

Freedom of Information Act 2000 and Environmental Information Regulations 2004 Policy

CCBC – Information Governance Unit

Conwy County Borough Council

Version	Description/reason for change	Author	Authorisation	Date issued
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4.1	Amendments (FOIA / EIR)	DS (CICS)		26/10/2012
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6.0	Amendment – public interest test	DOC (IGU)		20/1/2016
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Introduction

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities. This legislation helps the Council to create a climate of openness and dialogue with all its stakeholders, which in turn will help to increase public confidence in the way that the Council is operating. Robust FOI and EIR practices will not only enable the Council to meet its obligations, but will also aid the Council in understanding what the public is interested in, helping the Council to shape service delivery. The Council embrace's a culture that is open, accessible and accountable with an assumption to publish as much information as possible.

This policy covers both the FOIA 2000 and the EIR 2004. Requests for information under both, will be called 'information requests' unless a further distinction is necessary. This policy is a statement of what the Council intends to do to ensure compliance with the legislation. It is not a statement of how compliance will be achieved; this will be a matter of operational procedures.

This policy applies to all information the Council processes regardless of how it was created or received. It applies regardless of the way information is stored, or whether the information be in paper or electronic format. Both legislations are fully retrospective.

What constitutes an information request

The Council will comply with all requests for information in accordance with the appropriate legislation and will endeavour to assist the public in exercising their 'right to know' by ensuring that these 'rights' are understood by its employees and procedures are in place to facilitate access.

The FOIA (2000) and the EIR (2004) allow anyone to request any information from the Council regardless of their age, nationality, location, or motive, subject to a limited number of exemptions and exceptions laid down by law.

This will include information that the Council has produced internally as well as information that is maintained by the Council about another organisation or received from

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another organisation following a mutual exchange of information, e.g. a contract or partnership agreement.

Under the FOIA (2000) requests need to;

- Be in writing (e-mail, letter or fax)
- Be legible
- Contain the name of the applicant
- Contain a correspondence address for the reply (an email address is sufficient)
- Describe clearly the information that is sought.

Requests under the EIR (2004) do not need to be made in writing; however a written record should be made of any verbal requests that are received.

Requestors will not be required to explain the purpose of their request, although in the course of clarifying requests and ascertaining exactly what information is being sought it may be necessary to seek further information from them. Information requests do not need to mention any legislation to qualify as an official request. Information requests can be received by any employee / Service of the Council.

Roles and Responsibilities

Each Service within the Council has at least one nominated Information Governance Compliance Officer to coordinate responses to information requests. This individual needs to be senior enough within their Service to facilitate and guide officers through the process, and all responses need to be sanctioned by the relevant Head of Service before being disclosed to the requester.

Compliance Officers take ownership of the request and ensure it has been recorded corporately within the Information Governance Unit (IGU) if the request has been received direct. They should also record the request locally if necessary and organise the coordination and collection of information either for disclosure direct to the requester or via the IGU.

Any Service receiving an information request which spans more than one Service should forward the request to the IGU who will record and coordinate the responses. The information will still be collected by the relevant Service/s Compliance Officers.

The IGU is responsible for monitoring adherence to this policy and for coordinating the collection of information for information requests. They are responsible for providing advice and assistance with regards to the handling of FOI and EIR requests.

Requests received by the IGU will be registered and forwarded on to the relevant Compliance Officer/s. Any potentially contentious requests should also be forwarded to the relevant Head of Service and the Press & Public Relations Officer by either the IGU or Compliance Officer to ensure that any follow up queries can be addressed.

Heads of Service have responsibility to ensure that information requests are acted on in the correct way and that the nominated Service Compliance Officer has the support they need to fulfil their role under the FOIA and the EIR. They have responsibility for signing off requests before disclosure.

Disclosures that detail expenditure by the Council in excess of £20k must also have the approval of the S151 Officer.

