findings and the conclusions. In most cases, reviews will not need to be released to the requester, but should be prepared in a way that could be released if requested by the requester. Review documentation could also be requested by the Information Commissioner's Office if it later investigates a resulting complaint.

Officers tasked with conducting a review need to be scrupulous in recusing themselves from reviewing any cases in which they feel they have had significant input to the substance of the original response.

All reviews should be completed within 20 working days of the requester's request for a review. If the Reviewing Officer thinks that it will take any longer than this, they must write to the requester as soon as possible with an explanation and a revised date.

The officer undertaking the review should ensure that all matters are resolved to avoid ongoing complaints. Legal advice should be sought if necessary and all resources applied to reach the best outcome. They should also ensure that they are sufficiently independent of the lead officer. If the requester asks for the review to be checked by another officer, that person should also be sufficiently independent. The majority of complaints should be resolved after a Review.

#### **External appeals: information commissioner's office (ICO) and first-tier tribunal (information rights)**

Requesters wishing to complain to the Information Commissioner about a request can apply at any time. However, when the requester reaches the end of the Review process, he or she is considered to have exhausted the council's internal complaints mechanism for FOI, EIR and Data Protection, and the ICO has a duty to accept his or her complaint. The Information Commissioner can publish a number of notices to the parties. The Information Notice requests further information for a decision. A Decision Notice sets out the steps to be taken to fulfil the request and comply with the law. An Enforcement Notice is served if the information holder fails to comply with the law or the Commissioner's Decision Notice. Both parties will be sent copies of these notices by the ICO, as appropriate

The Information Commissioner's Office (ICO) can be contacted at: Information Commissioner's Office,

Wycliffe House, Water Lane, Wilmslow, Cheshire,

SK9 5AF

Telephone: 0303 123 1113

Visit the [Information Commissioner's Office](https://ico.org.uk/) website

If the requester is dissatisfied with the Information Commissioner's decision, he or she can apply to the Information Rights Tribunal. The council can also appeal to the Tribunal at this stage. The Information Commissioner can refer a point directly to the Tribunal for consideration. If a point of law (not a factual dispute) still remains unresolved after the Tribunal has considered the appeal, the case can be referred to the High Court for final resolution.

The Tribunal's contact details are:

First-Tier Tribunal (Information Rights) General Regulatory Chamber HM Courts and Tribunal Service

Arnhem House Support Centre PO BOX 9300

Leicester LE1 8DJ

Telephone: 0845 600 0877

## 32. Offences

### Criminal Offences

Section 77 - It is an offence for any person to wilfully alter, deface, block, erase, destroy or conceal any information, after a valid request is made, with the intention of avoiding having to answer the enquiry or to prevent disclosure. This offence may be committed either by a public body or an employee and is subject to an unlimited fine. The offence applies to information under the Data Protection Act as well as the Freedom of Information Act.

Paragraph 12 of Schedule 3 - Any person who intentionally obstructs a person in the execution of a warrant, or fails, without reasonable cause, to give any person executing a warrant such assistance as they may reasonably require for the execution of the warrant, is guilty of an offence. This enforces the Information Commissioner's power of entry and inspection.

### Contempt of Court

Section 54 - If the council fails to comply with a decision notice, information notice or an enforcement notice, the Information Commissioner can certify this in writing to the court. The Court may deal with the matter as if the council committed contempt of court. The offence is also committed if council provides false information to the Information Commissioner. Contempt of Court can be both a civil and criminal offence. The offence can carry two years imprisonment or an unlimited fine.

### Information commissioner practice recommendation

Section 48 - If the council fails to comply with the Codes of Practice under sections 45 (Discharging Functions) and 46 (Records Management) then the Commissioner can issue a practice recommendation in writing. These specify the steps to be taken to comply.

A copy of all Notices and Practice Recommendations should be sent to Legal Services who will record these and assist the member of staff or departments to fulfil them and

respond. Departments are legally responsible for complying with these Notices.

