



**Neath Port Talbot  
Castell-nedd Port Talbot**  
County Borough Council Cyngor Bwrdeistref Sirol

## **PUTTING**

## **FREEDOM OF INFORMATION AND THE ENVIRONMENTAL INFORMATION REGULATIONS**

## **INTO EFFECT**

**March 2014**



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# **NEATH PORT TALBOT: PUTTING FREEDOM OF INFORMATION INTO EFFECT**

## **PART 1**

### **THE AUTHORITY'S POLICY ON FREEDOM OF INFORMATION AND ACCESS TO ENVIRONMENTAL INFORMATION**

#### **1. Purpose**

This Policy sets out the principles which underpin the Authority's approach to the promotion of open government and reinforces its commitment to open government.

#### **2. Status**

- 2.1 This Policy is not a legal document. It does not create rights nor override any legal statutory provisions which either require or prevent the disclosure of information.
- 2.2 This Policy applies to information held by Neath Port Talbot County Borough Council whether it is originated by the Authority or not.
- 2.3 Throughout this Policy references to the “Authority” are references to the Neath Port Talbot County Borough Council.

#### **3. Scope**

This Policy takes account of the key features of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 – including the categories of exempt information specified in the Act and the regulations respectively.

#### **4. Key features of the Freedom of Information Act 2000 and its implementation**

The Freedom of Information Act 2000:

- 4.1 Provides a general right of access to any recorded information (other than “Environmental Information”) which is held by a public authority and places two general duties on the public authority:
  - to confirm or deny that it holds the information requested, and
  - if it does hold the information to give the person requesting it access to it.

- 4.2 Provides that the above general duties are subject to exemptions – some of these being absolute exemptions (see Annex A) and some of them being exemptions which are subject to the public interest test (see 4.3 and annex B).
- 4.3 Establishes a “public interest test” in that in the case of those exemptions which are “Qualified Exemptions”, the public authority will be under a duty to assess whether the “public interest” in maintaining the exemption outweighs the “public interest” in disclosing the information.
- 4.4 Provides that apart from the exemption tests referred to above, public authorities may refuse to confirm or deny holding information and/or to give access to it on grounds of non-payment of any fee or where the applicant has not provided sufficient detail to identify the information required.
- 4.5 Requires public authorities to adopt, maintain, implement strictly and review regularly a publication scheme to be approved by the Information Commissioner (see 4.6 below). The scheme relates to the publication of information by the public authority and must specify:
- the classes of information which the public authority publishes or intends to publish;
  - the manner in which the information is, or is intended to be, published;
  - whether the material is, or is intended to be, available free of charge or on payment of a fee.
- 4.6 Establishes the office of the Information Commissioner whose duties will include the promotion of the observance of the requirements of the Freedom of Information Act 2000 and the provisions of statutory codes of practice under that Act; the investigation of complaints about a public authority’s failure to comply with the statutory requirements of the Act; the promotion of good practice; the approval of public authorities publications schemes.
- 4.7 Allows public authorities to charge fees in accordance with fees regulations made by the Department For Constitutional Affairs and exempts public authorities from disclosing information until the fee has been paid.

- 4.8 Provides statutory time limits for complying with a request for information.
- 4.9 Requires public authorities to provide advice and assistance to persons requesting information.
- 4.10 Requires public authorities to state the basis for the refusal of a request for information and to provide advice on the complaints procedure where one exists.
- 4.11 Provides that public authorities are not obliged to comply with vexatious requests or with requests which are repeated, or substantially similar requests, from the same person.
- 4.12 Exempts public authorities from the obligation to disclose the information requested if the cost of doing so exceeds a specified threshold of £450.
- 4.13 Requires that requests for access to “Environmental Information” are dealt with in accordance with the provisions contained in the Environmental Information Regulations 2004.

## **5. Key Features of the Environmental Information Regulation 2004**

- 5.1 The Environmental Information Regulations 2004 require that a public authority which holds “Environmental Information” is obliged to make it available on request to an applicant, unless specific exceptions are available to an authority.
- 5.2 Requests for “Environmental Information” need not be made in writing (i.e. oral requests may be made for such information e.g. in person or by telephone).
- 5.3 “Environmental Information” for the purposes of the provisions contained in the Environmental Information Regulations 2004 is defined in those regulations as:-

“Any information in written, visual, aural, electronic or any other material form on:

  - (a) 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;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

- 5.4 The Regulations provide that requests must generally be responded to within 20 working days following the date of receipt.
- 5.5 The requirement to make Environmental Information available on request is subject to the right of public authorities to apply one or more of the 13 exceptions available to them under the regulations and to refuse to disclose information in reliance on the exception (s). The exceptions are set out in Annex C.
- 5.6 With the exception of the “Personal Data Exception” all of the exceptions in the regulations are subject to a public interest test. This means that a public authority may only rely upon an exception and refuse to disclose requested information “if in all the circumstances of the case, the public interest in maintaining

the exception outweighs the public interest in disclosing the information". (Regulation 12(1)(b)).

6. The Regulations permit public authorities to levy a charge for the provision of copies of requested information to applicants and exempts public authorities from providing such copies until the charge has been paid to the public authority.
7. Authorities are required by the regulations to provide advice and assistance, so far as it would be reasonable to expect them to do so to applicants and prospective applicants.
8. Where a public authority decides to refuse to disclose information which has been requested, it is required to state the basis for its refusal in a written response to the requestor [including its reasoning in respect of why the public interest does not justify disclosure]. It must also inform the applicant of his/her right to seek a review of the decision by the Authority through its internal review procedure for environmental information requests.

