

Process Specification:

Request for Information under the *Freedom of Information Act 2000*

Document Control

Version	Release Date	Updates Made
3.0	11/2/2005	Amendments to fees process & Appendix E
2.0	24/1/2005	Amendments to complaints process
1.0	23/12/2004	First issue

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1. INTRODUCTION

1.1 Purpose

This document defines the process for Responding to requests for information of any type, of any age and on any medium.

1.2 Overview

Under the Freedom of Information Act 2000, any member of the Public, worldwide, has the statutory right to see any document or record (subject to certain exemptions) held by the Council. The Act is retrospective in that it applies to all records – it is not limited to those created since the passing of the Act. Information must be produced within 20 working days. Requests must be in writing and include an address for correspondence.

This procedure does not supersede any current arrangements the Council has for satisfying requests from the Public for information. It is intended to satisfy the new rights the Public has under the Act.

1.3 Document Structure

This document describes the end-to-end process for responding to requests for information. It identifies and gives a brief description of each process step. The process steps sometimes refer to appendices, which provide more detailed instructions on how to perform each step.

1.4 Process Trigger

The process is triggered by a request from any person (other than officers of the Council or its outsourced services) for information held by, or on behalf of, the Council.

1.5 Process Completion

The process will complete when one of the following events occur:

1. The request goes on to be processed as a general enquiry or Data Protection subject access request or a request for environmental information.
2. The request is rejected, as the requestor is not entitled to the information requested, and a letter informing the customer of this is sent out.
3. The customer has received the information requested followed up by a customer satisfaction card.

2. THE PROCEDURE

The process is available as an [A3 diagram](#) on the intranet.

2.1 Submit information request

2.1.1 Tell requester how to make request

If you are asked by a member of the public how he or she can make a request for information under the Freedom of Information Act, direct them to our website, where they can access the public information leaflet, explaining how to make an FOI request and complete an on-line e-form requesting information. The e-form will automatically be submitted to the appropriate MEO/CCO. Alternatively you can print off a manual FOI request form from the website and send it to the requester to complete and return to the relevant departmental MEO/CCO for processing.

If the member of the public is asking for personal data, they should be re-directed to our website where he or she can access the subject access request form in order to make their request under the Data Protection Act.

2.1.2 Submit information request to LBL Council

The customer may contact any Council officer to request information. The customer may use a number of different contact channels to make this request:

- ❖ [E-form](#) for FOI requests available via the website ([manual printable version](#) also available),
- ❖ E-mail,
- ❖ Letter,
- ❖ In person (Face to Face) e.g. at a Joint Service Centre, Neighbourhood Housing Office, Benefits office, etc.,
- ❖ Telephone,
- ❖ Fax.

Put a return address on the second page of the blank form if you print it and send or give it to the requester.

Freedom of Information (FOI) requests **must be in writing**¹ and include the following:

- ❖ mandatory details—
 - the name of the Requester,
 - the name of the person who should be corresponded with if different from the Requester,
 - an address for correspondence,
 - a description of the information required (sufficient for the information to be found and identified),
 - the name and post of the Council officer if the details are recorded from a verbal request;
- ❖ optional details—

¹ Requests for environmental information **do not** need to be in writing. However, environmental requests are exempt under the FOI Act and should be forwarded to the relevant department's MEO/CCO for processing under the Environmental Information Regulations 2005.

- the Requester's daytime phone number,
 - the Requester's e-mail address,
 - whether or not the Requester is content to receive the information by e-mail,
 - the Council department which holds the information,
 - dates and brief description of any previous requests for information,
 - equal opportunities data (ethnicity and registered disabled) for statistical purposes only;
 - authorisation from the Requester, if details have been taken down over the phone²
- ❖ the date of receipt of the request must be recorded.

Members of the Public are free to make less formal requests for information: these are processed as "general enquiries".

Note that "information" is information already recorded and held by the Council. Members of the Public do not have the right under the Act to insist that we derive new information or create new documents or records.

2.2 Request received; counting of 20 days starts

The request can be received and progressed by any Officer. The first action on receiving a request is to record the date of receipt on the request form, letter, fax or e-mail.

The Council has 20 working days from receipt to satisfy the request. At certain points in the process, the clock may be stopped (see **Appendix G** – 'The 20 days' and elsewhere in this document).

2.3 Is this an FoI request?

Using the laminated FoI card (see **Appendix A** - Recognising an FOI Request), the officer must decide whether or not the request should be processed as a formal FoI request.

2.4 Have all necessary details been supplied?

If the request **is** to be processed as an FoI request, the receiving officer must check (a) that it is in writing (i.e. e-form, letter, fax or e-mail), and (b) if it is, that all the details listed in §2.1 have been provided.

If the request is not on a completed e-form (by hand or electronically) or otherwise in writing, the receiving officer must take steps to ensure that an e-form **is** completed either by completing it him/herself and sending it to the Requester to sign & return, or by asking the Requester to complete an e-form; the Requester can be directed to the Web-site or sent an e-form by post. See **Appendix B** Guidance for the Public.

The counting down of the 20 working days allowed for the Council to satisfy an FoI request stops during the wait for any outstanding details from the Requester. If the information is not received within three months of the date of the request for further information, the original request will be closed.

² The completed form should be sent to the requester to authorise with their signature and return to the Council.