## **33. Schools**

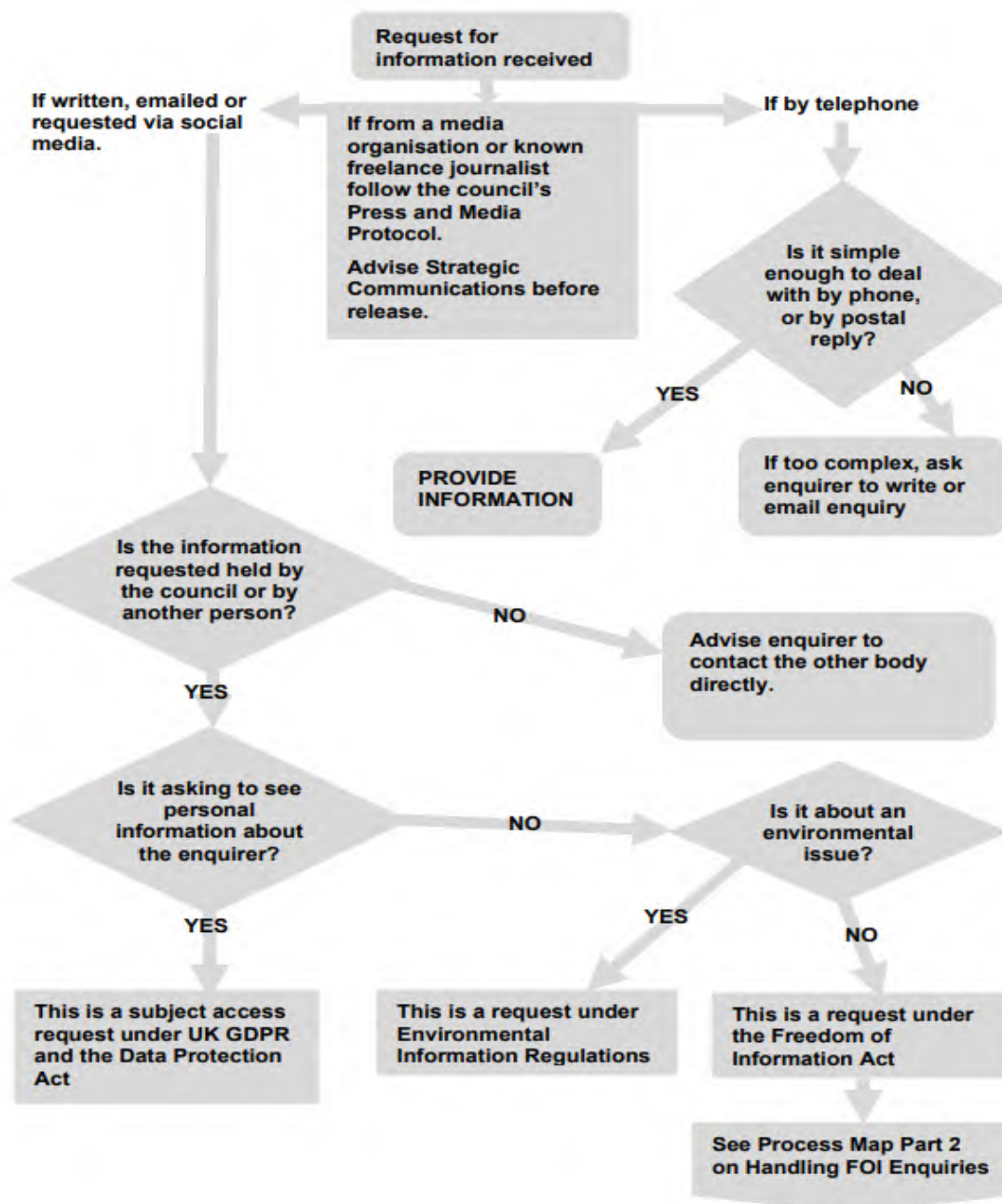
Maintained Schools are seen as individual public bodies under the FOI Act. Each must maintain a Publication Scheme and respond to requests it receives. The council should refer requests to schools that require information they hold. Schools and the council should also make arrangements to deal with requests that require information that is held partly within the council and partly within schools. Specific guidance for schools is available from the Department for Education's website.

