

**Freedom of Information Policy**  
**Including Environmental Information Regulations**

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## **1. Purpose**

This document sets the policy for the Parish Council with regard to its legal obligation to comply with the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations (EIR), in providing access to the public, staff, journalists and anybody else who wishes to see the Council's information. It also details the policy on the 'Re-use of public sector information' regulations (2005).

## **2. Introduction & definitions**

Within the context of FOIA, the term 'information' means every piece of information held by the Council, whether paper or electronic. It includes all draft documents, agendas, minutes, emails, diaries and even rough handwritten notes. There is overlap between FOIA and Data Protection Act (DPA), with regard to information relating to living individuals. Should responding to an FOIA request require disclosure of information relating to an individual then relevant areas of DPA must also be taken into account.

The FOIA makes it an offence to alter, deface, block, erase, destroy or conceal any record held by the Council, with the intention of preventing disclosure to all or part of the information that an applicant is entitled to.

Penalties can be imposed on both the Council and the Clerk for non-compliance with the FOIA.

The Clerk has a legal duty to preserve formal records on behalf of the Council, which must be accurate, adequately named and indexed for easy retrieval or publication. Poor record management itself is not an offence, but it may lead to an inability to comply with Freedom of Information requirements.

The regulations regarding 're-use' apply where the Council holds the intellectual property/copyright on the information and where re-use has been requested by a body that is not a public authority.

## **3. Clerk's responsibilities**

The Clerk is responsible for implementation of the policy. This responsibility includes:

- Setting out a process for responding to requests and monitoring performance.
- Facilitating the provision of education and awareness for members of the Council, ensuring that basic principles are part of Council's induction processes.
- Annual review of policy, process and code of practice (or more frequently if appropriate, with regard to changes in legislation or guidance from the Information Commissioner).
- Engaging expert advice and support on the application of exemptions.
- Developing the approach to publication and maintenance of the publication scheme.

The Clerk is responsible for advising the Council Chairman on responses to any request where concern is raised about the appropriateness of disclosure by Councillors whose work is relevant to the subject of the request.

#### **4. Publication Scheme**

Section 19 of the FOIA makes it a duty for every Public Authority to adopt and maintain a scheme relating to the publication of information by that authority, which is approved by the Information Commissioner. Requirements around publication schemes were updated in the summer of 2008. The Parish Council uses the 'approved' model issued by the Information Commissioners office in January 2009. The outline of the scheme is below:

The Clerk will be responsible for facilitating review of the scheme on at least an annual basis, seeking revised approval from the Information Commissioner's Office if classes are added or deleted from the scheme. The Publication Scheme will also state what sort of information is regarded as exempt, outlining the nature of the exemption applied.

#### **5. Request for information within the publication scheme**

If a request is received for information that comes under the scope of the publication scheme, the requestor will be directed to download the information from the Council website if actively published. Where the information is identified as available on request it will be provided in electronic format where possible or alternative format if requested. All such responses will be dealt with promptly and within 5 working days.

#### **6. Request to re-use information provided or available**

The regulations around re-use require organisations to publish details of information available for re-use. Information that the Council publishes as part of its publication scheme and website will be the list of information available for re-use. Any published document can be re-used without charge, provided the Council is quoted as the source and retains copyright where appropriate. This will be noted on the publication scheme. See example text in Appendix B.

Following the completion of a response to a request for information that is not covered by the publication scheme, consideration will be made as to whether this information should become part of the publication scheme. The Clerk will be responsible for informing the Information Commissioner of new classes of information added to the Council's scheme.

#### **7. Managing & defining requests.**

The Clerk will ensure that the Council has a full and efficient process for responding to requests received. This will include awareness for all members of how the Council will manage a request.

Members receiving requests for information should pass them to the Clerk. All requests will be logged and the response process and outcome documented.

All requests will be risk assessed by the Clerk upon receipt and copied to the Chairman. Any draft response to a request that has a risk rating of '9' or above at the time of preparation must be approved by a meeting of the Council.