2.5 Forward the request to the MEO/CCO

The request e-form is now forwarded to the appropriate Members' Enquiry Officer or to the Corporate Complaints Team. If it applies to a single "front-line" service it goes to the appropriate MEO for Social Services, Environmental Services, Housing, Education, Corporate Services, Planning and Benefits.

A request which will need to be processed —

- by more than one department, or
- by the Finance Department, or
- by the Office of the Assistant Chief Executive, or
- by the Chief Executive

— must be forwarded to the Corporate Complaints Team. If the receiving officer is uncertain as to which department the request "belongs" to, he /she can send these also to the Corporate Complaints Team.

2.6 Is this a Data Protection or Environmental Information Regulations request?

The MEO/CCO receiving a written request for information should consider whether the request is any of the following before continuing to process the request via the FOI Procedure.

- ❖ **Data Protection Subject Access Request:** Is this request regarding personal information about the customer? If so it should be redirected to the Subject Access Request Officer (in the Corporate Complaints Team) as a request under the Data Protection Act. The FOI procedure ends here.
- ❖ **Environmental Information Request:** Is this request regarding information of an environmental nature that might be covered by the Environmental Information Regulations (EIR's)? If so this should be re-directed to the appropriate departmental MEO to process as a request for information under the EIR's. The FOI procedure ends here.

For further help in identifying requests, which are covered by the Environmental Information Regulations and the Data Protection Act refer to **Appendix C** – Recognising requests covered by the DP Act and EIR's.

2.7 Log details of the request

The MEO/CCO must —

- check that he/she is the correct officer to progress the request; if not forward the request to the correct MEO/CCO,
- log all the details of the request,
- consider whether the FOI request is vexatious, repeated (i.e. the requester has asked for the same or similar information within the last 20 days) or likely to be expensive. If the MEO/CCO considers the request to be any of these, they should note this when forwarding the request to the relevant records administrator to process. The MEO/CCO should consult the FOI Officer and explain to the records administrator how to proceed with the request.
- confirm (in so far as he/she can) that all the necessary details have been supplied to process the request; contact the Requester directly if further details are needed. The twenty-day clock can be stopped whilst further details are being sought.

For instructions on how to log and track FOI requests in the RESPOND database refer to **Appendix D – Using RESPOND for FOI requests.**

2.8 Send acknowledgement to Requester

The MEO/CCO will check that the information requested exists in the form it has been requested and **is** held by the Council and its service partners.³

The MEO/CCO will then send an acknowledgement of the request including a copy of the completed form to the requester and, if the Council and its partners do not hold the information or some part of it, the MEO/CCO will tell the requester which organisation to contact.

2.8.1 Tracking information requests

The MEO will track progress of all FOI requests within their department. The CCO will track those requests that relate to OACE, Finance, or cover more than one department. The MEO/CCO will ensure that the requests are satisfied within the time frame of 20-working days to satisfy a request, sending reminders to records administrators who are retrieving the records throughout the process

2.9 Is an exemption to be applied?

The MEO/CCO will consider whether the request is: (i) covered by an absolute or qualified exemption and (ii) whether the Council will claim the exemption wholly or in part. The MEO/CCO may seek the advice of the FOI Officer regarding applying exemptions.

The time spent on considering exemptions cannot be (a) deducted from the twenty days, or (b) charged to the Requester.

For details on all the exemptions and their application, including applying the public interest test refer to **Appendix E – Applying Exemptions.** If the exemption being applied is s36, 'Prejudice to the effective conduct of public affairs', the qualified person referred to in the **Appendix E**, must be contacted at the earliest possible opportunity. If an exemption is to be applied to the whole request the MEO/CCO should communicate this to the customer in writing. If an absolute exemption is to be applied, an explanation of the refusal will be sent to the Requester, citing the exemption being applied. If a qualified exemption is to be applied, an explanation of the refusal will be sent to the Requester, citing the exemption to be applied, explaining the application of the public interest test.

The Requester will also be informed of the Council's complaints procedure, which for the purposes of FoI, starts at stage 2.

If the requested information is covered only partially by an exemption, it may be appropriate to discuss the supply of alternative information with the Requester.

The MEO/CCO must log any decision to make use of exemptions – recording the exemption or partial exemption claimed, and the public interest argument.

2.10 Identify the Records Administrator(s) and send the request with any details of exemptions

³ Information is any recorded information held or produced by the Council. The Council should not create information to satisfy the Act. However it may be helpful to advise the requester of similar information that exists in recorded form if what the requester has asked for does not exist.

The Records Administrator(s) of the information requested will be identified by the MEO/CCO who will send the request to him/her/them together with an *exemptions & fees memo*⁴ detailing any necessary details of partial exemptions and prompting the records administrator to start the fees request process.

The MEO/CCO may refer to the list of [records administrators](#) and their specific datasets available on the intranet.

Where more than one records administrator is involved in the process, the MEO will nominate one of them to collate all information prepared, to ensure one response from the Council is received by the requester.

2.11 Has the information been found?

The Records Administrator will locate the information and estimate the effort that will be required to assemble it for the Requester. See also 2.12 below.

The MEO/CCO will monitor the subsequent actions until the Requester has been sent all of the requested information. See also 2.8.1 above

2.12 Apologise and negotiate;

If the records cannot be found, an apology should be sent to the Requester, and suggestions made for alternative records that can be supplied.