## **34. Review of the policy**

This policy will be reviewed every at least every two years by the Data & Information Group.

# Appendix 1 (part 1 of 2)

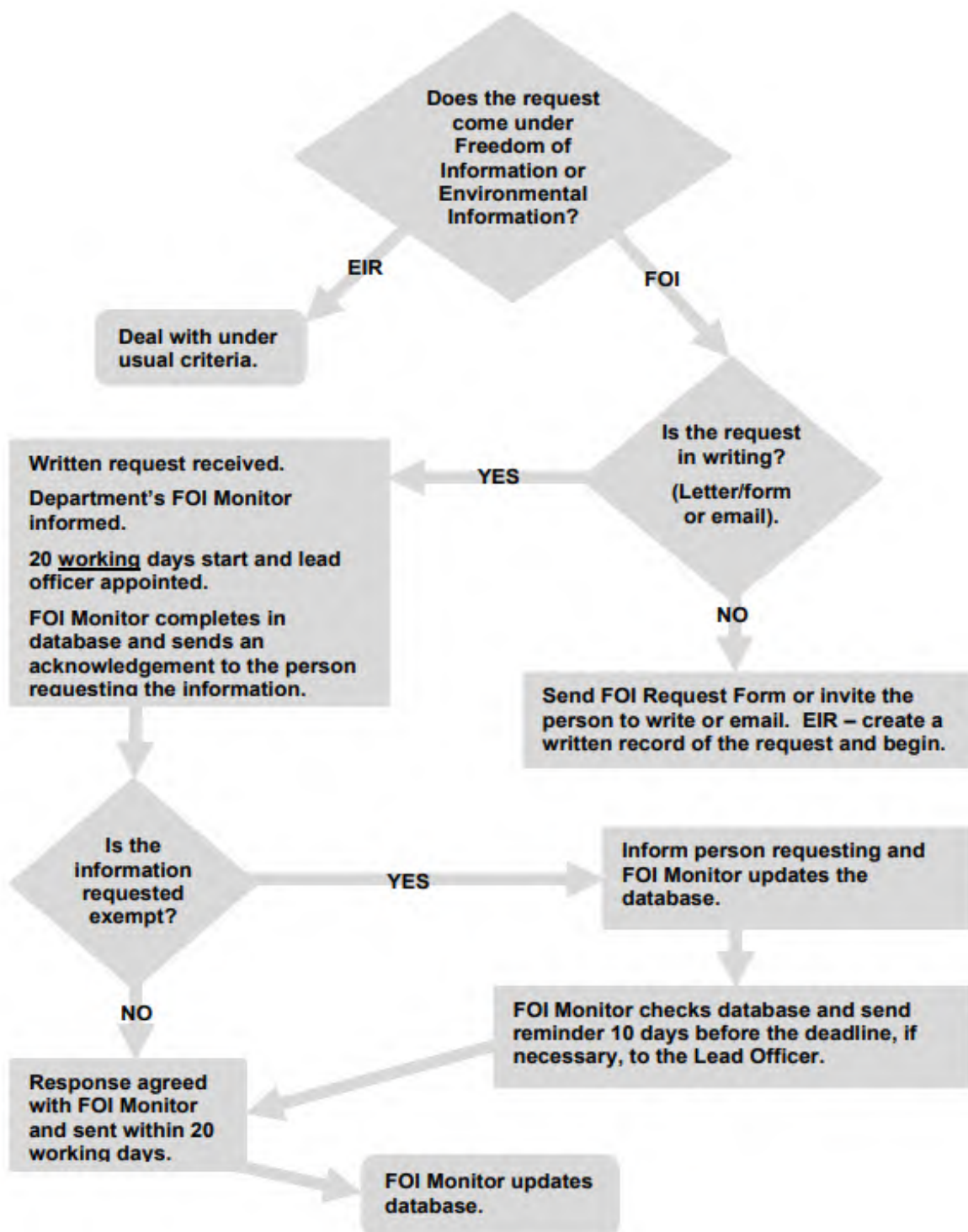
## Process map for receiving requests for information





