

# Freedom of Information and Environmental Information Regulations Procedure

## 2020 - 2023

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# 1. STATEMENT OF PURPOSE

The Freedom of Information Act (FOIA) 2000 and Environmental Information Regulations (EIR) 2004 provide public access to recorded information held by public authorities. It does this in two ways:

- Public authorities are obliged to publish certain information about their activities
- Members of the public are entitled to request information from public authorities

Herefordshire Council is a public authority for the purposes of the FOIA / EIR and as such recognises its responsibilities as set out by this legislation. This procedure is a statement of what the council does to ensure its compliance with the provisions of the FOIA and EIR, and to inform all council staff, members, volunteers and contractors of their responsibilities when receiving and processing requests made under this legislation. This document also informs members of the public of the process the council has established for complying with the FOIA and EIR.

This procedure provides a framework within which the council will ensure compliance with the requirements of the Act. Incorporating guidance from the Information Commissioner's Office (ICO), it will underpin operational procedures and activities connected with its implementation.

The council is committed to openness, transparency and accountability with regards to the recorded information it holds, and is committed to ensuring that it provides access to information in accordance with its obligations under the FOIA / EIR. The council will use appropriate and necessary means at its disposal to comply with the legislation and associated guidance.

## 2. BACKGROUND

The FOIA and EIR came into force on 1 January 2005. Both are fully retrospective and apply to all information that falls within their scope, not just to information created from 1 January 2005 onwards.

The FOIA requires public authorities, including Herefordshire Council, to publish certain information proactively, with its commitment to doing so set out in its [Publication Scheme](#).

In addition the public have a general right of access to recorded information held by public authorities. Information covered by the FOIA is any recorded information which is not 'personal data' within the meaning of the Data Protection Act 2018 or which is not 'environmental information' as defined by Regulation 2 of the EIR. This recorded information includes: information created and held by the council, information created by the council and held by another organisation on our behalf, information held by the council provided by third parties which relates to the function or business of the council (such as contractual information) and information held by the council relating to councillors where the information relates to the function of the council. Recorded

information can be held in a variety of different forms including paper, electronic, audio and video.

EIR gives the public the right to access environmental information which is held by the council or one of its contractors on the council's behalf. This includes subjects like: the state of the elements, natural sites (e.g. wetlands), factors like radiation, energy, noise, waste, and the state of human health including the contamination of the food chain, cultural sites and built environment.

Any requests from an individual to access personal information held about them will be treated as a [subject access request](#), as set out in the Data Protection Act 2018 and the General Data Protection Regulations 2016. Further information regarding the process for accessing that type of information can be found in the [Data Protection Policy](#).

In complying with its duty under the FOIA and EIR the council will also take into account:

- The Section 45 Code of Practice which gives recommendations to public authorities about their handling of FOI requests.
- The EIR Code of Practice which sets out good practice recommendations to meet obligations under the Regulations.
- The Code of Practice on datasets which provides guidance on how to meet obligations in relation to dataset provision.
- The Section 46 Code of Practice which covers good records management practice and the obligations of public authorities under the Public Records Act to maintain records in an ordered and managed way, so that information can be readily retrieved when needed.

The council will abide by the terms of the Codes of Practice whenever it is possible or appropriate.

Further information relating to the above legislative requirements are available from the [ICO](#).

The ICO is responsible for the regulation of the FOIA and EIR and can issue decision notices to public authorities it finds have breached the legislation. The ICO also has powers to enforce compliance for failure to adopt a Publication Scheme or for not publishing information that we should.

## **3. PROCEDURE FOR RESPONDING TO INFORMATION REQUESTS**

### **3.1**

The council will comply with all of the relevant provisions of the FOIA and EIR.

### **3.2**

It will maintain a comprehensive Publication Scheme that provides information which is accessible without the need for a formal FOIA / EIR request.

### **3.3**

The council is responsible for ensuring that people are aware they can make a request under the FOIA / EIR and advise them how to make this request; which it shall do via the relevant pages on the council website.

### **3.4**

Any written requests for information shall be regarded as a request for recorded information under the Act unless:

- The request can be dealt with as a normal customer enquiry and it would therefore provide better customer service to be handled under the usual customer service procedures
- The request is for personal data relating to the individual making the request, in which case it will be processed under the subject access provisions of the Data Protection Act 2018.

### **3.5**

A request does not have to refer to FOI or EIR to be handled under that legislation. Anyone wishing to make an FOI request must do so in writing. EIR requests can be made verbally or in writing. All FOI / EIR requests will be dealt with by the Information Access Team (IAT). If a request relating to service delivery is received direct by any officer or member, then the individual should forward details of the request to the IAT upon receipt.

### **3.6**

The council aims to respond to all requests promptly and within the statutory response period of 20 working days following receipt. A working day is defined as any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking & Finance Dealings Act 1971 in any part of the United Kingdom.

### **3.7**

The response timescales can be extended by up to a further 20 working days to consider the public interest test under FOI, or if a request is 'complex and voluminous' under EIR. Any such extensions will be determined by the IAT and requesters informed in writing of the new time frame for a response.

