

FOI and EIR Knowledge Base

Version Control

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To add:

Pre-application planning advice 25/06/21

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Guidance documents and Codes of Practice

FOI & EIR

Index of ICO Guidance on FOI and EIR: <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/>

FOI

FOIA: <https://www.legislation.gov.uk/ukpga/2000/36/contents>

FOIA Code of Practice:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

EIR

EIR: <https://www.legislation.gov.uk/uksi/2004/3391/contents/made>

EIR Code of Practice: [https://ico.org.uk/media/for-](https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf)

[organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf](https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf)

ICO guidance on the EIR Code of Practice: <https://ico.org.uk/media/for-organisations/documents/2013835/eir-regulation-16-code-of-practice.pdf>

Complaints about delays

Standard Covid-19 delay apology

Thank you for your email and apologies for the delay in our reply. Unfortunately, we are still dealing with a large backlog of cases, which means that it is taking longer than normal to respond to requests. I can confirm that your request has been allocated to the relevant service for them to provide a response. I have emailed them to ask for an update and I will let you know as soon as I hear back from them.

Kind regards

Standard Covid-19 delay apology for where we have not yet carried out redactions

Thank you for your email and apologies for the delay in our reply. Unfortunately, we are still dealing with a large backlog of cases, which means that it is taking longer than normal to respond to requests. I can confirm that we have now received the relevant documents from the service but we need to review these before we can disclose them. We will do this as soon as we have capacity to do so.

Kind regards

Standard Covid-19 delay apology where we are providing information after the deadline has passed

Please accept our apologies for missing the deadline to respond to your request. We are still dealing with a large backlog of cases, which means that it is taking longer than normal to respond to requests.

Extension of time

FOI

I am writing in relation to FOI **Insert number** to apologise that we will not be able to provide a response to your request within the initial timescale set out in our email of **Insert date**.

Section 10(3) of the Freedom of information Act 2000 enables an authority to extend the 20 working day limit up to a 'reasonable' time in any case where:

- it requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption; or
- it needs further time to consider whether it would be in the public interest to confirm or deny whether the information is held.

Sheffield City Council has not yet reached a decision on **whether or not the balance of the public interest lies in maintaining an exemption/whether it would be in the public interest to confirm or deny whether the information is held (delete as appropriate)** and, as a result, we will not be able to respond to your request in full by the statutory disclosure date.

Under section 45(1) of the Freedom of information Act 2000 (FOIA), the Minister for the Cabinet Office has issued a [Code of Practice](#) which provides guidance to public bodies on request handling.

Section 4.6 of that guidance states that it is best practice for an extension to be no more than a further 20 working days, although, in some circumstances, a longer extension may be appropriate.

Consequently, we are extending the deadline by an additional 20 working days until **Insert date** at the latest, but we will endeavour to provide a response as soon as possible.

EIR

I am writing in relation to EIR **Insert number** to apologise that we will not be able to provide a response to your request within the initial timescale set out in our email of **Insert date**.

Regulation 7(1) of The Environmental Information Regulations 2004 (EIR) enables an authority to extend the 20 working day limit up to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.

In this case, we do reasonably believe that the volume and complexity of the request makes it impracticable to comply within the 20 working day limit, and consequently we are extending the deadline by an additional 20 days until (**insert date**).

Internal Reviews

See Internal Reviews section below

Refusals – FOI

Overview

Section Number	Title (most common in yellow)	Absolute	Qualified	PIT	Description
S12	Exemption where cost of compliance exceeds appropriate limit	*			Where to collate the information would take over 18 hours
S14	Vexatious or Repeated Requests				Where a request is repeated from the same person, or considered vexatious. Must go through ICO guidance to explain why it is vexatious to the individual - there are indicators in the guide to use
S21	Information accessible to applicant by other means	*			Available elsewhere (i.e. on the web, can apply for it through normal council channels
S22	Information intended for future publication		*	*	Where the information is due for publication and a decision was made to publish it before we received the request
S30	Investigations and proceedings conducted by public authorities		*	*	Where it applies to investigations we have carried out, e.g. Trading Standards
S31	Law enforcements		*	*	Where it could increase crime, or prevent crime being detected
S32	Information in court records	*			Must be held in a court record
S36	Prejudice to effective conduct of public affairs	*			Where to release the information could affect our conduct - this exemption can be used as a last resort where disclosing information would cause harm, but another exemption wouldn't apply - has to be approved by the Monitoring Officer
S38	Health and safety		*	*	Where someone's physical or mental health or safety could be affected
S39	Environmental information	*			Where the request is for environmental information, which means that we must instead respond under EIR

S40	Personal information	*	*	*	Where the information contains personal information about the requestor, or someone else
S41	Information provided in confidence	*			Where information has been provided to us and there is an expectation that the information would be kept confidential
S42	Legal professional privilege		*	*	Where information has come from a legal professional - they can state whether or not the information can be released
S43	Commercial interests		*	*	Where it would affect the Commercial Interests of the Council or another organisation
S44	Prohibitions of disclosure	*			Where a piece of law stated that we can't disclose the information

Section 12 – Exemption where cost of compliance exceeds appropriate limit

Standard wording

The information you have requested is exempt from disclosure under section 12 of the Freedom of Information Act 2000. Sheffield City Council does hold the information you have requested. However, we do not record the information in a format that allows us to produce an electronic report of this. Therefore, we would have to carry out a manual search of our records. We estimate that we would need to search 300 records and that it would take 10 minutes to search each record. Therefore, it would take us 50 hours to collate the information, which is more than the cost limit of 18 hours or £450 specified in the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(SI 2004 No. 3244\)](#).

Under section 16 of the Freedom of Information Act 2000, we have a duty to provide advice and assistance to requesters. If you would like to narrow down the focus of your request, we would be happy to process your revised request as a new request for information under the Freedom of Information Act 2000.

Aggregation of requests when we have not yet responded to any of the requests

The information you have requested in FOIs 648-653 is exempt from disclosure under section 12 of the Freedom of Information Act 2000 on the grounds that cost of compliance would exceed the appropriate limit. The cost limit (18 hours or £450) is specified in the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(SI 2004 No. 3244\)](#). Although your requests were submitted separately, regulation 5 of the Regulations provides that, where the requests were made by one person (reg 5(1)(1)) and where the requests relate, to any extent, to the same or similar information (reg 5(2)(a)), we are entitled to aggregate the costs of complying with the requests.

In this case, to collate the requested information, we would have to search through approx. 200 notices (prohibition, improvement, hazard awareness, emergency action) which were issued during the requested timeframe. We estimate that this would take us over 33 hours. We have based this estimate on a sampling exercise in which it took us 1 hour to collate the information from 6 files.

Aggregation of requests when we have already responded to one or more of the requests

The information you have requested in FOI 2020-21-2652 is exempt from disclosure under section 12 of the Freedom of Information Act 2000 on the grounds that cost of compliance would exceed the appropriate limit. The cost limit (18 hours or £450) is specified in the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(SI 2004 No. 3244\)](#) ("the Fees Regulations").

Regulation 5 of the Fees Regulations provides that, where the two or more requests were made by one person (reg 5(1)(1)); where the requests relate, to any extent, to

the same or similar information (reg 5(2)(a)); and where the requests are received by the public authority within any period of sixty consecutive working days (reg 5(2)(b)), we are entitled to aggregate the costs of complying with the requests.

Therefore, we are aggregating the cost of complying with this request, FOI 2020-21-2652, with the cost of complying with your previous request for FOI statistics, FOI 2020-21-2499. Both requests were made by you and so were made by one person, and both requests are for similar information, that information being statistics on FOI performance. FOI 2020-21-2499 was received on 4 September 2020 and FOI 2020-21-2652 was received on 5 October 2020. FOI 2020-21-2499 was received within the period of sixty working days counting back from 5 October, and therefore we are entitled to include the costs of dealing with FOI 2020-21-2499 in calculating the costs of dealing with FOI 2020-21-2652. This is the case even though your requests were submitted separately, and even though we have already complied with request 2020-21-2499.

It took us approximately 8-10 hours to produce the statistics for FOI 2020-21-2499. Based on the time it took us to comply with that request, we estimate that it would take us a minimum of 16-18 hours to produce the statistics requested in FOI 2020-21-2652. Therefore, it would take us approximately 24-28 hours at minimum to comply with the aggregated requests. This is more than the limit of 18 hours specified in the Fees Regulations and, consequently, we are refusing to comply with FOI 2020-21-2652 under section 12 of the Freedom of Information Act 2000 on the grounds that cost of compliance would exceed the appropriate limit.

Under section 16 of the Freedom of Information Act 2000, we have a duty to provide advice and assistance to requesters. We kindly advise that you review the statistics on our FOI compliance which are already published. Statistics from 2014-15 to present are publicly available at the following link:
<https://datamillnorth.org/dataset/information-rights-scc>.

Section 14 – Vexatious or repeated requests

Section 14(1) – Vexatious – Standard wording

I write in reference to your email dated 1 October 2020 which has been logged as FOI 2020-21-2641 and which asks for further information about South Yorkshire Police's request for the names of individuals in order that those individuals could be briefed regarding recommencement of street tree felling in the week beginning 26 February 2018.

We are refusing to answer to your request on the grounds that it is vexatious under section 14(1) of the Freedom of Information Act 2000. Under section 14(1) FOIA, "vexatious" is not explicitly defined, but the case of Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), suggests that a request is very likely to be considered as vexatious if it meets at least one of the following four tests:

1. the burden (on the public authority and its staff);
2. the motive (of the requester);
3. the value or serious purpose (of the request)
4. any harassment or distress (of and to staff)

Sheffield City Council considers that the first three of these tests are met by your request.

