

Guidance for Dealing with Requests for Information under the Freedom of Information Act 2000 & Environmental Information Regulations 2004

1. INTRODUCTION

- 1.1. This document sets out guidance for South Kesteven District Council (“the Council”) officers for dealing with requests for information under the Freedom of Information Act 2000 (“the FOIA”) and The Environmental Information Regulations 2004 (“EIR”) collectively referred to in this policy as (“the Acts”). This guidance compliments the Council’s Data Protection Policy.
- 1.2. The Acts give general rights of access to recorded information held by public authorities, they set out exemptions in the case of FOIA and exceptions in the case of EIR, from that right of access and they place a number of obligations on public authorities including the Council.
- 1.3. There is an additional duty to adopt and maintain a publication scheme that details the classes of information that the Council will regularly publish. The publication scheme is regulated by the Information Commissioner who has wide powers to enforce the rights contained in the Act. The publication scheme can be found on the Council’s website. All information available through the publication scheme is exempt from the FOIA. Heads of service are responsible for ensuring that the Publication Scheme is up to date.

2. PURPOSE

- 2.1. The purpose of this guidance is to ensure compliance with the provisions of the Acts and other access to information legislation (see annex A and paragraph 4 below).
- 2.2. This guidance cannot be read in isolation and in producing this guidance regard has been given to the Lord Chancellor’s Code of Practice under section 45 of the FOIA which provides guidance on the practice to be followed in handling requests for information and Section 46 of FOIA on records management that assist the Council in complying with the duties imposed on public authorities by the FOIA. <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>
- 2.3. This guidance sets out the general principles that will be adopted by the Council in response to requests for information under the statutory access regimes.

3. AIMS

- 3.1. The aims of the guidance is to ensure compliance with the Acts and other access to information legislation and guidance, equality of access to information held by the Council, to promote greater openness, provide increased transparency and consistency in decision making and to build public trust and confidence.
- 3.2. These aims will be balanced against the need to ensure the confidentiality of some information relating to such areas as personal information, privacy, confidentiality and commercial sensitivity where disclosure would not be in the public interest.

4. ACCESS TO INFORMATION LEGISLATION

- 4.1. A list of statutory access regimes is found at **Annex 'A'**.
- 4.2. The FOIA, the Data Protection Act 1998 (“the DPA”) and the EIR provide rights of access to information with limited exemptions and exceptions. In effect, the three pieces of legislation work together, the EIR enabling access to environmental information, the DPA enabling access to personal information of which the applicant is the subject and the FOIA enabling access to all other information.
- 4.3. Any written request for information is technically an FOIA request in the first instance. However, if part or all of the information requested relates to environmental issues it cannot be dealt with under the FOIA regime and must be considered under the EIR. Environmental information is any information in written, visual, verbal, audio, electronic or any other material form on – the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements. If there is any doubt as to whether the request relates to environmental information Officers should seek guidance from the Legal and Democratic Service team.
- 4.4. If part or all of the information requested is personal information, where the applicant is the subject of that information, access to that information will be dealt with under the DPA.

5. REQUESTS FOR INFORMATION

- 5.1. All FOIA and EIR requests must be logged and monitored on the central database maintained by the Council’s Legal and Democratic Services Section.
- 5.2. On receipt of any request for information the Council will, within 10 working days, either provide the information or acknowledge receipt of the request. If the information requested cannot be provided within 10 working days, a reply must be sent no later than 20 working days after receiving the request. In the case of EIR we can extend the 20 day deadline to 40 days if the request is lengthy or

complex. Each Section Information Coordinator (SIC) (see paragraph 13.5) must refer all requests to the Legal & Democratic Service section to log, co-ordinate a response and ensure response deadlines are met within their section and copy a response to the Legal & Democratic Services section to log.

5.3. The reply to the request should either;

5.3.1. provide the information that has been requested, or

5.3.2. Confirm or deny whether the Council holds the information.

5.4. Where the information requested is held by another public authority the Council will assist a person making a request so that they can access the information from the other authority.