2.13 Calculate cost and request payment

The Records Administrator

The records administrator will keep a log of time spent locating, retrieving and preparing information to be supplied to the customer⁵. If the fees calculation is complicated or large, the records administrator will use the [FOI costs spreadsheet](#) available via the intranet to log time spent satisfying the request. In addition the number of photocopying or printing copies made should be recorded. The spreadsheet will automatically calculate the amount to charge the customer and the cost to the Council.

Where more than one records administrator is involved in the response to an information request, the invoice request process should be managed by one records administrator, nominated by the MEO, who will collate all completed spreadsheets from each records administrator and raise an invoice on behalf of the whole request, sending copies to all records administrators involved in the request.

A copy of the completed spreadsheet should be sent to the [departmental head of credit control](#) with a request invoice form and a completed [fees letter](#), a copy of which can be taken from the intranet and is included here in **Appendix F**. The records administrator should file a copy of all fees related documents, retaining them for two years after the request.

All invoices raised for FoI fees must include a breakdown of the costs associated with the request.

⁴ Generated by RESPOND database

⁵ The records administrator should devise their own methods for recording costs associated with satisfying all FoI requests, regardless of whether these are to be charged to the customer or not. This information should be provided to the Corporate Records Manager or Finance department in the format requested, when required. The fees spreadsheet has been devised to assist the records administrator with complicated calculations if necessary.

The records administrator may refer to the list of [departmental heads of credit control](#) on the intranet.

The staff time spent locating, retrieving and preparing information for a customer that has been requested under the FOIA2000, can be charged for. If the total cost of hours spent doing this by staff amounts to more than £450, it can be charged for in total. If the total cost of hours spent doing this by staff is less than £450 the cost is free to the customer. The records administrator should negotiate the cost, possibly against the quantity of information to be supplied, with the customer, if necessary.

The other costs associated with satisfying an FOI request (photocopying, postage, printing) can always be charged for at full cost. These costs are not included in the calculation of £450.

The Council will not seek to recover fees from the customer that are £20.00 or less in total.

[The Departmental Heads of Credit Control](#)

The departmental head of credit control will set up the debtor on ORACLE and raise an invoice, including [a full breakdown of costs](#), returning a copy to the records administrator for their records. The [departmental head of credit control](#) will get authorisation for the invoice and send the fees letter with the invoice, stating the charge for the information requested, to the customer **within 48 hours** of the request. The 20-day clock stops once the payment request is sent.

The MEO/CCO should be notified by the records administrator that a fees letter has been sent to the customer and log these details into the RESPOND database. If the fee is not received within three months of the request, the original information request is closed. The [departmental heads of credit control](#) will track payments received using ORACLE, informing the records administrator when payment has been received. The records administrator must inform the MEO/CCO to re-start the clock when this occurs.

The [Fol invoice procedure note for records administrators and heads of credit control](#) is available on the intranet.

2.13.1 Staff costs

Hours spent on this process by the records administrator must be logged in units of hours. The [FOI fees calculation spreadsheet](#) can be used for complicated or large requests. Refer to **Appendix F**, FOI costs spreadsheet and guidance.

2.13.2 Other costs

Other costs including postage and printing must be logged as an actual cost. The FOI fees calculation spreadsheet can be used for complicated or large requests. Photocopying costs should be logged in units of copies.

2.14 Is the twenty days likely to be exceeded?

Information requests under the FOIA2000 must be satisfied within 20-working days. If at any time this timescale is likely to be exceeded, the MEO/CCO tracking the request should inform the customer and apologise for the delay, stating by when the request will be satisfied. The MEO/CCO should track the request throughout, sending reminders to the records administrator(s) when necessary and when the time limit appears likely to be exceeded.

2.15 Receive payment, prepare records and send them

The records administrator will receive the fees requested and follow the Council's usual banking and income received procedures. Information should only be supplied when the full fee has been received (i.e. when a cheque has cleared). The status of payments can be tracked using the ORACLE database. When the fee is received the date of its receipt should be noted by the records administrator and the MEO/CCO informed. The RESPOND database should be updated accordingly. Once the payment is received, the 20-day clock starts again.

The records administrator should prepare the information to be sent out to the customer, by copying relevant documents and separating or blacking out exempt information. In most instances this will mean the anonymising of personal information. Advice may be sought from the Data Protection Officer if required. Where information is removed or concealed, a note should be made on the copy sent to the customer, stating what exemption has been applied (i.e. "personal information"). The costs of photocopying and printing have been built into the hourly rate for time spent locating and preparing records: see 2.12 'Calculating Cost and Requesting Payment' above.

Once the information to be supplied has been decided on, the documents prepared and any fees requested have been received, the records administrator should supply the information requested to the customer. A covering letter should be included, giving details of any exemptions that have been applied and details of the Council's complaints procedure should the customer be unhappy with the service they have received. The Records Administrator will notify the MEO/CCO of—

- the action taken regarding the particular request and include details of any records not found,
- the time and money spent on the request (see section 2.13) (this may be done by sending the spreadsheet) and
- the actual payment received.

2.16 Have all the records been supplied?

If the request was sent for action to more than one Records Administrator, the MEO/CCO will check that **all** available information has been sent to the Requester.

2.17 Log conclusion of process

The MEO/CCO will close the request once he/she knows that all the requested information has been supplied.