1. The burden

This test involves consideration of the number, breadth, pattern and duration of the previous requests you have made.

Since 17 June 2019, you have submitted 28 requests, including this request, which have been dealt with under the Freedom of Information Act 2000 or Environmental Information Regulations 2004. 25 of these requests relate to the same or substantially similar issues about the felling of street trees in Sheffield. This is a very large number of requests and Sheffield City Council have expended a large amount of time and resources in dealing with these questions.

In terms of pattern, you have made overlapping requests and have consistently submitted new requests within days of previous requests being closed. This includes making requests based on the Council's responses to other requesters where these responses have been posted on the WhatDoTheyKnow website. Several of your requests are requests for information held about other requests, and have been submitted as part of a "fishing" exercise for information which you believe may prove to be scandalous or harmful to the Council's reputation but without knowing what information is actually held.

In terms of duration, there is a long history of requests you have made on the same subject, which goes back even further than the requests made since June 2019. When considered alongside that history, this request seems wholly unreasonable given the present and future burden that answering it would create on the authority.

A disproportionate amount of effort has already been expended in dealing with these requests, and answering this request would create a further strain on time and resources which the Council believes is unreasonable.

2. The motive

We recognise that the felling of street trees is an important issue to the residents of Sheffield and that there is public interest in the matter. However, where requests which are first entirely reasonable and legitimate then lead on to a series of related requests on allied topics, which are increasingly distant from the original request, those further requests may, at some point, become vexatious. We consider that this point has now been reached and that the requests you have made can be considered part of a campaign to disrupt the local authority rather than legitimate and reasonable attempts to obtain information.

3. The value or serious purpose

Closely linked to (2) is the lack of serious value in the request. There is very little objective public interest in the information requested, and it is not clear what inherent value there would be in responding to the request.

Section 14(2) – Repeated – Standard wording

In response to FOI 2020-21-2339, this request is a repeated request as it is identical to Internal Review 2018-18-0295, to which we responded initially on 12 June 2018. We concluded our internal review of our response to that request on 21 September 2018. Consequently, we are refusing to answer this request under section 14(2) of the Freedom of Information Act 2000 on the grounds that we have previously complied with an identical request. We do not consider that a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

This request is a repeated request as it asks for identical information to the information which we provided in our responses to FOI 2019-20-0425, which were issued on 15 July 2019 and 30 July 2019. We then completed our internal review of FOI 2019-20-0425 on 8 October 2019. That request asked for information on what date and by what means several members and officers, including Cllr Dore, were informed of the Forestry Commission's investigation into the felling of healthy street trees in Sheffield pursuant to the council's Streets Ahead contract with Amey. We fully answered the request on the dates specified above and provided the information that we hold.

Consequently, we are refusing to answer this request under section 14(2) of the Freedom of Information Act 2000 on the grounds that we have previously complied with an identical request. We do not consider that a reasonable interval has elapsed between compliance with the previous request and the making of the current request, and, even if it had, we have already provided the information that we hold.

Section 21 – Information accessible to applicant by other means

Standard wording

The information you have requested is exempt from disclosure under section 21 of the Freedom of Information Act 2000 on the grounds that it is information which is accessible to the applicant by other means. The information you have requested is available at the following link:

Or

As this is information which is accessible to the applicant by other means, it is exempt from disclosure under section 21 of the Freedom of Information Act 2000.

Section 22 – Information intended for future publication

Standard wording

Please note that this information is exempt from disclosure under section 22 of the Freedom of Information Act 2000 on the grounds that it is information which is intended for future publication. The information was already held with a view to such publication at the time when the request for information was made and we consider that it is reasonable in all the circumstances that the information should be withheld from disclosure to ensure that it can be verified and checked for accuracy before it is disclosed to the public.

Section 22 is a qualified exemption which is subject to the public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that there is a public interest in ensuring that there is time for the information to be checked before it is made public and that the timetable properly requires internal consideration of the information prior to its public release. On balance, the Council believes that the public interest lies in maintaining the exemption.

Trees Archive Project

Thank you for your request. You will see that a [decision](#) was made by Cabinet on 21st October 2020 to invest in the development of a public archive of Sheffield City Council tree related material to be held within the City Archives in perpetuity. This public archive will increase the accessibility of this information and help to meet the organisation's commitment to transparency.

The project is currently in planning stage and is expected to deliver around spring 2021. As the information you have requested is intended to be published as part of this project, it is exempt from disclosure under section 22 of the Freedom of Information Act 2000 on the grounds that it is information which is intended for future publication.

We can confirm that the information was already held with a view to such publication at the time when your request was made. We consider that it is reasonable in all the circumstances to withhold the information until the archive is published because dealing with requests for information whilst a process to create a publicly available archive is ongoing can be complex and resource intensive. In addition, piecemeal disclosures may in fact damage the process and affect the strategic aims of the public disclosure.

Section 22 is a qualified exemption which is subject to a public interest test. Factors in favour of disclosing the information are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that it is important to ensure that publication of the information is properly managed so that the information can be made available via the public archive as soon as possible. Making ad-hoc disclosures in response to individual requests before we have had

time to fully consider the information could disrupt this process. On balance, the Council believes that the public interest lies in maintaining the exemption.

Section 31 – Law enforcement

Standard wording – s31(1)(a) – prevention or detection of crime

The information you have requested is exempt from disclosure under Section 31(1)(a) of the Freedom of Information Act 2000 on the grounds disclosure would be likely to prejudice the prevention or detection of crime. Sheffield City Council believes that disclosing this data **would/would be likely to (select which)** lead to an increased risk of **explain**.

This exemption is subject to a public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that it is not in the public interest to disclose information which **explain**.

On balance, we believe that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Standard wording – s31(1)(c) – administration of justice

The information you have requested is exempt from disclosure under Section 31(1)(c) of the Freedom of Information Act 2000 on the grounds disclosure would be likely to prejudice the administration of justice. Sheffield City Council believes that disclosing this data **would/would be likely to (select which)** lead to an increased risk of **explain**.

This exemption is subject to a public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that it is not in the public interest to disclose information which **explain**.

On balance, we believe that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 36 – Prejudice to effective conduct of public affairs

Standard wording

Monitoring Officer sign off form needs completing

Sheffield City Council does hold the information you have requested. However, this information is exempt from disclosure under Section 36(2)(b)(i) of the Freedom of Information Act 2000 on the grounds that disclosure would inhibit the free and frank provision of advice and under section 36(2)(b)(ii) of the Freedom of Information Act 2000 on the grounds that disclosure would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.

This is because the information requested consists of internal discussions about the Council's negotiating position in relation to entering Tier 3 measures, as well as external discussions with other local authorities about this issue. These negotiations and discussions are still ongoing, and we believe that disclosure at this point in time would be likely to prejudice the Council's position in the negotiations.

This exemption is subject to the application of a public interest test.

The factors in favour of disclosure are that there is a public interest in transparency and accountability to promote public understanding and debate.

The factors against disclosure are that the disclosure of this information would inhibit free and frank discussions in the future, and the loss of frankness could damage the quality of deliberation and lead to poorer decision making. Executive and senior officers need a 'safe space' in which to explore alternative options where they can give free and unfettered opinion. This is particularly relevant in relation to this request, where the negotiations are still live, and disclosure of the information at this time could prejudice those ongoing discussions.

On balance, the Council believes that the public interest lies in favour of maintaining the exemption.

Section 36 [Argument used in FOI-2021-22-1267]

There are also 3 documents which are exempt in their entirety pursuant of Section 36, which is the 'Prejudice to effective conduct of public affairs' exemption.

Of these three documents, one is regarding an internal discussion and deliberation on certain relevant issues and two contain internal discussions and deliberations regarding a press release.

The parts of the exemption which are engaged are (2) (b) (i) and (ii), because it is the opinion of our qualified person that disclosure under the Act would or would be likely to, inhibit (i) the free and frank provision of advice and (ii) the free and frank exchange of views for the purposes of deliberation.

This is because in order for any discussions to result in the right decision, services and individual officers are expected to give their opinions and thoughts on the situation in hand and talk through the possible options for dealing with it. In order for the Council to reach the right conclusion in situations we have to be able to create a culture and environment where discussion can happen freely and openly. If all of these discussions are made public it would create a culture where ideas are not forthcoming, creative thought would be stifled and officers would be afraid to speak out for fear of later public ridicule or admonishment.

With regards to the discussions about the press release, if discussions and advice given by the experts in the Media Team are made public, it completely undermines the purpose of that team and the work which they do, whilst also undermining the message that the Council has given the public. This could lead to confusion and future lack of trust regarding the Council's position on certain aspects of Council work. It would also risk services and staff not being forthcoming or frank with their opinions and thoughts on what is being proposed to release to the public for fear those preliminary views may be subject to public scrutiny. Officers in the Media Team would also be less willing to provide all of their advice if they are aware that this advice would be subject to public scrutiny.

The Section 36 exemption is subject to a Public Interest Test.

Public interest arguments in favour of disclosing the information

- Disclosure may be considered to assist transparency - enable the public to fully review the internal considerations
- May provide the opportunity for interested individuals to re-open an issue, including the requester to request an internal review of the request, which the Council has previously attempted to conclude

Public interest arguments in favour of maintaining the exemption

The City Council does; however, need to consider the impact of disclosing information, which in this case might:

- Prejudice Council officers' ability to discuss freely and frankly internally and directly with the Media Team when working together on press releases thereby eroding the safe space provided to discuss issues without fear of disclosure of all related records held
- Cause a chilling effect in the openness of staff leading to a reluctance to record opinions or representations for fear of public disclosure.
- Stifle creative thinking and the culture the Council is trying to create in order to face challenges
- This reduction in frankness and candour would likely damage the quality of FOI responses and likely lead to less information being disclosed under FOIA due to a reluctance to have any discussions in writing whereas the philosophy of the legislation is for information to more available to the public
- It is in the clear public interest that the Council can fully discuss situations we are dealing with to ensure that the best ideas and actions are followed

It is considered that the impact of disclosure and the harm it would likely cause to future handling of challenging situations means that the public interest balance firmly lies in the application of this exemption to ensure that the open and creative culture is protected ensuring the best outcomes for Sheffield.

