



Code of Practice for the
Freedom of Information Act 2000
Rights of Access

Prepared By: Malkiat Thiarai
**Head of Corporate Information
Management**
Date of Publication: 17th October 2013
Version: 5.0
Classification NOT PROTECTIVELY MARKED

Table of Contents

1.	Version Control	4
2.	Points of contact for this Code of Practice.....	4
3.	Introduction to the Freedom of Information Act	5
3.1	Definition	5
3.2	Security Risk	5
3.3	Assertions	5
3.4	Review	5
3.5	Discipline.....	5
3.6	Is your team ready for Freedom of Information requests?	6
4.	Dealing with an Freedom of Information Request within the City	7
4.1	Flowchart for a Freedom of Information Request in the City.....	Error!
	Bookmark not defined.	
5.	Receiving a Request for Information	10
6.	Validating a Request for Information	12
7.	What are the exemptions within the Act	166
8.	Duty to confirm or deny the City holds the information	199
9.	Duty to communicate the information	21
10.	Birmingham City Council FOI Panel.....	24
11.	Transferring a request for information	25
12.	Fees Regulations	26
13.	Dealing with the Press.....	29
14.	Procedure for producing a summary report.....	30
15.	Production of the information into another language or format.....	31
16.	FOI request from a Council Member or employee of the City.....	32
17.	FOI Complaints Procedure of the City Council	34
18.	Responding to Requests for Assessment from the Information Commissioner	35
19.	Audit & Management Requirements	36
	Appendix A: Guide to requesting information from Birmingham City Council.....	37

Appendix B: Birmingham City Council FOI Request for Information form
..... **38**

Appendix C: Frequently asked questions about Freedom of Information
..... **41**

Appendix D: Freedom of Information Act 2000 Exemptions..... **44**

Part II of the Freedom of Information Act – Exempt Information 44

Section 21 of the Act:..... 44

Section 23 of the Act:..... 44

Section 25 of the Act:..... 45

Section 32 of the Act:..... 45

Section 34 of the Act:..... 45

Section 36 of the Act:..... 46

Section 40 of the Act:..... 48

Section 41 of the Act:..... 49

Section 44 of the Act:..... 49

Section 22 of the Act:..... 49

Section 24 of the Act:..... 49

Section 30 of the Act:..... 50

Section 35 of the Act:..... 51

Section 37 of the Act:..... 52

Section 38 of the Act:..... 52

Section 39 of the Act:..... 52

Section 42 of the Act:..... 53

Section 26 of the Act:..... 53

Section 27 of the Act:..... 53

Section 28 of the Act:..... 54

Section 29 of the Act:..... 54

Section 31 of the Act:..... 55

Section 43 of the Act:..... 56

Appendix E: Guidance from the Information Commissioner’s Office..... **57**

Appendix F: Freedom of Information Useful links..... **58**

1. Version Control

Version	Date	Notes
Draft	13 September 2004	Draft for comments to FOI Working Group meeting held on 14/9/04 – feedback into the Corporate Group meeting scheduled for 28/9/04
	11 October 2004	Revised draft as requested on 28/9/04 by FOI Corporate Group
Version 1.0	21 October 2004	Revised document after consultation with the FOI Working Group
Version 1.1	30 December 2004	Revised document after consultation with the FOI Working Group
Version 1.2	31 December 2004	Amendment to page 28, tracking form and request for information form
Version 1.3	7 th February 2005	Inclusion of details of Fees Regulations in agreement with Chief Legal Officer
Version 1.4	15 th April 2005	Revisions for inclusion based on emerging practice and policy advice given. For consideration by Freedom of Information Working Group
Version 1.5	May 2006	Revisions for inclusion based on emerging practice and policy advice given. For consideration by Freedom of Information Working Group and Chief Legal Officer
Version 1.6	January 2007	Review of Code of Practice and revision based on emerging practice and policy advice given. For consideration by Freedom of Information Working Group and Chief Legal Officer
Version 1.7	May 2007	Review of Code of Practice and revision based on emerging practice and policy advice given. For consideration by Chief Legal Officer
Version 1.8	September 2008	No changes made to document, presented to BTAG 16 th September 2008
Version 2	16 September 2008	Approved by BTAG
Version 2.1	18 November 2009	Draft for comments to FOI Working Group meeting held on 24/11/09
Version 2.2	30 November 2009	Revised draft as requested by FOI Working Group
Version 2.2	2 December 2009	Code of Practice submitted to BTAG 2 nd December 2009
Version 2.2	9 December 2009	Approved by BTAG
Version 2.3	4 November 2010	Circulated to FOIWG contacts for comments
Version 2.3	23 November 2010	Discussed at FOIWG
Version 2.3	8 December 2010	Submitted to BTAG for approval
Version 3.0	8 December 2010	Approved by BTAG
Version 3.1	20 December 2011	Revised following annual review and comments
Version 4.0	04 January 2012	Approved by BTAG
Version 4.1	September 2013	Policy review and inclusion of new datasets provisions
Version 5.0	17 October 2013	Approved by BTAG

2. Points of contact for this Code of Practice

Document Author

Name	Malkiat Thiarai
Title	Head of Corporate Information Management
Telephone	0121 303 1909
Email	malkiat.thiarai@birmingham.gov.uk

3. Introduction to the Freedom of Information Act

3.1 Definition

From 1st January 2005, the Freedom of Information Act 2000 allows any person, from anywhere in the world, the general right to inspect and have copies of any documents or information the public authority may hold.

The Freedom of Information Act 2000 creates significant new rights of access to information held by public authorities. The Act gives two general rights in relation to disclosure of information:

- The right to be told if the information is held.
- The right to be given that information within 20 working days.

The purpose of a *Freedom of Information* disclosure is to put that information in the public domain.

The Lord Chancellor's has published a Code of Practice on the discharge of public authority functions under section 45 of the Freedom of Information Act 2000. This provides guidance to public authorities as to the practice that it would, in his opinion, be desirable for them to follow in connection with the discharge of their functions under Part 1 of the Act. Also, a Code of Practice under section 46 of the Act sets out guidance on Records Management and this is covered in more detail in Section 5.2 of this document.

This document should be read in conjunction with other City Council policies for Data Protection, Environmental Information Regulations and Re-use of Public Sector Information Regulations.

3.2 Security Risk

Non-compliance with the Freedom of Information Act 2000 may lead to possible legal action against the Birmingham City Council, which could result in bad publicity and have an impact on the Council's reputation.

3.3 Assertions

Birmingham City Council is committed to ensuring compliance with the Freedom of Information Act 2000.

All employees should familiarise themselves with the provisions of the Freedom of Information Act 2000 and the associated Birmingham City Council Policies.

3.4 Review

This document will be reviewed on at least an annual basis or wherever there may be a change of influencing circumstances.

3.5 Discipline

An Individual found deliberately contravening this Code of Practice may be liable to disciplinary action, and where appropriate, legal action.

Furthermore, destruction of information during the life of a request for that information is viewed as contempt of court and is a criminal offence, which may carry a custodial sentence.

3.6 Dealing with Freedom of Information requests?

- ✓ *Ensure that your business procedures for responding to requests for information held by the Council are in line with the requirements of the Freedom of Information Act 2000. Contact your FOI Directorate representative for further guidance.*
- ✓ *A response for information made to the Council should be responded to promptly and in any event not later than the twentieth working day following the date of receipt of a request.*
- ✓ *A 'Working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.*
- ✓ *If you are going to refuse a request for information please liaise with your Directorate FOI Contact to ensure that appropriate consideration is given to any refusal to a request.*
- ✓ *All Freedom of Information requests must be logged onto the City Council's corporate FOI database and the logs maintained accurately.*

3.7 Dealing with Open Data requests under the Freedom of Information Act

Context

The guidance relates to provisions in the FOI act due to come in force 1st September 2013.

Datasets can already be requested under FOI, however the new provisions in summary are:

- Any request to release a dataset must be in electronic form which allows re-use where reasonably practicable
- Datasets containing copyright material (where the public authority holds the copyright) must be available for re-use under a specific licence
- Requested datasets must be added to publication schemes

Impact on a public authority

A public authority will have a duty to comply with the requirements of the FOI Act, including the new provisions for datasets.

Section 102 of the Protection of Freedoms Act 2012 adds new provisions to FOIA (in particular sections 11 and 19) regarding datasets.

The new provisions are about how information is released, rather than what information is released. They only relate to information that the public authority holds as a dataset, which is a defined term in the new provisions. They are about the re-use of those datasets that the public authority provides in response to a request or under a publication scheme. There is no new duty to provide any information in response to a FOIA request that was not previously accessible, and there are no new exemptions from that duty. The dataset definition and supporting guidance can be found at section 6.4.

Considering publication of datasets in a publication scheme

For existing and new datasets, the authority should consider publication, based on whether a dataset would be released if subject to a request. Where possible it should be published in a re-usable/machine readable format. Where a dataset is subject to a request and is released, then it should be published. Published datasets should be updated as needed in line with any other published information that is in need of update.

4. Dealing with an Freedom of Information Request within the City

There are a number of stages to a Freedom of Information Request within Birmingham City Council:

Refer to **Section 5:**

- ✓ Receive a request for information

Refer to **Section 6:**

- ✓ Validate the request for information

Refer to **Sections 7, 8, 10 & 11:**

- ✓ Establish if the Council holds the information
- ✓ Transferring a request for information to another public body
- ✓ Initial Inspection of the FOI Act exemptions

Refer to **Section 12:**

- ✓ Estimating the cost of the request
- ✓ Calculating disbursements
- ✓ Requesting the fee
- ✓ Collecting the fee

Refer to **Sections 7, 9, 10 & 14:**

- ✓ Initiating the search for information
- ✓ Remember to check Records Management or Archives
- ✓ Collate the information found
- ✓ Apply / determine exemption
- ✓ If necessary - check with third party
- ✓ If necessary select / redact information
- ✓ Constructing a response