The MEO/CCO should consider any additions that should be made to the Council's Publications Scheme, based on the frequency of FOI requests for a certain piece of information.⁶

The MEO/CCO will make a brief note of any information not found in the RESPOND database.

⁶ Information already available in the public domain (eg on the website or in the Council's Publications Scheme) is exempt under the FOI Act. Therefore it is in the Council's best interests to update the Publications Scheme with information that is frequently requested in order to avoid the need to follow this procedure.

2.18 Retention and Disposal Standard

The Council's [retention and disposal standard](#) lists most classes of records held at the Council and the length of time they should be retained before archiving or destruction. All Officers should consult this document when deciding what action to take with the records they hold. The policy can also be consulted to ascertain whether the Council still holds information being requested by the Public.

2.19 Complaints Procedure

Generally, the Information Commissioner will expect the complainant to have used the Council's complaints process before asking him to take action.

If a member of the Public wants to make a complaint about the service they have received in response to a request for information, he/she should be told to contact the [Corporate Complaints Unit](#). [The procedure for dealing with Fol complaints](#) can be found on the Fol Intranet page.

If the complainant is not satisfied upon completion of the corporate Complaints procedure, he/she should be told that he/she can make a complaint (by post is preferred) to the *Information Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF*.

2.20 Report performance indicator values

The Fol performance indicators are (corporately and for each department) —

- the number of requests received,
- the percentage satisfied within 20 days.

The Fol Officer is responsible for contributing the monthly values of these to the Corporate Performance Digest.

APPENDIX A – RECOGNISING A FREEDOM OF INFORMATION (FoI) REQUEST

A.1 The Laminated Cue Card Calender

Every Officer should have a copy of the laminated cue card Calender, [How to recognise and handle an FoI request](#). It is available on the intranet and can be printed off as required.

APPENDIX B – GUIDANCE FOR THE PUBLIC AND THE FoI FORM

B.1 The request forms

The Public can request information under the FoI Act by completing either an [electronic](#) or [manual printable](#) request form. Both these are available on the website.

B.2 The public guidance leaflet

The [Public guidance leaflet](#), available from all Lambeth information points can also be found on the [website](#).

APPENDIX C RECOGNISING REQUESTS COVERED BY THE DATA PROTECTION ACT AND THE ENVIRONMENTAL INFORMATION REGULATIONS

C.1 Personal Information (s40)

C.1.1 Introduction

Personal Information about the individual requesting it is exempt under the Freedom of Information Act 2000 (FOIA). This does not mean that the information is exempt from being provided but that the request should be processed under the provisions of the Data Protection Act 1998 (DPA). This is an absolute exemption under the FOIA and any such requests should automatically become [subject access requests](#) under the [DPA](#).

Personal Information about someone other than the individual requesting it is known as 'third party data'. This information is exempt under the FOIA if its disclosure would breach any of the DPA principles or if the third party has formally objected to their disclosure. This is a qualified exemption and consideration should be given to whether the disclosure of the information would be both fair and lawful.

C.1.2 Disclosure would be unlawful if;

- ❖ There would be an actionable breach of confidence (see further **Appendix E** – Applying Exemptions). This would include personal financial details or medical information.
- ❖ There is a law forbidding disclosure, for example covered by the Official Secrets Act

C.1.3 Disclosure would be unfair if;

- ❖ It caused unnecessary or unjustified distress or damage to a person
- ❖ There was no expectation of disclosure when the information was submitted
- ❖ There was an expectation of secrecy
- ❖ Consent to disclose was expressly refused (in writing)

When thinking about fairness, it is worth considering whether the information relates to private or public lives of third parties. Private information would relate to the family or home life of an individual whereas public information would relate to the official or work related life of an individual.

For example, information relating to staff of the Council including their names, job functions, decisions made in official capacities, or grades would be considered public information. Information relating to staff of the Council such as home addresses, internal disciplinary matters, or bank details would be considered private information.

C.2 Environmental Information (s39)

C 2.1 Introduction

Environmental information requests are exempt under the FOIA. This does not mean that the information is exempt from being provided but that the request should be processed under the provisions of the Environmental Information Regulations (EIR's), which came into force with the FOIA in January 2005. The

FOIA is the gateway to the EIR's, which means that they are enacted under the provisions of the FOIA. Section 74 of the FOIA gives the Secretary of State the power to make provision relating to environmental information, which has been done with the revision of the EIR's.

C.2.2 Definition of Environment

Environmental Information is broadly defined as;

- a. The state of the elements of the environment (air, soil, water..)
- b. Factors that affect or are likely to affect (a) when released into the environment (emissions, energy, noise, waste....)
- c. Measures and activities that might affect or protect (a) or (b) (policies, plans, agreements...)
- d. Reports on implementation of Environmental information
- e. Cost benefit and other economic analyses related to (c)
- f. The state of human health and safety (contamination of food chain, conditions of human life, incl built structures, cultural sites...)

C.2.3 Processing Requests

Please note that environmental information requests do not need to be in writing and might be for any department within the Council. Please ensure you forward the request to the Members Enquiries Officer of the relevant department.

Environmental Information Requests could include: Parking (Environment), Regeneration (Corp Services & Housing), School Bus Routes (Education), Community Safety (Corporate Services), Planning (Housing & OACE) and Health & Safety (Environment).