Section 38 – Health and safety

Standard wording – meeting locations

Under section 38, information is exempt which would be likely to endanger the safety of any individual, so we have redacted the venues of meetings and Zoom invitations. We do not want to put staff at risk by identifying regular meeting arrangements, which could be exploited by a person or persons who bore a grudge or wanted to disrupt daily business of the council. Even though this exemption is engaged, we are obliged to consider whether disclosure should nevertheless be made in the public interest.

The public interest in favour of disclosure is transparency. The public interest in withholding the information is preventing any risk to the safety of council staff and their visitors. Council business should be conducted with a normal expectation of safety at work, and without disruption to meetings and activities. On balance, the distress to individuals that might result and the prudent costs of added security should such a disclosure be made, make it in the public interest to withhold this information.

Standard wording – councillors' addresses

The information you have requested is exempt from disclosure under section 38(1) of the Freedom of Information Act 2000 on the grounds that disclosure could endanger the physical health or safety of councillors currently in office and those who have recently left office. We do not want to put councillors and former councillors at risk by identifying where they live, which could be exploited by a person or persons who bore a grudge or wanted to disrupt the daily business of our councillors. We no longer publish councillors' addresses on our website or on ballot papers due to the real threat of danger that this may place them in, following events such as the murder of MP Jo Cox.

Even though this exemption is engaged, we are obliged to consider whether disclosure should nevertheless be made in the public interest.

The public interest in favour of disclosure is transparency. The public interest in withholding the information is preventing any risk to the safety of councillors. Council business should be conducted with a normal expectation of safety at work, and councillors have the right to respect for their private and family life under Article 8 of the European Convention on Human Rights. On balance, the distress to individuals that might result make it in the public interest to withhold this information.

Standard wording – plans for major events

Section 38(1)(b) provides information is exempt if disclosure would, or would likely, endanger the safety of any individual(s); for example in disclosing elements of an event plan which could cause a variance in the activity of the general public as a result of a major incident which could cause difficulties with its management and the ultimate aim to protect the public from harm. Furthermore details of the specific management of an incident may cause risk of harm to the public, including workers supporting the management of the incident, by highlighting the likely actions as a result of an incident which may cause them to be a target of criminal activity. As events are managed with consistency dependent on the nature of the event we do have to consider how release of the details of the management of a past event may harm the ability of the Council to manage future similar events. Section 38 is a qualified exemption and subject to a public interest test to consider whether it is in the public interest to maintain the exemptions or to disclose the information.

What harm could be caused by the release of the information?

To release this information could impact on the Council, and other bodies involved in the handling of a large event in the City, and their specific ability to manage an incident if it occurred. Disclosure may also provide information which would cause significant harm to the community in providing details of the handling of a major incident which would aid a terrorist or the criminal community in planning an action in order to circumvent or specifically target the instigation of a major incident for nefarious purposes. Disclosure into the public domain may also adversely affect the general public's actions during the management of a major incident in terms of panic or reactions which could endanger the safety of both those attempting to manage the incident and the public themselves.

Public interest arguments in favour of disclosing the information

The Council does, wherever lawful and possible, disclose information about the money it spends, the decisions it makes and the activities it carries out because it helps to:

- Improve public awareness and allow members of the public to engage in public debate about decisions and initiatives affecting the locality*
- Promote accountability and transparency in the way public money is spent including in the preparation and management of large scale events*
- Encourage individuals to become aware of, and prepared for, the actions likely to occur in the event of an incident*
- Allow for public review of the plans for the management of large scale event and support specific public debate on the practical application and likely effectiveness of the Council's plans*

Public interest arguments in favour of maintaining the exemption

The Council understands the need for transparency and openness, but also needs to weigh up the impact of disclosing information which may affect other organisations and the Council, which in this case might:

- Present a high risk that individuals involved in criminality/terrorism would be able to act on the information released thereby jeopardising the security or infrastructure of the United Kingdom*
- They would potentially have knowledge of sensitive Council and associated bodies' activities and would be able to identify any perceived deficiencies or weaknesses in the plans that could be manipulated for their own purposes*
- Disclosure of the plans for this event may be linked to future events and cause health and safety issues if members of the public react to event staff actions in a modified manner as a result of details being publically accessible*
- It is not in the public interest to disclose information that would undermine the effectiveness of the Government in taking steps to deal with major incidents*

Balance of the public interest arguments

On balance there is a strong public interest in the disclosure of the full undated event manual; however, in this case we believe the public interest in avoiding prejudice to the Council and its partners in the management of such large scale events significantly overrides the public interest in disclosure of the exempted elements of the documentation.

Section 39 – Environmental information

Standard wording (for trees/Amey requests)

Under section 39 of the Freedom of Information Act 2000 (FOIA), information is exempt from disclosure if a public authority (a) is obliged by the Environmental Information Regulations 2004 (EIR) to make the information available to the public, or (b) would be so obliged but for any exemption contained in the regulations.

Information relating to the Streets Ahead contract, including reference to tree work activity, is environmental information within the meaning of Regulation 2(1)(a) and Regulation 2(1)(c) EIR as tree work activity is an activity affecting the state of the elements of the environment. We are obliged to make this information available under EIR unless an exception to disclosure applies. Consequently, this information is exempt from disclosure under section 39 FOIA and instead we are legally required to deal with your request under EIR.

Standard wording (for if we just respond under EIR instead of refusing under FOI)

Please note that we have responded to your request under the Environmental Information Regulations 2004 (EIR) rather than the Freedom of Information Act 2000, as, under section 39 FOIA, environmental information is exempt from disclosure; instead, we are legally required to deal with requests for information about the environment or measures which affect the environment under EIR.

Section 40 – Personal information

Section 40(1)

Standard wording

As this is a request for your own personal data, it is exempt from disclosure under section 40(1) of the Freedom of Information Act 2000, as it constitutes personal data of which the applicant is the data subject.

Dealing with a request under SAR rather than FOI

I write in reference to your recent request for information. We note that you have specifically stated that you are making this request under the Freedom of Information Act 2000 (FOIA). The FOI provides a right of access to non-personal information held by public bodies, but information related to individuals is exempt from disclosure under Section 40 of the Act. You do, however, have a right of access to your own personal data under the Data Protection Act 2018 (known as a Subject Access Request). As a result, we have filtered your request through this process rather than the FOI process, as a formal refusal would be required if we were to process your request under FOI.

Section 40(2)

Standard wording

The information you have requested is exempt from disclosure under section 40(2) of the Freedom of Information Act 2000 on the grounds that it is personal data and disclosure would contravene the data protection principle under Article 5(1)(a) of the General Data Protection Regulation that processing of personal data must be fair, lawful and transparent.

Used by ICO in response to their own FOI requests (28/06/2021)

Section 40(2) Section 40(2) exempts information in response to a request if it is personal data belonging to an individual other than yourself and it satisfies one of the conditions listed in the legislation.¹ The condition contained in section 40(3A)(a) applies - that disclosure would breach one of the data protection principles. The principle is that - "Personal data shall be processed lawfully, fairly and in a transparent manner..."² We do not consider that disclosing this information to you, and consequently the public, is necessary or justified in order to satisfy your information request and the requirements of the FOIA. In the circumstances of this request there is no strong legitimate interest that would override the prejudice to the rights and freedoms of the data subject/s. We have therefore taken the decision that disclosing this information to you would be unlawful

¹ Amendments to the Freedom of Information Act 2000 contained in the Data Protection Act 2018. ² GDPR EU2016, Article 5(1)(a).

Redaction of staff names/third party names

Please note that the names of individuals have been redacted under section 40(2) of the Freedom of Information Act 2000 on the grounds that these are personal data and disclosure would contravene the data protection principle under Article 5(1)(a) of the General Data Protection Regulation that processing of personal data must be fair, lawful and transparent.

Suppression of low numbers

Please note that numbers below 5 have been suppressed as disclosure of this information could potentially identify the individuals involved, especially if combined with other data. Therefore, this information is exempt from disclosure under section 40(2) of the Freedom of Information Act 2000 on the grounds that it is personal data and its disclosure would contravene the data protection principle under Article 5(1)(a) of the General Data Protection Regulation that processing of personal data must be fair, lawful and transparent.

Section 40 – Neither Confirm Nor Deny

Section 40 (5A) – where the information is the requester's personal data

Under section 40(5A) of the Freedom of Information Act 2000, we can neither confirm nor deny whether Sheffield City Council holds the information that you have requested.

We are not obliged to confirm or deny whether we hold the information you have requested as, if we were to do this, this would, in itself, involve disclosure of personal information.

The fact that section 40(5A) of the Act has been cited should not be taken as an indication that the information you requested is or is not held by the Council. The terms of this exemption in the Freedom of Information Act 2000 mean that we do not have to consider whether or not it would be in the public interest for us to reveal whether or not the information is held.

Section 40 (5B) – where the information is third party personal data

Under section 40(5B) of the Freedom of Information Act 2000, we can neither confirm nor deny whether Sheffield City Council holds the information that you have requested.

We are not obliged to confirm or deny whether we hold the information you have requested as, if we were to do this, this would, in itself, involve disclosure of personal information.