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All staff are responsible for ensuring that information requests reach their nominated Service Compliance Officer or the IGU as quickly as possible, and also to retrieve any information that they are asked to within a given time frame.

Provision of advice and assistance

The Council has an obligation to provide advice and assistance in response to requests for access to information in so far as it reasonably can and where such help is required. Staff and/or requestors can contact the IGU at anytime.

Timescales for responses

The Council is committed to dealing with requests for information promptly and no later than the statutory deadline of 20 working days. The Council would not expect every request for information to take 20 working days and will endeavour, where possible, to provide the requested information at the earliest opportunity from the date of the request.

Where a delay in reaching a decision beyond this period is expected to occur due to the consideration of the public interest test, the Council must give a realistic and reasonable estimate of when a decision will be reached. This revised estimate must be complied with unless there is a valid reason for not doing so. If this estimate is exceeded, the applicant should receive an apology and an explanation for the delay. It is important that the requestor is informed if the estimate is proving unrealistic.

Clarifying a request

If the request is unclear, the Council has a duty to clarify the request with the requestor. However, the requestor is not obliged to reveal their aims or motives for making the request.

Where the Council has offered all the advice and assistance that it deems to be reasonable and the requestor still fails to describe the information requested in a way which enables the Council to identify and locate it, no further attempts need be made to seek clarification.

The Council will, however, provide whatever information it has identified and located that it believes to be relevant to the request, subject to any exemptions, exceptions and/or the public interest test.

Receiving a request

When an information request is received either by a service compliance officer or the IGU the following must be considered:

- Ascertain which legislation the request falls under to ensure that it is treated appropriately. If the request falls under both FOI and EIR, the respective parts will be dealt with under the relevant legislation. If the request relates to personal data of the requester, it must be processed in accordance with the General Data Protection Regulation 2016/Data Protection Act 2018.
- Whether the request can be dealt by one service or requires consideration by a number of services.

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All FOI and EIR requests need to be logged with the IGU, although they can also be logged locally within a Service if required – especially if the request can be dealt with directly with the customer in line with existing customer service standards and no exemptions or exceptions apply. Each request should be actively managed throughout its lifecycle.

What information is covered

The FOIA and the EIR cover all information held by the Council, no matter how it was obtained and not just information that the Council has produced or uses for its own business purposes. The Council will be said to hold the information even if the ownership or copyright rests with another body, or is also held by another authority. Copying information for the purposes of releasing it under the FOIA or the EIR does not breach copyright laws. There is no need to create new information to comply with a request.

Information requests surrounding the release of personal information on deceased clients must be handled under FOI as the General Data Protection Regulation 2016/Data Protection Act 2018 (under which access to personal records is normally handled) only applies to living persons.

Fees and charges

The Council aims to provide as much information as possible free of charge on the website for customers to download. Therefore the Council will not charge for information requests unless there are exceptional circumstances where the information cannot be gathered through normal working procedures.

Under the FOIA there is an exemption under which the Council does not have to comply with a request if the costs would exceed the appropriate limit, which in practice means that it would take more than 18 hours to comply with. In this instance, the Council still has a duty to confirm or deny whether it holds the information, unless this alone would exceed the limit.

There is a presumption in all cases where the 18 hours of staff time would be exceeded that the Council will offer advice and assistance to help the customer refine or narrow down their request.

Third party consultation

The Council understands that unless a valid exemption or exception is applicable it will be obliged to disclose the requested information about a company, public authorities or individual in response to a legitimate information request.

In general it will be necessary / courteous for the Council to consult third parties about the prospect of disclosing information regarding them. Their views will be important if it is necessary to assess the balance of public interest in the disclosure of information.

On all occasions where both parties fail to agree on disclosure the final decision will rest with the Council.

Tenders and Contracts

Unless an exemption or exception applies the Council will be obliged to disclose information relating to pre-tender and tendering process.