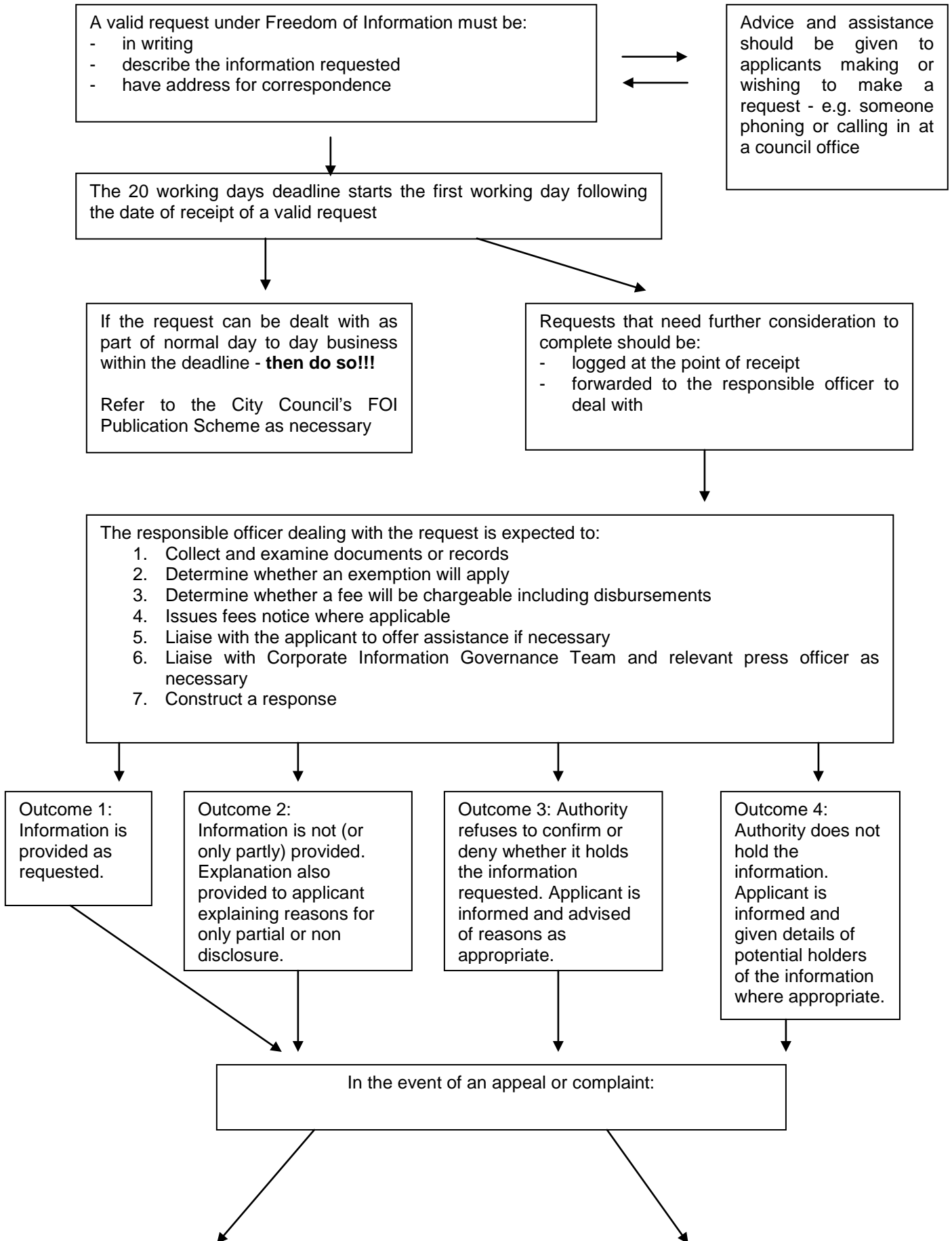
Refer to **Section 7, 8, 9, 10:**

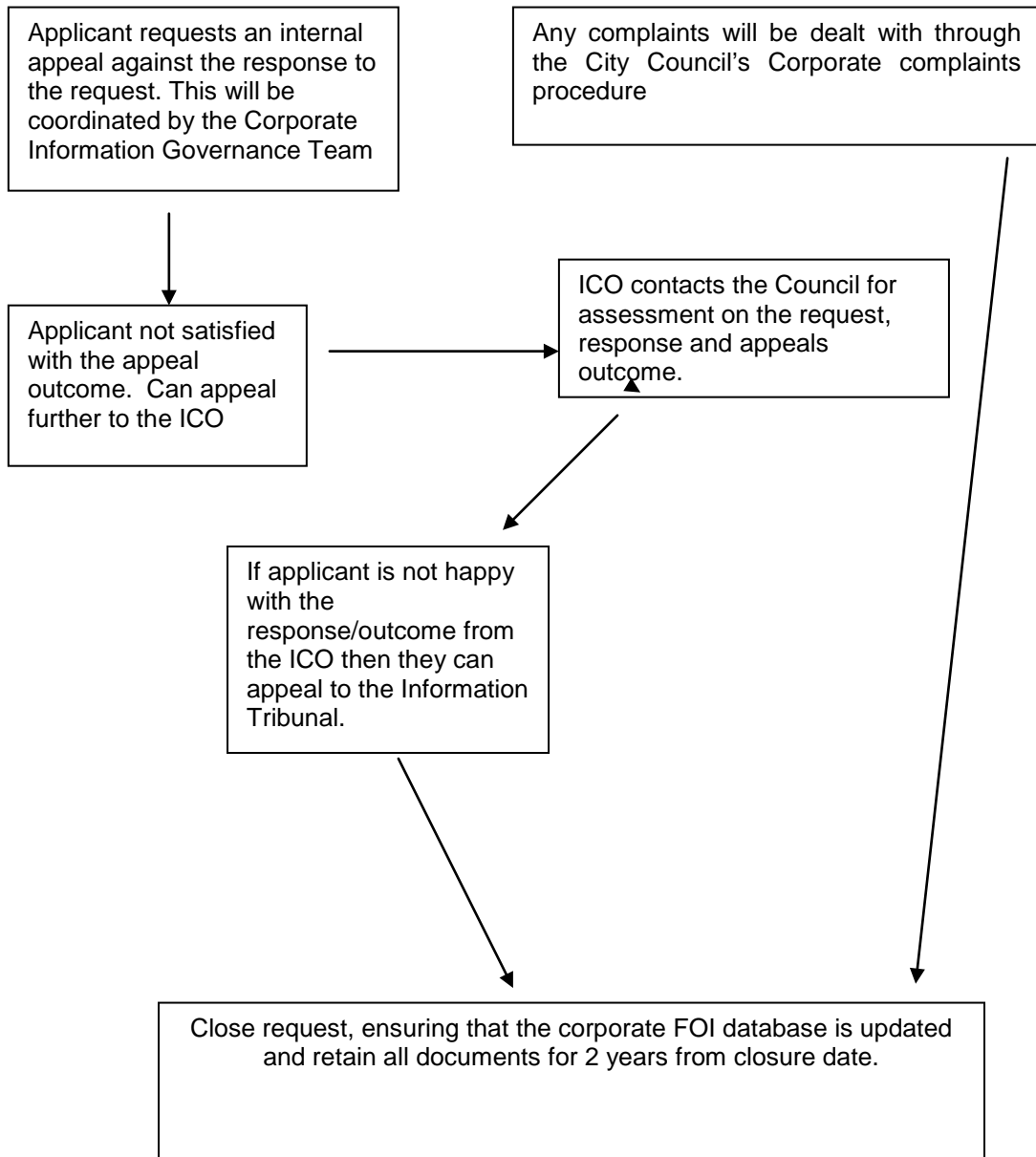
- ✓ Duty to confirm or deny the Council holds the information requested
- ✓ Duty to communicate the information requested
- ✓ The Council's FOI Panel

Refer to **Section 19:**

- ✓ Keeping response records
- ✓ Audit & Management Requirements

4.1 Flowchart for a Freedom of Information Request received by the Council





5. Receiving a Request for Information

5.1 A request for information could be received from any one around the world. It may be from:

- ❖ Member of the public
- ❖ The media
- ❖ Council member or employee
- ❖ Company
- ❖ Customer
- ❖ Supplier
- ❖ Another Council or other public body
- ❖ Pressure group

The Council may receive a request for information in a number of ways for example:

- ◆ Face to Face
- ◆ Telephone Call
- ◆ Text message
- ◆ Fax
- ◆ Letter
- ◆ E-mail

The vast majority of requests for information are likely to be dealt with as part of normal day to day business of the City Council.

If the Council receives a request for information during a **telephone call** or **face to face** interview and the request cannot be handled as part of normal day to day business, the Council should treat the request as a **potential** 'FOI request for information' and

- ◆ Consider whether the information is available, e.g. the information is available via the Council's website or can be made available as part of normal business.
- ◆ If the information is not available as part of normal business then advise the applicant that they can write, email or complete a copy of the Birmingham City Council FOI Request for Information form which is also available on the website.
- ◆ Remember to forward the customer a copy of the BCC FOI Request for Information form if required, asking them to complete and return it to the Council.
- ◆ Ensure that you log the customer name, telephone number and address to enable you to respond to their request.

The Council should ensure that appropriate assistance is given to enable the customer to make a request for information under Freedom of Information as required by s45 Code of Practice. Depending on the circumstances, appropriate assistance might include advising the customer 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. Council staff should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.

5.2 Datasets:

There is not a requirement in the Act or in these new provisions to create datasets purely for publication, nor to update datasets that in the normal course of business would not be updated by the authority.

As with draft documents, datasets that are incomplete or in draft can be requested and disclosed. The same provisos apply in that disclosure should take place unless an exemption applies in whole or in part.

The new provisions do not make any difference to whether a requested dataset should be disclosed or not. Disclosure is still based on whether there are any exemptions that apply.

5.3 Section 46 - Records Management

The Council will only be able to comply with Freedom of Information legislation effectively if information can be found when it is requested. A Code of Practice on the management of records is issued under section 46 of the Freedom of Information Act, with which authorities subject to the act are expected to comply.

The Records Management code provides a framework for the management of records a summary of which is detailed below:

- Authorities should have in place organisational arrangements which support good records management
- Authorities should have in place a records management policy which sets out the commitment to create, keep and manage records which document its principal activities
- There should be clearly defined instructions, applying to staff at all levels of the authority to create, keep and management records
- Authorities should ensure they keep the records they will need for business, regulatory, legal and accountability purposes
- All staff should be aware of their personal responsibility to keep accurate and complete records as part of their daily work
- Authorities should keep their records in systems that enable records to be stored and retrieved as necessary
- Authorities should know what records they hold and where they are and ensure that they remain usable for as long as required
- Storage of records should provide protection to the records inline with the nature, contents and value of the information in them
- The whereabouts of records should be known at all times and movement of files and other physical records between storage areas should be logged
- Authorities should have in place a strategy for the continued maintenance of records in digital systems to ensure they remain usable
- Business continuity plans should identify and safeguard records considered vital to the organisation
- Authorities should ensure that records are stored securely and that access to them is controlled
- Authorities should define how long they need to keep particular records, should dispose of them when they are no longer needed and should be able to explain why records are no longer held
- Authorities should ensure that records shared with other bodies or held on their behalf by other bodies are managed in accordance with the Code of Practice

For further advice, guidance and support, contact the Records Management Service.

If the request for information is received by **Fax**, **e-mail** or **letter** and the request cannot be handled as part of normal day to day business, then the request should be treated as a 'FOI request for information'. See Section 6 – Validating a request for Information.

If you are unsure or require further guidance please contact your FOI Directorate representative.

6. Validating a Request for Information

On receipt of a written request for information to the City Council (this could be e-mail or letter) the Authority must establish the validity of the request under the Freedom of Information Act 2000 (Section 8 of the Act). The Act states that the Council must comply promptly and not later than the twentieth working day following the date of receipt of a request.

The Council has a duty to provide advice and assistance and in validating a request this may mean taking into account the needs and circumstances of the individual making the request. The provision of advice and assistance should take account of the City Council's commitments in relation to its Customer Charter, its Corporate Equality Scheme and its obligations under legislation such as the Race Relations Amendments Act and the Disability Discrimination Act.

6.1 A valid request for information should:

6.1.1 Contain any reference to 'a request for information' and be in writing and a request is to be treated as made in writing where the text of the request is electronic, is received in a clear form, is capable of being used for subsequent reference.

Where a person is unable to frame their request sufficiently, the Council should ensure that appropriate assistance is given to enable that person to make a request for information. Council staff should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.