The fact that section 40(5B) of the Act has been cited should not be taken as an indication that the information you requested is or is not held by the department. The terms of this exemption in the Freedom of Information Act 2000 mean that we do not have to consider whether or not it would be in the public interest for us to reveal whether or not the information is held.

Section 41 – Information provided in confidence

Standard wording

The information you have requested is exempt from disclosure under section 41(1)(a) of the Freedom of Information Act 2000. Under section 41(1)(a), information is exempt from disclosure if its disclosure would constitute an actionable breach of confidence. To demonstrate an actionable breach of confidence, the information must have the necessary quality of confidence, must have been shared in circumstances which give rise to an obligation of confidence and its disclosure would have to lead to an actionable breach of confidence.

In this instance, information provided to a local authority for the purposes of calculating rates or reliefs is information that a reasonable person would regard as confidential. It is not already in the public domain and therefore it has the necessary quality of confidence.

The information was shared with the Council in circumstances which give rise to an obligation of confidence as individuals would not expect that information held by the Council for the purposes of calculating rates or reliefs would be used for other purposes or be published.

Disclosure of the information would lead to an actionable breach of confidence as, if the Council were to disclose the information, it would breach the general common law principle of taxpayer confidentiality. Consequently, the information requested is exempt from disclosure under section 41 of the Freedom of Information Act 2000.

Section 42 – Legal professional privilege (LPP)

Standard wording

This information is exempt from disclosure under section 42(1) of the Freedom of Information Act 2000 on the grounds that the information is subject to legal professional privilege (LPP). LPP protects advice given by a lawyer to a client and confidential communications between them about that advice. In this case, communications between the **Council's Legal Service** and its client, **the Council's Planning Service, in relation to planning application 20/01220/FUL**, are considered by the Council to be confidential, and, as such, are caught by the exemption.

This exemption is subject to a public interest test. Factors in favour of disclosing the information are that disclosure promotes openness and transparency. Factors in favour of maintaining the exception are that it is important to protect the concept of legal professional privilege and the rationale behind the concept, which is to safeguard frankness between lawyer and client. On balance, the Council believes that the public interest lies in maintaining the exemption.

Section 43 – Commercial interests

Approach to disclosure of contracts – Sarah Bennett, Assistant Director of Commercial Services 26 May 2021

Given my work on the Amey contract this sort of question has been something I've had to apply my mind to before. Even if any of these organisations do feel something is prejudicial to their commercial interests we don't necessarily have to agree with them (or we may agree but believe that release is still in the public interest and that the public interest outweighs the impact on their commercial interests) and we need to make that clear when we make that request: we are seeking their views so we can take them into account, not asking their permission.

This will be a lengthy task but that isn't covered by the ability to refuse a request for the time commitment required. For that we are only allowed to take into account time actually finding the information.

What will prejudice an organisation's commercial interests is, to a certain extent, a case by case exercise but there are some things I think we can say are definitely not covered and some things we can say might be:

Definitely not

- Standard T's and C's
- Non-standard T's and C's if they were shared with all/a number of bidders/prospective tenants
- Anything fundamentally consistent with what the wider market is doing that doesn't come within the categories above – if its not special its unlikely to be prejudicial to anyone's interests to release it.

Maybe

- Individually negotiated terms but even then only if these are something that would really impact the Council or the other party if they were released e.g. if they were very deal specific and we wouldn't agree to them in a different situation so we don't want other potential bidders/tenants to know we were prepared to agree them on this occasion.
- Detailed price mechanisms, although generally not overall prices as these are often disclosed as part of our general transparency requirements.
- Method statements but only if unique. If its standard market stuff then it probably wouldn't prejudice the company for this to be released.

- Things we agreed would be commercially sensitive/commercially prejudicial in the agreement – this is a difficult one because we don't want to put ourselves in breach of a confidentiality clause or other term of an agreement. However, most of our contracts have an exemption for things releasable under FOI so this is unlikely to be the case. I think the key things for me is that it should be a starting point and not a finishing point. We still have to recheck the thinking that went in at the time the agreement was drawn up and ask ourselves if release would genuinely be prejudicial.

Standard wording – damage to the interests of the Council

This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000 on the grounds that disclosure of this information would prejudice the commercial interests of the Council. Disclosure of the winning amounts tendered would prejudice the Council's commercial interests as the Council will invite tenders in the future and the public release of such information may mean that the Council would receive lower bids than may normally be the case from an open tender process, particularly as there are a number of competing operators.

Section 43 is a qualified exemption which is subject to the public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that there is a public interest in allowing public authorities to withhold information which, if disclosed, would reduce its ability to negotiate or compete in a commercial environment. On balance, the Council believes that the public interest lies in maintaining the exemption.

Standard wording – damage to the interests of the Council's contractors

This information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000 on the grounds that disclosure of this information would prejudice the commercial interests of the contractor. The contractor's rates are not available on the open market and disclosure of this information would provide an unfair advantage to competitors.

Section 43 is a qualified exemption which is subject to the public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that there is a public interest in allowing public authorities to withhold information which, if disclosed, would reduce its contractors' ability to negotiate or compete in a commercial environment. On balance, the Council believes that the public interest lies in maintaining the exemption.

Bidding/tenders – if only section 43 applies

Section 43 provides information is exempt if its disclosure would, or would likely to, prejudice the commercial interests of any person (which includes a company). The disclosure of this information may prejudice the company's commercial interests as it would reveal information about the price they are willing to accept for this project. Section 43 is a qualified exemption and subject to a public interest test to consider whether it is in the public interest to maintain the exemption or to disclose the information.

Public interest arguments in favour of disclosing the information

There is always interest in the way public authorities spend money. In the current financial climate, there is greater need to ensure public money is being spent on the right services and activities whilst getting the best value.

The Council does, wherever lawful and possible, disclose information about the money it spends, the decisions it makes and the activities it carries out because it helps to:

- Improve public awareness and allow members of the public to engage in public debate about decisions and initiatives affecting the locality
- Promote accountability and transparency in the way public money is spent and the process behind contracting services
- Encourage other potential suppliers to bid for contracts, leading to greater competition, and possibly decreasing the cost to the Council

Public interest arguments in favour of maintaining the exemption

The tender process is a critical process in determining what services can be acquired. It is a process that requires interested parties to bid for work and to be clear about what services can be offered and delivered with agreed timescales and at what cost.

The Council understands the need for transparency and openness, but also needs to weigh up the impact of disclosing information about other organisations, which in this case might:

- Result in legal action if the organisation wishes to pursue a breach of confidentiality. The duty of confidentiality is well established in law and there is a strong interest in confidence being maintained
- Impact on the organisation's ability to compete in a competitive market because information about a bidding failure may hit commercial or public confidence in the firm. This may result in the loss of business the company receives together with its ability to obtain supplies or secure finance, and in more extreme cases, jobs.

- Discourage companies to bid for future work with the Council amid concerns that information will be disclosed despite their wishes, which may result in fewer choices and higher costs for the Council.
- Prejudice the commercial interests of the Council by affecting adversely its bargaining position during contractual negotiations which would result in the less effective use of public money.
- Reduce tender submissions if businesses disengage from the bidding process if they consider they are unable to compete with the disclosed bidders in any other future process.

Balance of the public interest arguments

On consideration of the points above, we believe the public interest in maintaining the exemption outweighs the interest in disclosing the information and therefore have decided that the information should be refused.

Bidding/tenders – if both section 41 and section 43 apply

The Council considers that the information provided under a bidding process, including the pre-qualification questionnaires and technical / qualitative submission elements, maintains a duty of confidence and is therefore exempt under Section 41 of the Freedom of Information Act 2000. The Council also considers that the information is exempt from disclosure under Section 43 of the Freedom of Information Act, on the basis that this information is likely to prejudice the commercial interests of the parties involved.

Section 41 provides information is exempt if it is given to the Council in circumstances which create a duty of confidence and that disclosure would be an actionable breach of that duty of confidence. The information being requested was received by the Council during a tender process, which is considered to be a submission in confidence. Disclosure of this information is likely to be considered a breach of confidence, possibly resulting in action being taken against the Council. The information submitted under the process carries a duty of confidence as a result.

Section 43 provides information is exempt if its disclosure would, or would likely to, prejudice the commercial interests of any person (which includes a company). The disclosure of this information may prejudice the company's commercial interests as it would reveal information about the price they are willing to accept for this project.

Section 41 is an absolute exemption, but Section 43 is a qualified exemption and subject to a public interest test to consider whether it is in the public interest to maintain the exemption or to disclose the information.

Public interest arguments in favour of disclosing the information

There is always interest in the way public authorities spend money. In the current financial climate, there is greater need to ensure public money is being spent on the right services and activities whilst getting the best value.

The Council does, wherever lawful and possible, disclose information about the money it spends, the decisions it makes and the activities it carries out because it helps to:

- Improve public awareness and allow members of the public to engage in public debate about decisions and initiatives affecting the locality
- Promote accountability and transparency in the way public money is spent and the process behind contracting services
- Encourage other potential suppliers to bid for contracts, leading to greater competition, and possibly decreasing the cost to the Council

Public interest arguments in favour of maintaining the exemption

The tender process is a critical process in determining what services can be acquired. It is a process that requires interested parties to bid for work and to be clear about what services can be offered and delivered with agreed timescales and at what cost.

The Council understands the need for transparency and openness, but also needs to weigh up the impact of disclosing information about other organisations, which in this case might:

- Result in legal action if the organisation wishes to pursue a breach of confidentiality. The duty of confidentiality is well established in law and there is a strong interest in confidence being maintained
- Impact on the organisation's ability to compete in a competitive market because information about a bidding failure may hit commercial or public confidence in the firm. This may result in the loss of business the company receives together with its ability to obtain supplies or secure finance, and in more extreme cases, jobs.
- Discourage companies to bid for future work with the Council amid concerns that information will be disclosed despite their wishes, which may result in fewer choices and higher costs for the Council.
- Prejudice the commercial interests of the Council by affecting adversely its bargaining position during contractual negotiations which would result in the less effective use of public money.