### **3.8**

If clarification is required before a request can be processed further the 'clock' will stop whilst clarification is sought and obtained from the requester. Requests for which

clarification is required will be held open for a period of 2 months before being closed down.

### **3.9**

All requests will be logged and acknowledged by the IAT, usually within 5 working days of receipt. All acknowledgements will set out further details explaining what the requester can expect from the council with regards to the processing of their request.

### **3.10**

All requests will be treated as 'applicant blind', which means they will be treated equally regardless of who made the request. As such requests made direct to the IAT will be forwarded to the service area(s) to collate the requested information without details of the applicant making the request being included. The council will also not ask why information is being requested or what the requester intends to do with it.

### **3.11**

Where the council already publishes the information requested, as set out in the Publication Scheme, the requester will be directed to the public resource where they may find the information they require.

### **3.12**

As required by the legislation, advice and assistance will be provided to help facilitate the public's use of FOI / EIR. The council will publish its procedures and assist requesters to clarify their request so that they can obtain the information they require.

### **3.13**

The council will work with its partners and contractors to ensure we meet our obligations including the disclosure of any information that they hold on the council's behalf.

### **3.14**

There is a legal duty to release information under FOI / EIR unless it falls within an exemption / exception contained within that legislation. Access to information can, and will, only be denied if an exemption applies to disclosure, in whole or part. A list of all the exemptions / exceptions are available from the [ICO](#).

### **3.15**

Some exemptions are 'absolute'. If an absolute exemption applies to requested information, in whole or part, it means that the information does not need to be disclosed under any circumstances.

### **3.16**

Other exemptions are 'qualified' in that they are subject to a public interest test either in whole or part. This means that a public interest test will be carried out and the information will only be withheld if the public interest in not disclosing is greater than the public interest in disclosing. Some of the qualified exemptions are also subject to a prejudice

test which must be carried out before the information can be considered exempt. This test considers whether harm or prejudice will, or will be likely, to be caused if the information is released.

### **3.17**

Where the information being requested is held by the council but was created by a third party, the council may consult with that third party regarding disclosure of information which could affect their rights and interests. However, the IAT will make the final decision on disclosure.

### **3.18**

In some cases if an exemption / exception applies and permits it we may also decide not to say whether we hold the requested information. This would be the case if, for example, to say we hold the information would reveal something of the content.

### **3.19**

The council reserves the right to refuse FOI requests where the cost of supplying the information would exceed the Appropriate Limit in accordance with the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004. This is currently based on an average flat rate of £25 per hour (£450) which equates to 18 hours work.

### **3.20**

Under EIR, the Appropriate Limit does not apply, however, public authorities are permitted to make a 'reasonable' charge for supplying information. Further details of how the council will do this are set out in the [Charging Policy](#).

### **3.21**

The council will refuse any vexatious or repeated requests, which meet the definition as set out in the legislation.

### **3.22**

The council will aim to supply the information in the format it has been requested. Any datasets will be disclosed in an open data format.

### **3.23**

The council reserves the right to charge for any disbursement costs, such as photocopies or printed copies, in line with its [Charging Policy](#).

### **3.24**

Where the council does not hold the information being requested but believes that another organisation does, the council will advise the requester to contact that organisation. Wherever possible the council will provide up-to-date contact details for that organisation.

### **3.25**

Reasons for non-disclosure will be communicated in writing to the requester, setting out which exemptions / exceptions apply, and the reasons for refusal. The response will explain if a public interest or prejudice test has been carried out, and if withholding the information, why this is the case. The IAT are the only ones permitted to apply any exemptions / exceptions, and all responses will be sent from this team.

### **3.26**

Any refusal notices issued will also advise the requester of their right to a review and their right to approach the ICO if they are unhappy with the response that they receive.

### **3.27**

If the individual requesting the information is not satisfied with the council's response they can apply for an internal review of the decision. All appeals should be forwarded to the IAT and will be dealt with in line with the council's [Internal Review Procedure](#). If the requester remains dissatisfied they have a right to appeal to the ICO and can raise a complaint and ask them for an independent review. The ICO will determine if it is appropriate to investigate the complaint and if so, make a decision on their findings. At that stage, the council also has a right of appeal. The council will respond promptly to all requests from the ICO concerning requests for information which have been processed under the FOIA or EIR.

### **3.28**

All requests and responses will be recorded and held by the IAT for a period of 6 years from the date the request was submitted.

## **4. ROLES AND RESPONSIBILITIES**

### **4.1 Management Board**

The Management Board will be responsible for ensuring that the council complies with its responsibilities under FOI / EIR through monitoring of activities via at least bi-annual reporting by the Information Access and Records Manager (or representative). The Board will also ensure that there are adequate resources to support the work outlined in this procedure to ensure compliance with the legislation.

### **4.2 Information Governance Steering Group**

The Group will be responsible for monitoring activities via monthly reporting by the Information Access and Records Manager (or representative), and escalating issues where appropriate to Management Board or the relevant directorate management team.

