



## **CORPORATE POLICY, STANDARD AND GUIDANCE**

### **FREEDOM OF INFORMATION ACT**

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## 1. Introduction

The Freedom of Information Act 2000 ('the FOI Act') provides individuals and organisations with the right to request information held by public authorities. The FOI Act gives two related qualified rights – the right to be told whether the information is held and the right to receive the information, subject to exemptions. The right of access applies regardless of the purpose of the application. Requests must be made in writing and the information must be provided to them within 20 working days, unless an exemption applies.

Cheshire West and Chester Council is fully committed to the aims of the Freedom of Information Act and related legislation, and will make every effort to meet its obligations.

## 2. Purpose / Objectives

This policy outlines Cheshire West and Chester Council's approach to responding to requests for information made under the FOI Act.

<b>POLICY OBJECTIVES</b>	<ul style="list-style-type: none"><li>• To provide a framework that fully endorses and adheres to the principles of Freedom of Information</li></ul>
	<ul style="list-style-type: none"><li>• To ensure consistency of approach in applying FOI principles, making FOI decisions and enforcing FOI exemptions</li></ul>
	<ul style="list-style-type: none"><li>• To ensure that the council meets the standards set out in the Lord Chancellor's Code of Practice under section 45 of FOI Act, which provides guidance on the practice to be followed in handling requests for information.</li></ul>
	<ul style="list-style-type: none"><li>• To act as a user's guide</li></ul>
	<ul style="list-style-type: none"><li>• The Council recognises that although it is not legally binding, failure to comply with the Code may lead to failure to comply with the FOI Act.</li></ul>
	<ul style="list-style-type: none"><li>• To ensure consistency in publishing information not in the public domain via the Council's publication scheme and in response to FOI enquiries</li></ul>

### 3. Aims

This policy aims to ensure access to information held by the Council in order to promote greater openness, provide increased transparency of decision-making and to build public trust and confidence. Access to information about decisions we take can help local people to influence local service provision. These aims will be balanced against the need to ensure the confidentiality of certain information, where disclosure would not be in the public interest.

### 4. Key Commitment To Access To Information

Cheshire West and Chester Council is committed to openness about the way in which it operates and makes decisions and will favour disclosure of information where possible. This policy sets out the general principles that will be adopted by the Council in response to requests for information under the FOI Act.

### 5. Scope

This policy applies to all recorded information held by Cheshire West and Chester Council.

The policy covers all requests for information except requests from individuals for their own personal data and normal 'business-as-usual' requests. A 'business-as-usual' request is a request for information or services that a service area would expect to receive in its normal day-to-day operation. Any request that indicates it is a FOI Act request cannot be treated as 'Business as usual'.

We will make information available pro-actively through our website and publication scheme. The publication scheme includes a guide to information, which shows the types of information that we make available.

We will provide access to environmental information through the Environmental Information Regulations 2004 ('EIR'). Requests under the EIR will be dealt with in accordance with Cheshire West and Chester Council's Environmental Information Regulations Policy.

## 6. Validity

<b>To be valid</b> under the FOI Act, requests: -	<ul style="list-style-type: none"><li>• Must be in writing;</li><li>• Must clearly describe the information being sought;</li><li>• Can be made by an individual or an organisation;</li><li>• Can be made by letter, fax or e-mail;</li><li>• Must be legible and</li><li>• Must contain the name of the applicant and a return address.</li></ul>
To be valid under the FOI Act requests <b>do not</b> : -	
<ul style="list-style-type: none"><li>• Have to be written in a special form;</li><li>• Need to mention the FOI Act; or</li><li>• Need to refer to “Freedom of Information”.</li></ul>	

## 7. Advice and Assistance

The Council has a duty to provide advice and assistance to applicants under Section 16 of the FOI Act so far as it would be reasonable to expect the Authority to do so. The Council will offer advice and assistance to any person or organisation that wishes to make a request for information. The Council is committed to dealing with requests within the statutory guidelines, no more than 20 working days and more speedily if possible.