- Reduce tender submissions if businesses disengage from the bidding process if they consider they are unable to compete with the disclosed bidders in any other future process.

Balance of the public interest arguments

On consideration of the points above, we believe the public interest in maintaining the exemption outweighs the interest in disclosing the information and therefore have decided that the information should be refused.

Refusals – EIR

Regulation 12(3) and 13 – Personal data

Standard wording

The information you have requested is exempt from disclosure under Regulation 12(3) of the Environmental Information Regulations 2004 (EIR) and Regulation 13 EIR as amended by Sch. 19, para 307 of the Data Protection Act 2018, which provide an exception for where the information requested includes personal data of which the applicant is not the data subject where disclosure would contravene the data protection principles of the General Data Protection Regulation (GDPR). Disclosure of the information would contravene the data protection principle under Article 5(1)(a) of the General Data Protection Regulation that processing of personal data must be fair, lawful and transparent.

Redaction of staff names/third party names

The names of third parties and the names of some staff members have been redacted under Regulation 12(3) of the Environmental Information Regulations 2004 (EIR) and Regulation 13 EIR as amended by Sch. 19, para 307 of the Data Protection Act 2018, which provide an exception for where the information requested includes personal data of which the applicant is not the data subject where disclosure would contravene the data protection principles of the General Data Protection Regulation (GDPR). Disclosure of the information would contravene the data protection principle under Article 5(1)(a) of the General Data Protection Regulation that processing of personal data must be fair, lawful and transparent.

Regulation 12(4)(b) – Manifestly unreasonable

Standard wording

Please note that while we do hold this information, we are refusing your request under Regulation 12(4)(b) of the Environmental Information Regulations 2004 on the grounds that it would be manifestly unreasonable to comply with the request. We do not record this information in a format that allows us to produce an electronic report of this and therefore, we would have to carry out a manual search of each record. It is estimated that checking would take one minute per record. Based on the figures above, **insert number** records would need to be searched, at **insert number** per record this would take approximately **insert number** hours.

Regulation 12(4)(b) is subject to a public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exception are that it is not in the public interest to spend such a large amount of officer time on providing this information, as this would come at a large cost to the council and would divert officers from being able to carry out other work. On balance, the council believes that the public interest lies in maintaining the exception.

Potholes

Please note that while we do hold information on the number of individual potholes we have received complaints about, this information is exempt from disclosure under regulation 12(4)(b) of the Environmental Information Regulations 2004 on the grounds that it would be manifestly unreasonable to comply with the request. We do not record this information in a format that allows us to produce an electronic report of this and therefore, we would have to carry out a manual search of each individual pothole enquiry. It is estimated that checking would take one minute per enquiry. Based on the figures above, **30,725** records would need to be searched, at one minute per enquiry this would take approximately **512** hours.

Regulation 12(4)(b) is subject to a public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exception are that it is not in the public interest to spend such a large amount of officer time on providing this information, as this would come at a large cost to the council and would divert officers from being able to carry out other work. On balance, the council believes that the public interest lies in maintaining the exception.

Trees Archive

Thank you for your request. You will see that a [decision](#) was made by Cabinet on 21st October 2020 to invest in the development of a public archive of Sheffield City Council tree related material to be held within the City Archives in perpetuity. This

public archive will increase the accessibility of this information and help to meet the organisation's commitment to transparency.

The project is currently in planning stage and is expected to deliver around spring 2021. As the information you have requested is intended to be published as part of this project, we consider that it would be manifestly unreasonable under Regulation 12(4)(b) of the Environmental Information Regulations 2004 to provide the information at the present time due to the duplication of effort and resources that this would involve.

We consider that it is reasonable in all the circumstances to withhold the information until the archive is published because dealing with requests for information whilst a process to create a publicly available archive is ongoing can be complex and resource intensive. In addition, piecemeal disclosures may in fact damage the process and affect the strategic aims of the public disclosure.

Regulation 12(4)(b) is a qualified exemption which is subject to a public interest test. Factors in favour of disclosing the information are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that it is important to ensure that publication of the information is properly managed so that the information can be made available via the public archive as soon as possible. Making ad-hoc disclosures in response to individual requests before we have had time to fully consider the information could disrupt this process. On balance, the Council believes that the public interest lies in maintaining the exemption.

Regulation 12(4)(d) – Draft or unfinished documents

Some information has been redacted under Regulation 12(4)(d) of the Environmental Information regulations 2004 (EIR) on the grounds that that the information consists of material which is still in the course of completion, to unfinished documents or to incomplete data. This exception is subject to a public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exception are that the Council needs a safe space in which it can develop ideas, debate live issues, and reach decisions away from public scrutiny. On balance, the Council believes that the public interest lies in maintaining the exception.

Regulation 12(4)(e) – Internal communications

Some information has been redacted under Regulation 12(4)(e) of the Environmental Information regulations 2004 (EIR) on the grounds that that the information consists of internal communications. This exception is subject to a public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exception are that the Council needs a safe space in which it can develop ideas, debate live issues, and reach decisions away from public scrutiny. On balance, the Council believes that the public interest lies in maintaining the exception.

Regulation 12(5)(b) – The course of justice, including legal professional privilege (LPP)

Some information has been redacted under Regulation 12(5)(b) EIR, which provides an exception from the disclosure of environmental information which would adversely affect the course of justice. The course of justice covers material covered by legal professional privilege (LPP). LPP protects advice given by a lawyer to a client and confidential communications between them about that advice. This exception is subject to a public interest test. Factors in favour of disclosing the information are that disclosure promotes openness and transparency. Factors in favour of maintaining the exception are that it is important to protect the concept of legal professional privilege and the rationale behind the concept, which is to safeguard frankness between lawyer and client, and this serves the wider administration of justice. On balance, the Council believes that the public interest lies in maintaining the exception.

Regulation 12(5)(d) – The confidentiality of proceedings of the public authority

Standard wording – pre-planning enquiries

In accordance with the decision notice issued by the Information Commissioner's Office (ICO) in case FER0900414, available online [here](#), Sheffield City Council believes that the information you have requested is exempt from disclosure under Regulation 12(5)(d) of the Environmental Information Regulations 2004 (EIR).

Regulation 12(5)(d) EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of the proceedings of that public authority, or any other public authority, where such confidentiality is provided by law.

In order for Regulation 12(5)(d) to apply, the pre-planning process must constitute a "proceeding". In decision notice FER0900414, the ICO accepted that pre-application enquiries and the associated advice have the necessary formality to constitute a 'proceeding' for the purposes of regulation 12(5)(d).

It is also necessary to establish that the confidentiality of the proceedings in question is protected by law. In this case, the information is subject to the common law duty of confidence. This is because the information is not of a trivial nature, is not already in the public domain, and was communicated in circumstances importing an obligation of confidence.

Disclosure would have an adverse effect on the confidentiality of the pre-application process as it would damage the general principle of confidentiality itself and result in harm to the interest the exception is designed to protect. Disclosing the specific information requested in this case would discourage full engagement with the pre-application process for fear of the public dissemination of such information.

Regulation 12(5)(d) is subject to a public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency and that there is a public interest in any matters relating to planning being disclosed to understand what has been considered by the local planning authority in relation to a particular plot of land and what was discarded as a result.

Factors in favour of maintaining the exception are that there is limited public interest in disclosing information which relates to an interest which is private in nature. Information about pre-application planning enquiries for an individual property is a private interest and as such there is limited public interest in disclosing this information. It would be unfair to disclose information which the developer has provided to the Council with the expectation that the Council would protect the confidentiality of this information.

On balance, the Council believes that the public interest lies in favour of maintaining the exception.

However, please note that if a formal application is later received from the same applicant, then information relating to that application will be made available online through our planning portal.

Regulation 12(5)(e) – Confidentiality of commercial or industrial information

Standard responses to specific topics

Business rates

(Where the request only asks for Property Reference, Full Property Address, NDR Analysis Code Description (Property Type), NDR Analysis Code, Current Rateable Value)

The information you have requested is exempt from disclosure under section 21 of the Freedom of Information Act 2000 on the grounds that it is information which is accessible to the applicant by other means. The information you have requested is available at the following link: <https://datamillnorth.org/dataset/scc-business-rates>.

(Where the request asks for details of the type of relief/exemptions including value and date of relief (Note: this is only relevant if disclosing the information would involve disclosure of which properties are in receipt of empty rate relief; if the information is just about e.g. small business rates relief, then just use section 41); periods where the property was empty; the occupied/empty status)

We publish some business rates information on our Open Data website at the following link: <https://datamillnorth.org/dataset/scc-business-rates>.

Please note that the data we publish is limited and does not include all of the information you requested.

In case EA/2018/0055; *Sheffield City Council vs Information Commissioner and Gavin Chait*, the First-tier Tribunal (General Regulatory Chamber) Information Rights upheld the Council's appeal against the Information Commissioner's decision (decision notice FS50681336 <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258231/fs50681336.pdf>) that the Council should publish this information. Consequently, the Council maintains that this information is exempt from disclosure for the following reasons.

Section 31 of the Freedom of Information Act 2000

The information you have requested is exempt from disclosure under section 31(1)(a) of the Freedom of Information Act 2000 on the grounds that disclosure of this information would prejudice the prevention and detection of crime. Disclosure of this information would involve releasing the addresses of empty properties which could make the properties more vulnerable to criminal and anti-social activities. In particular, the Council believes that disclosure of the information could have the following effects:

- Disclosure would provide a ready-made list of empty properties which could be used by criminals who could target empty properties to commit property crimes and fraud.

