



**Mansfield  
District Council**

*Creating a District where  
People can Succeed*

**Freedom of Information Act 2000 (FOIA) and  
Environmental Information Regulations 2004 (EIR)  
Policy**

Mansfield District Council (August 2014)

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## **1. INTRODUCTION**

- 1.1 Legislation has turned the desire to know and need to know into a right to know. Individuals now have a statutory right to information and data held about themselves and by Public Authorities and most other data held by a public authority relating to any other aspect of the organisation's operations.
- 1.2 The legislation consists of the Human Rights Act 1998, the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 1.3 The scope of the policy and guidance relates only to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) which both came into force on the 1 January, 2005.
- 1.4 The purpose of this policy and the guidance it contains is to identify the requirements of the FOIA and EIR and set out procedures to follow to support compliance with both the enactments and the spirit of the law.

## **2. ACCESS TO INFORMATION POLICY STATEMENT**

- 2.1 Mansfield District Council recognises and supports the legal requirement of access to data and information.
- 2.2 The Council intends to use these responsibilities to ensure its openness and transparency in decision making and communication with any person making a request.
- 2.3 The Council will follow the guidance issued by the Department of Constitutional Affairs and the Information Commissioner's Office.

## **3. THE FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS**

- 3.1 Any person, of any age or any legal entity such as a company anywhere in the world has a right of access to information and can make a request under FOIA or EIR.

### **3.2 FOIA**

The right applies to any written request for information which is made to the Council, whether or not mention is made of the FOIA. This applies to information recorded in any form which is held by the Council at the time of the request; this also includes information which is held by another body, for example a contractor on behalf of the Council.

For a FOIA request to be valid it must:

- Be made in writing
- State the name of the Applicant
- Include an address for correspondence
- Include a description of the information required

Should the requester be unable to put their request in writing, please see section 4 (process) of this policy on how to proceed.

If the Council is unable to identify and locate the information being requested, it will need to ask the requester for clarification. This could arise where the request:

- can be read in more than one way;
- does not have an obvious interpretation;
- is so general and open-ended that it is impossible to determine what information falls within its scope; or
- is rendered unclear by the context.

If the Council requires clarification, there is no duty to comply with the request until this has been received. The 20-day deadline for a response begins when the Council receives the further information or clarification it needs.

The Council may redact information from documentation released under FOIA - Redaction is the process of editing requested information to remove exempt or excepted material. Where the Council decides to redact part of the requested information, it must justify each individual redaction by reference to a specific exemption or exception, explaining why it applies.

### 3.3 EIR

Requests under EIR do not have to be in writing and under EIR all information which is 'held' by the Council including information held on its behalf and on behalf of others is potentially available subject to EIR.

The Council may redact information from documentation released under EIR - Redaction is the process of editing requested information to remove exempt or excepted material. Where the Council decides to redact part of the requested information, it must justify each individual redaction by reference to a specific exemption or exception, explaining why it applies.

### 3.4 Publication Scheme

The FOIA requires public authorities to adopt and maintain a publication scheme, approved by the Information Commissioner (ICO)

and from time to time review it. The Council has a publication scheme approved by the ICO which was reviewed in 2011 and will be reviewed again in 2013 and on a biennial basis thereafter.

The publication scheme provides an opportunity for the Council to engage with the public, explain how FOIA works and applies in practice. The Publication Scheme proactively releases a substantial amount of information by stating what documentation is already publicly available from the Council.

### 3.5 The Information Commissioner (ICO)

The Commissioner is an independent officer who reports directly to parliament. The Commissioner has the central role of ensuring compliance with the FOIA and EIR. Some of the Commissioner's duties are to promote good practice, provide information to the public about FOIA and EIR and consider complaints from applicants who believe that authorities have not dealt properly with their requests.

### 3.6 The Commissioner's powers under FOIA and EIR

The Commissioner's powers relate to public authorities which includes the Council. Those powers can be summarised as follows:

- Serving a decision notice on a public authority which the Commissioner has decided has failed to respond properly to a request for information under FOIA or EIR.
- Serving an information notice requiring a public authority to provide specified information to enable the Commissioner to discharge his duties under FOIA.
- Serving an Enforcement Notice if the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part 1 of the FOIA. An enforcement notice may be served even if the Commissioner has not received a specific complaint.
- Approving and revoking a publication scheme.

There will be cases when a public authority does not release information requested and the applicant exercises the right to complain. Provided that the applicant has exhausted all the local complaints procedure with the exception of frivolous or vexatious complaints, the Commissioner will make a decision as to the disclosure or refusal of information.

