



Winchester
City Council



ACCESS TO INFORMATION POLICY



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1. INTRODUCTION

This policy supports the legislative framework for responding to requests for information under the statutory access regimes of the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA), the Environmental Information Regulations 2004 (EIR) and any other legislation that provides a right of access.

As a result of the changes effective from 1 January 2005 there will be a presumption in favour of disclosure to promote a transparent, open and accountable Local Government. Although the Council has traditionally been open about the way it operates and endeavours to supply information wherever possible there will now be a requirement to ensure that this level of openness is maintained and enhanced.

2. PURPOSE

The purpose of this policy is to ensure compliance with the provisions of FOIA, EIR and other access regimes with effect from 1 January 2005. The Council will also ensure compliance with the DPA, which provides for the protection of personal information held by the Council.

This policy should not be read in isolation and regard should be had to the Lord Chancellor's Code of Practice under section 45 of FOIA which provides guidance on the practice to be followed in handling requests for information. The Council further recognises that although it is not legally binding, failure to comply with the Code may lead to failure to comply with the Act. Similarly, the Council recognises that the Lord Chancellor's Code of Practice under Section 46 of FOIA on records management will assist the Council in complying with the duties imposed on public authorities by FOIA.

3. AIMS

The aims of the policy are to ensure access to information held by the Council in order to promote greater openness, provide increased transparency of decision making and to build public trust and confidence. These aims will be balanced against the need to ensure the confidentiality of some information relating to such areas as personal privacy, confidentiality and commercial sensitivity where disclosure would not be in the public interest.

4. KEY REQUIREMENTS AND COMMITMENT TO ACCESS TO INFORMATION

Winchester City Council is committed to openness about the way in which it operates and makes decisions, and will favour disclosure of information where possible. This policy sets out the general principles that will be adopted by the Council in response to requests for information under all statutory access regimes.

5. ROLES AND RESPONSIBILITIES

This policy is endorsed by Cabinet. The City Secretary and Solicitor has overall responsibility for access to information and amendments to the policy. The City Secretary and Solicitor who is also the Council's Data Protection Officer and Monitoring Officer will take the lead role and be responsible for the provision of advice and guidance on FOIA, EIR and DPA. He will also be responsible for decision making, in particular in relation to any refusal of requests for information.



Directors will be responsible for ensuring operational compliance with this policy within their own departments and for routine requests where information is released in accordance with a request, whether written or otherwise.

Directorate representatives will receive additional training and will be responsible for providing guidance to staff throughout their directorates on access to information. They will also be a contact point for the public in dealing with non-routine requests for information. The most complex requests will be directed to a named Legal Officer – currently Fiona Sutherland (Telephone 01962 848513; email - fsutherland@winchester.gov.uk)

All Officers will have responsibility for ensuring that requests for information are dealt with in accordance with this policy.

Complaints received in connection with access to information will be handled in accordance with the Council's Complaints Procedure.

6. STATUTORY ACCESS REGIMES

Access to information is principally governed by the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Data Protection Act 1998. They all provide rights of access to information with limited 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.

Any written request for information is technically an FOIA request in the first instance. Section 39 of the FOIA then exempts environmental information from being dealt with under the Act and provides that it should be dealt with under EIR (see Appendix D).

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.

The Council has produced a Publication Scheme as required by the FOIA, approved by Cabinet and the Information Commissioner in December 2002. The Scheme sets out the classes of information already available to the public, details of how the information can be obtained, its location and whether there is a charge for providing the information. All information available through the Publication Scheme is exempt from the FOIA. The Scheme is kept under review so that any new classes of information to be made available to the public are included.

The FOIA allows anyone (including organisations) to request information from the Council after the 1 January 2005 regardless of their identity, location or motive. Any information held by the Council is eligible for release. However, a limited number of exemptions (see Appendix B) may be applied to protect some categories of information. The Act requires that all requests must be in writing (to include faxes and e-mails), must state clearly what information is required and must provide the name of the person making the request with an address for correspondence. The EIR slightly differ in that a verbal request may be made.

All FOIA and EIR requests should be logged and monitored on the database maintained within each Department.

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.