- Release of information which is not easily available at present would better enable a fraudster to persuade the council that they were the ratepayer. It would entail significant time and expense for the Council to alter its security system to protect against any potential fraud.
- Disclosure of the information would make it easier for criminals to target empty properties in which waste could be dumped.
- Release of information could be used to locate potential venues for illegal raves, which are also associated with other crimes such as criminal damage in accessing the property, drug offences and public order offences.
- A list of empty properties could be used by urban explorers to locate new properties to explore and could lead to an increase in crimes associated with urban exploring such as criminal damage to gain entry
- Disclosure of a list of empty properties may lead to an increase in crimes such as criminal damage, arson and anti-social behaviour, which are often associated with squatting.

There is a real and significant risk that fraud would be made easier by the release of this information and that the provision of a readymade list of empty properties makes it easier for criminals to identify targets for the crimes listed above. Therefore, disclosure would be likely to prejudice the prevention of crime.

This is a qualified exemption and requires a public interest test to consider whether the public interest in maintaining the exemption outweighs the public interest in the disclosure of the information.

Public interest arguments in favour of disclosing the information

- The disclosure of the information serves the general public interest in promotion of better government through transparency, accountability, public debate, better understanding of decisions, and informed and meaningful participation of the public democratic process.
- Researchers could use this data to contribute usefully to the general debate in this area and therefore there is some public interest in its release.
- A list of vacant commercial properties could be used by businesses looking for development opportunities

Public interest arguments in favour of maintaining the exemption

- The release of this information would make it much easier for a fraudster to pose as a ratepayer and bypass the Council's security systems, and changing those systems would entail significant time and expense. Disclosure would also facilitate a fraudster posing as the Council to obtain confidential information from a ratepayer. Rates fraud is a real and current problem and the consequences to the Council of a loss of a significant sum of public money are serious.
- Urban exploring and illegal raves are a current problem in Sheffield and disclosure could contribute to this problem.
- Disclosure may lead to an increase in other property crimes such as criminal damage, arson and anti-social behaviour. Tackling issues like these would

involve significant public expense and it is in the public interest to protect property and to ensure that public resources are used efficiently. There is also a compelling public interest in avoiding personal distress to the direct victims of the crime and to those in the wider neighbourhood who may be affected. Once an area is subject to crime, it has an impact on the surrounding neighbourhood, reducing the value of neighbouring properties and the quality of life of the residents.

- Research can be undertaken without the release of this data. There are other mechanisms for researchers to obtain the data, for example the use of licensed research agreements, which do not involve disclosure of the information to the world at large.
- There are already sources of information which can be used to identify development opportunities: some vacant properties are being actively marketed, there is a list of vacant commercial properties on the Business Investment District list and information is available from the town centre management scheme or planning officers.

On balance, the Council believes that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(Where the request asks for the business name/name of the liable party; the dates for liability; accounts in credit; account name; account start date; billing authority reference; completion notices)

We publish some business rates information on our Open Data website at the following link: <https://datamillnorth.org/dataset/scc-business-rates>.

Please note that the data we publish is limited and does not include all of the information you requested.

In case EA/2018/0055; Sheffield City Council vs Information Commissioner and Gavin Chait, the First-tier Tribunal (General Regulatory Chamber) Information Rights upheld the Council's appeal against the Information Commissioner's decision (decision notice FS50681336 <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258231/fs50681336.pdf>) that the Council should publish this information. Consequently, the Council maintains that this information is exempt from disclosure for the following reasons.

Section 40 of the Freedom of Information Act 2000

Some of the information requested relates to sole traders and/or partnerships. This information is exempt from disclosure under section 40(2) of the Freedom of Information Act on the grounds that it is personal data and disclosure would contravene the data protection principle under Article 5(1)(a) of the General Data Protection Regulation that processing of personal data must be fair, lawful and transparent.

It would not be fair, lawful or transparent for the Council to disclose this data as individuals have a legitimate expectation that personal information held by the

Council for the purpose of calculating business rates is used only for those purposes and will not be published. Publication would increase the risk of crime in relation to that individual's property if it was empty, and would increase the risk of business rates fraud against that individual. Knowledge of this increased risk would lead to distress for the individuals and this would cause prejudice to the rights and freedoms of the individuals.

Section 41 of the Freedom of Information Act 2000

The information you have requested is exempt from disclosure under section 41(1)(a) of the Freedom of Information Act 2000. Under section 41(1)(a), information is exempt from disclosure if its disclosure would constitute an actionable breach of confidence. To demonstrate an actionable breach of confidence, the information must have the necessary quality of confidence, must have been shared in circumstances which give rise to an obligation of confidence and its disclosure would have to lead to an actionable breach of confidence.

In this instance, information provided to a local authority for the purposes of calculating rates or reliefs is information that a reasonable person would regard as confidential. It is not already in the public domain and therefore it has the necessary quality of confidence.

The information was shared with the Council in circumstances which give rise to an obligation of confidence as individuals would not expect that information held by the Council for the purposes of calculating rates or reliefs would be used for other purposes or be published.

Disclosure of the information would lead to an actionable breach of confidence as, if the Council were to disclose the information, it would breach the general common law principle of taxpayer confidentiality. Consequently, the information requested is exempt from disclosure under section 41 of the Freedom of Information Act 2000.

[Business rates – request from a company asking us to provide ratings information about all companies in their company group](#)

Note on how to respond: We need to send the request to BusinessRates@sheffield.gov.uk and ask the Business Rates team to ask the company to provide evidence of proper authority from all of the companies listed to prove that the company is acting on their behalf. The Business Rates team should then process the request as BAU

[EIR CON29 Requests](#)

Allocate to Land Charges where possible. If not possible, then allocate to FOI until we have established a new process for how to respond to these.

Meals on Wheels

We can confirm that the Council has previously provided a Meals on Wheels service. We no longer hold details of the specific data and reasons for the ending of the scheme; however, a member of staff has been able to anecdotally confirm in response to a previous FOI that:

“The service was ended in the early/mid 90s. It was only ever a twice a week service on either Mon/Thurs or Tues/Thurs depending on where you lived. It was disbanded due to the Kelvin Welfare Centre closing and the introduction of Park Care Meals and Wiltshire Farm Foods which was seen as a better alternative.”

This service may be commissioned on an individual basis for individual users through a personal budget or direct payment, where we will signpost people through “help yourself” to self-purchase from either national or local warm or frozen meals delivery services.

A small number of local cafés are marketing meals delivery in the immediate geographical area of their premises.

Details on how we facilitate access to meals on wheels service can be found at:

<https://www.sheffield.gov.uk/content/sheffield/home/disability-mental-health/care-support.html>. As a result, we do not hold any recorded information in relation to the specific points in your request.

Schools' expenditure on supply teachers and support staff

The council does not hold the information requested. Schools pay for temporary staff cover through their own financial systems, therefore we do not hold details on supply spend in the manner requested. A document noting contact details for schools can be found at the following link: <http://www.sheffield.gov.uk/home/schools-childcare/school-information-term-dates> should you wish to contact schools directly for the information you have requested.

Contaminated land search

Note: EPSAdmin will do the searches.

Sheffield City Council is treating your request as a request for environmental information under the Environmental Information Regulations 2004 (EIR), as it relates to information about the state of the elements of the environment, in particular land, landfill and contaminated land.

Under regulation 8 EIR, public bodies are allowed to charge for making environmental information available where that charge is reasonable. In relation to this request, Sheffield City Council considers that it is reasonable to charge for the information as we handle many similar requests of this type for which we require a standard charge to be paid. Our standard charges are £75.00 + VAT for the reduced set of questions (please see attached) and £150.00 + VAT for the full set of questions (also attached).



Comm Ind full set
questions v2.docx



Comm Ind reduced
set questions v1.doc

Please confirm whether you wish to proceed with your request by replying to this email within 60 working days. If we do not receive a reply within this time period, we will close the request.

HMO Register

Standard wording

Note: Check the numbers with the service (Private Sector Strategy and Rented Housing Service (Private Housing Standards)) on a regular basis.

Sheffield City Council currently publishes details of HMO licences issued at:
<http://www.sheffield.gov.uk/home/housing/licensing-houses-in-multiple-occupation>

As this information is accessible by other means it is exempt from disclosure under [Section 21](#)(1) of the Freedom of Information Act 2000.

The full register of licences is a public document able to be observed by appointment and includes the majority of the information listed above. A full copy of the register is available for £1000, being the cost of copying the register. There are currently approx. 1800 entries in the full register, which comprises 8 lever arch files. Individual copies of a single entry are available for £5. If you are wanting to observe the full register you should contact our office on 0114 273 4680 and make arrangements to view the register at Moorfoot. As the viewing will need to be accompanied we would appreciate at least 24 hours' notice in order to arrange a full viewing.

We hold details of the majority of owners of the properties which are registered on the HMO register. However, this information is accessible by other means and therefore exempt from disclosure under [Section 21](#) of the Freedom of Information Act 2000.

Details of the ownership of the HMO licensed premises can be found via the Land Registry.

Covid-19 wording

Sheffield City Council currently publishes details of HMO licences issued at:
<http://www.sheffield.gov.uk/home/housing/licensing-houses-in-multiple-occupation>. A spreadsheet of licences issued to 11 February 2020 can be found on the right hand side of the page under Supporting Information.

As this information is accessible by other means it is exempt from disclosure under Section 21(1) of the Freedom of Information Act 2000.