## **6. The Authority's approach to Freedom of Information and Open Government**

Notwithstanding the statutory requirements set out in the Freedom of Information Act 2000 and the Environmental Information Regulations, the Authority is committed to the following principles:

### **6.1 Principle 1: The Authority will be as open as possible.**

- 6.1.1 The Authority will endeavour to make information available unless there are legal or public interest reasons for not doing so.

### **6.2 Principle 2: The Authority will present its business in clear language, in line with its Welsh Language Scheme**

- 6.2.1 The Authority will endeavour to use plain language in its dealings with the public.
- 6.2.2 It will aim to produce brief, easy to read documents and avoid the use of small print.
- 6.2.3 It will produce documents in accordance with its Welsh Language Scheme.

**6.3 Principle 3: The Authority will publish information on the Internet**

- 6.3.1 The Authority's Internet site will include information on the services and functions carried out by the Authority.
- 6.3.2 The Authority will provide information on its Internet site in conformity with its Welsh Language Scheme.
- 6.3.3 The Internet site will provide search facilities, feedback and contact forms for further enquiries about the availability of information.

**6.4 Principle 4: The Authority will maintain a Freedom of Information Publication Scheme**

- 6.4.1 The Authority has produced a Publication Scheme in accordance with the requirements of the Freedom of Information Act 2000 which has been approved by the Information Commissioner.
- 6.4.2 The Publication Scheme is available for viewing on the Authority's Internet Website at [www.neath-porttalbot.gov.uk](http://www.neath-porttalbot.gov.uk).
- 6.4.3 Members of the public without Internet facilities may view the Scheme at any of the Authority's Civic Centres or in any of the Authority's Public Libraries.

**6.5 Principle 5: The Authority will have due regard to respect for personal privacy, commercial confidentiality, the duty of confidence and all legislation governing the release of information**

- 6.5.1 Before responding to a request for information which involves disclosing information relating to persons whose interests are likely to be affected by disclosure, the Authority will endeavour to consult those persons as appropriate.
- 6.5.2 Examples of legislation covered by this Principle include the Data Protection Act 1998 and the Human Rights Act 1998.

**6.6 Principle 6: The Authority will provide a prompt and comprehensive response to requests for information**

- 6.6.1 The Authority will endeavour to respond positively to requests for information. If it withholds information it will explain why.
- 6.6.2 If the Authority is not able to provide the information in the form or format preferred and requested by the requestor, it will explain why.
- 6.6.3 The Freedom of Information Act and the Environmental Information Regulations provide a statutory general deadline of 20 working days for responding to a request for information; they also provide that in certain circumstances this may be extended. The Authority will whenever possible (and subject to the circumstances set out in 6.6.4 below not applying) aim to respond to requests within the 20 working days in order to comply with the statutory requirements.
- 6.6.4 Where information is considered exempt under the provisions of the Freedom of Information Act or the Environmental Information Regulations and where the Authority is required to consider whether the public interest in disclosing the information is outweighed by the public interest in non-disclosure, the Authority will not be required to comply with the 20 working days target. In such a case it will keep the applicant informed of progress in reaching a decision on whether to disclose the information or maintain the exemption and give an estimate of the date by which it expects to reach such a decision.
- 6.6.5 Where clarification of the information requested by the requestor is required by the Authority, in order to process the request, the 20 working days time limit takes effect from the date on which the applicant provides the clarification. Where the Authority is prepared to provide information subject to the payment of its reasonable charges (see Principle 8), the 20 working days commitment takes effect from the date on which the applicant confirms that he/she wishes to proceed with the application and submits the necessary payment.

- 6.6.6 Requests for information received in Welsh will receive a response in Welsh. Where information is only available in documents which are compiled in the English language the requested information will be provided in English but under cover of a response in Welsh.
- 6.6.7 In dealing with a request for information, the Authority is not required to acquire information it does not possess. If it considers that another public body may hold the information sought, the person requesting the information will be advised that the information is not held by the Authority and that the request should be addressed to the other public body.
- 6.6.8 Where the Authority refuses to provide information, its written response will set out the reason(s) for its refusal, the statutory provision relied upon for that refusal and will include advice on the Authority's FOI/EIR Complaints Procedure (see Principle 7).

**6.7 Principle 7: The Authority will provide a right of complaint where there is dissatisfaction with the response given to a request**

- 6.7.1 Where the Authority refuses to provide any or all information requested, the notification given to the requestor will include details of the Authority's FOI/EIR Complaints Procedure for their information.
- 6.7.2 Any complaint received in accordance with the FOI/EIR Complaints Procedure will be investigated by the Authority's Monitoring Officer or, if instructed to do so by the Monitoring Officer, by the Principal Solicitor Litigation and/or the Legal Services Childcare Manager who shall have the power to uphold or dismiss the complaint.
- 6.7.3 If after pursuing the complaint through the complaints procedure the complainant is still dissatisfied with the Authority's stance he/she has the right to refer the matter to the Information Commissioner for investigation.