## **4.3 Directors / Assistant Directors / Heads of Service / Service Managers / Team Leaders**

All directors / assistant directors / heads of service / service managers / team leaders will be fully aware of their responsibilities with regards to FOI / EIR. They will ensure that:

- All staff for which they are responsible are provided with and complete appropriate training with regards to the requirements of the legislation.
- Information is created and stored in accordance with the council's [Records Management Policy and Procedures](#) to facilitate easy location should the information be requested under FOI / EIR.
- Information is supplied in response to requests in the timescales set by the IAT so that responses can be sent out in a timely manner.
- Any concerns they or their team may have regarding disclosure of requested information are raised with the IAT so that they may consider whether appropriate exemptions / exceptions apply.
- Address issues of late mixed submissions within directorates, teams and contractors with a commitment to improve consistent poor performance.

For the purposes of the FOIA, it should be noted that the Monitoring Officer is the council's Qualified Person.

## **4.4 Information Access Team (IAT)**

The IAT will:

- Produce and maintain up-to-date policies and procedures to ensure compliance with current legislation and guidance.
- Produce and maintain the Publication Scheme.
- Produce training materials to ensure staff are fully aware of their responsibilities under the FOIA / EIR.
- Work with all council departments, and where appropriate with partner organisations, to ensure that appropriate mechanisms are in place to raise staff awareness.
- Log and acknowledge all requests for recorded information that fall within the provisions of the FOIA / EIR.
- Collate the requested recorded information or organise service areas to collate it.



- Consult if necessary with any third parties, who have created information held by the council, over its disclosure.
- Make the final decision on whether requested information can be released if an appropriate exemption / exception applies.
- Provide a response to the requester within the statutory timescales – either releasing the requested information or explaining why the request has been refused.
- Log and pass requests for internal review to the FOI / EIR review panel.
- Act as the point of contact for, and co-operate with, the ICO.
- Publish compliance statistics on the council's website on a quarterly basis.

## 4.5 All staff and members

All staff and members whether or not they create, maintain or receive information have responsibilities under the FOIA / EIR. It is the duty of all staff and members to ensure:

- They are fully aware of this procedure and their responsibilities, and they must comply with this procedure and any associated procedures.
- Any requests for recorded information that they receive are dealt with in line with the requirements of the FOIA / EIR, and in compliance with this procedure and any prevailing procedures.
- Any requests that they receive direct are forwarded to the IAT immediately upon receipt.
- They recognise all recorded information may be provided to the public and that the law states that there will be full and unconditional disclosure in every case unless one of the statutory exemptions / exceptions apply.
- That they collate requested information within the timescales set by the IAT to ensure that responses can be sent in a timely manner.
- That information is collated / they handle requests in compliance with the FOIA / EIR, taking advice from the IAT where necessary.
- They provide appropriate advice and assistance to requesters sending requests for information.
- All records are maintained in accordance with the council's [Records Management Policy and Procedure](#) and retention schedules.
- They maintain a good awareness of the FOIA / EIR by undertaking relevant training. FOI / EIR is part of the mandatory training for all new starters and for councillors at the point of election. Staff should complete mandatory refresher training annually.

It is the responsibility of all staff and members to ensure that they comply with the requirements of this procedure and any associated policies and procedures. Failure to do so may result in disciplinary action being taken against staff, or councillors may be referred to the Monitoring Officer for breach of the code of conduct.

## 4.6 Contractors / suppliers

Any contracts the council has with its contractors / suppliers should contain FOI clauses.

It is the responsibility of those staff dealing with external partners / contractors to ensure that they and all their staff who create and manage records on behalf of the council:

- Are aware of this procedure and are fully trained in, and aware of, their duties and responsibilities under the FOIA / EIR.
- Ensure that any information supplied to the council or held by them on the council's behalf will be subject to the terms of the FOIA / EIR.
- Forward any FOI / EIR requests they receive direct for information they are holding on the council's behalf to Herefordshire Council's IAT immediately upon receipt.
- Ensure all FOI / EIR requests are handled effectively and comply with this procedure.
- Ensure all records are maintained in accordance with the council's [Records Management Policy and Procedure](#) and retention schedules.

## 4.7 Contract / agency staff and volunteers

All contract / agency staff and volunteers are bound by the same code of behaviour and policies / procedures as council staff, including this procedure.

## 5. WHO WILL IMPLEMENT AND MONITOR THIS PROCEDURE?

The Information Access and Records Manager will be responsible for complying bi-annual reports for Management Board, which provides details of compliance with FOI / EIR.

A monthly report will be produced by the IAT summarising compliance including details of the number of requests received and number responded to within statutory timescales. The IAT will also publish FOI / EIR compliance statistics on the council's website on a quarterly basis.

This procedure and any associated procedures will be monitored by the Information Governance Steering Group. The Assistant Director Corporate Support will be kept informed of any issues and instances of non-compliance regarding this procedure.

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