The full register of licences is a public document able to be observed by appointment and includes the majority of the information listed above; please note, the licence doesn't necessarily provide owner details, just licence holder and manager. A full copy of the register is available for £1000, that being the cost of copying the register. The register must be collected in person once the copy is ready. There are currently approx. 1500 entries in the full register, which comprises 8 lever arch files. Individual copies of a single entry are available for £5. If you are wanting to observe the full register you should contact our office on 0114 273 4680 and make arrangements to view the register at Moorfoot.

Please note that, due to the coronavirus pandemic, we are operating under business continuity arrangements and so we are not currently able to offer viewings or copies of the full register. We will endeavour to make these services available as soon as possible when normal service resumes. Once normal service does resume, please note that we will require 24 hours' notice in order to arrange a full viewing. We only provide full information at a register viewing or by the customer paying for a full copy of the register. The address information is not published on the website.

We hold details of the majority of owners of the properties which are registered on the HMO register. However, this information is accessible by other means and therefore exempt from disclosure under Section 21 of the Freedom of Information Act 2000.

Details of the ownership of the HMO licensed premises can be found via the Land Registry.

Transparency spend

Data about Sheffield City Council's monthly spend to suppliers for amounts over the value of £250 can be found on our Open Data site:

<https://datamillnorth.org/dataset/sheffieldcitycouncil-spend-over-f250>. Redactions have been applied where the payments have been made to private individuals, for example social care payments. The publication is in line with the Local Transparency Code 2015. As this information is accessible by other means, it is exempt from disclosure under Section 21(1) of the Freedom of Information Act 2000.

Cyber security

The information you have requested is exempt from disclosure under Section 31(1)(a) of the Freedom of Information Act 2000 on the grounds disclosure would be likely to prejudice the prevention or detection of crime. Sheffield City Council believes that disclosing this data would be likely to lead to an increased risk of cyber-attack, especially if it was combined with other information about our network. Releasing this information would be likely to allow potential attackers to determine the most successful forms of attack as well as allow attackers to determine whether their attacks were detected.

This exemption is subject to a public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that it is not in the public interest to disclose information which could compromise the integrity of the Council's IT infrastructure or could cause increased risk of a cyber-attack, as any disruption to our IT network would prevent us from being able to deliver public services. On balance, we believe that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Noise complaints

The documentation you have requested relates to an identifiable individual at a specific address. A noise abatement order is made against an **individual**, not a property as a standalone building. Officers' field notes, recordings, complaints and logs of action are created as part of the case built to serve the order. Complaints made by third parties could also identify individuals e.g. neighbours.

It would not be possible to separate the information requested through redaction as the documentation would still render individuals identifiable. As a fictional example, if a redacted line within the officer notes said "[redacted] had repeated loud arguments and [redacted] submitted a complaint", this would still be identifiable when tied to a specific property. This includes self-identification made by the complainant and the subject of the complaint.

Therefore, the information you have requested is exempt from disclosure under Regulation 12(3) of the Environmental Information Regulations 2004 (EIR) and Regulation 13 EIR as amended by Sch. 19, para 307 of the Data Protection Act 2018, which provide an exception for where the information requested includes personal data of which the applicant is not the data subject where disclosure would contravene the data protection principles of the General Data Protection Regulation (GDPR). Disclosure of the information would contravene the data protection principle under Article 5(1)(a) of the General Data Protection Regulation that processing of personal data must be fair, lawful and transparent.

It would not be fair or transparent for us to disclose the personal data of third parties in response to a request under EIR, which, in effect, is a disclosure to the world. In addition, there is no lawful basis under Article 6(1) GDPR for us to process the personal data of third parties in such a manner.

Land Registry

The requested information, including accurate property/land ownership details, is available via the Land Registry at the following link:
https://eservices.landregistry.gov.uk/eservices/FindAProperty/view/QuickEnquiryInit.do?id=p_search_link. This service provides a map search which may assist you in identifying the information you are hoping to obtain.

We note there is a small cost to access the ownership details; however, even though a cost is levied, this information is still accessible by other means, and therefore it is exempt from disclosure under Section 21(1) of the Freedom of Information Act 2000.

Public Health Act Funerals

The information you have requested is exempt from disclosure under Section 31(1)(a) of the Freedom of Information Act 2000 on the grounds disclosure would be likely to prejudice the prevention or detection of crime. Sheffield City Council believes that if this data were disclosed, then it could, when put together with other information, lead to the identification of the deceased. This could prejudice the prevention and detection of crime by making unsecured assets vulnerable; identifying empty properties and making those properties vulnerable to squatting, theft or physical damage; and making it easier for criminals to commit identity theft of the deceased, leading to theft/fraud.

Section 31 is a qualified exemption which means that we must carry out a public interest test.

Public interest arguments in favour of disclosing the information

- disclosure promotes accountability and transparency
- the next of kin might be traced and informed of the death of the deceased and any inheritance
- disclosure supports private enterprise, for example, individuals and businesses wanting the job of identifying next of kin
- empty properties might be identified with a view to them being managed or maintained, until they can be disposed of or re-used

Public interest arguments in favour of maintaining the exemption

- to prevent squatting, damage or theft to empty properties. Tackling issues like these involve significant public expense and it is significantly in the public interest to protect property and to ensure that public resources are used efficiently.
- to avoid personal distress to the direct victims of the crime and to those in the wider neighbourhood who may be affected
- to prevent the misuse of an empty property, e.g. mail redirection
- to prevent identity theft/fraud
- some of the information is already available on the [Treasury Solicitor's website](#) in a document entitled "list of unclaimed estates". This includes the names of the deceased, the date of death, and the area of death.

On balance, we believe that the public interest lies in favour of maintaining the exemption.

Deceased with no known next of kin

The information you have requested is exempt from disclosure under Section 31(1)(a) of the Freedom of Information Act 2000 on the grounds disclosure would be likely to prejudice the prevention or detection of crime. Sheffield City Council believes that if this data were disclosed, then it could, when put together with other information, lead to the identification of the deceased. This could prejudice the prevention and detection of crime by making unsecured assets vulnerable; identifying empty properties and making those properties vulnerable to squatting, theft or physical damage; and making it easier for criminals to commit identity theft of the deceased, leading to theft/fraud.

Section 31 is a qualified exemption which means that we must carry out a public interest test.

Public interest arguments in favour of disclosing the information

- disclosure promotes accountability and transparency
- the next of kin might be traced and informed of the death of the deceased and any inheritance
- disclosure supports private enterprise, for example, individuals and businesses wanting the job of identifying next of kin
- empty properties might be identified with a view to them being managed or maintained, until they can be disposed of or re-used

Public interest arguments in favour of maintaining the exemption

- to prevent squatting, damage or theft to empty properties. Tackling issues like these involve significant public expense and it is significantly in the public interest to protect property and to ensure that public resources are used efficiently.
- to avoid personal distress to the direct victims of the crime and to those in the wider neighbourhood who may be affected
- to prevent the misuse of an empty property, e.g. mail redirection
- to prevent identity theft/fraud
- some of the information is already available on the [Treasury Solicitor's website](#) in a document entitled "list of unclaimed estates". This includes the names of the deceased, the date of death, and the area of death.

On balance, we believe that the public interest lies in favour of maintaining the exemption.

Japanese Knotweed

Sheffield City Council holds some information about the locations where Japanese Knotweed is growing. However, we cannot identify all areas where Japanese Knotweed is growing, as Japanese Knotweed rhizome material can lie dormant for years and the range of land ownership and sites owned or managed by the Council means that Japanese Knotweed may be growing in locations that we do not currently know about. Therefore, it is not possible to provide all relevant sites or records relevant to your request as the information is not fully known.

For the sites where we are aware of active Japanese Knotweed growth, we consider that information about the location of these sites is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000. This exemption allows for the protection of information where disclosure would likely “prejudice the commercial interests of any person (including the public authority holding it)”.

We consider that the disclosure of site level information would harm the commercial interests of individuals and businesses in the locality, as identification of Japanese Knotweed within the vicinity of a premises can affect the property prices in the area even where those properties are not specifically affected by the plant.

Section 43 is a qualified exemption which is subject to the public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that there is a real risk that house prices could be affected by disclosure of the information, and it is not in the public interest for us to disclose information which could affect the housing market. On balance, the Council believes that the public interest lies in maintaining the exemption.

Grenfell Aluminum Composite Material (ACM) Cladding

Response to FOI 2020-21-2110 from 30 November 2020:

1. How many residential buildings in Sheffield have the Grenfell style ACM (Aluminium Composite Material) Cladding, including where they are located and what is the status of their remediation (removal and replacement of their cladding)?

The number of ACM clad Highrise buildings (above 18m) in Sheffield is 20.

Please note that this number is the number of buildings with ACM cladding. There are different types of ACM cladding and we do not hold information on whether the cladding used is the exact same type as in Grenfell.

We hold some information on the location of the buildings and the status of the remediation works, although the information we hold is limited because the buildings are privately owned and are not Council buildings. However, we consider that the information we do hold is exempt from disclosure under

section 38 of the Freedom of Information Act 2000 on the grounds that disclosure could damage the physical or mental health and the safety of individuals. We believe that disclosure of the information would create an inaccurate reassurance for some residents whilst causing unnecessary distress or action for others.

Section 38 is subject to a public interest test. Factors in favour of disclosure are that disclosure promotes openness and transparency. Factors in favour of maintaining the exemption are that it is important to protect the safety of individuals and to ensure that individuals are subjected to unnecessary distress or worry. On balance, the Council believes that the public interest lies in maintaining the exemption.

2. Please can you specify what buildings are owned and maintained by the council and what buildings are privately owned.

All of the buildings are privately-owned.

Also, because the Government, this week launched a £1bn fund for Non ACM cladding buildings I [also](#) need to know

3. if there are Non ACM cladded residential buildings which are deemed equally dangerous.