They must be processed within 20 days but this can be extended to 40 days if the request is particularly complex or voluminous. There are no absolute exemptions under the EIR's. All decisions to withhold information must be qualified with the Public Interest Test (Cf **Appendix E** – Applying Exemptions).

EIR requests should be forwarded to the relevant department's Members Enquiry Officer for processing.

APPENDIX D – USING RESPOND FOR FOI REQUESTS

D.1 Logging & Tracking Requests

Throughout the process of an FOI request, the Members' Enquiry Officer (MEO) or Corporate Complaints Officer (CCO) must consider the 20-day timescale, in particular ensuring that internal correspondence is done by email to save time lost by using internal post, and liaising with all records administrators involved in the request to ensure the request is on target to be completed within the 20-days allowed by the Act.

D.1.1 Logging requests

When an information request is received by the relevant MEO/CCO, the details of the request should be logged on the Respond Centrepoint system. Respond will generate tasks for the MEO/CCO at various points that information is entered into the database.

D.1.2 Tracking requests

The MEO/CCO must track the progress of each FOI request, ensuring that sufficient progress is made against the 20-day time limit to satisfy requests. This will include sending reminders to records administrators regarding progress.

D.2 Using Respond to Log FOI requests

D.2.1 The customer card, summary card and enq/complaint card

These cards should be completed by the receiving MEO/CCO as per a normal complaint or members enquiry. The status of the request will be either 'Freedom of Information request' or 'Environmental Information request' if the request is for information of an environmental nature⁷. Inputting these details will automatically generate a task to 'send acknowledgement letter' to the customer.

D.2.2 The FOI Card – Information & details of previous requests

Details of the information required should be entered in the first text box. It should be noted whether the information can be forwarded to the customer by email. Any previous requests, including details and when the previous request was made should be logged under 'previous request'. The information regarding the previous request will enable the MEO/CCO to ascertain whether this is a repeated or perhaps vexatious request.

D.2.3 The FOI Card – More details required

If more information is required to process the request, this should be noted. A task will be generated to send out a request for information. This can be done via the letter generated by Respond, or by email, if an email address has been provided, or even by telephone. The 20-day clock should be stopped on the date further information is requested, and re-started when enough information has been supplied to process the request.

D.2.4 The FOI Card – Exemptions & records administrators

⁷ See also your laminated cue card Calender for examples of what might constitute an environmental information request.

The MEO/CCO should note whether exemptions need to be applied, which exemption(s) are to be applied and any further details relating to their application, for example details of the public interest test that was applied. The records administrator(s) who hold the information requested should be entered. It is likely there will be more than one dealing with one information request -all those records administrator(s) involved should be inputted on Respond. These actions will generate a memo to be sent to the records administrator(s) detailing the information to be supplied and whether exemptions are to be applied. A reminder should be sent to the records administrator(s) after 15 days of the request's life have passed.

D.2.5 The FoI Card – Fees requested

The records administrator(s) will inform the MEO/CCO whether a fee is to be requested, how much has been requested and that date of that request. These details should be logged in Respond and the 20-day clock stopped on the date the fee was requested. It should be re-started when the records administrator(s) inform the MEO/CCO that a fee has been received. If the fee is not received within 90 days of its being requested, the information request is cancelled and this should be noted in Respond.

D.2.6 The FoI Card – Outcome

Once the information has been supplied or the customer has been informed that the information will not be supplied, the outcome should be logged.

D.3 Tasks & Template Letters Generated by Respond

Throughout the process of logging an FoI request, tasks will be generated with certain timescales for their completion. Several letters are available with merge facilities to make the process as automated as possible. Information that relates to each particular request should be added to the template letters.

D.3.1 List of tasks

- Send the FoI requester an acknowledgement letter
- Send the FoI requester the appropriate records
- Request further information from requester
- Send exemption memo to records administrator

D.3.2 Template letters

- Acknowledgement of request (external to customer)
- Further information request (external to customer)
- Exemption and information memo (internal to records administrator(s))
- Exemption letter (external to customer)
- Partial exemption letter (external to customer)

APPENDIX E APPLYING EXEMPTIONS

E.1 Introduction

There are 23 exemptions to the disclosure of information under the Freedom of Information Act 2000 (FOIA). Some of these are absolute and some are qualified.

Often more than one exemption might be cited as reason for non-disclosure of information to the Public. All responses to the Public must state clearly, in writing, what exemptions have been applied, and in the case of qualified exemptions must give reasons for their application.

An exemption can apply to all or only some of the information in a document. An exemption that may have applied at the time of creation of a record or document may no longer apply when the record is the subject of a request for information.

Advice regarding exemptions can be sought at any time from the Freedom of Information Officer.

Comprehensive government guidance on all the exemptions and their use, is available on the [Department for Constitutional Affairs](#) website.

There is a full list of exemptions and their section headings at the end of this appendix. Guidance in this section relates to exemptions that are likely to be most commonly used by Officers at the Council, when considering whether to withhold information from the Public.

E.1.1 Absolute Exemptions

This means there is no right of access under the FOIA. However in some cases this is due to the right of access to this information being governed by a different statute, for example Personal Information or Environmental Information (See further **Appendix C** - Recognising requests covered by the Data Protection Act and the Environmental Information Regulations).