**6.8 Principle 8: The Authority will provide information subject to the payment of its reasonable charges incurred in supplying the information**

The Authority has a discretion under FOI and EIR respectively to charge for the cover price of any publications requested or the cost of photocopies of documents or prints from electronically held documents supplied to requestors. Accordingly, the Authority has decided that as a basis for charging for any copy documentation provided in response to requests for information, it will levy a copying charge on requestors in accordance with the following scale rates:-

1. 10 pence per A4 size black and white paper copy.
2. 20 pence per A3 size black and white paper copy.
3. 30 pence per A4 size colour paper copy.
4. 60 pence per A3 size colour paper copy.
5. Plans, Technical Drawings, Documents etc. which are larger than A3 size will incur a charge which equates to the actual costs incurred by the Authority in reproducing such copies for the requestor. Similarly copies of audiotape, video tape, electronic information and film footage will incur a charge equating to the actual costs of reproducing the same.

**6.9 Principle 9: Requests which exceed the £450 costs threshold of the FOI Act**

Due to the limited resources available to the Authority and the numerous public duties which it is required to fulfill, in accordance with the discretion available to it under Section 12 of the FOI Act 2000, the Authority will in respect to FOI requests (but not environmental information requests) decline to provide a requestor with information where the costs to the Authority in doing so would exceed the costs threshold of £450 [calculated in accordance with the statutory fees regulations]; unless the relevant Head of Service adjudges that there are exceptional circumstances justifying a deviation from this principle.

## **6.10 Principle 10: Providing advice and assistance**

The Authority will, as far as it is reasonable to do so, provide applicants and potential applicants for information with appropriate advice and assistance in making an application.

## **6.11 Principle 11: Records Management Policy**

The Authority will carry out its records management functions in accordance with its Corporate Records Management Policy, so as to ensure that the Authority's documentation and records are created, retained, managed and disposed of by officers in accordance with set corporate procedures.

## **PART TWO** **CODE OF PRACTICE** **ON DEALING WITH REQUESTS FOR INFORMATION UNDER** **THE FREEDOM ON INFORMATION ACT 2000 and** **THE ENVIRONMENTAL INFORMATION REGULATIONS 2004**

### **1. Introduction**

The aims of this code are :

- 1.1 Facilitate the disclosure of information under the Freedom of Information Act 2000 (hereinafter referred to as "FOI Act") and the Environmental Information Regulations 2004 (hereinafter referred to as the "Regulations") by setting out good administrative practice that it is desirable for officers to follow when handling requests for information,
- 1.2 Protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them,
- 1.3 Ensure that the interests of third parties who may be affected by any decision to disclose information are considered by the Authority by setting standards for consultation,
- 1.4 Ensure that officers consider the implications of Freedom of Information before agreeing to confidentiality provisions in contracts and accepting information in confidence from a third party more generally; and to

1.5 Ensure that any persons who consider that their request for information has not been properly handled, or who are otherwise dissatisfied with the outcome of the consideration of their request, may have the opportunity of recourse to the Authority's FOI/EIR Complaints Procedure.

## 2. Requests for information

- 2.1 As from the 1<sup>st</sup> January 2005, in accordance with the provisions of the FOI Act and the Regulations, the public, subject to a limited number of exemptions, have a right of access to any recorded information held by the Authority, regardless of the medium in which it is held (i.e. paper or electronic etc.).
- 2.2 Officers should note that the overlaying principle of the FOI Act and the Regulations are that ALL information held by the Authority is open to access by the public UNLESS any applicable exemptions justify the Authority in not disclosing it.
- 2.3 The right of access under the FOI Act will apply to any written request for information [other than "Environmental Information"] made by any person - this could be an individual or a legal entity such as a company, furthermore the person making it need not be resident in the United Kingdom.
- 2.4 Where information is "Environmental Information" (as defined in the Environmental Information Regulations 2004) a right of access to that information will apply to any oral or written request made by any person – this could be an individual or a legal entity such as a company, furthermore the person making it need not be resident in the United Kingdom. Requests may therefore be made orally to an authority during face to face meetings with any officer of the Authority or during telephone conversations with officers, or even as a voicemail message sent to the Authority.
- 2.5 The requestor need not give a reason for the request and the request does not need to state that it is made under the FOI Act or the Regulations. However, it can benefit both the requestor and the Authority if the reason behind the request can be explained in order to more accurately and quickly identify the information of most interest to the requestor.

## **2.6 The right of access**

- 2.6.1 The right of access to information actually consists of 2 rights which are:
- 2.6.1.1 (1) The right to be informed in writing by the Authority whether it holds the information specified in a request (the duty to “confirm or deny”) and
- 2.6.1.2 (2) If it does hold it, to have it communicated to him/her (the duty to “disclose”).
- 2.6.1.3 Officers should note however that if the Authority “discloses” the requested information to the applicant it will have complied with its duty to “confirm or deny” and there will be no further requirement to do so in writing.
- 2.6.2 Information which is subject to the duty to confirm or deny or which is to be communicated to an applicant pursuant to an FOI request is the information held by the public authority at the time when the request is received. Public authorities may amend or delete information after receipt of the request but before disclosing the information, provided that it is a routine amendment or deletion that would have been made regardless of the receipt of the request in accordance with the Authority’s Corporate Records Management Policy.
- 2.6.3 However, where the information requested is Environmental Information, which has been compiled by or on behalf of a public authority, there is a duty on a public authority when making the Environmental Information available to a requestor to ensure that so far as the Authority reasonably believes it is up to date and accurate; this means that if the Authority holds information at the date of receipt of a request the information supplied should in those circumstances be the information which is available at the date of the Authority’s response.
- 2.6.4 It is however a criminal offence for the Authority or an officer to alter, deface, block, erase, destroy or conceal any record held by the Authority once a request for information under either the FOI Act or the Regulations has been received, with the intention of preventing the disclosure of all or part of the information to which the applicant would have been entitled. Personal liability may arise for officers who do not follow Authority policy.