5.6 If the information is held by the Council but is not provided, the reply should explain why not, quoting a statutory exemption or exception and the reasoning for applying it (see paragraph 10 and 11) If confirming or denying will itself provide information which is exempt, then the Council does not have to confirm or deny that it holds information.

5.7 When responding to any request for information the Council will notify the applicant of the right to complain if they are not satisfied with the response. In the first instance an appropriate officer of the Council will conduct an internal review in accordance with Paragraph 12. The applicant will be informed of their right to complain to the information commissioner if the applicant is not satisfied with an internal review.

6. FEES AND CHARGES

6.1. The Council ability to charge fees for responding to requests for information is limited by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).

6.2. Where a request would cost us less than £450 or would take us less than 2.5 days, (18 hours @ £25 per hour-the appropriate limit laid down by government) to satisfy, we are not permitted to charge except for the cost of actually supplying the information. In calculating whether the appropriate limit has been met we are entitled to take into consideration the time involved in:

6.2.1. determining whether we hold the information requested;

6.2.2. locating the information or documents containing the information;

6.2.3. retrieving such information or documents; and

6.2.4. extracting the information from the document containing it, including any necessary editing.

7. REQUESTS FOR PERSONAL INFORMATION UNDER THE DPA.

7.1. The Council reserves the right to charge for these requests and will let you know if we intend to do so. The maximum we can charge is £10, and this includes any photocopying we need to do.

8. REQUESTS FOR INFORMATION UNDER THE EIR.

8.1. Under the EIR the Council can charge a reasonable amount for making environmental information available but the Council shall not charge for allowing an applicant to access any public register or lists of environmental information or to examine the information requested at the place where the Council makes available for that examination.

8.2. If the Council feels the request is particularly large or complex, we may refuse to comply with that request. In those circumstances the Council should tell the requester that we are refusing and provide further guidance which may help the requester reduce the size of their request.

9. OPPORTUNITY TO INSPECT

9.1. If there is a large amount of information in connection with a request, or if the Council feels the requester would benefit from viewing this on site, where Council staff will be able to provide advice, we will offer the requester the chance to make an appointment to view the information.

10. EXEMPTIONS (FOIA) & EXCEPTIONS (EIR) AND THE PUBLIC INTEREST

10.1 The Council recognises the presumption of disclosure within the Acts. Whilst the Acts provide for the right of access to information held, they also afford a number of exemptions in the case of FOIA and exceptions in the case of EIR (see **Annex B**), from this right in order to permit public authorities to withhold some or all of the information requested where a justifiable reason exists.

10.2 The exemptions fall into two categories:

10.2.1 Absolute exemptions where the Council may withhold the information without considering any public interest arguments and;

10.2.2 Qualified exemptions where an exemption applies to the information but the Council must consider whether the public interest in maintaining the exemption is greater than that in confirming or denying the existence of the information requested and providing the information to the applicant.

10.3 In respect of the absolute exemptions, the Council does not have to confirm or deny that it holds the information if to do so would in itself provide exempt information.

10.4 In respect of qualified exemptions, the Council's exemption's panel (see paragraph 11) will decide if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.3 The EIR sets out various exceptions allowing public authorities to refuse to disclose environmental information. However, all the exceptions in the EIR are subject to a public interest test.

11. EXEMPTIONS PANEL

11.1 Where the officer dealing with the request for information believes an exemption under the FOIA or an exception under the EIR may apply (see **Annex B**) they must pass the information to the Exemption Panel that sits within the Council's Legal and Democratic Services section. The Panel shall consist of no less than two lawyers who will discuss the exemption, exception or any public interest test that may apply with the officer. If the Panel considers that the exemption or exception does not apply or the public interest does not outweigh the duty to disclose, the request will be returned to the relevant officer with a direction to respond to the applicant.

12. APPEALS

12.1 An applicant who is refused information has the right to request an internal review of the decision. The appropriate officer [Strategic Director Corporate Focus] with responsibility for conducting internal reviews will conduct the review and respond to the applicant promptly and no later than 40 working days after the request for a review is received.

13. ROLES AND RESPONSIBILITIES

13.1. **The Management Team** - The Management Team will monitor and review the performance of the Council in dealing with its responsibilities under the Act to assess the efficiency and effectiveness of information management, to demonstrate value and accountability and to ensure that the Council's information management procedures are fit for the statutory purpose.