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The disclosure of information relating to pre-tender and tendering processes is particularly time sensitive, for example potentially prejudicing an ongoing tendering exercise and so advice must be sought from the Corporate Contracts Manager, Legal Services and the IGU when judging what information should be disclosed, and when.

The Council will not include contractual terms that attempt to restrict the disclosure of information held by the Council beyond the restrictions permitted by the legislation.

Unless an exemption or exception applies in relation to any particular part of a contract, the Council will be obliged to disclose that information in response to an Information Request regardless of any terms of contract.

The Council at the tendering stage will request a contractor to identify at the outset what information they are submitting that they regard as commercially sensitive and/or confidential and for what time period the information should be regarded as such.

However, even in this instance the restrictions on disclosure may be overridden by the Council's obligations under the legislation, for example, where the public interest outweighs the confidentiality of the information.

Redaction

The legislation gives an entitlement to information rather than documents. Therefore if part of a document is exempt, some information may need to be redacted (the exempt information edited) to remove the appropriate section/s and the remainder disclosed. A record should be kept as to the exemption / exceptions that apply. Copies of both the redacted and un-redacted response must be retained in case a request for an Internal Review is received and/or enquiry by the Information Commissioner.

When redacting information, contact the IGU for advice if needed.

Exemptions and Exceptions

The Council will not withhold information, unless an exemption or exception to disclosure applies. This may include refusing to deal with vexatious and repeated requests under S14 of the FOIA and/or Reg 12(4)(b) of the EIR.

The requestor will be notified by way of a refusal notice of the exemption/exception that applies and why, together with details of how to appeal.

Refusal notices under S36 of the FOI act must be authorised by the Council's Monitoring Officer. They would be supported and assisted in considering whether S36 was relevant by the Information Governance Manager.

Under EIR all exceptions are subject to the public interest test.

All exemptions/exceptions applied must be recorded in the request file.

Staff should contact the IGU for guidance when considering whether any exemptions and exceptions might apply.

The Public Interest Test

In order to apply an exception or 'qualified' exemption, the public interest in withholding the information must outweigh the public interest in releasing it.

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This judgement (which must be made on a case by case basis) will be made following receipt of information from the service by the Information Governance Manager.

If consideration of the public interest test is likely to take the request over the 20 working day limit, the requestor needs to be informed immediately of the extension, and the circumstances that have led to the extension being required.

Staff should contact the IGU for guidance on the public interest test.

Appeals and Complaints

Where a requestor is dissatisfied with a decision they are entitled to an independent review of the decision, through the FOI and EIR Internal Review procedure.

A review can be made with regards to the following:

- The Council not following its publication scheme
- Requests that have not (in the applicant's opinion) been handled properly
- Where the requestor is dissatisfied with the outcome of the consideration of the request.
- Where the issue is such that it cannot be resolved informally in discussion with the officer dealing with the request.

All requests for Internal Review should be logged and reported to the IGU.

Reviews will normally be dealt with within 20 working days of a written request being received by the Council.

After the Council's Internal Review procedure has been exhausted, a requestor if still unhappy must refer any further request for review to the Information Commissioner.

Provision of the information

Wherever possible the Council will endeavour to provide the information in the format requested by the applicant. Legislation such as the Disability Discrimination Act will be considered in each case to ensure that the applicant receives the information in a suitable format.

The requestor must also be made aware of the appeals process.

Publication Scheme

The Council will maintain a publication scheme and update it regularly.

Monitoring and Reporting

The IGU will produce timely reports on FOI/EIR performance.

These reports will include, but not be limited to;

- Total number of requests
- The timeliness of those requests
- The outcomes of those requests
- The source of those requests.
- Breakdown of exemptions/exceptions used for requests

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- The number of requests that went to Internal Review
- The number of requests referred to the Information Commissioner

Information Governance Unit

The Council's Information Governance Unit has a remit to facilitate and advise on the Council's compliance with the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the General Data Protection Regulation 2016/ Data Protection Act 2018 at a corporate level, and to support the Councils Services/Departments.

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