- 2.7 The right of access to information held by the Authority is totally retrospective. There is no exemption for old records: this effectively means that regardless of the age of the record, if the Authority has it, it will be potentially disclosable [subject to the availability of a relevant exemption being properly applied].
- 2.8 However, the Authority is not required to hold on to information for longer than is necessary for its purposes or otherwise required by law, simply because it may be the subject of a request at some time in the future. Officers should therefore ensure that all the Authority's information is effectively managed in accordance with the Authority's Corporate Records Management Policy.

## 2.9 **The application**

- 2.9.1 Under the FOI Act there is no formal application procedure, however requests for information do have to be made in writing.
- 2.9.2 Any written request for information must however:
  - (1) include a name and address to which a reply may be sent, and
  - (2) must give sufficient detail about the information required for officers to identify what information is required – where a request does not contain enough detail for officers to decide what information the applicant wants, they may require the applicant to provide clarification.
- 2.9.3 In contrast to the FOI Act, a request for “Environmental Information” does not need to be in writing. Staff should be aware that a request under the Regulations may be made at any time and in any form (e.g. by telephone, fax, e-mail). Also an applicant for Environmental Information does not need to provide their name or address, and may request information anonymously.

## 2.10 **Exemptions under the FOI Act**

The right of access to information is subject to a range of some 23 exemptions under the FOI Act, covering for example: investigations and legal proceedings, health and safety, information provided in

confidence, and commercial interests. Some of the exemptions are ‘Absolute’. Once an Authority decides that an “Absolute exemption” applies to information requested, it does not have to release it under the FOI Act, although discretionary release is still possible. A list of Absolute Exemptions is set out in Annex A for information.

- 2.11 In the case of all the other exemptions [known as “Qualified Exemptions”], once it is decided that one or more of them applies, the Authority must still release the information unless it judges that “the public interest in withholding the information is greater than the public interest in disclosure.”(the Public Interest Test). A list of Qualified Exemptions is set out in Annex B for information.
- 2.12 Most of the exemptions in the FOI Act include a provision under which the Authority is able to refuse to “confirm or deny” that it even holds the information requested, if letting the requester know that it holds the information would have the effect of disclosing any information which the exemption is designed to protect. Where such a provision is included in a “Qualified Exemption” then the “Public Interest Test” must be applied in deciding whether or not to “confirm or deny” that the information requested is held.

### **2.13 Exceptions under the Environmental Information Regulations**

The right of access to Environmental Information is subject to a range of 13 exemptions (known as “Exceptions”) under the Regulations. A list of the Exceptions are set out in Annex C.

- 2.14 Other than the Exception for the protection of “Personal Data of Third Parties” contained in Regulation 13, all the other Exceptions are subject to a public interest test. This means that Environmental Information may only be withheld where:-
  - (1) The Authority can satisfy the terms of the particular Exception and
  - (2) In all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- 2.15 It should be borne in mind that Regulation 12(2) explicitly provides a presumption in favour of disclosure. Therefore where a document contains some information which may lawfully be withheld, then all other information in that document should be released unless it is impossible to separate it from the withheld information.

## **2.16 Time limit for a response**

- 2.16.1 Normally the Authority must respond to a request for information under the FOI Act and the Regulations within 20 working days of the receipt of a request in order to comply with the statutory requirement.
- 2.16.2 However there may be instances where this time limit may be extended as set out in Clause 5 of this Guidance.

## **2.17 Fees**

- 2.17.1 When an Authority receives a request for information under the FOI Act or the Regulations it can, within the 20 day period for complying with the request, give the requestor a notice in writing stating the fee the public authority intends to charge for complying with the request. Unless the fee is paid the public authority is not obliged to comply with the request and the 20 day period stops running until it is paid.
- 2.17.2 Any fees will be charged in accordance with paragraph 6 of this Guidance.

## **2.18 Means of Communication of Response**

- 2.18.1 The applicant may express a preference for communication of the information by any one or more of the following means:
  - a copy of the information in permanent form or in another form acceptable to the applicant;
  - the provision of a reasonable opportunity to inspect a record containing the information; or
  - a digest or summary of the information in permanent form or in another form acceptable to the applicant.
- 2.18.2 An Authority must, as far as reasonably practicable, give effect to the applicant's stated preference. In deciding whether it is reasonably practicable to provide the applicant with the information in a particular form, the Authority may have regard to all the circumstances, including the cost. If it decides that it is not reasonably practicable to comply with

the applicant's preference, the Authority must explain its reasons to the applicant (in writing if so required by the Applicant) and inform him/her of the FOI/EIR Complaints Procedure.

- 2.18.3 Subject to the above, the Authority may communicate information by any means which are reasonable in the circumstances. What is reasonable must be judged on a case by case basis.