13.2. **Strategic Director Corporate Focus** – The Strategic Director of Corporate Focus is responsible for overall management of information for South Kesteven District Council and is the appropriate officer to conduct internal reviews of refusals to supply information.

13.3. **The Monitoring Officer** – is authorized in all cases to act as the qualified person for the purposes of the S36 “conduct of public affairs exemption”.

13.4. **Executive Managers** – have responsibility for:

- 13.4.1. Appointing and ensuring training is provided for Section Information Coordinators to administer requests within their sections.
 - 13.4.2. Keeping records management systems in place and up to date
 - 13.4.3. Ensuring staff are appropriately trained and are aware of the Council's duties under the Acts.
 - 13.4.4. Making sure applicants receive responses to requests relating to their respective sections within the 20 working day deadline.
 - 13.4.5. Informing the Monitoring Officer of changes to the publication scheme which affect their sections.
 - 13.4.6. To periodically report compliance to the Management Team to enable them to monitor and review performance of information management.
- 13.5. **Section Information Coordinators** - The Section Information Co-ordinator will have an important role as a source of information and advice for their colleagues on all information matters. They will advise their colleagues on whether a request for information will need to be dealt with under the Act. They are responsible for referring matters to the exemption panel where their section refuses to supply information. They are responsible for informing the Legal Services Section as soon as practicable after they receive a request so it can be logged on the central database. A section Information role description is attached at **Annex, 'C'**.
- 13.6. **Individual members of staff** – have responsibility for:
- 13.6.1. Knowing their duties relating to requests for information ;
 - 13.6.2. Making sure that, when they are absent from work for any reason, arrangements are in place for their post and electronic mail to be checked or redirected to someone who can deal with it promptly;
 - 13.6.3. Responding to requests for information and, if they are unwilling or unable to do so, referring the request to their manager or Head of Service;
 - 13.6.4. Seeking advice when they are uncertain on how to respond to a request.
- 13.7. **Individual Councillors** – have responsibility for:
- 13.7.1. Knowing their duties under the Act;
 - 13.7.2. Responding to requests for information and, if they are unwilling or unable to do so, referring the request to the Monitoring Officer or relevant Head of Service;
 - 13.7.3. Seeking advice when they are uncertain on how to respond to a request.
 - 13.7.4. Members who also hold office (e.g. Leader/Deputy, portfolio holders, chairmen of committee or scrutiny panel, etc) will keep the Chief Executive and Monitoring Officer informed of all correspondence relating to their particular office.

14. **CONTRACTS AND THIRD PARTIES**

- 14.1 When entering into contracts the Council should refuse to include contractual terms which purport to restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act. The Council cannot “contract out” its obligations under the Act. Unless an exemption provided for under the Act is

applicable in relation to any particular information, the Council will; be obliged to disclose that information in response to a request, regardless of the terms of any contract.

- 14.2 When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. The Council should reject such clauses wherever possible. Where exceptionally, it is necessary to include non-disclosure provisions in a contract, an option could be to agree with the contractor a schedule of the contract that clearly identifies information, which should not be disclosed. However, the Council will need to take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for, could potentially be overtaken by its obligations under the Act, as described in the paragraph above.
- 14.3 In any event, the Council should not agree to hold information “in confidence” which is not in fact confidential in nature. It should be aware that the exemption provided for in the Act only applies if information has been obtained by the Council from another person, and the disclosure of the information to the public, other than under the Act, would constitute a breach of confidence actionable by that, or any other, person.
- 14.4 Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.
- 14.5 It is for the Council to disclose information pursuant to the Act, and not the non-public authority contractor. However, the Council may wish to protect from disclosure by the contractor, by appropriate contractual terms, information which it has provided to the contractor, which would clearly be exempt from disclosure under the Act. In order to avoid unnecessary secrecy, any such constraints should be drawn as narrow as possible, and according to the individual circumstances of the case. Apart from such cases, the Council should not impose terms of secrecy on contractors.
- 14.6 The Act empowers the Lord Chancellor to designate, as public authorities for the purposes of the Act, persons (or bodies) that provide under a contract made with a public authority, any service whose provision is a function of that authority. Thus, some non-public authority contractors will be regarded as public authorities within the meaning of the Act, although only in respect of the services provided under the specified contract. As such, and to that extent