6.1.2 States the name of the applicant and an address for correspondence.

The legislation does not necessarily regard the provision of an e-mail address alone by the applicant as satisfying the provision of 'address for correspondence'. The reason for this view was that a public authority, which possessed information only in hard copy, rather than electronic format, would not be able to communicate this information to an applicant who has given only an e-mail address. Therefore if the e-mail is the only address given and the information requested is only held in paper format then the applicant should be requested to supply a postal address.

If the requestor refuses to give a postal address - they should be advised that the amount of information the Council might be able to disclose may be reduced. The Council should then accept the e-mail address as a valid address for correspondence.

6.1.3 The applicant should describe the information requested – i.e. does the request contain enough information to enable us to find/locate what is requested.

Where the applicant does not describe the information sought in a way that would enable the Council to identify it, or the request is unclear, the Council should, as far as is practicable, provide assistance to the applicant to enable them to describe more clearly the information requested.

When checking that the request is understandable and answerable, it may be necessary to contact the Directorate and system owner or record holder to confirm if any further information would be needed from the applicant. If the request is open to interpretation or you require further information from the applicant, contact the applicant, by telephone in the first instance, if a contact number is available. If not then by e-mail if appropriate or letter (normal postage), highlight where the request is unclear and request clarification.

Clarification on requests for information should be sought only where it is reasonable and necessary. Commonly understood terms should be treated as such.

Once the requested information has been received from the applicant then the 20 working days following the date of receipt of the request would commence. A 'Working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a

bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

If the applicant has not responded with the requested information within 90 days, close the request for information and retain the record for 24 months. These documents should then be destroyed using your Directorates standard procedure regarding the destruction of confidential waste.

If the initial request contains sufficient information to enable you to action the request then the request should be processed in accordance with the Act and the procedures set out in this document.

6.2 Calculating the working days

The first working day begins the day after the receipt of the request for information. Where an email has been received (even if it's received out of hours), it was still received on that date. Therefore, the clock would start on the 1st working day after the date the email was received.

In processing the request, if the authority has to liaise with the applicant either for further clarification or where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days, beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority, are to be disregarded in calculating the twentieth working day following the date of receipt.

This means that both the day the correspondence either requesting fees or seeking clarification is sent out and the date the payment clears or the clarification response is received **does not** form part of the 20 working days.

For example, a request is received on Monday 6th September. Correspondence to the applicant seeking clarification is sent out on Wednesday 8th. The applicant replies on Friday 10th September. In this case, only 1 working day of the 20, that being Tuesday 7th September, has been used.

6.3 Logging FOI Requests for Information

All FOI requests for information should be logged, at the point of receipt, on the corporate database for FOI requests and assigned to the appropriate directorate contact so that they are maintained appropriately as the requests progress. This includes details of any actions taken, clarification sought and use of exemptions.

Where the requests relates to a single directorate, it will be the responsibility of the directorate contact officer to maintain and update the request. Where the request is multi directorate, it will be the responsibility of the Corporate Information Governance Team to maintain and update the request.

Where possible, information released in response to a request should be attached to the appropriate FOI record on the corporate database.

6.4 Determining whether a request is for a dataset

It is important to be clear about what information constitutes a 'dataset'. A dataset is defined in the act in section 11(5), as:

'A collection of information in electronic form, where all or most of the information has been recorded or obtained to provide service or other organisational function. The information must be factual and not subject to analysis or interpretation (other than calculation). It must also be effectively 'source' data that has not been organised, adapted or materially altered'.

The first main consideration therefore is **establishing a process to identify if any requested datasets fall within the definition of a dataset, as set out above.**

If the information requested does not fall within the dataset definition, it does not mean that the information should not be disclosed, it simply means the new dataset provisions do not apply. Consideration should then be given whether the request falls within the definition of a request for information, in which case the existing FOI procedures will apply. The timescales for answering the response remains at 20 working days.

In determining whether a request for information constitutes a datasets, the following need to be considered:

Electronic form

This paragraph shows that the term only applies to information that is held in electronic form. If the public authority only holds the requested information in another form, e.g. in hard copy, then it is out of scope; the public authority is not required to turn the hard copy information into an electronic dataset.

Service or function

The first criterion is about the purpose for which the authority holds the information:

- (a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority...

The wording here means that the information is to do with the services that the public authority provides or the functions it is carrying out.

Factual information

The next part of the definition specifies that “all or most of the information in the collection” must be “factual”. This does not simply mean numeric information. It could include, for example, not only figures for expenditure by departments, but also a list of the addresses of properties. Factual information is quantitative rather than qualitative information.

Not the product of analysis or interpretation

The term “factual information” is then qualified by two further criteria; firstly,

- (b) is factual information which—
 - (i) is not the product of analysis or interpretation other than calculation ...

This suggests that the definition is limited to ‘raw’ data that has been produced or obtained by the public authority, rather than value-added data that has been produced by analysis or interpretation.

Furthermore, the phrase “other than calculation” means that, for example, if expenditure data has been collected at the level of sections within the departments of a public authority, and it is then added up to show expenditure by department and by the authority as a whole, or even to show the percentage of the total expenditure by each department, this does not take it out of the definition, since totals and percentages are produced by calculation and they are inherent in the data itself.

ICO guidance does not consider that quality checking the information, e.g. ensuring that entries are recorded consistently or correcting errors that may have occurred in recording them, would constitute analysis or interpretation so as to take the dataset out of the definition.

These processes are part of the authority’s normal work of collecting management information, which is likely to involve checking the accuracy or completeness of the information collected, rather than further analysing or interpreting it.

This does not mean that an inaccurate or incomplete dataset is outside the definition or exempt from disclosure. Even if the information that has been requested is inaccurate or incomplete, the public authority must still release it unless a FOIA exemption applies. If the public authority does have to release incomplete or inaccurate information in response to a

FOIA request, because that is the information that it holds, then it would be sensible for it to issue a caveat or other information to put the release into context at the same time.

Official statistics

The second qualification to the term “factual information” concerns official statistics:
(ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007) ...

Official statistics, as defined in the Statistics and Registration Service Act 2007, are not datasets within the meaning of the dataset amendments to FOIA. However, the underlying raw data used to produce official statistics could fall within the definition of a dataset, assuming that the other criteria were satisfied.

Materially altered

The final part of the definition is that “all or most of the information in the collection”,
(c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.

To meet the definition, the information must remain presented in a way that has not been materially altered. This implies that the criterion is whether the *presentation* of the information has been altered, not whether the *information* itself has been altered. This means that if the information remains the same but the way that it is presented is changed, it can fall outside the definition. However, the phrase “or otherwise materially altered” suggests that any such change, ie organisation or adaptation, would have to be significant. A minor change, such as reordering the columns in a spreadsheet, is unlikely to represent a material alteration in the way that the information is presented. The intention of the subsection seems to be to define a dataset as a collection of raw data that is presented in essentially the same way that it was organised when the public authority originally obtained or recorded it.

When releasing a dataset in response to a FOIA request, the public authority may need to redact information that is exempt under one of the FOIA exemptions, for example personal data that is exempt under section 40. Redacting information in this way will not take the dataset out of the definition, even if the redactions are substantial. This is because the definition of a dataset in section 11(5) refers to the dataset that is held by the public authority i.e. the original, un-redacted version, and not to a redacted version that can be released in response to a FOIA request.

There may be situations where, in order to answer a request, a public authority extracts data from various sources and compiles a new table or spreadsheet, possibly involving calculations such as totals and percentages. Whilst still held for the purposes of FOI this new table or spreadsheet is not a dataset for the purposes of these provisions. The dataset provisions are about raw data. The new table or spreadsheet is not data that has been obtained or recorded to provide the authority with information in connection with its services or functions; the presentation of the data on which it is based has been materially altered since it was originally obtained or recorded.

If you are unsure or require further guidance please contact your FOI Directorate representative.

7. What are the exemptions within the Act

Whilst the Freedom of Information Act places a presumption that the information requested should be disclosed, it understands that in certain situations, the information should not be revealed, for a number of valid reasons. Accordingly, the Act affords a number of exemptions to allow the withholding of information. None of Act's exemptions are mandatory. While disclosure of requested information may be otherwise prohibited (for example, under the Data Protection Act 1998 or the Official Secrets Act 1989), there is nothing in the Act itself to prevent the voluntary disclosure of exempt information by a public authority.

The exemptions within the Act can be divided into two categories, absolute and qualified. An extract of the Act is attached in Appendix E that gives further details about the exemptions within the Act.

Absolute exemptions do not have a public interest element, and are the less numerous of the two classes of exemption. However, many of the absolute exemptions were and are designed for the benefit of central government, and may not be applicable for local government's purposes.

If information falls within the scope of an 'absolute exemption', a public authority is not obliged to communicate it to the applicant. In the case of information falling within most absolute exemptions, the authority will also be excused from the obligation to comply with the duty to confirm or deny in relation to such information.

The **Absolute Exemptions** are:

- Information reasonably accessible by other means (Section 21 of the Act)
- Information from or relating to certain security bodies (Section 23 of the Act)
- Certificates under SS. 23 and 24: supplementary provision (Section 25 of the Act)
- Information contained in court records (Section 32 of the Act)
- Information disclosure of which would breach Parliamentary privilege (Section 34 of the Act)
- Information disclosure of which would prejudice the effective conduct of public affairs when such information is held by the House of Commons or House of Lords (Section 36 of the Act)
- Personal information (where the applicant is the subject of the personal information and, in certain circumstances, where the applicant is a third party) (Section 40 of the Act)
- Information provided in confidence (Section 41 of the Act)
- Information covered by prohibitions on disclosure (Section 44 of the Act)

The remaining fifteen exemptions are **Qualified Exemptions** and should be subject to a public interest test:

- Information intended for future publication (Section 22 of the Act)
- National Security (Section 24 of the Act)
- Investigations and proceedings conducted by public authorities (Section 30 of the Act)
- Formulation of Government Policy etc (Section 35 of the Act)
- Communications with Her Majesty, etc and honours (Section 37 of the Act)
- Health & Safety (Section 38 of the Act)
- Environmental Information (Section 39 of the Act)
- Legal professional privilege (Section 42 of the Act)
- Defence (Section 26 of the Act)
- International relations (Section 27 of the Act)
- Relations within the United Kingdom (Section 28 of the Act)
- The Economy (Section 29 of the Act)
- Law enforcement (Section 31 of the Act)
- Audit functions (Section 33 of the Act)
- Commercial Interests (Section 43 of the Act)

7.1 Further guidance on the exemptions:

The application of any qualified exemption (i.e. requiring a public interest test) **must** be done in conjunction with Legal Services and not independently by officers in individual directorates. This will ensure the consistent application of the legislation and it also protects individual officers and the City Council against any complaints as to the use of exemptions. The service area or Directorate will submit the relevant documents to Legal Services, identifying the information to which the exemption will apply and setting out, in the form of a written submission, the reasons why the exemption should apply.

7.1.1 Information accessible to the applicant by other means (Section 21 of the Act):

The Act allows an absolute exemption where the information sought is already reasonably accessible to the applicant, i.e. is already available from other sources. This means that if the information can be obtained without requiring a request under the Act, then it falls outside the scope of the Act. Section 21 ties in with the Publication Scheme which is available via the City Council's website. The City Council would still be obliged to provide assistance. For example, providing a copy of the information sought or advising the applicant as to where they can obtain a copy of the information requested.