### 3. Who deals with requests for information

- 3.1 Technically, all requests for information made to the Authority will be requests for information under the FOI Act or the Regulations unless they are made under the Data Protection Act (in which case they will be dealt with in accordance with that legislation). However, in practical terms, it is envisaged that officers will be dealing with requests which essentially fall into one or other of the following 3 categories:
- Type A: A request for a straight forward piece of information, which does not require the consideration of applying an exemption because it is not a contentious issue for the Authority.  
e.g. A request to see a copy of a Traffic Management Order or a list of Council Tax Levels for the current financial year.
  - Type B: A request for information, the disclosure of which will require a consideration of whether or not the Authority should apply a relevant exemption and refuse disclosure of that information.
  - Cross-Directorate Requests:  
A request which consists of a request for information which is held by one or more Business Units and/or Directorates of the Authority (i.e. the information requested is held partly by one department and partly by one or more other departments).
- 3.2 In the case of all requests for information made under the FOI Act or the Regulations, the request should be forwarded, as soon as possible, to the Directorate FOI Co-ordinator for the Business Unit which substantially holds the information requested.

3.3 Once a request is received by the relevant Directorate FOI Co-ordinator for the Business Unit which holds the information requested, a record shall be made by the FOI Co-ordinator to record the date that the request was received by the Authority. This will assist in ensuring that requests are dealt with within the requisite 20 working day period for responding to requests. The FOI Co-ordinator will then arrange for the request to be dealt with on behalf of the Authority by the appropriate officers.

#### 3.4 **Type A Requests**

3.4.1 It is envisaged that Type A requests should be dealt with by any appropriate officer within a Business Unit who has as part of their duties the function of responding to such requests for that Business Unit.

#### 3.5 **Type B Requests**

3.5.1 In the case of Type B requests, officers within a Business Unit should refer the request to the Accountable Manager for that Unit for his/her consideration.

3.5.2 The Accountable Manager will be responsible for perusing the request and making an assessment of whether or not the information is of a type which can be readily disclosed. If he/she is of the opinion that there is no reason to give consideration to whether or not an exemption should be applied (i.e. disclosure of the information is appropriate) he/she may authorise the disclosure of the information requested.

3.5.3 If the Accountable Manager considers that the nature of the information is such that consideration needs to be given to whether or not an exemption should be applied to this particular information, he/she shall refer the matter to the Head of Service for the Business Unit (with any opinion thereon) for his/her decision on whether or not disclosure should be made.

3.5.4 Whenever a referral is made in accordance with paragraph 3.5.3 above, the Head of Service will be responsible for making and recording one of the following decisions:-

- (1) Disclosure will be made, or
- (2) An absolute exemption is applicable and disclosure is refused on the basis of that exemption, or

- (3) A qualified exemption applies and disclosure is refused on the basis that the public interest in non-disclosure outweighs the public interest in disclosure, or
- (4) Only part(s) of the information requested should be disclosed and the other part(s) should not be disclosed in accordance with decision(s) made under (2) and/or (3) above.

### **3.6 Cross-Directorate Requests**

- 3.6.1 If the request relates solely to information held within his/her Directorate the Co-ordinator will forward copies of it to each relevant Business Unit in that Directorate and will co-ordinate a joint response to the request on behalf of those Business Units. The Co-ordinator shall be responsible for ensuring that an appropriate response and/or disclosure is made to the requestor.
- 3.6.2 If the request also relates to Business Units in other Directorates the Directorate FOI Co-ordinator shall copy the request to the Co-ordinator in each of those Directorates. In such a case each of those Co-ordinators will be responsible for ensuring that their Business Units provide them with an appropriate response to any part of a request which relates to information held by that Unit. Once the Co-ordinator has received his Unit's response(s) he/she shall forward them to the FOI Co-ordinator who initially received the request. The FOI Co-ordinator who initially received the request shall then respond on behalf of the Authority to the requestor in respect of all parts of the request.

## **4. The provision of advice and assistance to persons making requests for information**

- 4.1 The Authority shall provide advice and assistance, including but not necessarily limited to the steps set out below, to those who propose to make, or have made requests to it, in order to facilitate their use of the FOI Act and the Regulations. The duty on the Authority is to provide advice and assistance “so far as it would be reasonable to expect the Authority to do so”.

- 4.2 Officers should bear in mind that not everyone will be aware of the provisions of the FOI Act or the Regulations and they will need to draw these to the attention of potential applicants who appear unaware of them.
- 4.3 A request for information under the FOI Act's general right of access must be made in writing (which includes a request transmitted by electronic means which is received in legible form and is capable of being used for subsequent reference). Where a person is unable to frame their request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, appropriate assistance might include advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf.
- 4.4 Where the applicant does not describe the information sought in a way which would enable the Authority to identify or locate it, or the request is ambiguous, the Authority should, as far as practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested. Officers should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest or that he or she will be treated differently if he or she does. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.
- 4.5 Under the Environmental Information Regulations an authority is required to provide advice and assistance, "so far as it would be reasonable to expect the authority to do so" to applicants and prospective applicants. Accordingly, where an authority decides that the applicant has formulated a request (whether orally or in writing) in too general a manner it shall:-
  - (1) Ask the applicant as soon as possible (and in any event within 20 working days) after receipt of the request to provide it with more particulars in relation to the request and
  - (2) Assist the applicant in providing those particulars.