The reply to the request should either

- provide the information that has been requested, or
- confirm or deny whether the Council holds the information.

If the information is held by the Council but is not provided, the reply should explain why not, quoting a statutory exemption and the reasoning behind it. 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.

If the request does not provide enough information for the Council to locate the information, the Council can ask for further details. The Council is under a duty to advise and assist the applicant and therefore will provide reasonable assistance to enable the request to be properly made.

If information requested is contained within the Publication Scheme, it is exempt from the FOIA requirements. In practice, this means that the applicant should be provided with the information in accordance with the Scheme. Most of the information available through the Publication Scheme is available on the web-site (at www.winchester.gov.uk) or a paper copy can be provided on payment of a photocopying charge.

If the information requested is not contained within the Publication Scheme, the Council may charge a fee as laid down in Regulations (Appendix C). At the time of approving this Policy, the Fee Regulations have not been laid before Parliament. The draft Regulations anticipate that most FOIA requests will not attract a fee. If however a fee is due but is not paid, the Council can refuse to supply the information.

A request for information may only be refused if an exemption under FOIA applies. If information is refused, a Refusal Notice will be issued by the City Secretary and Solicitor giving reasons for the refusal and setting out details of what to do if the recipient of the Notice is not satisfied with the way the Council has dealt with the request.

7. ADVICE AND ASSISTANCE

The Local Authority has a duty to provide advice and assistance to applicants under Section 16 of the FOIA and under the provisions of the EIR so far as it would be reasonable to expect the Authority to do so.

The Council's procedure for dealing with requests for information will be available on the website at www.winchester.gov.uk. Advice and assistance by telephone can be obtained by contacting the Department where the information is likely to be held. These procedures outline the Council's processes for dealing with requests for information including the transfer of requests to another authority and consultation with third parties (see page 8) and access under DPA.



Any queries regarding this policy or access to information within the Council should be directed to:-

Fiona Sutherland
Solicitor
Winchester City Council
City Offices
Colebrook Street
Winchester
Hants SO23 9LJ

E-mail: fsutherland@winchester.gov.uk
Tel no: 01962 848513
Fax no: 01962 848555

8. A FORMAL REQUEST FOR INFORMATION

Winchester City Council provides a wide range of information routinely and will continue to do so with only certain requests being treated formally under FOIA, EIR or DPA. Appendix A provides clarification as to which requests will be treated as a formal request for information under FOIA. The FOIA requires that a request for information must be made in writing, which may include a request transmitted by electronic means, providing it is received in a legible form and is capable of being used for subsequent reference. However the EIR allow a request for information to be made verbally. If a person is unable to articulate their request in writing the Council will provide advice to help them make their request. In addition:

- they may wish to consult another person or agency such as the Citizens' Advice Bureau or a solicitor who may be able to assist them with their application or make the application on their behalf;
- they can contact the officer named on page 5 who may provide appropriate assistance;
- in exceptional circumstances the Council may offer to take a note of the application over the telephone and send a note to the applicant for confirmation which once verified by the applicant and returned, would constitute a written request for information.
- they may apply online using the Council's online application form or by requesting an application form to be sent to them. This may assist the applicant in framing their request.

The Council fully supports the principles of FOIA and will seek to comply fully with the Act. However, if the information requested is not described in a way which would enable the Council to identify and locate it, or the request is ambiguous, the Council will seek clarification and the 20 working day request period may be put on hold. The Council will provide reasonable assistance to help the applicant to clarify the nature of the information sought and contact will be made to clarify the request at the earliest opportunity. The Council will not require the applicant to provide reasons for requesting the information as this is irrelevant to the decision. Often however, if reasons are provided, it can assist staff to process the request more easily.

Whilst the Council will make every effort to provide assistance to enable the applicant to submit a successful request, if they still fail to provide enough detail to enable the



information to be identified and located, the obligation to comply with the request will end unless further information to enable the request to be determined is provided.

Under section 14 of FOIA, the Council is not obliged to comply with requests which are substantially similar to a request received from a person where a reasonable interval has not elapsed between the previous request and the current request. Nor is it obliged to comply with requests which are vexatious.