E.1.2 Qualified Exemptions

This means that consideration needs to be given as to whether to disclose or withhold information. The decision is qualified with reference to the Public Interest Test (see below). When withholding information reasons must be given to the requester as to why this information is being withheld. The reasons must be set out against the Public Interest Test.

E.1.3 Public Interest Test

This test is a consideration of whether it is in the public's best interest to withhold or disclose the information being requested. The decision must be made on the basis that in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure. Where the balance is seen as equal the information must be released. In all cases, the decision to release or withhold will be a matter of judgement at the time of the request. The decisions should be recorded, documenting the reasons on both sides as objectively as possible, to make the decision and to be able to account for reasons.

There are some points that can be considered to help with the assessment of the Public Interest.

Factors in favour of disclosure

- ❖ Whether it would promote accessibility to information, promoting transparency and accountability.

- ❖ Whether a document would disclose reasons for a decision made on behalf of the public and/or enable them to challenge these decisions.
- ❖ Whether disclosure would contribute to a public debate on a matter of public interest.
- ❖ Whether disclosure would enhance scrutiny and thereby improve accountability and participation.
- ❖ Whether disclosure would bring to light important matters of public health and safety.

This list is not exhaustive, and in all cases proper consideration should be given regarding whether to disclose or withhold information. It is worth noting that the Public Interest does not include the protection of individuals, in their capacity as officers of the Council, from embarrassment.

Factors against disclosure

- ❖ Those points covered by the exemptions in the FOIA

In addition, there may be procedural reasons for refusing a request for information. For example if the request is vexatious or repeated, or if the cost of complying with the request would exceed the cost limit then the request may not have to be complied with.

E.2 Absolute exemptions

E.2.1 Information accessible by other means (section 21)

Any information already available in the public domain is exempt under the FOIA. This covers any information held in the Council's Publication Scheme or otherwise available. Therefore information that is frequently requested from the Council should be considered for inclusion in the [Publication Scheme](#).

E.2.2 Information intended for future publication (section 22)

This exemption may apply if there is an intention to publish the requested information at some future date. This ensures that the FOI Act does not force public authorities into premature publication of information. This section may apply even if the specific date for publication has not yet been determined but the proposed publication timetable must be **reasonable** in all the circumstances, in addition it will only apply if a public authority has decided, before the request is received, to publish the information concerned.

In some circumstances, there may be a genuine public interest in the public knowing the information prior to the intended publication date, and public authorities should not be able to avoid putting information in the public domain by adopting unreasonable publication timetables or an 'intention' to publish where there is little prospect of that intention being realised within the reasonable future.

"Publication" includes any speech, writing, programme or other communication in whatever form which is addressed to the public at large or any section of the public. This is a very broad term which embraces speech, print and electronic media and both commercial and non-commercial publication.

E.2.3 Environmental Information (section 39)

Environmental information requests are exempt under the FOIA. This does not mean that the information is exempt from being provided but that the request should be processed under the provisions of the Environmental Information Regulations, EIR's (See further Appendix C - Recognising requests covered by the Data Protection Act and the Environmental Information Regulations).

E.2.4 Personal Information (section 40)

Personal Information about the individual requesting it is exempt under the Freedom of Information Act 2000 (FOIA). This does not mean that the information is exempt from being provided but that the request should be processed under the provisions of the Data Protection Act 1998 (DPA).

E.2.5 Information Provided in Confidence (section 41)

Information that has been provided in confidence is exempt under the FOIA. However, consideration must be given to the weight of confidence placed on the information (it must not be trivial). This exemption only applies if disclosure of the information would give rise to an actionable breach of confidence (i.e. the Council could be taken to court). It does not include information marked confidential by the Council during the course of its work.

It should be noted that information is confidential and not files. It may be that some information from a file can be disclosed once severing of exempt information has occurred. In addition confidentiality should be considered within the time it is being released. What was confidential at the time of creation may not continue to be so, when some time has passed.

If information produced by a third party, but held by the Council, becomes the target of an FOIA request, the third party should be consulted before the information is released. (see also, commercial confidentiality, section 43, below)

E.3 Qualified exemptions

E.3.1 Investigations And Proceedings Conducted By Public Authorities (section 30)

This exemption is concerned primarily with preserving the integrity of certain proceedings and investigations which public authorities have the power or duty to conduct (for example, a disciplinary hearing). There are two ways in which the application of section 30 may be triggered:

- ❖ where information has at any time been held for the purpose of specified criminal and other investigations or proceedings; and
- ❖ where information relates to the obtaining of information from confidential sources and was obtained or recorded for a number of specified investigations or proceedings.

E.3.2 Law Enforcement (section 31)

Section 31 is concerned with protecting a wide range of law enforcement interests and its application turns on whether disclosure would be likely to prejudice those interests.

Some interests that are protected by section 31 are drawn quite widely, for example: the administration of justice, the prevention or detection of crime and the operation of immigration controls. But section 31 also applies where the exercise by any public authority of certain specified functions would be prejudiced by disclosure. Those functions include: ascertaining whether a person is responsible for improper conduct, determining the cause of an accident and ascertaining a person's fitness to carry on a profession.

Key points:

- ❖ Section 31 only applies in cases where the information does **not** fall within section 30
- ❖ The structure of section 31 is quite complex and it will be necessary to have careful regard to the important differences between the way in which the various categories of information are framed
- ❖ The categories within section 31 may overlap and consideration should be given to all categories that may apply.