- 4.6 Appropriate assistance under the FOI Act or the Regulations might include:
  - 4.6.1 providing an outline of the different kinds of information which might meet the terms of the request;
  - 4.6.2 providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the Authority;
  - 4.6.3 providing a general response to the request setting out options for further information which could be provided on request.
- 4.7 This list is not exhaustive, and officers should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.
- 4.8 In seeking to clarify what is sought officers should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the Authority for the use of applicants.
- 4.9 If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the Authority to identify and locate it, the Authority is not expected to seek further clarification. The Authority should disclose any information relating to the applicant which has been successfully identified and found for which it does not wish to claim an exemption. It should also explain to the applicant why it cannot take the request any further and provide details of the Authority's FOI/EIR complaints procedure.
- 4.10 Where the applicant indicates that he or she is not prepared to pay the charges notified in any notice given to the applicant, the Authority should consider whether there is any information that may be of interest to the applicant that is available free of charge.
- 4.11 Where the Authority is not obliged to comply with a request for information under the FOI Act because, under the FOI Fees Regulations, the cost of complying would exceed the “appropriate limit” (i.e. the present cost threshold of £450), the Authority should consider providing an indication of what information could be provided within the cost threshold to the requestor.

- 4.12 An Authority is not expected to provide assistance to applicants whose FOI requests are “vexatious” within the meaning of Section 14 of the FOI Act.

## 5. Time limits for dealing with requests

- 5.1 The FOI Act and the Regulations requires that requests should be responded to within the 20 working day period commencing from the date of receipt of the request by the Authority. However Authorities are required to comply with all requests for information promptly and they should not delay responding until the end of the 20 working day period if the information could reasonably have been provided earlier.
- 5.2 “Working Days” are defined as any days except Saturdays or Sundays or Bank Holidays.
- 5.3 In the case of FOI Act requests the Authority should aim to make **all** decisions within 20 working days, including in cases where the Authority needs to consider where the public interest lies in respect of an application where a “Qualified Exemption” may apply. However, it is recognised there will be some instances where it will not be possible to deal with such an application within 20 working days. Although there is no statutory time limit on the length of time the Authority may take to reach a decision where the public interest must be considered in respect to a “Qualified Exemption”, it must however give an estimate of the date by which it expects to reach such a decision. In these instances, officers are expected to give estimates which are realistic and reasonable in the circumstances of the particular case, taking account, for example, for the need to consult third parties where this is necessary. Public authorities are expected to comply with their estimates unless there are good reasons not to. If the Authority exceeds its estimate, it should apologise to the applicant and explain the reason(s) for the delay. If an officer finds, whilst considering the public interest, that the estimate given is proving unrealistic, he should keep the applicant informed. Officers should keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.
- 5.4 Where a request is received for Environmental Information under the Regulations, an authority may extend the period of 20 working days to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make

a decision to refuse to do so. Where an authority does this it must notify the requestor as soon as possible and no later than 20 working days after the date of the request.

## 6. Charging fees

- 6.1 The FOI Act gives the Authority a limited discretion to charge applicants a fee in accordance with the FOI Fees Regulations in respect of FOI requests.
- 6.2 The Authority therefore reserves its right to levy a fee for copying and transmission of the information supplied in response to requests, in accordance with the FOI Fees Regulations, where it is financially appropriate to do so. Accordingly, copying charges will be levied in accordance with the scale rates set out in Principle 8 of Part 1 of this document.
- 6.3 Officers should be aware that the FOI Fees Regulations do not apply:
  - 6.4.1 to material made available under our Publication Scheme or,
  - 6.4.2 where provision is made by or under any enactment as to the fee that may be charged by the public authority for disclosure of information under the enactment.
- 6.4 Officers should ensure that any charges they make in cases falling outside those covered by the FOI Fees Regulations are in accordance with any relevant legislation and are within the terms of any relevant guidance which has been issued or approved by HM Treasury and which is applicable to the Authority.
- 6.5 If the Authority makes “Environmental Information” available to an applicant, Regulation 8 of the Regulations states that the Authority may charge the applicant for providing the requested information. However, the Authority may not make a charge to the applicant for allowing him/her:-
  - (a) To access any public registers or lists of Environmental Information held by the Authority; or
  - (b) To examine the requested information at a place made available by the Authority for that purpose.

The Regulations state that where a charge is levied this “shall not exceed an amount which the public authority is satisfied is a reasonable amount”. Accordingly, officers should have regard to

current guidance emanating from the Information Commissioner at the time of a request when calculating any charge or prospective charge for dealing with that request and are reminded that charges for providing copies of information will be levied in accordance with the scale rates set out in Principle 8 of Part 1 of this document..

**7. A request for information which is held by another public authority [in whole or in part].**

- 7.1 The authority receiving the initial request must always process it in accordance with the FOI Act or the Regulations in respect of such information relating to the request as it holds. The Authority should also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. But before doing this, the Authority must be certain as to the extent of the information relating to the request which it holds itself.
- 7.2 If the Authority to whom the original request was made believes that some or all of the information requested is held by another public authority, officers should by way of assisting the applicant with his or her request.
  - 7.2.1 contact the applicant and inform him or her that the information requested may be held by another public authority;
  - 7.2.2 suggest that the applicant re-applies to the authority which the original authority believes holds the information; and
  - 7.2.3 provide him or her with contact details for that authority.