Decision notices issued by the Commissioner are binding unless there is a successful appeal to the Information Tribunal, failure to comply is punishable as a contempt of court.

Upon receipt of a complaint the Commissioner will require a public authority to provide copies of internal documentation and a copy of all information which has been withheld.

The Commissioner has the power to issue information notices placing authorities under a statutory duty to provide the relevant information, as with decision notices and enforcement notices non-compliance is punishable as a contempt of court.

### 3.7 The Information Tribunal

An applicant or a public authority may appeal to the Tribunal against a decision of the Commissioner.

The Tribunal has powers to allow or dismiss an appeal or substitute a notice or dismiss an appeal or substitute a notice that could have been served by the Information Commissioner.

## 4. **PROCESS**

For FOIA the request must be received in writing (e.g. letter, e-mail, fax), state the name and address of the requestor and describe the information required.

Verbal requests do not constitute valid FOIA requests. Advice and assistance should be offered in compliance with the Council's Equality and Diversity Awareness Policy and the duty to provide advice and assistance under S16 of the FOIA. A verbal request may be taken by the Council's Information Officer who should then write to the applicant with the details of their verbal request and the applicant will be asked to confirm that this is a true and correct interpretation of their request. Once confirmation has been received from the applicant the request will be treated as received by the Council

For EIR there need not be a request given in writing and a verbal request for information must be accepted.

Any employee of the Council may receive a request for information at any point across the Council and all employees should be made aware by their manager of this possibility and what to do in this circumstance.

## 5. **ROUTINE BUSINESS**

- 5.1 If the request is for information that officers routinely supply in the normal course of their business and the request does not refer to the FOIA or EIR; officers should continue with this practice and deal with the request without reference to this process.

If however, an officer thinks they have received a request for information which could be a FOIA or EIR request or they are unsure,

the officer must seek advice from the information officer for their particular service immediately upon receipt of the request.

There should be no delay in dealing with a request as the Council has only 20 working days after receipt to confirm whether the information is held by the Council, find the information and if the Council holds the information to send it to the person or organisation making the request.

Before any information is released consideration must be given to any exemptions that may apply and if applicable a Public Interest Test applied.

In relation to EIR, exceptions may apply and the Public Interest Test may also apply.

The Council will provide advice and assistance to individuals making requests for information under both the FOIA and the EIR, this could include assisting in focussing a request or advising if information is held elsewhere

## **6. RECEIPT OF A FREEDOM OF INFORMATION OR ENVIRONMENTAL INFORMATION REQUEST**

- 6.1 As soon as the Council's information officer has received a request for information it must be logged in the corporate information recording system, completing all the mandatory fields in that system.

If the Information Officer is unclear about the information being requested or the request is incomplete or vague the individual, company or organisation making the request should be contacted by the quickest means available e.g. telephone, e-mail or letter to clarify the request.

Help should be provided as required, to a person making a request to assist them in identifying the precise nature of their request.

If the Council offers advice or assistance, the 20 working day period for dealing with a request is not extended. It is important to stress the distinction between advice and assistance that is offered before a valid request is made and that offered following receipt of a valid request.

If the Council reasonably requires the applicant to provide clarification so that the information requested can be identified and located the 20 working day period does not continue until that further clarification has been received by the Council. However, any advice and assistance provided following receipt of a valid request does not extend the 20 working day period for responding to the request.

The Council is not entitled to ask why a request is being made and for what purpose the information is required. This line of enquiry should be avoided.

If an officer needs to seek clarification or offer advice or assistance to the requester, they should enter any available information into the corporate information recording system.

## **7. FEES**

### FOIA Fees

7.1 For an FOIA request, before any work is undertaken the Information Officer should estimate whether the cost of complying with a relevant request would exceed the 'appropriate limit' under s.9 of the FOIA. The Council will take account only of the costs it reasonably expects to incur in relation to the request in:

- Determining whether it holds the information.
- Locating the information, or a document which may contain the information.
- Retrieving the information, or a document which may contain the information.
- Extracting the information from a document containing it.

The appropriate limit is £450 and this is calculated at a rate of £25 per hour (see charging policy).

7.2 The Council will consider whether to aggregate costs, where two or more requests for the same or similar information, are made within any period of 60 consecutive working days, by one person or by different persons who appear to the Council to be acting in concert or pursuance of a campaign. The estimated cost of complying with the request is to be taken to be the total costs which may be taken into account by the Council.