E.3.3 Audit Functions (section 33)

This exemption can only be used by public authorities which have financial audit functions in relation to other public authorities or whose functions include examining the efficiency, effectiveness and economy with which other public authorities discharge their functions. This section applies to information whose disclosure would be likely to prejudice the exercise of these functions.

Section 33 only applies where one public authority has audit or monitoring functions in relation to another public authority. It does not apply where a public authority has such functions in relation to private sector bodies, nor does it cover internal audit and monitoring.

Reasons for non-disclosure of audit reports might also include, information that would be prejudicial to a criminal investigation or that revealed information about a third party that was covered by the Data Protection Act.

E.3.4 Prejudice To Effective Conduct Of Public Affairs (section 36)

This section exempts information whose disclosure would be likely to have any the following effects:

- ❖ prejudice collective responsibility;
- ❖ inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation; or
- ❖ prejudice the effective conduct of public affairs.

This section can only be used if, in the reasonable view of a "qualified person", disclosure of the requested information would have one of the specified prejudicial effects. The qualified person as regards local authorities is the Borough Solicitor in his function as Monitoring Officer.

E.3.5 Health And Safety (section 38)

This section relates to information which, if disclosed, would be likely to endanger the physical or mental health or the safety of any individual.

The individual concerned does not have to be identifiable: this section can apply where there is a group or class of persons, any or all of whom are likely to have their health or safety endangered by disclosure.

E.3.6 Personal Information (section 40)

Personal Information about someone **other** than the individual requesting it is known as 'third party data'. This information is exempt under the FOIA if its disclosure would breach any of the DPA principles or if the third party has formally objected to their disclosure. This is a qualified exemption and consideration should be given to whether the disclosure of the information would be both fair and lawful.

E.3.7 Commercial Interests (section 43)

This exempts information whose disclosure would be likely to prejudice the commercial interests of any person. It also includes a specific exemption for trade secrets.

This section protects not only the commercial interests of third parties but also the commercial interests of the public authority that holds the information. Public authorities will need to bear in mind that the commercial sensitivity (particularly the market sensitivity) of information will usually decrease with time.

E.4 Full List of Exemptions

Below is a list of all 23 of the exemptions under the Freedom of Information Act 2000. Guidance for the most common is available in this appendix. Guidance on the other exemptions and further guidance on all the exemptions can be found on the [Department for Constitutional Affairs Website](#). The FOI Officer is available to offer advice and support in the application of all exemptions.

Absolute

- s.21 Information accessible by other means
- s.22 Information intended for future publication
- s.23 Information supplied by or relating to, bodies dealing with security matters
- s.32 Court records
- s.34 Parliamentary privilege
- s.39 Environmental Information
- s.40 Personal Information
- s.41 Information provided in confidence
- s.44 Information whose disclosure is prohibited by law

Qualified

- s.24 National security
- s.26 Defence
- s.27 International relations
- s.28 Relations within the UK
- s.29 The economy
- s.30 Investigations and Proceedings
- s.31 Law Enforcement
- s.33 Audit Functions
- s.35 Formulation of government policy
- s.36 Prejudice to the effective conduct of public affairs
- s.37 Communications with her Majesty
- s.38 Health and Safety
- s.40 Some Personal Information
- s.42 Legal Professional Privilege
- s.43 Commercial Interests

APPENDIX F FoI FEES SPREADSHEET, FEES LETTER AND GUIDANCE

F.1 The Regulations

The Fees regulations governing the charging of fees for Freedom of Information (FOI) requests allow us to charge for certain activities and not others;

We can charge for – locating, sorting, editing and redacting⁸ information to be supplied to the customer.

We cannot charge for – considering whether to apply exemptions or not, or in order to consider the application of the public interest test.

The 20-day clock stops ticking between the date of request for fees from a customer and the receipt of payment at the Council. If no payment is received within 3 months the information request will be cancelled.

The full Fees Regulations can be viewed on the [Information Commissioners website](#).

F.2 The Charging Structure

F.2.1 Wage Costs

All requests that cost the same as or less than £450.00 in staff costs are free to the customer. All requests that cost more than £450.00 can be charged at actual cost⁹. The hourly rate for any Council Officer's time spent satisfying a request is £25.00 per hour. **Other costs are not included in the £450 calculation.**

F.2.2 Other Costs

Postage is charged at actual cost, photocopying is charged at £1.20 for the first copy then 0.20 per copy thereafter. Printing is charged at 0.03 per copy, dividers cost £1.75 per set, a binder is £2.00 and binding is £1.00 per copy. All these costs are on the fees spreadsheet. Pitney Bowes can be contacted for quotes for printing. The full cost of the other non-staff costs is always charged to the customer providing the lowest cost limit is exceeded.

F.2.3 Lowest Cost Limit

Where the total costs to be invoiced for are less than £20.00, the Council will not attempt to recover these costs and the information will be provided free of charge to the customer.

F.3 The LBL Fees Spreadsheet (for large or complex requests)

F.3.1 How to complete the spreadsheet

In all cases, costs associated with satisfying an FoI request should be logged by the records administrator. This information must be ready to be provided to the Corporate Records Manager or the Finance department when requested. For large or complicated requests, staff should complete the number of hours, copies and total cost of postage in the cells highlighted yellow on the fees calculation spreadsheet.

