

The Freedom of Information Act is coming...



G U I D A N C E
N O T E S

Freedom of Information Act 2000 Guidance Note 1

From 1 January 2005 the Freedom of Information Act 2000 (FOIA) gives people the right to request access to information held by a public body and for the public body to disclose that information. The Act also places an obligation on public bodies to set up a Publication Scheme detailing the types of information routinely held by it and where this information can be found. The thinking behind the Act is that everyone has the right to know how public authorities carry out their duties, why they make the decisions they do and how they spend public money. The rights are aimed at promoting transparency and accountability in local government and other public bodies.

This leaflet explains some of the key parts of the Act including how to request information and how you, as an employee or a member of Fenland District Council, should process a request for disclosure.

The Publication Scheme

The Council has set up its own Publication Scheme on its website which can be found at [INSERT LINK]. The Council aims to publish as much information as possible on the Publication Scheme so that the public can access the information without having to make a specific request.

If an applicant requests information which is available as part of the Publication Scheme, whether in writing or orally, you should direct the applicant to the appropriate part of the Scheme where they can access the information.

It is envisaged that the One-Stop-Shops will have PCs available in them for the public to use. In addition special procedures will be put in place to help to assist individuals who are not computer literate or who need extra help, for example, because of disability.

Information Requests

From 1 January 2005 anyone anywhere can

request the Council to disclose information which it holds. The request must be made in writing, include the applicant's name and address for correspondence, and must describe the information requested in sufficient detail so as to enable the Council to identify the type of information being sought (Section 8(1) FOIA 2000).

20 Day Rule

In general, a request must be answered within 20 working days (Section 10(1) FOIA). Hence if you receive a request you must forward it to the Customer Services Unit for processing as soon as possible.

Form of Requests

It is not necessary for the applicant to say that they are making a request under the FOIA but if a person asks how to make a request, they should be advised to state that their request is an FOIA request. Persons should also be encouraged to specify the form in which they would like the information provided to them.

Requests can be sent by email or by letter. Ideally requests should be made to the Customer Services Department of the Council, however, requests are valid if they are given to any worker or Councillor whether or not they are present at Fenland Hall at the time the request is made. This means that if you are given an information request while you are working, you must deliver the request without delay, to the Customer Services Department for processing.

Clear Requests

Applicants should give as much detail as they can so that it is clear what information they are asking for. If the request is not clear, you should ask the applicant to clarify what information is being sought. Applicants should be made aware that failure to provide sufficient detail will delay the processing of their request.

The applicant should be asked the mode in which they would like the information to be provided, eg letter, e-mail, spreadsheet etc. However, if the information is available as part of the Publication Scheme, the applicant should be

encouraged to access the information from the website themselves.

Helping Applicants

Some applicants will need help to make their request. The Council is under a duty to provide reasonable advice and assistance to persons who wish to request information (Section 16 FOIA). Any person requiring help should be directed to contact the Customer Services Unit for guidance.

Processing Requests

If an information request is forwarded to you for you to obtain the information from your Service Area, you should locate the information quickly so that it is provided to the applicant within the 20 day time limit.

If the information sought is not available as part of the Publication Scheme you may be required to provide:

- A copy of the information
- Access to the information, for example, by permitting the applicant a reasonable opportunity to inspect a public record or register containing the information
- A written reply summarising the information requested (Section 11 FOIA).

Charges

In some cases the Council may make a charge for the information requested. The fees are worked out according to Fees Regulations issued under the Act (Section 9 FOIA). The government is due to provide more guidance on the levels of charges before the end of the year. A separate guidance note will give details of how these will work in practice.

If the information requested is usually subject to a charge which is fixed under statute law (for example, a Land Charges Search) then the Council can carry on charging that amount.

If a fee is payable by the applicant, the person must be told they need to pay the fee and must be issued with a fees notice. The Council then

has 20 working days from receiving payment of the fee to provide the information (Section 10 FOIA).

Exempt Information

The FOIA draws a clear distinction between circumstances in which an absolute exemption can be applied and those in which a qualified exemption will be applied. Where an absolute exemption applies, the information does not need to be disclosed by the Council at all. In addition there is no duty on the Council to confirm or deny that it holds the information. The matter simply ends by the Council sending a letter to the applicant stating that the information is not disclosable because it is exempt from disclosure under the Act.

In contrast, where a qualified exemption applies, the Council may only refuse to disclose the information where the public interest in maintaining the exclusion of the duty to provide information outweighs the public interest in disclosing it. This is a balancing exercise. If the Council decides, on balance, that it is not in the public interest to disclose the information, the duty to confirm or deny whether the information is held does not arise.

Absolute Exemptions

Information which is of a type attracting absolute exemption (where there is no obligation to disclose the information) can take the form of the following types:

- Information accessible to applicant by other means
- Information supplied by, or relating to, bodies dealing with security matters
- Court records
- Parliamentary privileged information
- Information which would prejudice the effective conduct of public affairs
- Personal information
- Information provided in confidence
- Information which is prohibited by another piece of legislation or if disclosed would constitute or be punishable as a contempt of court.

Note that the proper avenue for seeking disclosure of personal information is by making a subject access request under the Data Protection Act 1998, and applicants who seek disclosure of personal information under the FOIA should be directed to make a written request to the Data Protection Officer of the Council (Norman Eighteen).

Qualified Exemptions

This information is not of a type covered by an absolute exemption (see above). The information may nevertheless be covered by a qualified exemption. If a qualified exemption applies, the information will not be disclosable if the public interest in maintaining the disclosure outweighs the public interest in disclosing the information. A balancing exercise is to be carried out in deciding whether or not to disclose the information. The following types of information constitute exempt information which is qualified under the FOIA:

- Information intended for future publication
- National security
- Defence
- Relations with the UK
- Economy
- Law Enforcement
- Investigations and proceedings conducted by public authorities
- Law enforcement
- Audit functions
- Formulation of Government policy
- Health and safety
- Environmental information
- Legal professional privilege
- Commercial interests

Hard Cases

Difficulty may be encountered in deciding which category information falls under especially where a document contains information which falls within an exemption and information which is not exempt information, or where a document contains information which is subject to more than one exemption.

Note that where a document contains some personal information about an individual (exempt

information), and other non-exempt information, the document will be subject to disclosure if it can be readily understood with the personal information being deleted (or blanked-out).

Where one or more exemptions apply, it will be necessary to classify the information as falling within both exemptions for the purposes of the auditing process. Furthermore, when a disclosure request is made, it will be necessary to consider the effect of all of the potential exemptions on the disclosability of the information. This may result in some parts of the information being withheld and some parts being released.

If you are unsure whether or not an exemption applies you should contact the Legal Services Section (Cara De La Mare in the first instance) for assistance.

Refusal Notices

If the Council decides to withhold all or part of the information that is requested, a letter must be sent explaining which exemption applies. The refusal notice must also tell the person applying what they need to do if they have a complaint about how their request was handled or if they want to appeal against the decision.

Failures to Respond

It is very important that complete records are kept of information requests including how they have been dealt with by the Council. As such, clear records of all correspondence should be kept by workers who deal with information requests.

Failure to act within the appropriate time limit would be a breach of Section 10 of the FOIA and the Council may have enforcement action taken against it by the Information Commissioner (this is an independent body set up by Parliament). The enforcement action could take the form of an Enforcement Notice, fines or prosecution.

Cara De La Mare
Principal Planning and Litigation Lawyer

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