Any queries regarding this policy or access to information within the Council should be directed to: -

**Solutions Team  
Cheshire West and Chester Council  
HQ  
58 Nicholas Street  
Chester  
CH1 2NP**

**[SolutionsTeam@cheshirewestandchester.gov.uk](mailto:SolutionsTeam@cheshirewestandchester.gov.uk)**

## 8. Roles and Responsibilities

**Directors / Heads of Service**

- Responsible for ensuring operational compliance with this policy within their own directorate/service.
- Appoint coordinators to be responsible for FOI requests
- Ensure that officers with responsibilities for FOI requests are supported in their work in terms of commitment and resources
- Ensure all staff comply with the agreed policy and procedures for FOI
- Recognise FOI issues in service planning and resource allocation

### **Solutions Team**

- Provide advice and guidance on the FOI policy and procedures
- Provide training in FOI issues
- Log all the details of the request for information
- Ensure that the electronic request for information system is kept fully up-to-date
- Coordinate requests for information in conjunction with directorate coordinators
- Consider whether the request for information is vexatious, repeated (i.e. the requester has asked for the same or similar information within the last 60 days) or likely to be expensive.
- Consider draft responses prepared and ensure that the information is being provided (subject to any exemptions under the FOI Act)
- Follow the procedure for handling sensitive FOI requests
- In the event of an internal review, gather information about the handling of the original request and set up a review panel to consider the complaint.
- Develop and maintain the corporate FOI policy and procedures
- Publish an FOI Frequently Asked Questions Page on the Council's Website.
- Monitor and review the effectiveness of the policy and procedures
- Identify and communicate any FOI issues to directorates
- Maintain the Council's Publication Scheme
- Report on compliance with the policy and procedures to Corporate Management Team

### **FOI Coordinators**

- Ensure that requests for information are handled effectively in their directorate/Service, by co-ordinating requests
- Ensure that he/she is the correct officer to progress the request; if not refer the request to the solutions team as quickly as possible
- Provide copies of the original request (if received through the directorate/service) and the response to the Solutions Team
- Promote the policy and procedures within their directorate/service
- Ensure that the electronic request for information system is kept fully up-to-date

- Consider whether the request for information is vexatious, repeated (i.e. the requester has asked for the same or similar information within the last 60 days) or likely to be expensive. If the FOI coordinator considers the request to be any of these, they must immediately notify the solutions team.

FOI coordinators will receive additional training and will be responsible for providing guidance to staff throughout their directorates/service on access to information.

### **The Head of Legal and Democratic Services (or delegated officer)**

- Provide legal advice (when requested) on the legality of proposed responses
- Be responsible for decision making in relation to any refusal of requests for information.
- Provide legal advice on the wording of refusal notices
- In the event of an internal review, form part of the review team, jointly investigate the merits of the complaint and assist in providing an appropriate response to the complainant.
- The Head of Legal and Democratic Services is authorised to act as the “qualified person” under Section 36 of the FOI Act (No delegation).

### **All Council Employees**

- Be aware of the FOI Act and what it means;
- To identify any request that falls under the FOI Act;
- Follow the policy and procedures for handling FOI requests
- Deal with all requests promptly and within 20 working days of receipt
- Ensure that all requests are logged with their directorate/service FOI Coordinator or the Solutions Team
- Provide advice and assistance to persons making requests for information

## **9. FOI Act and Environmental Information Regulations (EIR)**

The Council recognises that there are many similarities between the two regimes and that requests for “environmental Information” must be answered in accordance with the EIRs rather than the FOI Act.

It is possible that in some cases both regimes will be relevant. The Council will, when responding to such requests for information, endeavour to clearly identify which parts of the information fall under which regime.

## **10. Publication Scheme**

The Council has adopted a Publication Scheme and is committed to updating and maintaining it to keep it current and relevant. The Publication Scheme contains documents, policies, plans and guidance used by the Council. The material contained within the Scheme is available on the Internet. Where charges are applied these will be stated in the Scheme.

## 11. Charging

Fees will be charged for Freedom of Information requests in line with Cheshire West and Chester Council's Freedom of Information Charging Policy.

## 12. Transferring Requests For Information To Another Public Authority

If the Council receives a request for information that it does not hold, but knows is held by another public authority, it will provide as much assistance as possible to the applicant in transferring their request to the authority, which holds the information. This may be by simply directing them to the appropriate public authority.

If the Council holds any of the information that has been requested it will treat that part of the request as an FOI Act request and process it accordingly. At the earliest opportunity the Council will inform the applicant of the information it does not hold and provide reasonable assistance to enable them to locate it elsewhere.

If the applicant indicates to the Council that they do not object to the transfer of the request to the other public authority, the Council may transfer the request to the other authority direct. However the Council will notify the applicant if this is to be done.

All transfer of requests and contact with those who have requested information that is held by another public authority will be undertaken as soon as possible so that there is no undue delay. The time period for compliance with the request in respect of the part of information not held by Cheshire West and Chester Council does not start until the public authority that does hold it receives that request.

## 13. Consultation With Third Parties

The Council recognises that disclosure of information may affect the legal rights of a third party and this policy is written in accordance with the terms of the Data Protection Act 1998 and the Human Rights Act 1998. The Council further recognises that unless an exemption is provided for in the FOI Act there will be a requirement to disclose that information in response to a request.