**8. Consultation with third parties**

- 8.1 In some cases the disclosure of information pursuant to a request under the FOI Act or the Regulations may affect the legal rights of a third party, for example where information is subject to the common law duty of confidence or where it constitutes “personal data” within the meaning of the Data Protection Act 1998 (“the DPA”).
- 8.2 Officers must always remember that unless an exemption provided for in the FOI Act or the Regulations applies in relation to any particular information, they will be obliged to disclose that information in response to a request.

- 8.3 Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and in the circumstances the disclosure of the information without their consent would constitute an actionable breach of confidence such that an exemption for confidential information would apply), the Authority should consult that third party with a view to seeking their consent to the disclosure; unless such a consultation is not practicable, for example because the third party cannot be located or because the costs of consulting them would be disproportionate.
- 8.4 Where information constitutes “personal data” within the meaning of the DPA, officers should have regard to Section 40 of the FOI Act or Regulation 13 of the Regulations respectively which make detailed provision for cases in which a request relates to such information.
- 8.5 Where the interests of the third party which may be affected by a disclosure do not give rise to legal rights, consultation may still be appropriate. For instance, consultation should take place where:
- 8.5.1 the views of the third party may assist the Authority to determine whether an exemption under the FOI Act or the Regulations applies to the information requested; or
  - 8.5.2 the views of the third party may assist the Authority to determine where the public interest lies.
- 8.6 The Authority may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases officers should consider what is the most reasonable course of action to take in light of the requirements of the FOI Act or the Regulations and the individual circumstances of the request.
- 8.7 Consultation will be unnecessary where:
- 8.7.1 the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the FOI Act or the Regulations respectively;
  - 8.7.2 the views of the third party can have no effect on the decision of the Authority, for example, where there is other legislation preventing or requiring the disclosure of this information;
  - 8.7.3 no exemption applies and so under the provisions of the FOI Act or the Regulations respectively, the information must be provided.

- 8.8 Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation which can express views on behalf of those parties the Authority may if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Authority may consider that it would be sufficient to consult a representative sample of the third parties in question.
- 8.9 Officers must recognise that the fact that the third party has not responded to consultation does not relieve the Authority of its duty to disclose information under the FOI Act or the Regulations respectively, or its duty to reply within the time limits.
- 8.10 In all cases, it is for the public authority, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the FOI Act or the Regulations respectively. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld from an applicant who has requested that information.

## 9. Public Sector Contracts

- 9.1 The Lord Chancellor's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOI Act makes it clear that when entering into contracts the Authority should refuse to include contractual terms which purport to restrict the disclosure of information held by the Authority and relating to the contract beyond the restrictions permitted by the FOI Act or the Regulations. It must be remembered that public authorities cannot "contract out" of their obligations under the FOI Act or the Regulations; unless an exemption provided for under the FOI Act or the Regulations is applicable in relation to any particular information, a public authority will be obliged to disclose that information in response to a request, regardless of the terms of any contract.
- 9.2 When entering into contracts with non-public authority contractors, the Authority 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 Authority 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 which clearly identifies information which should not be disclosed. However, officers will need to take care when drawing up any such

schedule, and be aware that any restrictions on disclosure provided for could still potentially be overridden by their obligations under the FOI Act or the Regulations.

- 9.3 In any event, the Authority should not agree to hold information ‘in confidence’ which is not in fact confidential in nature. Officers should be aware that the confidential information exemption under the FOI Act only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the Act would constitute a breach of confidence actionable by that, or any other person.
- 9.4 Any acceptance of confidentiality provisions in contracts must therefore be for good reasons and capable of being justified to the Information Commissioner if called upon to do so in the event of a requestor appealing to the Commissioner against a refusal of access to information.

## **10. Accepting information in confidence from third parties**

The Authority should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Authority’s functions and it would not otherwise be provided to the Authority by a third party. Again, acceptance of any confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

## **11. Refusal of a request for information**

- 11.1 Where a request for information is refused in reliance on an appropriate exemption, the FOI Act and the Regulations respectively require that the Authority notifies the applicant which exemption has been claimed, and if it would otherwise not be apparent, why that exemption applies. Authorities should not merely paraphrase the wording of the exemption. The Act also requires Authorities, when withholding information (other than under an “Absolute” exemption), to state the reasons for claiming that the public interest in maintaining the exemption outweighs the public interest in disclosure. Officer should specify the public interest factors (for and against disclosure) which they have taken into account before reaching their decision to apply an exemption.
- 11.2 For monitoring purposes the Lord Chancellor’s Code of Practice on dealing with FOI requests recommends that all Authorities should keep a record of all applications where either all or part of the

requested information is withheld. Such monitoring will assist the Authority in assessing the numbers of applications which are being refused and also assist in determining whether requests are being dealt with consistently by the Authority. Therefore, in those cases where Heads of Service determine that an application under the FOI Act or the Regulations should be refused or refused in part, they should send copies of the applications and their decisions to the FOI Co-ordinator for their Directorate.

- 11.3 The FOI Co-ordinator for each Directorate will be responsible for compiling and maintaining a register for his/her Directorate of those requests for information which have been refused in whole or in part: all copies of applications and decisions made, submitted to them in accordance with paragraph 11.2 above, shall be recorded in the register.
- 11.4 FOI Co-ordinators will meet from time to time with the Authority's Deputy Monitoring Officer to monitor how the Authority is responding to requests. Entries in their Directorate's register will be perused during these meetings to assist in monitoring the Authorities compliance with the FOI Act and the Regulations.