7.1.2 Information intended for future publication (Section 22 of the Act):

This relates where there is an intention to publish the requested information at some future date. This is to ensure that the FOI Act does not force the premature publication of information. The exemption may apply even if a specific date for publication has not been determined but it must be reasonable in all circumstances to wait until the information is published. Furthermore, the public body must have decided to publish the information concerned before the request was received.

7.1.3 Personal Data (Section 40 of the Act):

Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject. Personal data falls under the Data Protection Act and the applicant should be informed that this request falls under the Data Protection Act, not the Freedom of Information Act, and that Birmingham City Council has 40 days, as opposed to the 20 working days set out in the FOI Act. Refer to Birmingham City Council's Data Protection Policy for further guidance.

7.1.4 Information provided in confidence (Section 41 of the Act):

Whilst this falls under an absolute exemption, it actually contains a public interest test element. The information must have been obtained by BCC from another legal person i.e. someone other than Birmingham City Council. Disclosure of that information would breach a duty of confidence held by Birmingham City Council to the other legal person.

7.1.5 Commercial interests (Section 43 of the Act):

This relates to information where the disclosure would be likely to prejudice the commercial interests of any person. It protects not only the commercial interests of third parties, but also the commercial interests of the public body that holds the information.

7.1.6 Prejudice the effective conduct of public affairs (Section 36 of the Act)

The use of this exemption is designated to the Monitoring Officer (or, in his absence, to the Chief Executive). The decision of the Monitoring Officer will have to stand up to challenge from the Information Commissioner / Courts. This exemption will only be used if there are clear and justifiable reasons presented in each case.

7.1.7 Environmental information (Section 39 of the Act)

Environmental Information Regulations require public authorities to provide information on:

- the state of the environment and factors affecting the environment
- measures such as policies, legislation, environmental agreement and economic analysis / cost benefit of such measures
- the state of human health and safety, the food chain, cultural / built structures and the conditions of human life where they are affected by environmental factors

Where a request for information relates to environmental information, it should be dealt with under the Environmental Information Regulations. Refer to Birmingham City Council's Environmental Information Regulations Policy for further guidance.

7.2 Vexatious requests

Birmingham City Council may refuse requests for information where it considers that the requests would:

- impose a significant burden on the council
- have the effect of harassing the public authority
- otherwise fairly be characterised as obsessive or manifestly unreasonable
- is the request designed to cause disruption or annoyance
- does the request lack any serious purpose or value

Refusals on the grounds that requests are vexatious will be considered on a case by case basis. It will be the request, not the requestor that is considered vexatious.

If you are unsure or require further guidance please contact your FOI Directorate representative.

8. Duty to confirm or deny the Council holds the information

8.1 The right to be told if the information is held

The Freedom of Information Act 2000 places a duty on the Authority to confirm or deny if the Council holds or does not hold the information requested.

Information is deemed to be held by Birmingham City Council if the information is held by Birmingham City Council, or on behalf of Birmingham City Council, in the course of its functions as a public authority.

An officer receiving the request should validate the request for information. The clock will start with regard to the need to complete and respond to the request within 20 working days. All FOI requests for information should be logged on the corporate database for FOI requests.

- ✓ *Check if information is readily available via the Council's website or whether the request can be handled as normal business.*
- ✓ *If you believe that the information is published but it is not detailed in the Publication scheme then contact your Directorate FOI contact or the Corporate Information Governance Team for guidance.*

The request should be forwarded to the relevant Directorate FOI contact officer prior to refusal for guidance in determining if an exemption does or does not apply. The officer will need to verify with the system owner / record holder whether the Council holds the information being requested and whether we need to confirm or deny this depending on the information concerned.

Where an exemption MAY apply

- ✓ Advise the FOI Directorate contact prior to responding to the applicant and without delay, providing the relevant information outlining why an exemption may apply and a copy of the original request.
- ✓ The FOI Directorate contact may raise the request with the Corporate Information Governance Team if appropriate providing them with all relevant information.
- ✓ The Corporate Information Governance Team may convene a FOI panel to review the exemption.
- ✓ The FOI panel should have been supplied with the relevant information outlining why an exemption may apply and a copy of the original request.

Consideration should be given to whether the exemption NEEDS to be applied. If there is no need to apply the exemption, provide the information requested.

Absolute exemption:

YES an absolute exemption does apply:

- ✓ The applicant should be advised in writing that in light of the legislation the Council is unable to confirm or deny that it holds or does not hold the information but may not have to confirm under which exemption it falls.
- ✓ Complete the FOI database record including confirming under which exemption the request for information has been refused.

Qualified exemption:

YES a qualified exemption does apply:

If the public interest to disclose **does not** outweigh the exemption –

- ✓ The applicant should be advised in writing that in light of the legislation the Council is unable to confirm or deny that it holds or does not hold the information but may not have to confirm under which exemption it falls.
- ✓ Complete the FOI database record including confirming under which exemption the request for information has been refused

An absolute or qualified exemption does NOT apply:

If the Council **does not** hold the information:

- ✓ Consider whether the Council needs to transfer the request.
- ✓ Write to the applicant advising them of the details relating to their request
- ✓ Update the FOI database as appropriate

If the Council **does** hold the information

- ✓ Consider and agree the fee in accordance with the Fees Regulations set out in Section 12
- ✓ Write to the applicant requesting payment
- ✓ Advise the applicant that the search will commence on receipt of the fee.
- ✓ Once the fee has been received proceed to Section 9 – Duty to communicate the information

Before advising the applicant, consideration must be given to the exemptions both absolute and qualified. The facts must fit the exemption applied.

In all cases the final response to the applicant should include:

- **Name of applicant**
- **FOI reference number**
- **Details of the request**
- **Details of the response. If the response is relating to a fees notice then relevant information should be provided as to how the fees has been calculated. If an exemption(s) is applied, the applicant should be provided with the relevant details of the exemption(s) and, where applicable, arguments setting out the public interest test.**
- **Details of the appeals process and contact details of the Information Commissioner's Office**

If you are unsure or require further guidance please contact your FOI Directorate representative.

9. Duty to communicate the information

9.1 The right to be given that information within 20 working days

The Freedom of Information Act places a duty on the Authority to communicate the information requested. This can take the form of:

- A copy of the information
- A summary of the information
- Inviting the applicant to come and view the information
- In the case of a dataset, the public authority has a duty to provide the requested information in an electronic form “which is capable of re-use”.

Once the applicant has been advised of the cost relating to their request for information and the Council is in receipt of the fee, the search for the information should commence:

- ✓ Locating the information within the Council / partner organisation
- ✓ Collating the required information.
- ✓ If necessary check with third party.
- ✓ If necessary select / redact information (consideration should be given to who will do this)
- ✓ Consider if Copyright applies and whether the applicant may inspect the information rather than receive a copy, where practical.
- ✓ If necessary apply / determine the exemption - Absolute or Qualified.
- ✓ Respond to the applicant.

Disclosure in an electronic format capable of re-use:

Where a dataset (as defined) is requested and can be disclosed, it is likely to either already be in a re-useable format, or easily converted to be so. A standard format is Comma-Separated-Value (CSV) and most software or extraction/analysis tools are capable of output in this format.

An exemption MAY apply

- ✓ Advise the FOI Directorate contact prior to responding to the applicant and without delay, providing the relevant information outlining why an exemption may apply and a copy of the original request along with a copy of the information held by the Council.
- ✓ The FOI Directorate contact may raise the request with the Corporate Information Governance Team if appropriate providing them with all relevant information.
- ✓ The panel should have been supplied with the relevant information outlining why an exemption may apply and a copy of the original request and a copy of the information held by the Council.

Consideration should be given to whether the exemption NEEDS to be applied. If there is no need to apply the exemption, provide the information requested.

In the event that some of the information can be disclosed, and some is subject to consideration, for example where it may fall under the public interest, the information that can be disclosed must be disclosed within the 20 working day limit. A letter explaining why the remaining information is delayed and what the expected date of disclosure / response is likely to be should be sent at the same time.

Absolute exemption:

YES an absolute exemption does apply:

- ✓ Advise the applicant in writing that the Council is unable to communicate the information and confirm under which exemption it falls.
- ✓ Update the FOI database as appropriate

Qualified exemption:

YES a qualified exemption does apply:

If the public interest to disclose **does not** outweigh the exemption –

- ✓ Advise the applicant in writing that the Council is unable to communicate the information and confirm under which exemption it falls
- ✓ Update the FOI database as appropriate

An absolute or qualified exemption does NOT apply:

- ✓ Supply the applicant with the information as requested, if practicable
- ✓ Update the FOI database as appropriate

Before advising the applicant, consideration must be given to the exemptions both absolute and qualified. The facts must fit the exemption applied.

In all cases the final response to the applicant should include:

- Name of applicant
- FOI reference number
- Details of the request
- Details of the response. If the response is relating to a fees notice then relevant information should be provided as to how the fees have been calculated. If an exemption(s) is applied, the applicant should be provided with the relevant details of the exemption(s) and, where applicable, arguments setting out the public interest test.
- Details of the appeals process and contact details of the Information Commissioner's Office

If you are unsure or require further guidance please contact your FOI Directorate representative.

10. Birmingham City Council FOI Panel

Birmingham City Council has in place a Freedom of Information panel. The panel will be convened to:

a) review any request for information where an exemption may apply or the public interest test of an exemption needs to be considered. In this case the panel would normally only be convened when all other means of determining the response have been exhausted. Prior to requesting the establishment of a panel the process should be:

1. Client Department seeks legal advice on the use of a qualified exemption
2. If, following legal advice, the Client Department does not agree with the advice, they should request a review from the solicitor, setting out the reasons why they feel the advice is not applicable.
3. If, following the review, the Client Department is still not satisfied, they can ask for a panel to be established to make a decision.

b) hear any appeal made by an applicant where a request has been refused or where some or all information has not been disclosed

Appropriate lead will be given to the Panel by the Corporate Champion where necessary. On receipt of a request for an appeal, the Corporate Information Governance Team should be notified to co-ordinate liaison between panel members, the client department and the applicant. The following table sets out the process for establishing a Panel:

BCC FOI Panel	Review a request	Hear an appeal
Convened by:	Corporate Information Governance Team	Corporate Information Governance Team
Composition	<ul style="list-style-type: none"> • A representative from the Corporate Information Governance Team • A representative from Legal Services • Representation from system owner / records holder • The FOI Directorate Contact (optional) 	<p>The Appeals Panel should not involve any officers involved in the original decision.</p> <ul style="list-style-type: none"> • A representative from the Corporate Information Governance Team (Chair) • A representative from Legal Services • Representation from system owner / records holder (optional) • A FOI Directorate Contact
Submission to the Panel	Submissions will be invited from: <ul style="list-style-type: none"> • System owner / records holder • Legal Services 	Submissions will be invited from: <ul style="list-style-type: none"> • System owner / records holder • Legal Services • Applicant
Notification of outcome	Once a decision is made this should be directed to the appropriate Directorate holding the information to confirm the decision of the panel.	The Corporate Information Governance Team will liaise with the Chair of the panel to notify the applicant of the outcome of the appeals process. A decision record will be completed and attached to the appropriate FOI database record.
Timescales	The panel will respond within 10 working days of a referral.	The panel will respond within 20 working days of an appeal.
Roles and responsibilities	The Corporate Information Governance Team will provide advice and guidance to panel members on their roles and responsibilities.	The Corporate Information Governance Team will provide advice and guidance to panel members on their roles and responsibilities. Refer to the FOI Appeals Panel Guidance note for further clarification.