If the Council estimates that the cost of compliance would exceed the appropriate limit, as set out under regulations made under Section 12(3) of FOIA (See Appendix C), the Council is not obliged to comply with the request. However, on request, the Council may consider on a discretionary basis what information could be provided within the appropriate limit.

9. REQUEST FOR INFORMATION AS PART OF AN ORGANISED CAMPAIGN

Where the cost of compliance of providing the information to a number of related requests exceeds the cost threshold limit described in the fees regulations, the Council will not be obliged to comply with the request. However, the Council may, on a discretionary basis, be prepared to offer assistance as to what could be disclosed in a more cost effective manner. It will be a matter for the Council to determine whether the various requests are related and part of an organised campaign.

10. PROMPT REPLIES TO REQUESTS

The Council is required to comply with all requests for information promptly and no later than the 20th working day following receipt. The Council does not expect every application for information to take 20 working days and will, where possible, provide information at the earliest opportunity from the date of the request. Requests for personal information under the DPA will continue to be dealt with within 40 calendar days.

If the Council is considering applying an exemption which is accompanied by a public interest test under the FOIA, the Council may need more than 20 working days. If so, the Council will notify the applicant in writing that the request for information engages the public interest test and will provide an estimate of a date by which it expects to reach a decision. The estimate will be reasonable in the circumstances of the particular case, taking account of such things as the need to consult third parties. If the estimate given proves to be unrealistic the Council will notify the applicant at the earliest opportunity giving a new realistic estimate of when the decision will be issued.

11. CHARGING FEES

The Council may charge applicants a fee in accordance with the fees regulations made under sections 9, 12 and 13 of FOIA. The maximum fee that may be charged for production of the information requested is calculated in accordance with the Fee Regulation Order 2005 (See Appendix C).

Under EIR a charge can be made provided that it does not exceed the costs reasonably attributable to the supply of the information. The Council will ensure that charges are based on the costs of retrieval and production of the information and in any case will calculate and advise the applicant of any fee due before the request is met. Any fees will be based on the officer time spent in retrieving the information (but excluding the time spent in deciding whether the information should be made available), plus any expenses in providing the information, such as photocopying.



The Fee Regulations do not apply to information available under the Council's Publication Scheme, to information which is reasonably accessible to the applicant by other means (Section 21 of FOIA) or where provision is made in other legislation as to the fee that may be charged by the Council for providing the information. Data Protection Subject Access requests will continue to be charged at the statutory £10 fee.

The Council may also charge a fee in meeting a non-statutory request. For example where a member of the public makes a verbal request for information to be provided immediately there may be a photocopying charge. This is likely to be the case in respect of much of the information held by Development Services.

12. TRANSFERRING REQUESTS FOR INFORMATION TO ANOTHER PUBLIC AUTHORITY

If the Council receives a request for information which it does not hold, but knows is held by another public authority, it will provide as much assistance as possible to the applicant in transferring their request to the authority which holds the information. This may be by simply directing them to the appropriate public authority.

If the Council holds any of the information that has been requested it will treat that part of the request as an FOIA request and process it accordingly. At the earliest opportunity the Council will inform the applicant of the information it does not hold and provide reasonable assistance to enable them to locate it elsewhere.

If the applicant indicates to the Council that they do not object to the transfer of the request to the other public authority, the Council may transfer the request to the other authority direct. However the Council will notify the applicant if this is to be done.

All transfer of requests and contact with those who have requested information that is held by another public authority will be undertaken as soon as possible so that there is no undue delay. The time period for compliance with the request in respect of the part of information not held by Winchester City Council does not start until that request is received by the public authority that does hold it.

13. CONSULTATION WITH THIRD PARTIES

The Council recognises that disclosure of information may affect the legal rights of a third party. The Council recognises the importance of the Data Protection Act 1998 and the Human Rights Act 1998 and this policy is written in accordance with their terms. The Council further recognises that unless an exemption is provided for in the FOIA there will be a requirement to disclose that information in response to a request.

If the consent of a third party is required prior to disclosure of information, the Council will, at the earliest opportunity, seek to consult with that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practical.

The consultation may assist the Council in determining whether an exemption under the Act applies to the information requested, or the views of the third party may assist the Council in determining where the public interest lies under section 2 of FOIA. A third party's refusal to consent to disclosure of information does not necessarily mean that information will not be disclosed.