If the consent of a third party is required prior to disclosure of information, the Council will, at the earliest opportunity, seek to consult with that third party with a view to seeking their consent to disclosure, unless such a consultation is not practical.

The consultation may assist the Council in determining whether an exemption under the FOI Act applies to the information requested, or the views of the third party may assist the Council in determining where the public interest lies under section 2 of the FOI Act. A third party's refusal to consent to disclosure of information does not necessarily mean that information will not be disclosed.

If the cost of consultation with the third party is disproportionate, consultation may not be undertaken. The Council will not undertake consultation if it does not intend to disclose the information because of another exemption, or where the views of the third party would have no effect on the decision of the Council because no exemption applies.

#### 14. Information Provided In Confidence

Information provided in confidence by a third party is exempt information under section 41 of FOI Act if the disclosure of that information to the public would be an actionable breach of confidence by the person providing the information or any other person.

The Council will only accept information from third parties on a confidential basis if that information would not otherwise be provided to the Council to assist the delivery of the Council's functions.

The Council will not agree to hold information in confidence if it is not actually confidential in nature. If a person or organisation seeks to provide information in confidence they will be told if it cannot be treated confidentially.

#### 15. Contracts

The Council will not include contractual terms, such as confidentiality clauses, which purport to restrict the disclosure of information held by the Council in relation to the contract beyond the exemptions in the FOI Act. Unless an exemption under the Act applies in relation to any particular part of the contract, the Council will be obliged to disclose that information in response to a request regardless of the terms of any contract. Trade secrets might be classed as exempt information, so may information, which would prejudice the commercial interests of any person, including the Council. This exemption is subject to the public interest test i.e. whether the public interest in maintaining the exemption outweighs the public interest in disclosing it.



The Council will seek during the tendering process to discuss and agree with the contractor a schedule of information, which the contractor wishes not to be disclosed. However even if such a schedule is included, the restrictions on disclosure may subsequently be overridden by obligations under the FOI Act. Further, the public interest in releasing information may after passage of time, be in favour of disclosure.

If a non-public organisation contracts with the Council to provide a service that is a function of the Council then that organisation will be deemed to be part of the Council for the purposes of the FOI Act and, in relation to that service, will be subject to the terms of the FOI Act.

## 16. Refusal Of Request

The Council recognises that there will always be some information which it must not disclose or which it is not in the public interest to disclose. In these cases the Council will ensure that applicants are given clear and accurate reasons for the refusal of their requests and assistance in finding relevant, alternative information. Applicants have the right to have the decision reviewed. Applicants will be informed of this right and may seek such a review if dissatisfied with the Council's response.

If the Council relies on an exemption to refuse a request for information the applicant will be notified of the appropriate exemption and why it applies. Appendix A sets out the main exemptions likely to apply to information held by the Council. If the reasoning behind the exemption, or the exemption itself, would result in the disclosure of information which would itself be exempt, then the Council may not provide that reason.

If the Council decides that the public interest in maintaining the exemption outweighs the public interests in disclosure, then this will be stated in the refusal letter together with the public interest factors, which have been considered, and which form a material part of the decision.

If a document contains exempt information, the Council will not refuse access to the whole document unless it is absolutely necessary to do so in order to ensure that exempt information is not disclosed. Where part of a document is exempt, normally only that part of the document containing the exempt information will be withheld.

The Council maintains a central record for monitoring purposes of all FOI Act requests and will proactively audit decisions to ensure that where information requests are refused, refusals are justified and reasonable.

## 17. Vexatious/Repeated Requests

## **Repeat Requests**

Where a repeated request is received that is identical or substantially similar to a previous request from the same person, The Council will consider this as a repeated request. The Council is not obliged to comply with repeat requests for information, under the FOI Act unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. In reaching a decision about whether an application for access should be categorised, as a repeat request the Council will have regard to: -

- The time that has elapsed since the previous request;
- Whether the request is identical or substantially similar to the previous request;
- Whether any relevant, new information has been generated since the previous request.

A 'reasonable interval' will be deemed to be 40 working days.

Where a request is refused because it is considered repeated, the Council will issue a written notice within 20 working days of the request. The Council will send out a standard letter stating that the request has been declined on the grounds that it is repeated. The applicant will receive information about the Council's Internal Review Process. Details of the rights of appeal to the Information Commissioner will also be enclosed.

Where a notice has previously been issued to the applicant that the request is repeated, the Council will not issue a further notice.

## **Vexatious Requests**

The Council is not obliged to comply with vexatious requests under the FOI Act. The Council will apply the term 'vexatious' fairly and consistently.