Logs of requests and responses will be reviewed by the Clerk, at least annually, to see if any classes of information should be added to the Publication Scheme.

Any financial information to be provided in response to a request will be approved the Council.

The Council will endeavour to fulfil any request that meets the following criteria:

- is received in permanent form, such as in writing or email.
- contains the name and correspondence address for the applicant, or contact email address for response.
- includes sufficient information to enable the Council to identify the information requested.
- is a request for information that is not already published? Noting where a request is received for information already published, the requestor should be directed to it, or provided with a copy within 5 working days.
- for re-use requests, they must include the purpose for the request.

When the Council is in receipt of a request that fulfils the criteria above, it will respond within 20 working days or earlier if the process is complete.

The Council is under a duty to provide advice and assistance to making a request and will take all reasonable steps to advise anyone whose request does not fulfil the above criteria, what is required by the Council to progress their request. The timing for response does not commence until the Council has sufficient detail to consider its response. Any communications to clarify a request will be undertaken without unnecessary delay.

Where a request has been made, but the requestor has not asked to re-use the information, a standard response will be included to say that if they wish to re-use the information, then a separate request must be made (see Appendix B).

Where a request for re-use is received, a licence to re-use will generally be granted for re-use in line with the requested purpose. As appropriateness for re-use has to be determined, any request that does not identify the purpose of re-use will be queried with the requestor. Re-use licences will generally limit re-use to the requestor for the agreed purpose and no more.

Any requestor whose request is refused will be informed that they may make representation to the Council's complaints procedure.

### **7.1 Vexatious/repeat requests**

Should an applicant make 'vexatious' or 'repeated requests' for identical or substantially similar information, the Council will inform the applicant in writing, that they will not fulfil the request. When responding in this manner, the Council will offer assistance to the individual, by indicating why they consider the request is 'vexatious' or a 'repeat'. They will also indicate what recourse the applicant has if they are unhappy with this position (see section 9).

### **7.2 Exemptions & authority to release**

Within the process to compile the request, if there is a concern raised about release, consideration of the exemptions will be undertaken. Where the exemption is subject to a 'public interest' test (see section 8) the response time will be paused and a reasonable timeframe for the test to be carried out will be set. The requestor will be informed of this.

If an absolute exemption may apply this should be determined within the 20 working day period and communicated to the requestor.

Advice and guidance on the applications of exemptions will be sought from the Information Commissioner.

Where an exemption is applied, the draft response will be signed off by the Council Chairman or Vice Chairman and reported to the next meeting of the Council. The response will detail which exemptions have been applied and the reasons as to why. Documentation/communication records of the decision process will be kept.

### **7.3 Fees and re-use charges**

The Council may charge a fee for dealing with a request, in line with the

‘Appropriate Limit & Fees’ regulations 2007. Where the cost of the work to respond is estimated to be less than £450 then no fee can be charged.

Where the cost is in excess of this amount, the Council will correspond with the applicant either to reduce the requirement (and therefore cost) below the threshold or to agree a fee. If agreement cannot be reached on cost in such circumstances the Council may decide not to respond to the request.

If a fee is proposed, then the clock measuring the 20 days can be paused, between the date the applicant is notified and the date the fee is received. If this period is in excess of 3 months, then the request can be rejected. For example if a request is received and it takes 3 days to identify the cost and notify the applicant, then 3 of the 20 days have been used. When the fee is received, there are then 17 days remaining of the 20 in which to complete the response.

For re-use of information actively published, no charge will be raised.

Where information is requested for re-use that is not routinely published a reasonable charge will be applied. This will be applied on a cost recovery basis, of the costs to provide the information and up to 25% of the time costs spent on original creation. Any standard charging regimes set by North Somerset Council in the future will apply.

### **7.4 Requests known to be from the media or of potential media interest**

Whilst there will be no difference in the compilation of a response to a request from the media, on the basis that disclosure under FOI is considered to be disclosure to any member of the public, where the request is known to be from a journalist or the media or likely to be of media interest, the intended response will be copied to all Council Members, so they are aware of the media interest in the topic.