If the cost of consultation with the third party is disproportionate, consultation may not be undertaken. The Council will not undertake consultation if it does not intend to disclose the



information because of another exemption, or where the views of the third party would have no effect on the decision of the Council because no exemption applies.

14. INFORMATION PROVIDED IN CONFIDENCE

Information provided in confidence by a third party is exempt information under section 41 of FOIA if the disclosure of that information to the public would be an actionable breach of confidence by the person providing the information or any other person.

The Council will only accept information from third parties on a confidential basis if that information would not otherwise be provided to the Council to assist the delivery of the Council's functions.

The Council will not agree to hold information in confidence if it is not actually confidential in nature. If a person or organisation seeks to provide information in confidence they will be told if it cannot be treated confidentially. For example, a person who seeks to lodge a confidential objection to a planning application will be informed that objections are open to public inspection.

15. CONTRACTS

The Council will not include contractual terms, such as confidentiality clauses, which purport to restrict the disclosure of information held by the Council in relation to the contract beyond the exemptions in the FOIA. Unless an exemption under the Act applies in relation to any particular part of the contract, the Council will be obliged to disclose that information in response to a request regardless of the terms of any contract. Trade secrets are exempt information as is information which would prejudice the commercial interests of any person, including the Council. This exemption is subject to the public interest test i.e. whether the public interest in maintaining the exemption outweighs the public interest in disclosing it.

The Council will seek during the tendering process to discuss and agree with the contractor a schedule of information which the contractor wishes not to be disclosed. However even if such a schedule is included, the restrictions on disclosure may subsequently be overridden by obligations under the FOIA. Further, the public interest in releasing information may after passage of time, be in favour of disclosure.

If a non-public organisation contracts with the Council to provide a service that is a function of the Council then that organisation will be deemed to be part of the Council for the purposes of FOIA and, in relation to that service, will be subject to the terms of the FOIA.

16. REFUSAL OF REQUEST

If the Council relies on an exemption to refuse a request for information the applicant will be notified of the appropriate exemption and why it applies. Appendix B sets out the main exemptions likely to apply to information held by the Council. If the reasoning behind the exemption, or the exemption itself, would result in the disclosure of information which would itself be exempt, then the Council may not provide that reason.

If the Council decides that the public interest in maintaining the exemption outweighs the public interests in disclosure, then this will be stated in the refusal letter together with the public interest factors which have been considered and which form a material part of the decision.



The Council will maintain a central record for monitoring purposes of all information that has been withheld and will proactively audit decisions to ensure that such refusals are justified and reasonable. This central record will be held by the City Secretary and Solicitor. A record of information that is provided in response to a formal request will be maintained in the relevant Department.

17. COMPLAINTS

The Council has an internal complaints procedure. Any person who is unhappy with the way in which the Council has handled their request for information may use this procedure. The Information Commissioner is unlikely to investigate any complaint about the Council's handling of an information request unless the complaints procedure has been exhausted.

A complaint may be made about the Council's failure to release information in accordance with its Publication Scheme, about requests that have not been properly handled, or where there is dissatisfaction with the outcome of a request.

If, following a complaint, the decision is made to release information, this will be done as soon as is practicable and notification of intended disclosure, if it is not accompanied by the information requested, will be made at the earliest opportunity.

Details of the complaints procedure can be found on the web-site at www.winchester.gov.uk
Complaints about the way in which information requests are handled should be directed to:-

The Chief Executive
Winchester City Council
City Offices
Colebrook Street
Winchester
Hampshire SO23 9LJ.

If the decision to refuse disclosure is upheld or the internal complaints procedure is exhausted and the applicant is still dissatisfied, they will be made aware of their right to apply for a review to the Information Commissioner at:-

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

Tel No: 01625 545700
Fax No: 01625 545510



Appendix A

WHAT IS A REQUEST FOR INFORMATION?

The Council routinely provides information as part of its day to day functions. The new access regimes under Environmental Information Regulations, Freedom of Information Act and Data Protection Act are so broad that they cover much of what the Council does routinely.