⁸ Redacting means shading out exempt information from documents to be supplied to a customer, for example to remove personal data, which is exempt under the FOI Act.

⁹ For example, if a request costs £451.00 to satisfy, the charge to the customer is £451.00. If the total cost is £450.00 or below the charge to the customer is £0.00

The spreadsheet will automatically calculate the amount to invoice the customer and the cost to the Council. The records administrator should retain these spreadsheets for two years.

You can get a functioning spreadsheet by doing the following:

- Click on [Fol: fees calculation spreadsheet](#)
- Click on ⓘ,
- Right click on the file name beside **Get Native File**,
- Click on **Save Target As...**,
- Set up the file name and folder you want to use and then press the SAVE button.

You will now have available a functioning Excel spreadsheet which will calculate the cost for you.

It is possible to print out the [spreadsheet](#) and complete it by hand; this is not advised unless you are very confident in your knowledge of the charging regulations.

F.3.2 Example of the fees spreadsheet

Freedom of Information

Fees Calculation Spreadsheet

1. Please complete the yellow cells below in the Unit column with the number of hours, photocopies, binders, divider sets, you estimate it will take to satisfy this request.
2. Please enter the total estimated cost for postage in the yellow cell in the total cost column

The spreadsheet will automatically calculate the total invoice amount to raise

Expenditure		Unit (No. of Hours, Copies, Sheets, etc..) ££	Unit cost ££	Total Cost	
Staff Costs @ £25.00 per hour	enter no. of hours	19	25	375	NB1
Paper	enter no. of sheets	30	0.03	0.9	
Dividers	enter no. of sets	1	1.75	1.75	
Binders	enter no. of items	1	2	2	
Binding per copy	enter no. of docs	1	1	1	
Photocopying first sheet	enter 1 unit always	1	1.2	1.2	NB2
Photocopying (after 1 st sheet)	enter no. of sheets	60	0.2	12	
Postage	enter cost of postage			3.20	
Total				397.05	

Total Other Costs		For records only		22.05
Invoice Amount to Customer				20.85
Total Council costs		For records only		375

Notes

NB1 Staff Costs - All staff costs that cost the same as or less than £450.00 are free to the customer. All requests that cost more than £450.00 can be charged at actual cost. **For example, if a request costs £451.00 to satisfy, the charge to the customer is £451.00. If the total cost is £450.00 or below the charge to the customer is £0.00. Only staff costs are included in the £450.00 calculation, other costs are not.**

NB2 Other Costs - The first sheet photocopied is charged at £1.20. Every other sheet copied after the first sheet is charged at 0.20 per sheet. When including photocopying costs, 1 unit must be entered in the row, 'Photocopying first sheet' each time

F.4 Fees Letter

The shaded grey areas should be completed with the relevant details for each request.

Dear XX(customer),

We have assessed the work required to provide you with the information you have asked for.

[Insert description of information requested]

We require a fee from you in order to carry this out for you. Details of the fee are on the enclosed invoice.

You can view the fees regulations to be applied for Freedom of Information Act requests on the Information Commissioner's website at www.informationcommissioner.gov.uk/. You can also see what we are allowed to charge for.

The process of your request will be suspended until your payment has cleared. You will find details of how you can pay on the back of the enclosed invoice.

If we have not received payment from you within three months, your request for information will be cancelled.

We may be able to provide the information you require for no charge or a smaller fee if you are able to give us more detail regarding the type of information you are looking for. If you would like to discuss this or your application, please contact the Council via the contact details on this letter.

Yours sincerely,

XXXX(name)
XXXX(title)

APPENDIX G THE 20 DAYS

G.1 Time Limit

A public authority must inform the applicant in writing whether it holds the information requested, and if so, communicate that information to the applicant, promptly, but not later than 20 working days after receipt of the request [FOIA s10(1)]

The code of practice states that Public authorities 'should not delay Responding until the end of the 20 working day period under section 10 (1), if the information could reasonably have been provided earlier.' [Part IV para 17]

If you would normally Respond to the particular request for information within 10 days as a general enquiry, you should do so.

G.2 The 20-day clock

The 20-day clock starts:

- ❖ The day after the Council receives the request.
- ❖ The day the Council receives the further information necessary to process the request (ie in order to identify and locate the required information)¹⁰
- ❖ If a request is transferred to a different authority, the day after it is received by them.

A request is received by the Council when it is delivered to the Council by post or arrives in an officers Inbox. If an out of office reply is in operation. The request would not be received until the email reaches the Inbox, noted for redirection.

The 20-day clock stops:

- ❖ When a fee has been requested from the applicant, until the fee has been received in the Council's bank account (ie a cheque has cleared)

The 20 working day clock would 'stop', in effect, the day before the fee notice is sent and would 're-start' the day after the fee is received.

If no fee is received within 3 months of the date of request, the request becomes defunct.

Considering what exemptions to apply, or locating and preparing records for disclosure, does not stop the clock ticking. These actions and the entire FOI request process must be satisfied within 20 working days.

G.3 Environmental information requests

For particularly large or complex requests for environmental information, the 20-day period can be extended to 40 days.

¹⁰ The 20-day clock does not stop when more information is needed to focus the request, perhaps because it is too voluminous. Only when it is not clear what record the requester wants.