15. CONTACTS

- 15.1. Any enquiries about this Guidance or for more details on the Freedom of Information or the Publication Scheme should be directed to:

Business Manager - Legal & Democratic Service
South Kesteven District Council
Council Offices
St. Peter's Hill
Grantham
Lincolnshire
NG31 6PZ

END

Annexes

Annex A

List of access to information legislation

- The Freedom of Information Act 2000
- The Data Protection Act 1998
- Local Government Act 1972
- Local Government (Access to Information) Act 1985
- Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012
- The Environmental Information Regulations 2004
- Audit Commission Act 1998

Annex B

Information about Exemptions under the FOIA.

The Exemptions are as follows:-

Absolute Exemptions

- Sec 21 Information accessible to applicant by other means
- Sec 23 Information supplied by, or relating to bodies dealing with security
- Sec 32 Court records
- Sec 34 Parliamentary privilege
- Sec 41 Information provided in confidence
- Sec 44 Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court
- Partly Absolute Exemptions
- Sec 36 Prejudice to effective conduct of public affairs (Applies only to information held by House of Commons or House of Lords otherwise public interest test)
- Sec 40 Personal Information (absolute where the applicant is the subject of the information requested and they already have the right of 'subject access' under the Data Protection Act 1998. There is also an exemption if the information requested concerns a third party and disclosure by the Council would breach one of the Data Protection Principles)

Qualified Exemptions (Exemptions where the Public Interest Test Applies)

- Sec 22 Information intended for future publication
- Sec 24 National Security
- Sec 26 Defence
- Sec 27 International relations

- Sec 28 Relations within the United Kingdom (between any administrations in the UK)
- Sec 29 The economy
- Sec 30 Investigations and proceedings conducted by public authorities
- Sec 31 Law enforcement (applies to local authority regulatory functions)
- Sec 33 Audit functions
- Sec 35 Formulation of government policy
- Sec 37 Communications with the monarch and honours
- Sec 38 Health and safety
- Sec 39 Environmental information
- Sec 42 Legal professional privilege
- Sec 43 Commercial interest

Information about Exceptions under the EIR.

The Exceptions are as follows:-

- Reg. 12 (4) (a): the information is not held when the request is received
- Reg. 12 (4) (b): the request is manifestly unreasonable
- Reg. 12 (4) (c): the request is formulated in too general a manner
- Reg. 12 (4) (d): the information is intended for future publication
- Reg. 12 (4) (e): the request involves the disclosure of internal communications
- Reg. 12 (5) (a): disclosure would adversely affect international relations, defence, national security or public safety
- Reg. 12 (5) (b): disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature
- Reg. 12 (5) (c): disclosure would adversely affect intellectual property rights
- Reg. 12 (5) (d): disclosure would adversely affect confidentiality of proceedings
- Reg. 12 (5) (e) disclosure would adversely affect commercial or industrial confidentiality
- Reg. 12 (5) (f): disclosure would adversely affect the interests of the person or organisation who provided the information
- Reg. 12 (5) (g): disclosure would adversely affect environmental protection
- Reg. 13: personal data

Annex C

Section Information Coordinator Role Description

The section information coordinator:

- Acts as first point of contact for information requests within the section.
- Recognises and understands the information flows within the section and is able to locate records and files.

- Recognises and understands the implications of a request for information under the Freedom of Information Act, the Data Protection Act, the Environmental Information Regulations and associated legislation.
- Develops an understanding within the section of Freedom of Information Act policy and its implications for records management.
- Develops an understanding within the section of the use of exemptions under the FOIA and exceptions under the EIR.
- Assists his/her line manager in monitoring the SKDC Publication Scheme from a section perspective.

The role will require the post holder to have a broad understanding of the Council's Customer Relationship Management and Content Management systems. A basic understanding of Internet Explorer, Adobe Acrobat and scanning will be needed.

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