11. Transferring a request for information

Birmingham City Council can only transfer a request where the Council receives a request for information that it does not hold, but which is held by another public body. If the Council holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public body).

If the Council believes that some or all of the information requested is held by another public body, the Council needs to consider what would be the most helpful way of assisting the applicant with their request. In most cases this is likely to involve:

- Contact the applicant to advise them that the information requested may be held by another public body and is not held by the Council.
- Suggest to the applicant that they re-apply to the public body that the Council believes holds the information that the applicant is requesting.
- If it is known then provide the applicant with contact details for that public body.

If you are unsure or require further guidance please contact your FOI Directorate representative.

12. Fees Regulations

12.1 FOI Fees Regulations

The Department of Constitutional Affairs (DCA) published, the Fees Regulations, which entitled Public Authorities to make charges in relation to complying with a request made under the Act. There is a limit of £450, below which Local Authorities are **not** entitled to charge the applicant, unless there is a charge for the information under the Publication Scheme.

This means that if a local authority receives a request and the work entailed in dealing with the request, (i.e.: the cost of determining whether the Public Authority hold the information; locating the information or documents which may contain the information; retrieving the information, or a document which may contain the information; and/or striking any exempt information from the document containing the information) exceeds £450, then the Local Authority can either:

1. ask the applicant to pay for the **additional cost** of dealing with the request in full (on the basis of an hourly rate of £25.00);
2. ask the applicant to narrow down the request so that the information the applicant feels is essential can be supplied within the £450 limit; or
3. reject the request completely.

In order to work to the £450 limit, an hourly rate of £25 per person per hour should be used. This equates, therefore, to 18 hours of work. The £450 limit does not cover disbursement or postage charges (see below), which the Public Authority can still charge the applicant.

In accordance with the duty to provide advice and assistance, Birmingham City Council will, where the cost of dealing with the request exceeds the £450 limit, provide an initial estimate of the work involved. A letter/e-mail will be sent to the applicant asking whether s/he would be prepared to pay the estimated additional costs. Additionally, further instructions with a view to narrowing down the scope of the request in order to bring the cost under £450 limit may also be provided.

If the applicant wants the full information, then a more thorough estimate will be prepared, and forwarded to the applicant with a request for payment. As the obligation is to try and get the estimate reasonably correct, if the actual costs fall below the final estimate, we will reimburse the applicant. Where, however, the final estimate was too low (i.e. the actual costs exceed the estimate), we are prohibited from seeking further monies from the applicant.

However, in certain circumstances, it may be apparent from an initial assessment of the request or requests (if they can be argued to be related requests, i.e. requests around a common theme) that the time involved in locating, collating and/or extracting the information requested, will exceed the 18 hours/£450 threshold by a considerable amount.

Where it can be shown that the time involved in dealing with the request would have a considerable detrimental impact on the provision of core services, e.g. by occupying key officers in responding to the request at the detriment of their other obligations and responsibilities, the Council is entitled to refuse the request entirely.

This should only be done as a last resort, and where the Applicant is unable or unwilling to scale down the request so that it does not cause such a detrimental impact on the provision of services, and where it can be shown that the work involved would exceed the 18 hours/£450 threshold by a considerable amount. In refusing a request, the Applicant should be offered the opportunity to rescale the request to fit within the fees regulations, and where appropriate, advice and assistance should be offered to assist the Applicant to bring his requests under the fees threshold.

12.2 Disbursements

As referred to above, Public Authorities are entitled to charge for disbursements, and these disbursements can include:

- Informing a person making a request, whether it holds the information; and
- Communicating the information to the person making the request (e.g. photocopying or duplicating charges and postage).

The Fees Regulations also allow Public Authorities the power to charge for the costs of giving effect to any preference expressed by the person making the request as to the means or form of communicating the information.

12.3 Information in different formats

Subject to the discrimination legislation, therefore, a Public Authority may charge translation costs to the applicant for the information sought. Where the information needs to be in an alternative format, to be accessible to the applicant, for example, Braille or audio tape, disbursement charges should be reflective of existing service standards and customer entitlements.

Consideration will, of course, also be given to whether the cost of collecting and processing disbursements outweighs the actual costs of disbursements. See Section 15 for further details.

A standard table of disbursement charges (unless otherwise stated in the Publication Scheme) has been calculated, taking into account not just the costs of the materials, wear and tear, etc, but also the time involved in preparing the enclosures.

Photocopying / printing

A4 B&W	£0.15 per sheet
A3 B&W	£0.30 per sheet

A4 colour (inkjet paper)	£2.00 per sheet
--------------------------	-----------------

A4 colour (gloss photo paper)	£2.50
-------------------------------	-------

Blank CDR	£1.00 per disc
-----------	----------------

12.4 Related or Mosaic Requests

Where a Public Authority receives two or more requests for access to information - either made by one person or by two or more people who appear to be acting in concert or in pursuance of a campaign - the Fees Regulations permit the Public Authority, where it believes that the requests are related or mosaic, to amalgamate the costs of complying with the request and apply the £450 limit to the same.

In order to be able to use this provision, the requests must relate to the same or similar information sought, and must have been made within 60 consecutive working days of each other.

12.5 Charging for disbursement

No charge should normally be made where disbursement costs are below £10.00. Where disbursement costs exceed £10.00, then the standard fees letter with a remittance slip should be sent to the applicant, requesting that they forward payment of the disbursement charges. The applicant can send a cheque made payable to Birmingham City Council, or make payment in person.

Only once notification of receipt of payment has been received by the City Council will the information be released to the applicant.

12.6 Unstructured Personal Data

In addition to the £450 limit applying to dealing with S1 requests made under the Act, this figure also applies to Subject Access Requests made under the Data Protection Act only in relation to work undertaken respect of unstructured personal data.

The Freedom of Information Act removes, for public authorities only, the exemption created by the Court of Appeal in the case of *Durant v FSA*, where unstructured manual files were held to fall outside the scope of a subject access request.

The Freedom of Information Act removes this exemption, but instead applies the same £450 limit. This means that where a Public Authority is likely to spend more than 18 person hours in going through unstructured manual files in order to locate the personal data, then instructions should be sought from the applicant either as to whether they wish to narrow down their request or whether they would agree to pay the additional costs in full, prior to receiving the information.

12.7 Fees and licensing arrangement for datasets

Fees:

The Freedom of Information (Release of Datasets for Re-use) (Fees) Regulations 2013, come into effect from 1st September 2013. The regulations set out the circumstances in which a public authority may charge a fee for making relevant copyright work available for re-use.

Where datasets can be made available for re-use, this is dependent on the position regarding copyright and intellectual property, particularly of third parties. The position is simple if the authority is the sole copyright holder; however it is more complex if there is a third party with any rights in relation to the dataset.

Where a charge is levied, the total fee shall not exceed the sum of the cost of collection, production, reproduction and dissemination of the relevant copyright work and a reasonable return on investment. The fee shall be determined in accordance with the accounting principles applicable to the public authority.

The application of fees will be determined on a case by case basis and licensed accordingly.

Licensing arrangements:

The Ministry of Justice has laid its Code of Practice before Parliament on 17th July 2013. The Code of Practice takes effect from 1st September 2013.

The Code of Practice also provides that, when making datasets available for re-use, one of the following licence terms should be followed:

- UK Open Government Licence
- Non Commercial Government Licence
- Charged Licence

The different licence terms recognises the fact that not all datasets will or can be made available for re-use free of charge and that in some circumstances, a public authority may be able to charge a fee for re-use of a dataset.

If you are unsure or require further guidance please contact your FOI Directorate representative.

13. Dealing with requests from the Media and Press Office

When processing FOI requests, officers should ensure that suitable attention has been given by Media colleagues to requests received by the Council:

- √ Each new request logged on the corporate FOI database, in addition to being assigned to the relevant FOI directorate contact, will be assigned to the relevant corporate media contact officer. This process will provide an e-mail alert to the corporate media contact officer.
- √ All final FOI responses need to be sent to the appropriate media officer by the 18th working day in order to allow for final checking and release of the information.

13.1 Where a media request is received by the City Council's Marketing and Communications Team, they will:

- a) respond to the requestor acknowledging receipt of the request
- b) forward the request to either:
 1. the FOI directorate contact where the request is for a specific directorate, or
 2. the Corporate Information Governance Team where the request is multi directorate

The request must then be logged onto the corporate database for FOI requests by the receiving directorate FOI contact or the Corporate Information Governance Team.

13.2 Where Directorates or the Corporate Information Governance Team receives media requests directly, they should:

- a) Inform the Communications Team so that they are aware of the request
- b) Respond to the applicant acknowledging receipt of the request
- c) Log the request onto the corporate database for FOI requests

13.3 Liaising with the media

The Directorate contact or the Corporate Information Governance Team will be responsible for preparing any correspondence that needs to be sent to the media should any issues arise in the course of dealing with the request. This could include, for example:

1. Seeking further clarification on the request
2. Notification of any fees due
3. Extension of the 20 working days due to Public Interest test (PIT) consideration or third party consultation

As a general rule, this correspondence should be forwarded in its final format to the relevant press officer prior to forwarding the final response to the applicant.

13.4 Collating the information and preparing a response

The responsibility for collating information and preparing a response rests with the Directorate or the Corporate Information Governance Team dealing with the request. **FOI Contact officers should seek the guidance of their nominated press officer for their directorate within the central Marketing and Communications Team and consultation with the Marketing and Communications prior to the response being released is encouraged.**

13.5 Sending out the response

Once the information is collated and the response prepared, it will be sent out to the applicant by the relevant Directorate or the Corporate Information Governance Team.

Under no circumstances will any Councillor be able to 'veto' or stop any information from being lawfully released to members of the public/Press under FOIA.

14. Procedure for producing a summary report

A summary of information may be required if:

- ✓ The applicant has requested a summary
- ✓ Due to exemptions not all of the information can be provided but a summary can be supplied
- ✓ The condition of the information prevents the information from being viewed

The decision to produce the summary will rest with the Officer or Section Head dealing with the FOI Request for Information. The relevant Assistant Director, if appropriate, should approve any summary before it is released. The Directorate should ensure that this is fully justifiable and documented. This would support the Council in responding to a request for assessment of complaint from the Information Commissioner's Office regarding our reasons for none compliance with the applicants request for a summary.

Extreme care should be taken to ensure that any summary produced is a fair and accurate reflection of the information requested so that any subsequent review / scrutiny would endorse the objectivity of the summary based on auditable records.

The system owner or record holder should produce the summary. Once the summary has been produced it should be checked by the FOI Directorate contact before being sent to the applicant

If any information has been withheld then the applicant should be advised of the exemption(s) which apply relating to this.

The applicant should be advised of the Council's complaints procedure and the appeals process of the Information Commissioner's Office.

The Act states that the Council must comply promptly to a request for information and not later than the twentieth working day following the date of receipt of a request.