We do not hold this information.

Surveys or external links

Unfortunately, we are not able to proceed with your request at this point. In order to request information under the Freedom of Information Act 2000 (FOIA) you must provide, in writing (Section 8(1) FOIA), details of the information you are requesting.

There is no obligation on the Council to download a file or review questions on a third party hosted website. We, as an organisation, avoid clicking unknown links due to the potential security risks in doing so. There is also no obligation for us to supply a response via an externally hosted website.

If you would like to continue with your request, we advise that you provide a copy of the questions/request for information you require directly via email. Please note you have a right of access to recorded information. There is no requirement under the Act for the Council to create information or “complete” a survey in response to a request, only to provide the relevant information held.

Information requested in a specific format when it is already available on our website

We do note your request for information in a specific format; however under Section 11(3) of the Freedom of Information Act 2000 (FOIA), the Council is not obliged to provide information in a specific format if it is not reasonably practicable. In this case, as the

information is already accessible in the public domain, we do believe this provides the underlying information you are hoping to obtain. Under Section 11(4) FOIA, we believe this to be reasonable in the circumstances.

Hypothetical or speculative questions or requests for an opinion

Please note that the Freedom of Information Act provides access to recorded information; there is no requirement for the Council to create information, answer hypothetical or speculative questions, or provide advice or opinions in response to a request.

Electoral Services

Please note that the Electoral Registration Officer, Returning Officer or any other person appointed under the Representation of the People Act 1983 are not subject to the provisions of the Freedom of Information Act.

Note: We do sometimes answer requests anyway just to be helpful.

Coroners' Office

Please note that the Coroners' Office is not subject to the provisions of the Freedom of Information Act.

Note: We do sometimes answer requests anyway just to be helpful.

Licensing public access database link

Sheffield City Council's public Licensing Database can be accessed via the following link: <https://licensing.sheffield.gov.uk/>. As this information is accessible by other means, it is exempt from disclosure under Section 21(1) of the Freedom of Information Act 2000.

Planning public access portal link

Details of all planning applications are available via the Council's online Planning Portal, which can be accessed via the following link: <https://planningapps.sheffield.gov.uk/online-applications/>. As this information is accessible by other means, it is exempt from disclosure under Section 21(1) of the Freedom of Information Act 2000.

Contracts Register link

Our full Contracts Register, along with advertisements for tender opportunities and how to apply, is available at the following link, under the Contracts Register tab: <https://www.yortender.co.uk/>. As this information is accessible by other means, it is exempt from disclosure under Section 21(1) of the Freedom of Information Act 2000.

Internal Reviews

Extension of time

FOI

I am writing in relation to your request for Internal Review of FOI **Insert number** to apologise that we will not be able to complete our Internal Review of your request within the initial timescale set out in our email of **Insert date**.

An officer is in the process of carrying out the review, but, unfortunately, we need further time to carry this out.

Under section 45(1) of the Freedom of information Act 2000 (FOIA), the Minister for the Cabinet Office has issued a [Code of Practice](#) which provides guidance to public bodies on request handling.

Section 5.5 of that guidance states that “If an internal review is complex, requires consultation with third parties or the relevant information is of a high volume, public authorities may need longer than 20 working days to consider the issues and respond. In these instances, the public authority should inform the applicant and provide a reasonable target date by which they will be able to respond to the internal review. It is best practice for this to be no more than an additional 20 working days, although there will sometimes be legitimate reasons why a longer extension is needed.”

Consequently, we will now aim to respond within a further 20 working days, by **Insert date**.

Please feel free to contact us in the meantime if you have any further queries.

Kind regards

EIR

I am writing in relation to your request for Internal Review of EIR **Insert number** to apologise that we will not be able to complete our Internal Review of your request within the initial timescale set out in our email of **Insert date**.

An officer is in the process of carrying out the review, but, unfortunately, we need further time to carry this out.

Under Regulation 16(1) of the Environmental Information Regulations 2004 (EIR), the Secretary of State has issued a [Code of Practice](#) which provides guidance to public bodies on request handling.

Paragraphs 62 and 63 of the Code of Practice state that public authorities “must respond to the complainant within 40 working days from the time when the complaint was received”, but, “where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the authority should inform the applicant and explain the reason for the delay”.

In this case, it will take us longer than the target time to provide a response to your Internal Review because **Insert reason for delay**.

Consequently, we will now aim to respond by **Insert date**.

Please feel free to contact us in the meantime if you have any further queries.

Kind regards

Internal Review request not received within 40 days

I am writing in relation to your request for internal review of FOI **Insert number**. Please note that, as stated in our original response, “Internal review requests should be submitted within 40 working days from the date of [the] response.”

As we responded to your request on **Date** and your request for internal review was not received until **Date**, your request for internal review was not submitted within the 40 working day time limit.

For reference, the 40 working day deadline is set out in the Freedom of Information Code of Practice, which was issued by the Minister for the Cabinet Office under Section 45 of the Freedom of Information Act 2000. Paragraph 5.3 of the Code of Practice states:

“It is usual practice to accept a request for an internal review made within 40 working days from the date a public authority has issued an initial response to a request and this should be made clear in that response to the applicant. Public authorities are not obliged to accept internal reviews after this date. Internal review requests should be made in writing to a public authority.”

As your request for internal review was not made within the 40 working day time limit, we will not be able to consider your request for review.

Should you wish to make a new request under the Freedom of Information Act, we would be happy to consider this.

Internal Review backlog

Please accept our apologies for the delay in providing a response to your internal review. Your request for review has been allocated to a member of the team, but unfortunately, due to several staff absences and vacancies and the continued high

workload because of the pandemic, we have not yet been able to complete the review. We will aim to complete this as soon as possible but, unfortunately, I am not able to provide an expected timeframe for this at present.

If you remain dissatisfied with the service you have received, you can contact the Information Commissioner's Office for further help and assistance.

Please accept my apologies that we have not come back to your emails previously. I appreciate that the Council has not met the 20 working day period which we use as an internal target for the completion of Internal Reviews. I do note, however, that there is no statutory timescale for the completion of internal reviews and, at present, due to the significant demand in regard to both FOI/EIR requests and Internal Review requests, there is a backlog in the handling of FOI/EIR Internal Reviews.

I hope you can appreciate that we have to prioritise the handling of new FOIs as these do have a statutory requirement to be completed within 20 working days. This is particularly the case when we have periods of high demand in terms of FOI requests, Internal Reviews and the wider work associated with the management of requests. As I am sure you can appreciate, the Council has received a high number of FOIs including a significant proportion related to the management of highway trees. Certainly, this topic area has led to an enhanced number of requests for review which has in part expedited the backlog of review cases.

I would request that you do refrain from sending daily reminders as your request is not being ignored. As noted, the Council is working through its backlog and this has to be prioritised for those individuals who have been waiting the longest for a review response.

Where we have opened an Internal Review, but the requester replies to state that they do not want us to carry out an Internal Review

FOI

I note that you have specifically asked us not to carry out an internal review at this stage. However, under section 45(1) of the Freedom of information Act 2000 (FOIA), the Minister for the Cabinet Office has issued a [Code of Practice](#) which provides guidance to public bodies on request handling.

Section 5.1 of that guidance states that, where a requester "seeks to challenge either the outcome or the process of the handling of the initial response", an Internal Review should be conducted.

As your email did challenge the outcome of the response the Council provided, it is appropriate to deal with this under the Internal Review procedure.

Conducting an Internal Review creates an obligation for us to respond within a set time limit and is the proper process to follow under FOIA. Should you remain dissatisfied with our response following the Internal Review, you have the right to contact the Information Commissioner's Office who will investigate further.

EIR

I note that you have specifically asked us not to carry out an internal review at this stage. However, under Regulation 16(1) of the Environmental Information Regulations 2004 (EIR), the Secretary of State has issued a [Code of Practice](#) which provides guidance to public bodies on request handling. Paragraph 60 of the Code of Practice states:

"Any written reply from the applicant (including one transmitted electronically) expressing dissatisfaction with an authority's response to a valid request for information should be treated as a complaint... These communications should be handled in accordance with the authority's review procedure pursuant to Regulation 11, even if the applicant does not state his or her desire for the authority to review their decision or the handling of their application. "

As your email expressed dissatisfaction with the response the Council provided, we are going to deal with this under the internal review procedure.

Conducting an internal review creates an obligation for us to respond within a set time limit and is the proper process to follow under EIR. Should you remain dissatisfied with our response following the internal review, you have the right to contact the Information Commissioner's Office who will investigate further.

Christmas

From the 1st week of December, add the following wording to allocation emails to services and staff:

Christmas Leave and the Christmas shut-down period

Over the Christmas period we are still under strict legal timescales for dealing with EIR requests; therefore, to ensure compliance with Environmental Information Regulations 2004 can you please ensure that there is someone available within your service to pick up EIR requests in your absence (outside any mandatory shutdown for your service area). Please email foi@sheffield.gov.uk if there are any other contacts to be used during this period for resilience and to ensure there are no unnecessary delays in processing requests. Please also ensure that you activate your out of office message in Outlook with the appropriate contact details for other staff available during any period of absence. Please note this mailbox will not be monitored from the afternoon of 24th December [year] until our return on [Day, Date, Year].

An out of office will need to be added for the Christmas shutdown:

Thank you for your email. This inbox is not being monitored over the Christmas period (25th December [year] to [return date]). Your email will be picked up when staff return on the [date], and processed according to statutory requirements.

Please note that we are still facing a high volume of requests, and responses may be subject to delays because of the ongoing coronavirus pandemic.

You can also find out more about the services we provide, the decisions we make and the money we spend at <https://www.sheffield.gov.uk/home/your-city-council/access-to-information>