In determining whether a request should be refused because it is vexatious the Council will consider all the circumstances of the request, including: -

- The context and history of requests submitted by an applicant;
- Repeat requests submitted by an applicant (see, 'Repeat Requests');
- Whether the request is likely to cause unjustified distress, disruption or irritation.

- Whether the request could fairly be seen as obsessive?
- Whether complying with the request imposes a significant burden?
- Whether an applicant is habitually and persistently submitting requests where there appears to be no reasonable grounds for them to do so
- Whether there is a strong likelihood that such requests are being made to intentionally cause harassment, cause distress to staff, divert resources or to disrupt the proper workings of the Council.

The Council is aware that the term 'vexatious' should be applied to the **activities** of the applicant and not to their nature or attitude. The Council will assess whether a request is vexatious based on the **type** of information requested and not on the identity of the applicant.

Where a request is refused on the grounds that it is deemed to be vexatious, a written notice from the Council will be issued within 20 working days of receipt of the request.

The Council will send out a standard letter stating that the request has been declined on the grounds that it is vexatious. The applicant will be notified of the internal procedures for dealing with a complaint. Details of the rights of appeal to the Information Commissioner will also be enclosed.

Where a notice has previously been issued to inform the applicant that the request has been classified as vexatious, the Council will neither acknowledge nor answer subsequent requests that are made on the same or similar subject.

Where a request is received and there is a chance it is merely vague rather than vexatious due to a lack of knowledge on the part of the applicant, the Council will clarify with the applicant what is actually required. This may be done by telephone or by providing a written request for clarification.

Where a request is suspected of being vexatious, the Solutions Team will consult with the Head of Legal and Democratic Services before any further action is taken.

## 18. Complaints

The Council has an Internal Review Procedure (Appendix B) for dealing with complaints made in relation to the handling of requests for information under the FOI Act. Any person who is unhappy with the way in which the Council has handled their request for information may use this procedure. The Information Commissioner is unlikely to investigate any complaint about the Council's

handling of an information request unless the complaints procedure has been exhausted.

A complaint may be made about the Council's failure to release information in accordance with its Publication Scheme, about requests that have not been properly handled, or where there is dissatisfaction with the outcome of a request. If, following a complaint, the decision is made to release information; the information will be made available at the earliest opportunity following notification of intended disclosure.

Details of the Internal Review procedure can be found on the web site at [www.cheshirewestandchester.gov.uk](http://www.cheshirewestandchester.gov.uk)

Complaints about the way in which information requests are handled should be directed to the Solutions Team at:

**Solutions Team  
Cheshire West and Chester Council  
HQ  
58 Nicholas Street  
Chester  
CH1 2NP**

**[SolutionsTeam@cheshirewestandchester.gov.uk](mailto:SolutionsTeam@cheshirewestandchester.gov.uk)**

If the decision to refuse disclosure is upheld or the internal Review procedure is exhausted and the applicant is still dissatisfied, they will be made aware of their right to apply for a review to the Information Commissioner at: -

The Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Tel No: 01625 545700  
Fax No: 01625 545510

## 19. Monitoring and Review

Compliance with this policy and related procedures will be monitored by the Solutions Team, working with the FOI Co-ordinators from each directorate/service.

Any deliberate breach of the FOI Act will be seen as misconduct and may result in disciplinary action.

The Solutions Team will review this policy annually.

## **Appendix A**

### **EXEMPTIONS UNDER FOI ACT**

Whilst the Freedom of Information Act provides for the right of access to information held, it also affords a number of exemptions from this right in order to permit public authorities to withhold some or all of the information requested where a justifiable reason exists.

The exemptions fall into two categories:

- Those that are absolute exemptions where the Council may withhold the information without considering any public interest arguments, and
- Those that are qualified i.e. that, although an exemption may apply to the information it will nevertheless have to be disclosed unless the public interest in withholding the information is greater than the public interest in releasing it.

In respect of the absolute exemptions, the Council does not have to confirm or deny that it holds the information if to do so would in itself provide exempt information.

### **Absolute Exemptions**

This means there is no right of access under the FOI Act. 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. The absolute exemptions that are most likely to apply to the Council are:

- Information that is reasonably accessible by another means, i.e. through the Council's Publication Scheme or via existing access regimes (Section 21)
- Court records (Section 32)
- Personal information relating to the person making the request. Such requests will continue to be dealt with under the Data Protection Act 1998 (Section 40(1))
- Personal information about a third party where disclosure of that information would contravene the data protection principles contained in the Data Protection Act 1998 (Section 40(2))

- Information provided in confidence – this exemption only applies to information where disclosure would result in an actionable breach of confidence (Section 41)
- Information that is prohibited from disclosure by law (Section 44)

### **Qualified Exemptions**

This means that consideration needs to be given 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.