See section 15 on guidance for the provision of a summary in an alternative format.

If you are unsure or require further guidance please contact your FOI Directorate representative.

15. Production of the information into another language or format

The City Council has established procedures, as part of its customer service standards, for providing information in alternative formats or languages. The implication for a FOI request in an alternative format or language is that it would be likely to lead to a delay in the process and may incur additional costs in satisfying the request. It is important that this is communicated to the applicant as appropriate.

The City Council's Corporate Equality Scheme sets out guidance for the provision of and access to information as follows.

"To ensure equality of opportunity in accessing information we will work with representative groups to remove barriers to proper access by ensuring that information is available in a timely fashion. Information will be made available on request in accessible formats including Braille, disc and audiocassette and in minority languages to meet the needs of those who are not fluent in English. Specific consideration will be given to how best to communicate information to young people and those with learning difficulties."

If you are unsure or require further guidance please contact your FOI Directorate representative.

16. FOI request from a Council Member or employee of the Council

Employees of the Council and Elected Members who make requests for information under Freedom of Information should note the following guidance:

Employees

- Staff using an internal system, such as their Lotus Notes email, will be required to identify the request as a personal request for information under FOIA at the start of the request so as to distinguish it from other normal council business.
- Where staff use personal emails or home addresses these will be treated in the same way as any other FOIA request from a member of the public.
- Employees, as part of their normal duties for Birmingham City Council, should not be using FOIA. If a Department does not provide necessary information required by another department, line management arrangements must be used. It is an abuse of procedures to clog up the FOIA system with unnecessary "departmental" requests.
- Employees, in their official capacity, should not, make FOI requests to other public authorities to access information unless the relevant Chief Officer approves of such an approach on a case by case basis.

Elected Members

- Existing Rights: Members already have rights to certain City Council information and the guidance for the request and use of this information is set out in Volume B - Part 3 (F) Member / Officer Relations Protocol - Access to Information 'Need to know'. This will continue as currently operated.
- Member enquiries: Where Elected Members make requests for information and it is deemed not to be covered by their existing rights, clarification should be sought as to the nature of the request. If it is subsequently treated as a request for information under FOIA, it will be processed as such and no priority will be given.
- Member in a representational role: As with member enquires, clarification should be sought as to the nature of the request. If it is subsequently treated as a request for information under FOIA, it will be processed as such and no priority will be given.
- Member personal request: This will be treated in the same way as any other request from a member of the public and no priority will be given.
- Members of the public requesting information from Elected Members: If this is not related to the Council, it will not be covered by FOIA and the member will be free to answer / reject any such requests for information. If this request is related to the Council (i.e. to an Executive Member or Chair, etc) by virtue of his/her office with the Council, this will be an FOIA request and members will have to be encouraged to forward the same to officers for processing through the FOIA system.
- In light of recent Freedom of Information requests, Elected Members may wish to consider adopting the following standard paragraphs in initial correspondence - in letters and emails - with constituents, when acting in their capacity as Councillors doing representative work for their constituents, to deal with any correspondence that may have to be released by the City Council under the Freedom of Information Act 2000.

"Under the Freedom of Information Act 2000, Birmingham City Council, as a public authority, is legally required to disclose any information it holds, unless information can be withheld under an exemption to the Act.

I am informed that this duty to disclose includes correspondence sent by me on your behalf. However, I understand that Birmingham City Council will delete the names and addresses of any constituents, where they are acting in a personal capacity, i.e. not in relation to a business issue, from any correspondence that will be disclosed."

If you are unsure or require further guidance please contact your FOI Directorate representative.

17. FOI Complaints Procedure of the City Council

Complaints made about the way in which a request for information has been managed should be dealt with through the City Council's internal complaints procedure, save for where other statutory procedures apply.

The following guidance is provided to assist officers in dealing with complaints or appeals arising from FOI requests.

17.1 An applicant may respond to the City Council following a response that they have received related to a request that they have made, for example:

- a) providing further clarification to the original request
- b) asking for further information to supplement information received
- c) asking for new information

In these instances, the response should be dealt within FOI and not treated as a complaint or appeal.

17.2 Where the applicant makes a complaint whilst the request is ongoing

This should be logged within the Council's complaint database as a complaint and dealt with through the complaints processes as a Stage 2 complaint. Contact your directorate co-ordinator for further details.

17.3 Where the applicant makes a complaint after the request is completed

As above, this should be logged within the Council's complaints database as a complaint and dealt with through the complaints processes as a Stage 2 complaint. Contact your directorate co-ordinator for further details.

17.4 Where the applicant appeals against the outcome of a request

The applicant may appeal against an outcome of a request, for example:

- 1. Where the request has been refused
- 2. Where information has not been disclosed

In these instances, as there is a statutory appeals procedure within the FOI Act, it falls outside of the Council's complaints process. The appeal, therefore, should be logged with the Corporate Information Governance Team, who will subsequently arrange for an appeals panel (independent of any of the officers involved in dealing with the original request) to be established. See Section 10 for further details.

If you are unsure or require further guidance please contact your FOI Directorate representative.

18. Responding to Requests for Assessment from the Information Commissioner

Any 'requests for assessment' received by the Council from the Information Commissioner's Office will need to be managed by the Corporate Information Governance Team. These may include assessments in respect of complaints, refusals or appeals.

The Corporate Information Governance Team will:

- ✓ Log all requests for assessment received by the Council
- ✓ Advise the Directorate concerned that a request for assessment has been received.
- ✓ In conjunction with the Directorate investigate the request for assessment and agree a response to the Information Commissioner's Office
- ✓ Respond to the Information Commissioner's Office within the timescales set by the ICO.

If you are unsure or require further guidance please contact your FOI Directorate representative.

19. Audit & Management Requirements

It is important that there is an audit trail of the work carried out by the Council in responding to requests for information as outlined in the Freedom of Information Act 2000. This will also enable the Council to respond to requests for assessments or complaints from our customers.

There are a potential number of common problems that may occur during our processing of request for information:

- ◆ Delays in responding to requests
- ◆ Excessive charges, this may include excessive refusal of requests on the grounds that the cost threshold has been exceeded.
- ◆ Excessive reliance on particular exemptions

All requests under FOI be logged on the corporate database for FOI and the record and details of each request should be retained, by the relevant FOI contact for a period of 24 months from the date the request was completed.

Management information will be provided on a monthly / quarterly basis as appropriate to the Council's Monitoring Officer and the FOI Corporate Group on the following:

- ◆ Request for Assessment received by the Council from the Information Commissioner's Office
- ◆ Request's for information refused by the Council
- ◆ Request's for information completed by the Council
- ◆ Request's for information exceeding the 20 working days
- ◆ Other relevant information as may be requested by senior officers periodically

This will support the Council to be able to respond to assessments, complaints, audit and performance management needs. It will also provide opportunities to learn from and share good practice in the management of requests for information.

If you are unsure or require further guidance please contact your FOI Directorate representative.

Appendix A: Guide to requesting information from Birmingham City Council

**Freedom of Information Act 2000 & the
Data Protection Act 1998**

Guide to requesting information from Birmingham City Council

Introduction

As far as is possible Birmingham City Council wishes to provide members of the public, customers, staff or members with any information they need about Birmingham City Council.

Under the terms of the Data Protection Act 1998 and the Freedom of Information Act 2000, these Acts give certain rights of access with regard to obtaining information held by Birmingham City Council. You may make requests for information under the terms of either or both of these Acts via the following application forms.

Making a request for information held about YOU from Birmingham City Council:

Under the terms of the Data Protection Act 1998 you can ask Birmingham City Council for information held about you as an individual. If you wish to make a request for a copy of the information that relates to yourself, then please complete the form titled *Data Protection Subject Access Request form*. Birmingham City Council will have 40 calendar days to respond to your request.

[Attached is a copy of the Data Protection Subject Access Form](#)

Making a request for information about or held by Birmingham City Council:

Under the terms of the Freedom of Information Act 2000 you can ask Birmingham City Council for information held by the Council. If you wish to locate some information you believe the Council holds then in the first instance you should consult the Birmingham City Council's Publication Scheme.

From January 2005 if the information you require is not available in the City's Publication Scheme you can write, email or complete the form titled 'Request for Information'. Birmingham City Council will have 20 working days to respond to your request, the 20 working days may not commence until Birmingham City Council has sufficient information to locate the information you require. A working day is any day Monday through to Friday excluding bank holidays.

[Attached is a copy of the Request for Information Form](#)

Please note:

- There may be a charge for the service of providing the information requested. This charge will reflect the cost of providing the information to you. We will determine the fee as quickly as possible. The charge will be calculated as described in the published 'Fees Regulations' as issued by the Departmental of Constitutional Affairs. Birmingham City Council will respond to your request for information following receipt of the relevant fee.
- To obtain personal information relating to you please complete *the Data Protection Subject Access form*. You will not be able to obtain information about you via a *Request for Information form*.

- We will make all reasonable efforts to locate the information you require but may ask you to provide more details if your original request for information does not allow us to locate exactly what you require. It is only once we receive this additional information that the 20 working days for a response will recommence.
- Any further/later requests you make may attract additional fees so please be careful to request all the information you require.
- We reserve the right not to provide information in cases where an exemption may apply, but will advise you of the details if this is the case.

Once you have decided on the type of enquiry you wish to make, please complete the appropriate application form and return to:

Corporate Information Management Team

PO Box 16366

Birmingham B2 2YY

Telephone: 0121 303 4876

FAX: 0121 675 1427

Email: FOI_Mailbox@Birmingham.gov.uk

Appendix B: Birmingham City Council FOI Request for Information form

Birmingham City Council
Freedom of Information Act 2000
Request for Information form

In accordance with section 8 of the Freedom of Information Act 2000, I wish to request access to information, which I believe is held by Birmingham City Council.

Before completing this form – Please check the Council's Publication Scheme as the information you require may be already published by the Council. The Publication scheme is available on the Web at www.birmingham.gov.uk

1. Details of Applicant:

Surname	
First name	
Correspondence Address	
Post Code	
Contact Telephone Number including dialling code	
Mobile Number	
E-mail Address	

2. Information required by you that you believe is held by Birmingham City Council.

Please detail as much information as you can to enable us to identify and locate the information you require.	
---	--

3. If the information required is from/to a particular period please specify the dates of the information required:

From:		To:	
-------	--	-----	--

4. Please specify your preferred form of access to the information by selecting one of the following options:

Receive a copy by post	
Receive a copy by e-mail (This is restricted to documents which are held in electronic format)	
View / inspect original information	
Receive a digest or summary of the information by post	
Receive a digest or summary of the information by email	
Other / Special needs - please specify	

It may not always be possible for the Council to provide the information in the way that you have requested, if this is the case then the Council will advise you of this.

5. The Data Protection Act 1998

The information you provide on this form will be held on our database and may also be held within manual records for a period of 2 years from the date Birmingham City Council received your request. Any personal data that you provide to Birmingham City Council will be held in line with the requirements set out within the Data Protection Act 1998. If you would like to see a copy of any personal data that Birmingham City Council may hold about you, you can request this under Section 7(1) of the Data Protection Act 1998. A Subject Access Request Form is available from our web-site at www.birmingham.gov.uk or you may request a copy from us at the address detailed below.