Where possible requests for information will be dealt with in the normal course of business; however it is accepted that some requests will require a more formal approach. This guidance note sets out what the triggers will be for engaging the official process for dealing with requests for information under the above legislation.

The following will not, as a general rule, engage the formal process:

- If the information is reasonably accessible to the public by such means as it being published on the Internet, mentioned in the publication scheme, or readily available for inspection. This may include information leaflets, or published reports or general information on the internet;
- Information that is released as part of the Council's normal business process; the Council routinely provides information as part of their day to day processes (for example job application forms or information relating to case work). The new processes are not intended to replace existing business systems that are functioning adequately;
- Correspondence that is not a request for information;
- Requests that do not include a name and address for correspondence (or an email address).

It is important to recognise, at an early stage, when requests for information should be entered into the Council's system for managing requests. This is to ensure that the Council can comply with the request within the statutory time periods and to enable sufficient monitoring and auditing of the Council's compliance. It will be the responsibility of each Director to ensure that a database is set up to monitor and manage the progress of formal requests in their Department. The day to day responsibility for maintaining the database will lie with the appropriate Directorate representative. A central database of all refusals to supply information following a formal request will be maintained by the City Secretary and Solicitor.

Examples of types of requests which should be logged on Departmental databases are:

1. Written requests that consciously engage any or all of the information access regimes, for example, requests which specifically mention the right of access under an Act.
2. Requests which result in information being withheld for any reason under an exemption or exception from the right of access.
3. Requests that are not processed because the Council estimates the cost of compliance would exceed the appropriate limit.



4. Requests that are not processed because the Council considers the request to be vexatious or repeated.
5. Requests for information relating to information that is contained in a transferred public record which may include where information is held by another public authority either as author or as recipient.
6. Where the Council requires further information from the applicant in order to identify and locate the information requested.
7. Requests on which Council staff seek legal advice before responding.



Appendix B

EXEMPTIONS UNDER FOIA

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

The exemptions fall into two categories:

- those that are absolute exemptions where the Council may withhold the information without considering any public interest arguments, and
- those that are qualified i.e. that, although an exemption may apply to the information it will nevertheless have to be disclosed unless the public interest in withholding the information is greater than the public interest in releasing it.

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.

Absolute Exemptions

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

- Information which is reasonably accessible by another means, i.e. through the Council's Publication Scheme or via existing access regimes (*Section 21*)
- Court records (*Section 32*)
- Personal information relating to the person making the request. Such requests will continue to be dealt with under the Data Protection Act 1998 (*Section 40(1)*)
- Personal information about a third party where disclosure of that information would contravene the data protection principles contained in the Data Protection Act 1998 (*Section 40(2)*)
- Information provided in confidence – this exemption only applies to information where disclosure would result in an actionable breach of confidence (*Section 41*)
- Information that is prohibited from disclosure by law (*Section 44*)

Qualified Exemptions

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

- Information intended for future publication (*Section 22*)
- Investigations/proceedings conducted by public authorities (*Section 30*)
- Law enforcement (*Section 31*)
- Prejudice to the effective conduct of public affairs (*Section 36*)
- Health & Safety (*Section 38*)
- Environmental Information (*Section 39*)
- Personal information relating to a third party (*Section 40*) – save as mentioned above
- Legal professional privilege (*Section 42*)
- Commercial interest (*Section 43*)

A full list of the exemptions under the Act are available from the Information Commissioner's website at www.informationcommissioner.gov.uk

The Public Interest Test

The public interest test requires that information should be withheld under exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Further guidance on the application of exemptions and the public interest test can be found on the Council's intranet and website.



Appendix C

CHARGING FEES

In accordance with the Fees Regulation Order 2005 (Not yet available).



Appendix D

ENVIRONMENTAL INFORMATION REGULATIONS 2004

Where an access request is for Environmental Information it should be dealt with under the Environmental Information Regulations 2004 (EIR). There has been a public right of access to environmental information since 1992, however the regulations have been revised to take into account the Aarhus Convention and the EU Directive on Public Access to Environmental Information. The new regulations will come fully into effect on 1st January 2005 and are explicitly referred to within the Freedom of Information Act 2000.

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

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

Environmental Information is taken to mean information that relates to:

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

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