## 12. Complaints

- 12.1 The Authority will deal with complaints from persons who consider that their request has not been properly handled, or who are otherwise dissatisfied with the outcome of the consideration of their request, and where the issue is such that it cannot be resolved informally in discussion with the officer dealing with the request.
- 12.2 When communicating any decision made in relation to a request under the FOI Act or the Regulations, officers are obliged to notify the applicants of their right of complaint. They should provide details of the complaints procedure relating to FOI/EIR, including how to make a complaint and inform the applicant of the right to complain to the Information Commissioner if he or she is still dissatisfied following the Authority's review.
- 12.3 Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an Authority's response to a valid request for information should be treated as an FOI Act or Regulation complaint, as should any written communication from a person who perceives the Authority is not complying with its FOI Publication Scheme. These communications should be handled in accordance with the Authority's FOI/EIR Complaints Procedure (which is set out in paragraph 12.5 below).

12.4 The FOI/EIR complaints procedure is intended to be a fair and impartial means of dealing with handling problems and reviewing decisions taken pursuant to the FOI Act or the Regulations including decisions taken about where the public interest lies in respect of exempt information. It will be possible under the procedure to reverse or otherwise amend decisions previously taken

## 12.5 FOI Complaints Procedure

- 12.5.1 Under the FOI/EIR Complaints Procedure any person who is dissatisfied with a decision to refuse disclosure of information in response to an FOI Act or Regulation request, may submit a written request to review that decision: setting out therein the reasons why they perceive the decision should be overturned. This complaint should be addressed to the Authority's Monitoring Officer (hereinafter referred to as the "M.O.").
- 12.5.2 The complaint will be determined by the Monitoring Officer or, if instructed by him to do so, by the Principal Solicitor Litigation and/or the Legal Services Childcare Manager.
- 12.5.3 In all cases the M.O. will notify the complainant that he/she is now considering the complaint and inform the complainant of the M.O.'s target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case) the M.O. should inform the applicant and explain the reason for the delay. The complainant must always be informed of the outcome of his or her complaint within 10 working days of the M.O.'s decision.
- 12.5.4 Where the outcome of a complaint is that information should be disclosed which was previously withheld, the information in question shall be disclosed as soon as practicable and in any event within 20 working days of the decision to disclose being sent by the M.O. to the complainant.
- 12.5.5 Where the outcome of a complaint is that the procedures within the Authority have not been properly followed by the Authority's staff the M.O. shall apologise in writing to the

complainant on behalf of the Authority. In such circumstances the M.O. shall take appropriate steps to ensure that similar errors do not arise in the future.

- 12.5.6 Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the Authority's favour, the complainant shall be informed in writing by the M.O. of his or her right to appeal to the Information Commissioner, and shall be provided with the address of the Information Commissioner's Office for that purpose.
- 12.5.7 The M.O. shall file a copy of his/her decision in relation to the complaint on a FOI/EIR Complaint File, which is to be compiled and maintained by the M.O. In addition, the M.O. will forward a copy of the decision to the Co-ordinator for the Directorate that received the complaint so that it may be recorded on the Directorate's FOI/EIR Register.

#### **Annex A – Absolute Exemptions under the FOI Act**

1. Information accessible to the applicant by other means (Section 21).
2. Information supplied by or relating to bodies dealing with security matters (Section 23).
3. Court Records (Section 32).
4. Parliamentary Privilege (Section 34).
5. Personal information (Section 40).
6. Information provided in confidence (Section 41).
7. Legal prohibitions on disclosure (Section 44).

#### **Annex B – Qualified Exemptions under the FOI Act**

1. Information intended for future publication (Section 22).
2. National Security (Section 24).
3. National Defence (Section 26).
4. International relations (Section 27).
5. Relations within the United Kingdom (Section 28).
6. The Economy (Section 29).
7. Investigations and proceedings conducted by Public Authorities (Section 30).
8. Law Enforcement (Section 31).
9. Audit (Section 33).
10. Formulation of Government Policy (Section 35).
11. Prejudice to the effective conduct of Public Affairs (Section 36).

12. Communications with Her Majesty and Royal Household (Section 37).
13. Health and Safety (Section 38).
14. Environmental Information (Section 39).
15. Legal Professional Privilege (Section 42).
16. Commercial Interests (Section 43).

### **Annex C – Exceptions under the Environmental Information Regulations**

1. Authority does not hold the information (Regulation 12(4)(a))
2. Request is manifestly unreasonable (Regulation 12(4)(b))
3. Request is formulated in too general a manner (Regulation 12(4)(c))
4. Material in the course of completion, unfinished documents or incomplete data (Regulation 12(4)(d))
5. Disclosure of internal communications (Regulation 12(4)(e))
6. International relations, defence, national security or public safety (Regulation 12(5)(a))
7. The course of justice, ability to receive a fair trial or conduct of an inquiry of a disciplinary or criminal nature (Regulation 12(5)(b))
8. Intellectual Property Rights (Regulation 12(5)(c))
9. Confidentiality of the proceedings of a public authority (Regulation 12(5)(d))
10. Commercial Confidentiality (Regulation 12(5)(e))
11. Information supplied voluntarily by another person (Regulation 12(5)(f))
12. Protection of the Environment (Regulation 12(5)(g))
13. Protection of Personal Data (Regulation 13)