6. Please sign and date your request:

I understand I may be required to pay a fee for the information and that where a fee applies, the information will not be released by the Council until the fee has been paid.

I understand that the Council may not hold the information I am requesting and that the Council may need to consider whether it is appropriate for my request to be transferred to another public body. Where this is the case I CONSENT to my request being transferred.

Signature	
Date	

Please return this form to:

Birmingham City Council
Corporate Information Management Team
PO Box 16366
Birmingham
B2 2YY

Telephone: 0121 303 4876
FAX: 0121 675 1427
E-mail: FOI_Mailbox@Birmingham.gov.uk

=====

Appendix C: Frequently asked questions about Freedom of Information

Birmingham City Council - Frequently Asked Questions about Freedom of Information

The Freedom of Information Act 2000 (FOI) gives you right of access to information held by Birmingham City Council although the Council may refuse access to the information if that information falls within any of the 23 Exemptions within the Act. The exemptions protect against the disclosure of information, which may be information provided to the Council in confidence, personal information or other types of information the Council may hold. Further information on the Freedom of Information Act 2000 is available from www.foi.gov.uk

What information can I ask for?

Your right to ask for information only relates to information held by the Council at the time that you make your request. 'Information' may be in any form, for example printout, computerised records, maps, plans, microfilm, audio-visual material, paper etc. FOI provides a right to access 'information' rather than to records or documents. Although you are not required to specify any particular document, you must describe the information you are requesting in as much detail as possible. The Council publishes a wide range of information. You should first check the Council's Publication Scheme to find out whether the information you are requesting has already been published or if there are plans to do so. A copy of the Council's Publication Scheme may be obtained from the Data Protection & Freedom of Information Corporate Team or by logging on to the Internet at www.birmingham.gov.uk.

Do I need to give a reason to see the information?

No, you do not have to give a reason as to why you want to see any information. The Council must give you an explanation if you are not given the information you have requested.

Can I ask for personal information about myself?

No, a request for personal information about you must be made under the Data Protection Act 1998. You can use the Data Protection Subject Access Request form that is available from the Corporate Information Governance Team or by logging on to Internet at www.birmingham.gov.uk.

Can I ask for personal information about a third party?

Yes, personal information relating to a third party will be dealt with under FOI. However before you are given access to personal information relating to a third party, you may be asked to provide proof of their consent to the disclosure or the third party may need to be contacted so that their consent can be sought.

How do I make a request for information if I have a disability, am ill or cannot put my request in writing?

If you are unable to put your request in writing, please ask another person or agency (such as citizens Advice Bureau) to help you or to make the request on your behalf. The Council will provide you with assistance, examples of which may include:

- Accepting an oral request where you are unable to read, print and or write due to a disability. This may require an officer of the Council taking a note of your request over the telephone and then sending the note to you for confirmation requesting that you check the details and return it to the Council confirming your request. The Council may send you a part completed Birmingham City Council FOI Request for Information form to assist in this process.
- Enabling you to inspect or have the information you are requesting explained to you where possible;
- Providing guidance in other languages including Braille

Are there limits to the information I can ask for?

Yes, confidentiality is sometimes necessary to ensure the effectiveness of the Council's decision-making and to protect commercial interests, as well as information provided in confidence, personal information and other important interests. For these reasons, some categories of Council information may be covered by an exemption under the Act. Nevertheless it is the Council's aim to ensure that information should be made available unless it is clearly not in the public interest to do so.

How do I describe the information I am asking for?

You should describe the information as fully as you can to enable the Council to identify and locate it. If you are requesting personal information, please state precisely in whose name the information is held. You will not normally be given access to the personal information of another person unless you have obtained the written consent of that person. Where you provide insufficient information to enable the Council to identify or locate the information you are asking for or where the request is ambiguous, the Council will as far as is practicable provide you with assistance to enable you to describe more clearly the information you are requesting. The aim of this assistance will be to clarify the nature of the information sought and not to determine your aims or motivation for asking for the information. Where information is likely to be refused on cost grounds, the Council will give you an indication of what information could be provided within the costs ceiling.

What happens if the Council does not hold the information?

The Council may not hold the information you are asking for because the information may have been destroyed in accordance with the Council's data retention policies or another public body may hold the information. In such cases, you will be told that the Council does not hold the information. Where the council believes that another public body holds the information and that it would be appropriate to transfer your request to that other body then the Council will transfer your request and advise you of their action. The Council may suggest that you apply to the public body directly; if this is the case the Council will advise you of this.

Can the Council charge a fee?

Yes, charges may apply.

How do I receive the information I have asked for?

You are entitled to say how you wish the information to be communicated to you. This may be by letter, e-mail or by inspection at a Council office on a date and time to be mutually agreed. It may not always be possible for the council to comply with your wishes with regard to how you wish to receive the information. As an example there may be times where a document contains some information suitable for release under the Act, but also some information covered by another Act or exemption that prevents the Council from disclosing that information to you. Therefore inspection of the original documents may not be possible. If that is the case the council will advise you of this. If information is required in different formats, the Council will give consideration to this subject to cost implications.

When must the Council provide me with the information I have asked for?

Birmingham City Council will respond promptly to your request for information and in any event not later than the twentieth working day after the date the Council receives your request or if appropriate the fee required.

Can the Council refuse my request for information?

Yes there are circumstances where the Council may refuse a request on the grounds that it is vexatious, repeated or made with the aim of frustrating the operations of the Council.

The Council may also refuse to comply with a request for information where the Council estimates that the cost of complying with the request would exceed the cost ceiling set by the Fees Regulations.

The Council may also refuse to comply with the request for information where the information is considered to be exempt under the FOI Act. Should this be the case for your request, then you will be given an explanation of the reasons for the Council refusing your request for information.

Can I appeal against the Council's decision to refuse my request for information?

Yes, if you are not satisfied with the decision you may ask for an internal review via Birmingham City Council's Complaints procedure. Details of this procedure can be found at www.birmingham.gov.uk

If you are not satisfied with the Council's decision you may apply to the Information Commissioner for an independent review at the following address:

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

Telephone Number: 01625 545700

Web Address: www.ico.gov.uk

Appendix D: Freedom of Information Act 2000 Exemptions

Part II of the Freedom of Information Act – Exempt Information

Section 21 of the Act:

Information accessible to the applicant by other means

- (1) *Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*
- (2) *For the purposes of subsection (1)-*
 - (a) *information may be reasonably accessible to the applicant even though it is accessible only on payment, and*
 - (b) *information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.*
- (3) *For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.*

Section 23 of the Act:

Information supplied by, or relating to, bodies dealing with security matters.

- (1) *Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).*
- (2) *A certificate signed by a minister of the crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.*
- (3) *The bodies referred to in subsections (1) and (2) are-*
 - (a) *the Security Service,*
 - (b) *the Secret Intelligence Service,*
 - (c) *the Government Communications Headquarters,*
 - (d) *the special forces,*
 - (e) *the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,*
 - (f) *the Tribunal established under section 7 of the Interception of Communications Act 1985,*
 - (g) *the Tribunal established under section 5 of the Security Services Act 1989*
 - (h) *the Tribunal established under section 9 of the Intelligence Act 1994,*
 - (i) *the Security Vetting Appeals Panel*
 - (j) *the Security Commission*
 - (k) *the National Criminal Intelligence Service, and*
 - (l) *the Service Authority for the National Criminal Intelligence Service.*
- (4) *In subsection (3)(c) "the Government Communications Headquarters" includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.*

- (5) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).*

Section 25 of the Act:

Certificates under ss. 23 and 24: supplementary provisions

- (1) *A document purporting to be a certificate under section 23(2) or 24(3) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.*
- (2) *A document which purports to be certified by or on behalf of a Minister of the Crown as a true copy of a certificate issued by that Minister under section 23(2) or 24(3) shall in any legal proceedings be evidence (or, in Scotland, sufficient evidence) of that certificate.*
- (3) *The power conferred by section 23(2) or 24(3) on a Minister of the Crown shall not be exercisable except by a Minister who is a member of the Cabinet or by the Attorney General, the Advocate General for Scotland or the Attorney General for Northern Ireland.*

Section 32 of the Act:

Court Records

- (1) *Information held by a public authority is exempt information if it is held only by virtue of being contained in –*
- (a) *any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,*
 - (b) *any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or*
 - (c) *any document created by –*
 - (i) *a court, or*
 - (ii) *a member of the administrative staff of a court**for the purposes of proceeding in a particular cause or matter.*
- (2) *Information held by a public authority is exempt information if it is held only by virtue of being contained in –*
- (a) *any document placed in the custody of a person conducting an enquiry or arbitration, for the purposes of the enquiry or arbitration, or*
 - (b) *any document created by a person conducting an enquiry or arbitration, for the purposes of the inquiry or arbitration.*
- (3) *The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.*
- (4) *In this section –*
- (a) *“court” includes any tribunal or body exercising the judicial power of the State.*
 - (b) *“proceedings in a particular cause or matter” includes any request or post-mortem examination,*
 - (c) *“inquiry” means any inquiry or hearing held under any provision contained in, or made under, an enactment, and*
 - (d) *except in relation to Scotland, “arbitration” means any arbitration to which Part 1 of the Arbitration Act 1996 applies.*

Section 34 of the Act:

Parliamentary privilege

- (1) *Information is exempt information if exemption from section 1(1)(b) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.*

- (2) *The duty to confirm or deny does not apply if, or to the extent that, exemption from section 1(1)(a) is required for the purposes of avoiding an infringement of the privileges of either House of Parliament.*
- (3) *A certificate signed by the appropriate authority certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purposes of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact.*
- (4) *In subsection (3) “the appropriate authority” means: -*
- (a) in relation to the House of Commons, the Speaker of that House, and*
 - (b) in relation to the House of Lords, the Clerk of the Parliaments.*

Section 36 of the Act:
Information held by either House of Parliament whose disclosure would prejudice the effective conduct of public affairs

- (1) *This section applies to: -*
- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and*
 - (b) information which is held by any other public authority.*
- (2) *Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act: -*
- (a) would, or would be likely to, prejudice: -*
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or*
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or*
 - (iii) the work for the Executive Committee of the National Assembly for Wales,*
 - (b) would, or would be likely to, inhibit: -*
 - (i) the free and frank provision of advice, or*
 - (ii) the free and frank exchange of views for the purposes of deliberation, or*
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.*
- (3) *The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).*
- (4) *In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words “in the reasonable opinion of a qualified person”.*
- (5) *In subsections (2) and (3) “qualified person”:* -
- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,*
 - (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,*
 - (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,*
 - (d) in relation to information held by the House of Commons, means the Speaker of that House,*