### **7.5 Information provided by other organisations**

If the response to a request contains information provided by another organisation, the Council will ensure that it is clear to the applicant where this information has come from, so that they can, if they require, raise a request to the source organisation.

In deciding whether to disclose information provided by another organisation in response to a request, the Council will apply the same process with regard to exemptions, and will if required involve staff from the source organisation in discussion about possible exemptions. If the response to a request is that the Council does not hold any relevant information, the Council will endeavour to direct the applicant to organisations who may hold the information they seek.

If there is a request to re-use information provided by another organisation, the requestor will be directed to the other organisation as they are likely to be the copyright holders.

## **7.6 Environmental Information Regulations (EIR) and public access to environmental information**

In respect of any information held by the Council that relates to the environment, the definition in the Environmental Information Regulations (2004) will apply. This includes (but is not limited to) any information about the impact on the elements (air, water etc), substances released into the environment, measures (including policies & plans) that might affect the environment and the state of human health & safety. This applies to information in written, visual, aural, electronic or any other material form.

In respect of requests and responses, the policy and procedure is the same, except for the following points of note:

- EIR requests do not have to be made in writing; they can be on the phone or in person. Where they are received in such a manner, they will be formally documented and then processed in the same way.
- Requests under EIR can be charged for at any time, provided the cost is reasonable and a schedule of charges is actively published. EIR requests cannot be refused on cost grounds alone. To date no EIR requests have been received, so the Council policy is not to charge. This can be reviewed if required at any time.
- Whilst the time limit for response is the same at 20 working days, it can be extended by 20 further days if the EIR request is complex and large.
- There are some differences in the 'exceptions' under EIR, when compared to the 'exemptions' in FOI. They are not listed here but are centrally available for consideration if the need arises.

## **8. Exemptions & the Public interest**

The FOIA sets out 23 exemptions to the general right of access to information. Some of these are 'absolute', but the majority are 'qualified' on the basis that, if the exemption can apply, a 'public interest' test must be undertaken to establish if the public interest is best served by disclosure or withholding the information. In terms of interpreting the legislation there is a general presumption that information should be disclosed unless the harm likely to arise from disclosure would outweigh the public interest in making the information available.

The Clerk is responsible for ensuring decision making about public interest tests is appropriately undertaken. This will be decided on a case by case basis, and will where necessary require applying the 'test' to multiple items of information in a request.

In compiling the response the Clerk will highlight to members that should they have any concerns about the release of the information they must raise them so they can be considered. Such concerns

must be documented during the process of compiling the response. This may well be via formal communication (email) between the Clerk and members. Where an exemption might apply, the Clerk will highlight to the members concerned if the exemption(s) are subject to the public interest and request they provide a reasoned argument why disclosure may not be in the public interest.

As the public interest test has to be objectively applied, it is not sufficient to document just the public interest in non-disclosure. The counter argument for disclosure must also be established and documented. The Clerk will facilitate the counter argument, where necessary engaging other members of the Council.

Where there is a clear case for either disclosure or withholding the information, it will be documented and appropriate response provided. If however it is not an easy case to decide upon, the arguments will be put a meeting of the Council for a decision to be made.

#### **9. Requests to review response – complaints about response**

The Council will ensure in any communications with applicants that they are informed they can lodge a formal complaint, in line with the Council's complaint procedure and/or appeal to the Information Commissioner's office, if they are unhappy at any time with the conduct of the Council in responding to their request.

Should the requestor ask for a review of the response, they will be asked to identify the factors they are unhappy with (if their correspondence does not already).

Where possible the review will be referred a member, who was not responsible for the original response, however it is recognised where there are limited resources this is not always possible. The Clerk will co-ordinate the review.

The review will reconsider the original request, the information identified as relevant and any decision-making process regarding release. The review will be fully documented and completed within 40 days of the receipt of the review request. If this deadline cannot be met, the requestor will be informed.

If the outcome of the review is that information previously withheld will be released, then this will be communicated to the requestor and provided within 20 working days at the latest.