7.3 If the estimate is in excess of the 'appropriate limit' the Council does not have to comply with the request.

However, if the costs exceed the appropriate limit, advice should be given to the applicant to reformulate their request and advice and assistance provided as appropriate (s 16 FOIA).

If the Council exercises its discretion to comply it may charge the prescribed costs in full for amounts over the appropriate limit.

Once the financial ceiling of £450 has been reached it may be possible to refuse the request on the basis of costs.



## EIR Fees

- 7.4 The EIR do not require charges to be made but the Council has a discretion to make a reasonable charge.

The Council will not make a charge for:

- 1) Allowing an applicant to access any public register or lists of Environmental Information held by the Council, or
- 2) To examine the information requested at the place which the Council makes available for that examination, (usually the Civic Centre).

A charge will not exceed an amount which the Council is satisfied is a reasonable amount.

Where the Council proposes to make a charge, a schedule of charges will be made available.

## 7.5 Notification of Charges FOIA

When the Council receives a request for information it will, within the period for complying with s1(1) FOIA provide the applicant with a notice in writing (fees notice), stating the fee if any to be charged for complying with the request.

Where the allowed cost of providing information would be less than £10, the Council will waive any fee payable. Where the cost of disbursements eg photocopying exceeds £10 the Council may issue a fees notice.

If a fees notice is issued to the applicant, the applicant then has a period of three months to pay the required fee, beginning on the day the fees notice is provided to them.

If the applicant disputes the fee, they can appeal through a three stage process;

- The internal procedure.
- Request the decision of the ICO.
- If they are still dissatisfied, they can appeal to the Information Tribunal.

## 7.6 Notification of Charges EIR

The Council will notify the applicant no later than 20 working days after the date of receipt of the request for the information, if an advance payment is required and the amount of any such advance payment. The applicant must make an advance payment no later than 60 working days after the date on which they were given notification.

- 7.7 In both cases FOIA and EIR, the 20 working day time limit stops the day before the notice is sent and recommences on the day after the payment is received.
- 7.8 If payment is received by cheque the 20 working day time limit does not resume until the cheque has been cleared through the Council's bank account. The Council however, should ensure that cheques are banked promptly.
- 7.9 When a fees notice is sent by post, the Information Officer must ensure that it is sent by recorded delivery to confirm the date of delivery. If the fees notice is sent by e-mail the 60 working days will be calculated from day the e-mail is sent.
- 7.10 Reasonable charges can be made for disbursements (e.g. postage, photocopying and the Information Officer must inform the requester of the costs.

NOTE – Costs of disbursements can be minimised if there are alternatives (.e.g. e-mail, fax) these should be suggested to the requester.

- 7.11 If the request is straightforward and can be satisfied by the receiving department then the information officer should proceed to organise the request within their department ensuring at all times that the request is dealt with in a timely manner complying with the statutory time limit of 20 working days after receipt.
- 7.12 Once the information has been sent out to the person or organisation making the request then the Council's information officer should enter the information on the recording system to confirm that the request has been dealt with in full.

If the information officer is uncertain about how to proceed at any point or requires advice or assistance then Legal Services should be contacted immediately.

## **8. COMPLEX REQUESTS**

- 8.1 Complex requests may involve one of the following:
- Vexatious or repeated requests.
  - Fees in excess of £450 appropriate limit.

- Internal or external consultations.
- The application of exemptions under the Freedom of Information Act 2000.
- The application of exceptions under the Environmental Information Regulations 2004.

All requests must be responded to within 20 working days. Under FOIA there may only be an extension of time for application of the Public Interest Test.

Where the Council reasonably needs more time to arrive at a decision under the Public Interest Test, it must clearly state this in its refusal notice together with an estimate of when a decision is likely to be reached. The Council is still required, within 20 working days to state in the notice under which particular exemption it is considering where the public interest lies. This is still a 'refusal' notice under the (s17 FOIA) even though the Council has not at this stage decided to refuse the request.

The EIR also requires the Council to issue a refusal notice in the case where a request for information is being refused. Unlike the FOIA the EIR lists a series of exceptions, rather than exemptions and all are subject to the Public Interest Test. The EIR allows for an extension of up to 20 additional working days to the period of response if the requests are particularly complex or voluminous. If the extension is claimed the applicant must be informed.

## **9. VEXATIOUS OR REPEATED REQUESTS**

9.1.1 In complex cases where there is the possibility that the request might be considered 'Vexatious' or 'Repeated' this should be determined in the first instance and referred to the contact detailed in paragraph 15 of this policy, for a decision.