- (e) *in relation to information held by the House of Lords, means the Clerk of the Parliaments,*
 - (f) *in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,*
 - (g) *in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,*
 - (h) *in relation to information held by any Welsh public authority other than the Auditor General for Wales, means: -*
 - (i) *the public authority, or*
 - (ii) *any officer or employee of the authority authorised by the Assembly First Secretary,*
 - (i) *in relation to information held by the National Audit Office, means the Comptroller and Auditor General,*
 - (j) *in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,*
 - (k) *in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,*
 - (l) *in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means: -*
 - (i) *the public authority, or*
 - (ii) *any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,*
 - (m) *in relation to information held by the Greater London Authority, means the Mayor of London,*
 - (n) *in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and*
 - (o) *in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means: -*
 - (i) *a Minister of the Crown,*
 - (ii) *the public authority, if authorised for the purposes of this section by a Minister of the Crown, or*
 - (iii) *any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.*
- (6) *Any authorisation for the purposes of this section: -*
 - (a) *may relate to a specified person or to persons falling within a specified class,*
 - (b) *may be general or limited to particular classes of case, and*
 - (c) *may be granted subject to conditions.*
- (7) *A certificate signed by the qualified person referred to in subsection 5(d) or (e) above certifying that in his reasonable opinion: -*
 - (a) *disclosure of information held by either House of Parliament, or*
 - (b) *compliance with section 1(1)(a) by either House,*

would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

**Section 40 of the Act:
Personal data**

- (1) *Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.*
- (2) *Any information to which a request for information relates is also exempt information if:*
- - (a) *it constitutes personal data which do not fall within subsection (1), and*
 - (b) *either the first or the second condition below is satisfied.*
- (3) *The first condition is: -*
- (a) *in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section (1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene: -*
 - (i) *any of the data protection principles, or*
 - (ii) *section 10 of that Act (right to prevent processing likely to cause damage or distress), and*
 - (b) *in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.*
- (4) *The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).*
- (5) *The duty to confirm or deny: -*
- (a) *does not arise in relation to information which is (or if it were held by public authority would be) exempt information by virtue of subsection (1), and*
 - (b) *does not arise in relation to other information if or to the extent that either: -*
 - (i) *the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or*
 - (ii) *by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).*
- (6) *In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.*
- (7) *In this section: -*
- "the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;*
- "data subject" has the same meaning as in section 1(1) of that Act;*
- "personal data" has the same meaning as in section 1(1) of that Act.*

**Section 41 of the Act:
Information provided in confidence**

- (1) *Information is exempt information if: -*
- (a) *it was obtained by the public authority from any other person (including another public authority), and*
 - (b) *the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*
- (2) *The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.*

**Section 44 of the Act:
Information prohibited from disclosure under other laws, obligations or where it would involve a contempt of court**

“(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it: -

- (a) *is prohibited by or under any enactment,*
 - (b) *is incompatible with any Community obligation, or*
 - (c) *would constitute or be punishable as a contempt of court.*
- (2) *The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).*

**Section 22 of the Act:
Information intended for future publication**

- (1) *Information is exempt information if-*
- (a) *the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*
 - (b) *the information was already held with a view to publication at the time when the request for information was made, and*
 - (c) *it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).*
- (2) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (Whether or not already recorded) which falls within subsection (1).*

**Section 24 of the Act:
National Security**

- (1) *Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.*
- (2) *The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.*
- (3) *A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.*

- (4) A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.

**Section 30 of the Act:
Investigations and proceedings conducted by public authorities.**

- (1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
- (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.

- (2) Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
- (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources

- (3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

- (4) In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references-

- (a) to any officer of the authority,
- (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and
- (c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.

- (5) In this section-

"criminal proceedings" includes-

- (a) proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,
- (b) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957,

(c) *proceedings before a court established by section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957 (summary appeals courts),*

(d) *proceedings before the Courts-Martial Appeal Court, and*

(e) *proceedings before a Standing Civilian Court;*

“offence” includes any offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

(6) *In the application of this section to Scotland-*

(a) *in subsection (1)(b), for the words from “a decision” to the end there is substituted “a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted”,*

(b) *in subsections (1)(c) and (2)(a)(ii) for “which the authority has power to conduct” there is substituted “which have been instituted in consequence of a report made by the authority to the procurator fiscal”, and*

(c) *for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence.*

**Section 35 of the Act:
Formulation of Government Policy etc**

(1) *Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-*

(a) *the formulation or development of government policy,*

(b) *Ministerial communications,*

(c) *The provision of advice by any of the Law Officers or any request for the provision of such advice, or*

(d) *The operation of any Ministerial private office.*

(2) *Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-*

(a) *for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or*

(b) *for the purposes of subsection (1)(b), as relating to Ministerial communications.*

(3) *The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).*

(4) *In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-making.*

(5) *In this section-*

“government policy” includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of the National Assembly for Wales;

“the Law Officers” means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland and the Attorney General for Northern Ireland;

“Ministerial communications” means any communications-

- (a) between Ministers of the Crown,*
- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or*
- (c) between Assembly Secretaries, including the Assembly First Secretary*

and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of the executive committee of the National Assembly for Wales;

“Ministerial private office” means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or any part of the administration of the National Assembly of Wales providing personal administrative support to the Assembly First Secretary or an Assembly Secretary;

“Northern Ireland junior Minister” means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the Northern Ireland Act 1998.

**Section 37 of the Act:
Communications with Her Majesty, etc and honours.**

(1) Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or*
- (b) the conferring by the Crown of any honour or dignity.*

(2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

**Section 38 of the Act:
Health & Safety**

(1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or*
- (b) endanger the safety of any individual.*

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

**Section 39 of the Act:
Environmental Information**

(1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) is obliged by regulations under section 74 to make the information available to the public in accordance with the regulations, or*
- (b) would be so obliged but for any exemption contained in the regulations.*

(2) *The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).*

(3) *Subsection (1)(a) does not limit the generality of section 21(1).*

**Section 42 of the Act:
Legal professional privilege**

(1) *Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.*

(2) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.*

**Section 26 of the Act:
Defence**

(1) *Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

(a) the defence of the British Islands or of any colony, or

(b) the capability, effectiveness or security of any relevant forces.

(2) *In subsection (1)(b) "relevant forces" means-*

(a) the armed forces of the Crown, and

(b) any forces co-operating with those forces,

or any part of those forces,

(3) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).*

**Section 27 of the Act:
International relations**

(1) *Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

(a) relations between the United Kingdom and any other State,

(b) relations between the United Kingdom and any international organisation or international court,

(c) the interests of the United Kingdom abroad, or

(d) the promotion or protection by the United Kingdom of its interests abroad.

(2) *Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.*

(3) *For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.*

(4) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-*

- (a) *would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or*
- (b) *would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.*

(5) *In this section-*

“international court” means any international court which is not an international organisation and which is established-

- (a) *by a resolution of an international organisation of which the United Kingdom is a member, or*
- (b) *by an international agreement to which the United Kingdom is a party;*

“international organisation” means any international organisation whose members include any two or more States, or any organ of such an organisation;

“State” includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.

**Section 28 of the Act:
Relations within the United Kingdom**

- (1) *Information is exempt if disclosure under this Act would, or would be likely to, prejudice relations between any administration in the United Kingdom and any other such administration.*
- (2) *In subsection (1) “administration in the United kingdom” means-*
 - (a) *the government of the United Kingdom,*
 - (b) *the Scottish Administration,*
 - (c) *the Executive Committee of the Northern Ireland Assembly, or*
 - (d) *the National Assembly for Wales.*
- (3) *The duty to confirm or deny does not arise if, or to the extent that, compliance section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).*

**Section 29 of the Act:
The Economy**

- (1) *Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*
 - (a) *the economic interests of the United Kingdom or of any part of the United Kingdom, or*
 - (b) *the financial interests of any administration in the United Kingdom, as defined by section 28(2).*
- (2) *The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).*

**Section 31 of the Act:
Law enforcement**

- (1) *Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*
- (a) *the prevention or detection of crime,*
 - (b) *the apprehension or prosecution of offenders,*
 - (c) *the administration of justice,*
 - (d) *the assessment or collection of any tax or duty or of any imposition of a similar nature,*
 - (e) *the operation of the immigration controls,*
 - (f) *the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,*
 - (g) *the exercise by any authority of its functions for any purposes specified in subsection (2)*
 - (h) *any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or*
 - (i) *any enquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.*
- (2) *The purposes referred to in subsection (1)(g) to (l) are-*
- (a) *the purpose of ascertaining whether any person has failed to comply with the law,*
 - (b) *the purpose of ascertaining whether any person is responsible for any conduct which is improper,*
 - (c) *the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,*
 - (d) *the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,*
 - (e) *the purpose of ascertaining the cause of an accident*
 - (f) *the purpose of protecting charities against misconduct or mismanagement whether by trustees or other persons) in their administration,*
 - (g) *the purpose of protecting the property of charities from loss or misapplication,*
 - (h) *the purpose of recovering the property of charities,*
 - (i) *the purpose of securing the health, safety and welfare of persons at work, and*
 - (j) *the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.*

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would likely to prejudice any of the matters mentioned in subsection (1).

Section 33 of the Act:

Audit functions

- (1) This section applies to any public authority which has functions in relation to-*
- (a) the audit of the accounts of other public authorities, or*
 - (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.*
- (2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (91).*
- (3) The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to prejudice the exercise of any of the authority's functions in relation to any matters referred to in subsection (1).*

Section 43 of the Act:

Commercial Interests

- (1) Information is exempt information if it constitutes a trade secret.*
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).*
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would likely to, prejudice the interests mentioned in subsection (2).*

Appendix E: Guidance from the Information Commissioner's Office

A number of guidance documents are available on the Information Commissioner's website detailing Freedom of Information Compliance advice. The website address:

www.ico.gov.uk

The following awareness guidance documents have been published by the Information Commissioner on his website:

[Personal Information](#)
[Information provided in confidence](#)
[The Public Interest Test](#)
[Legal Professional Privilege – Section 42](#)
[Commercial Interests](#)
[Annex – Public Sector Contracts](#)
[Information Reasonably Accessible to the Applicant by Other Means](#)
[Information Intended for Future Publications](#)
[Records Management FAQs](#)
[Information contained in court records](#)
[Defence](#)
[Time for Compliance](#)
[When is information caught by the Freedom of Information Act](#)
[Relation within the UK](#)
[International Relations](#)
[The Economy](#)
[Investigations](#)
[Law Enforcement](#)
[Public Audit](#)
[Section 38 Health & Safety](#)
[Prejudice and adverse affect](#)
[The duty to confirm or deny](#)
[Vexatious and Repeated requests](#)
[Advice and assistance](#)
[Policy formulation, Ministerial Communications, Law Officers' Advice, and the operation of Ministerial Private Office](#)
[Communications with Her Majesty and the Awarding of Honours](#)
[Prohibitions on Disclosure](#)

Guidance currently available on the exemptions:

[Audit exemptions](#)

[Court Records \(Section 32 of the Freedom of Information Act\)](#)

[The Economy \(Section 29 of the Freedom of Information Act\)](#)

Appendix F: Freedom of Information Useful links

1. A copy of the Birmingham City Council Legal Services Briefing Note on the Freedom of Information Act 2000 can be found at:

www.birmingham.gov.uk

2. A copy of the Freedom of Information Act 2000 can be found at:

<http://www.cfoi.org.uk/foiact2000.html>

3. A copy of the Code of Practice issued under 45 on the discharge of public authority functions under Part 1 of the Freedom of Information Act 2000 can be found at:

www.foi.gov.uk

4. A copy of the Code of Practice 46 can be found at:

www.foi.gov.uk

5. A copy of the Birmingham City Council policy and procedure document relating to the Publication Scheme can be found at:

www.birmingham.gov.uk

7. Department of Constitutional Affairs – Peoples Rights – Freedom of Information

www.foi.gov.uk