# Appendix 1 (part 2 of 2)

## Department process map for handling requests





# Appendix 2

## 35. Exemptions to the release of information

Disclosure decisions should be made on a presumption of openness; however, the FOI Act recognises the need to preserve confidentiality and protect sensitive material in some circumstances. Staff must not withhold information unless one of the following applies: -

- an exemption to disclosure, or
- the information sought is not held, or
- the request is considered vexatious or repeated or
- the cost of compliance exceeds the threshold

## 36. The duty to confirm or deny

A person applying for information has the right to be told if the information requested is held by the council, and if that is the case to have the information sent (subject to any of the exemptions). This obligation is known as the "duty to confirm or deny" that it holds the information. However, the council does not have to confirm or deny if both of the following conditions are met:

- (a) The information is exempt (absolute or qualified); and
- (b) Confirming or denying would prejudice the issue underlying the grounds for exemption, or if so doing would in effect disclose the exempted information.

## 37. Exemptions

There are two general categories of exemptions: -

**Absolute:** where there is no requirement to disclose the information or to consider the public interest; and

**Non-Absolute/Qualified:** where, even if an exemption applies, there is a duty to consider the public interest in disclosing information

### What are the Absolute Exemptions?

There are 8 absolute exemptions listed in the Act. Even where these apply: -

it does not mean that you cannot disclose in all cases; it means that disclosure is not required by the Act. A decision could be taken to ignore the exemption and release the information considering all the facts of the case.

there is still a legal obligation to provide reasonable advice and assistance to the enquirer. The exemptions considered most relevant are:

**Information accessible to the enquirer by other means** (Section 21) -If information is reasonably accessible to the requester by another route than the Act, it is exempt information. This is the case even if the enquirer would have to pay for the information under that alternative route. This exemption includes cases where you are required to give information under other legislation, or where the information is available via the Publication Scheme or website.

**Personal information** (Section 40) see also the qualified exemption part of Section 40. Where enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act. See the council's Subject Access Request Policy, Procedures and Form document.

**Information provided in confidence** (Section 41) this relates to information obtained from a person if its disclosure would constitute a breach of confidence actionable by that, or another, person. (See Appendix 3)

**Prohibitions on disclosure** (Section 44) Information is exempt where its disclosure is prohibited under any other legislation by order of a court or where it would constitute a contempt of court or where it is incompatible with any EC obligation.

#### **What are the Qualified Exemptions?**

With qualified exemptions, even though it is decided that an exemption applies, there is a duty to consider the public interest in disclosing information.

**Information intended for future publication** (Section 22) if at the time the request was made, information is held with a view to publication, then it is exempt from disclosure if it is reasonable that it should not be disclosed until the intended date of publication. This could apply for instance to statistics published at set intervals, for example annually or where information is incomplete and it would be inappropriate to publish prematurely. Note the following:-

- the intended publication does not have to be by the council, it can be by another person or body.
- the date of publication does not have to be known, it could be at some future date (although it is recommended that some idea of a likely date is given).
- the duty to confirm or deny does not apply if to do so would involve the disclosure of any of the relevant information.

Remember, you still have a legal duty to provide reasonable advice and assistance in Section 16.

**Investigations and proceedings conducted by public authorities** (Section 30). Information is exempt if it has at any time been held by the departments for the purposes of criminal investigations or proceedings, such as determining whether a person should be charged with an offence or

whether a charged person is guilty, or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.