The qualified exemptions most likely to apply to the Council are:

- Information intended for future publication (Section 22)
- Investigations/proceedings conducted by public authorities (Section 30)
- Law enforcement (Section 31)
- Prejudice to the effective conduct of public affairs (Section 36)
- Health & Safety (Section 38)
- Environmental Information (Section 39)
- Personal information relating to a third party (Section 40) – save as mentioned above
- Legal professional privilege (Section 42)
- Commercial interest (Section 43)

A full list of the exemptions under the Act is available from the Information Commissioner's website at <http://www.ico.gov.uk>

### **The Public Interest Test**

The public interest test requires that information should be withheld under an exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- 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.

### **Some points to consider when assessing 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 over whether to disclose or withhold information. 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

There may be procedural reasons for refusing a request for information e.g. if the request is vexatious or repeated, or if the cost of complying with the request would exceed the cost limit.

### **Applying Exemptions**

- It is possible for more than one exemption to 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 Solutions Team or legal services. Further guidance on the application of exemptions and the public interest test is available from the Information Commissioner's website at <http://www.ico.gov.uk>



## Appendix B

### Freedom of Information – Internal Review Process

#### Overview

The Freedom of Information Act (the FOI Act) gives rights of public access to information held by public authorities. The Code of Practice issued under Section 45 of the FOI Act recommends that each public authority should have in place a procedure for dealing with complaints made in relation to the handling of requests for information. In this context the terms “procedure for dealing with complaints” and “internal review” are to be treated as one and the same.

#### Scope

This process should be used where an applicant wishes a review to be conducted about the way the Council has responded to a request for information made under the FOI Act or the Environmental Information Regulations (EIR). **All applicants must be informed of their right to request a review under this process when they are sent a response to a request for information.**

#### Dealing With A Request For Review

Any written reply from an applicant expressing dissatisfaction with the council's response to a valid request for information will be treated as a complaint to be dealt with under this process whether or not the applicant has specifically asked for the decision or the handling of the application to be reviewed internally.

A request for a review from a complainant may involve:

- A request for a review of a decision to withhold information or;
- A complaint about the handling of a request for information or
- A complaint about the Council's publication scheme.

The Council reserves the right to ask the applicant for clarification of the grounds of their complaint if the grounds are not clear.

#### Grounds For Complaint

An applicant is entitled to complain to the council if:

- It is believed that the application was not dealt with within the 20 working day time limit.
- All the information requested is not received

- A reason for the request being refused is not received
- It is felt that exemptions have been wrongly applied, and/or
- It is felt that a fee has been wrongly applied

## Internal Review

- If the customer is dissatisfied with the response they receive to their initial request for information, they can request an internal review.
- Customers should be told that if they wish the original decision to be reviewed, they should write to the Solutions Team.
- An applicant must submit a request for a review no later than 40 working days from the date of receipt of the response.

The Solutions Team will arrange for the original decision to be reviewed by a panel comprising an officer from legal services and a nominated tier 4 manager. The both legal officer and the nominated Tier 4 manager must be independent from the initial decision. The panel of reviewing officers will consider all of the information that was requested, including copies of any information that was exempted. Every effort must be made to ensure a fresh, independent approach is taken. The panel will make a decision whether any exemptions were properly applied, and whether the council has complied with its statutory duties.

The legal officer will write to the applicant informing them of the outcome of the review providing reasons for the decision. If the decision is made that some or all of the information that has been requested should be released to the applicant, the information will be sent out with the decision, if this is not possible the Applicant will be notified of when the information will be released.

Where the original decision is reversed and the information is deemed suitable for release, the applicant should be informed immediately, and the information should be sent out within 10 working days, where this is not possible a time for release must be stated in the decision letter.

If the original decision is upheld and the Council still feels the information is exempt from release, the applicant will be informed of the outcome of the review, the reasoning behind it and advised of their right to appeal the Information Commissioner if they are dissatisfied with the council's response.

The Information Commissioner  
Wycliffe House, Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Tel No: 01625 545700  
Fax No: 01625 545510

Unless there are exceptional circumstances, all reviews must be completed as soon as possible, and in any event within **40 working days** of the request for a review being received. If at any time it becomes apparent that this deadline cannot be met, the applicant will be informed and given an explanation for the delay.

Where the reviewing panel is of the opinion that the council's procedures or processes for handling requests for information can be improved, they may make a recommendation to the solutions team.

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