Should the Council receive any notices served by the Information Commissioner it will make all endeavours to comply unless it feels the need to appeal to the Information Tribunal.

## **10. Freedom of & Data Protection – the overlap**

If an individual is seeking information about themselves, then it is exempt from Freedom of Information, but is covered by the 'subject access' provisions within the Data Protection Act.

If an individual is seeking information about other individuals, then this will be considered, but with reference to applicable exemptions such as 'Personal information' and 'information provided in confidence'. If disclosure would breach the principles of the Data Protection Act (1998) the information would be withheld.

Information about Council staff in their capacity as public servants, e.g responsibilities, grade, work contact details, are likely to be disclosable, however if the information would enable another individual to contact them (via work contact details etc) then the subject(s) will be informed prior to disclosure, in case they have any reasonable objection. In legislation terms a 'reasonable objection' has to be determined in whether it is in the public interest to disclose or withhold the information.

## **11. Contracts with other organisations**

All operational contracts the Council has will have a clause detailing that information may be disclosed under the terms of the FOIA and this Policy. For existing contracts, the clause will be inserted at the next review.

## **12. Code of practice**

This policy sets out requirements for a number of processes to be in place, such as response to requests and managing exemptions. Detail on these processes will be set out in a 'code of practice'. This will allow process to be changed as experience is gained, without the need for a revision of this policy document. Should significant change be encountered, then it will be the responsibility of the Clerk to determine whether this policy needs to be reviewed outside of the normal schedule.



## **Appendix A – Exemptions to Freedom of Information Act Requests:**

Exemptions where the public interest test applies:

- Information intended for future publication.
- National Security (other than information supplied by or relating to named security organisations, where the duty to consider public interest disclosure does not arise).
- Defence.
- International Relations.
- Relations with the United Kingdom.
- The Economy.
- Investigations & proceedings conducted by public authorities.
- Law enforcement.
- Audit Functions.
- Formulation of government policy, etc.
- Prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords).
- Communications with Her Majesty etc and Honours.
- Health & Safety.
- Environmental Information.
- Personal Information (the Trust is only required to consider release in the public interest: where the information concerns a third party and a 'Section 10 Notice' under the Data Protection Act 1998, applies to that information; where the information concerns a third party, who would not be entitled to access that information himself because a 'subject access exemption' applies to it under the Data Protection Act 1998).
- Legal professional privilege.
- Commercial interests.

### **The 'Absolute Exemptions'**

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

- Information accessible to applicant by other means (Therefore, all information accessible through a Publication Scheme will be covered by this exemption).
- Information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified). There is a separate appeals mechanism against such certificates.
- Court records, etc
- Personal information (where applicant is the subject of the information. The applicant already has the right of 'subject access' under the Data Protection Act 1998; where the information concerns a third party and if disclosed would likely to endanger the physical or mental health or safety of any individual. If disclosed would breach a duty of confidentiality owed to another)
- Information provided in confidence

- Parliamentary privilege (a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliaments, in respect of the House of Lords is conclusive proof that the exemption is justified).
- Prejudice to effect conduct of public affairs (only applies to information held by House of Commons or House of Lords).
- Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court

## **Appendix B – Example text on ‘re-use’**

FOI publication scheme – general re-use statement:

‘Information routinely published by this organisation may be re-used by any individual or organisation. There is no charge for re-use of routinely published information, but in line with the ‘re-use of public sector information regulations (2005)’, we ask that if you do re-use any information that you quote the document title and acknowledge that it was published by this organisation and remains our copyright.

If there is specific information you require that is not published, you may make a written request under the terms of the Freedom of Information Act 2000.’

FOI Request response – ‘re-use’ standard text:

‘If you wish to re-use the information you have requested, in whole or in part, please write to me stating the purpose(s) you wish to re-use the information for. We will respond within 20 working days of receiving your request with any conditions or charges that relate to the re-use of the information. These will be determined in line with the ‘Re-use of Public Sector Information Regulations 2005 (SI 2005 No. 1515).’