

Freedom of Information: Adjusting the approach in Kirklees 2012

Briefing note to Fol Co-ordinators, Assistant Directors, Directors and Councillors

At Annual Council on 25 May 2011, a motion was agreed to consider the introduction of a protocol in relation to the handling of Freedom of Information requests by the Council, Members and Officers, and to report back to Council.

The Freedom of Information Act (the Act) creates the right for any person to be told whether a public authority such as the council holds information as described in their request, and then to be given that information, subject to possible exemptions (which may be limited by considerations of the public interest). The Act always assumes that information requested will be disclosed unless an exemption applies. Requests must be complied with as soon as possible and always within 20 working days.

A wide range of people, including the media (national and local press, broadcasters and specialist publications) and web-based pressure groups, are using the Act to provide them with material at little cost to themselves, and there is therefore a growing risk of bad publicity and reputational damage to the council. While embarrassment is not an exemption, it is possible to minimise the negative aspects of any particular disclosure by providing appropriate contextual information to reduce the scope for mis-representation.

This issue was raised in June 2009 and continues to be the case, with the number and complexity of requests increasing significantly in the last year, and with some negative articles published in the local press and in popular online blogs. The Council also became subject of monitoring by the Information Commissioner's Officer (ICO) in April 2011, following receipt of complaints about the length of time taken to respond to requests; the Council's performance improved considerably throughout the 3 month monitoring period and the ICO's decision was to take no further action at that time. Performance remains much improved although it is acknowledged that the Council could do more to reduce response times to requests and to improve on the success rate of responding within deadline.

A number of adjustments to the process have been put in place since 2009, including interim arrangements pending the implementation of a corporate system to log and track requests, rollout of the corporate system, identification of Co-ordinators and managers who will sign off responses within the new Council structure, more regular reporting of statistics and a refresh of the process and of the information provided to Co-ordinators.

It is proposed that:

1. All Fol requests will be logged by the Information Access Team (IAT) on receipt. Those received directly by Services (ie not by the IAT) will be recorded locally and must be copied to the IAT at the earliest opportunity following receipt.
2. The IAT will forward requests as appropriate to the nominated Co-ordinators, or otherwise liaise as necessary with Service contacts, to make sure that the process of locating and extracting requested information is started without delay. A standard form providing general advice will be used to forward requests to Services.
3. Any possible grounds for exemption must be notified to the IAT as soon as possible (preferably within 5 days of receipt), who will refer to Legal Services if necessary.

4. Simultaneously with 1 above, the request will be assessed for possible sensitivity, ie for any aspects that could generate media interest. This applies regardless of source; previous experience has shown that requests which end up in the media may originate from apparently personal email addresses.
5. Where there is any sensitivity, the IAT will liaise with the relevant senior managers, the Press Office and the key communications and marketing officers in order to provide advice to the Co-ordinator(s) at the earliest opportunity. The IAT will copy the request to the Cabinet Office for information purposes.

Where Co-ordinators identify issues they must bring these to the attention of their Head of Service/Assistant Director at the earliest opportunity, and tell the IAT that they have done so. The IAT will then liaise with other key players as necessary.

6. Where Services require clarification from the applicant in order to understand the scope of the request, this must be communicated to the IAT as soon as possible following receipt of the request.
7. The Act does not include for extensions of time. Where Services require additional time to determine whether or not an exemption applies to a request, they have to use the Public Interest Test and be confident that the exemption is engaged and that strong arguments are provided to support this.

Services must inform the IAT as soon as possible that they require additional time to determine whether information should be released and provide a date when they can reply, so that the IAT can advise the applicant.

Where some information can be released, Services should provide a partial response within the 20 day deadline, along with a date by which the remainder will follow.

8. All responses to FoI requests will be centralised, ie final responses will be sent by the IAT. In every case, information for disclosure must be delivered to the IAT as early as possible (wherever possible no later than the 17th working day). It is the responsibility of the Service to provide the information in such a way that it can be forwarded to the applicant without any further processing or formatting by the IAT.

The manager nominated to sign off responses must approve the response in terms of completeness, accuracy and presentation, and provide any necessary background or contextual commentary. They may wish to check their responses with their own communications staff.

9. In other sensitive cases the IAT will check responses with the Press Office before they go out.
10. Where other parties who have been advised of receipt of a request express an interest in seeing the response, they will be copied into it as it is sent out to the applicant.

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