**Law enforcement** (Section 31). Information which is not exempt under Section 30 Investigations and Proceedings, may be exempt under this exemption in the event that disclosure would, or would be likely to, prejudice the following among others:-

- the prevention or detection of crime.
- the apprehension or prosecution of offenders.
- the administration of justice.
- exercise of functions such as ascertaining if a person has broken the law, is responsible for improper conduct, or whether circumstances justify regulatory action.
- ascertaining a person's fitness or competence in relation to their profession.
- ascertaining the cause of an accident or protecting or recovering charities or its properties.
- any civil proceedings brought by or on behalf of the school which arise out of an investigation carried out for any of the purposes mentioned above.

The duty to confirm or deny does not arise where prejudice would result to any of these matters.

**Communications with the Queen** (Section 37) Information is exempt if it relates to communications with the Queen, the Royal Family or Royal Household or if it relates to the award of honours. The duty to confirm or deny does not arise where this exemption applies.

**Health and Safety** (Section 38) Information is exempt if its disclosure would or would be likely to endanger the safety or physical or mental health of any individual. The duty to confirm or deny does not arise where prejudice would result.

**Environmental information** (Section 39) Information is exempt under FOI where it is covered by the Environmental Information Regulations. Environmental information can cover information relating to: air, water, land, natural sites, built environment, flora and fauna, and health. It also covers all information relating to decisions or activities affecting any of these.

**Personal information** (Section 40) - see also the absolute exemption part of Section 40. Where an individual seeks information about themselves Data Protection Act powers apply.

Where the information concerns a third party, it is exempt if its disclosure would contravene the Data Protection Act, or the data protection principles; or if the person to whom the information relates would not have a right of access to it because it falls under one of the exemptions to the Data

Protection Act. The duty to confirm or deny does not arise in relation to this information if doing so would be incompatible with any of the above.

**Legal professional privilege** (Section 42) Legal professional privilege covers any advice given by legal advisers, solicitors and barristers. Generally such information will be privileged. If you wish to disclose the information you will need to seek consent from the provider of the advice. This exemption covers all such information where a claim to legal professional privilege can be maintained in legal proceedings. The duty to confirm or deny does not arise where to do so would involve the disclosure of such information.

**Commercial interests** (Section 43) Information is exempt if it constitutes a trade secret or would be likely to prejudice the commercial interests of any person or body (including the council). The duty to confirm or deny does not arise where prejudice would result to commercial interests but not where the information constitutes a trade secret. The council might, for example release a winning tender but not the failed bids, prices and company names.

### Applying exemptions, timing and the next steps

When considering if an exemption to disclosure should apply, **bare in mind that the presence of a protective marking** (Restricted, Confidential or Secret, with or without descriptors such as Staff, Management, Commercial etc) does not constitute an exemption and is not in itself sufficient grounds on which to prevent disclosure. Each case must be considered on its merits.

Where information has previously been withheld, it must not be assumed that any subsequent requests for the same information will also be refused. **Sensitivity of information decreases with age** and the impact of any disclosure will be different depending on when the request is received. Therefore, for each request, it will be necessary to consider the harm that could result at the time of the request and, while taking into account any previous exemption applications, each case should be considered separately.

Advice is available from Legal Services about whether exemptions can be applied to the request for information. The case will be quickly reviewed to check for sound considerations of exemptions, reasons for refusal and the public interest test.

# Appendix 3

## 38. Charging policy- FOI/EIR (Information)

1. Information that is referred to in the publication scheme will be charged for as stated in the scheme. Most of this will be free and available for immediate access. The council is permitted to continue to charge for statutory or general information for which it has historically required payment.
  1. Where information will require 18 hours or less staff time to retrieve, extract and communicate to the requester, a fee will not be charged.
  2. If it will take more than 18 hours' staff time to retrieve, extract and communicate information to a requester then we will just reject the request.
  3. Photocopies may be charged for at 10p per sheet and postage at actual cost.
  4. Where datasets containing information are supplied, any fees charged will be in accordance with the Dataset Fees Regulations.

These fees and charges may be waived wholly or in part where appropriate, including on grounds of hardship.