9.1.2 Vexatious or Repeated requests are identified by the same request being received from the same person or organisation. However, it can only be vexatious or repeated if the information requested is the same. If the request received is similar but has small changes there must be strong evidence to support refusal under vexatious or repeated request, consultation with legal services will be necessary.

A request may be determined as vexatious if some, not all, of the following criteria apply:

- It can be seen as obsessive
- It has the effect of harassing the authority or causing distress to staff.
- It would impose a significant burden in terms of expense and distraction

- It is designed to cause disruption or annoyance.
- It does not have any serious purpose or value?

## **10. CONSULTATION**

If either internal or external consultation is required to establish whether individuals or organisations will be prejudiced by the release of information and what if any information should be redacted to avoid prejudice then those consultations will be co-ordinated by the Council's Legal team, the obtaining consent from third parties for the release of information will form part of this consultation process wherever practicable.

## **11. FOIA EXEMPTIONS AND PUBLIC INTEREST TEST AND EIR EXCEPTIONS**

11.1 In each case the Council's Legal team where appropriate will take the necessary decision on the application of exemptions or exceptions followed by the Public Interest Test where applicable.

11.2.1 It is important to note that the Government Code of Practice indicates that an exemption should not be applied except by the qualified person dealing with FOIA and that this person must also apply the Public Interest Test, this also is the case for EIR. The qualified person in the Council is the Head of Corporate Administration or Senior Solicitor and in their absence, the Managing Director.

11.2.2 The Council's Legal team will consider whether an exemption applies on a case by case basis and will take into account whether information has been provided by a third party in confidence eg a Contract. In this instance the Council may seek consent from the third party for disclosure, if consent is not received a decision will be made on a case by case basis on whether or not to disclose the information.

## **12. REFUSAL**

12.1 Any decision to refuse to release information will be taken by the Council's Legal team. Refusal will be communicated formally stating the reasons for refusal and informing the applicant of their right to complain using the Council's information requests complaints procedure and their further right of appeal to the Information Commissioner.

A request may be refused where:

- The request is vexatious or repeated

- The cost of complying with the request exceeds the 'appropriate limit'.
- The information requested falls under one of the exemptions/exceptions

If the Council has grounds for not releasing the information requested, the Council will issue a written refusal notice to the requester, which will explain:

- What exemption applies and why
- The public interest considerations taken into account
- The Internal appeals process
- The requesters right to complain to the ICO

### **13. RELEASED INFORMATION**

- 13.1 Published information is information or data which is readily made available to the public on request with or without a charge. Published information has to be included within the Council's Publication Scheme which is made available to the public and has been approved by the Information Commissioner.

The Publication Scheme has to show, by category, information which is available from the Council, where it can be obtained and if there is a charge for obtaining the information.

If any additional information is prepared then the Council's information officer must be informed immediately to ensure inclusion of that additional information in the scheme.

If any information is to be removed or amended the Information Commissioner must be informed immediately and approval given.

If the data requested is listed in the scheme then it is exempt under FOIA on the basis that it is already accessible to the public by other means by virtue of S21 of the FOIA.

### **14. COMPLAINTS**

- 14.1 The Council will have an information requests complaints procedure. Each applicant will be informed in their response they receive that if they are not satisfied with how their request has been dealt with then they should complain in writing and who they should write to.
- 14.2 The target for dealing with complaints is 20 working days from receipt of the written complaint. A complaint will be acknowledged within 5 working days and the applicant informed of the Council's target date for determining the complaint.

14.3 Where the outcome of the complaint is that information should be disclosed which was previously withheld the information in question will be disclosed as soon as practicable and the applicant informed how soon this will be.

14.4 Where the outcome of the complaint is that the initial decision to withhold information is upheld or is otherwise in the Council's favour the applicant will be informed of their right to appeal to the Information Commissioner and be given details of how to make that appeal.

## **15. Contacts**

Enquiries should be directed to the Council's lead officer for Freedom of Information at the following address:

Head of Finance, Property and Revenue Services  
Mansfield District Council  
Civic Centre  
Chesterfield Road South  
Mansfield  
Notts  
NG19 7BH

Telephone: 01623 463015

Email: [DataProtection@mansfield.gov.uk](mailto:DataProtection@mansfield.gov.uk)

For further independent advice about Data Protection please contact:

Information Commissioner

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Website: [www.ico.gov.uk](http://www.ico.gov.uk)

Telephone: 01625 545745

Fax: 01625 524510

Email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)