

RYHALL PARISH COUNCIL

FREEDOM OF INFORMATION (FOI) GUIDANCE

FOI is all about the right of access

The Freedom of Information Act 2000 did, from 1 January 2005, give everyone for the first time a general legal right to be provided, on request, with any information held by all public authorities subject to stated exemptions. These authorities include Central Government and Local Authorities (including Parishes and Charter Trustees) under Schedule 1 of the Act. Anyone has a right to ask public authorities for any information they hold and there is no requirement to explaining why the information is being requested.

What information is covered by the Act?

Anything public authorities create, hold or process. This includes, for example, e-mails, letters, reports, faxes, file notes, notes of phone calls, videos, audio records - they are all "information" potentially disclosable under the Act - even a casual comment scrawled on the side of a minute may be covered. The Act will apply retrospectively to existing information, no matter how old, as well as that produced from 1 January 2005.

How can requests for information under the Act be made?

A request can be made in any written form (eg. letter or e-mail) and need not mention the Act - it will still apply. It is important to bear this in mind whenever considering how to respond to requests for information. It is also important to be aware that requests can be made to anyone, at any level, within the public authority and that the request must state the name and address of the person applying for the information and the required information.

The information requested, unless exempted under the Act, must be supplied within 20 working days of being requested. A refusal to release the information must be given in writing and the reasons for refusal specified along with the applicant's right to appeal.

Should the information requested always be provided?

The information should be disclosed unless it falls under one of the exemptions in the Act. The Act provides for public access to information which may be supplied in any format, unless the applicant has specified a preferred format for receiving it - this can include copies of or access to (ie viewing at offices) actual records if that is what the applicant requests.

There is a range of exemptions under the Act that will allow certain types of information to be withheld under certain circumstances. The majority of these exemptions require a "public interest test" to be applied. For those exemptions where the public interest test applies, a request may only be refused if the public interest in withholding the information outweighs that in disclosing it.

What are the Exemptions?

There are 23 exemptions from the general rights of access. For example:

- Certain information relating to national security, information that would prejudice international relations, commercially sensitive information and confidential information.
- Environmental information is exempt as access rights are covered by the Environmental Information regulations.
- An applicant wishing to access information about themselves should use their rights under the Data Protection Act. Personal data about other people cannot be released if to do so would breach the Data Protection Act.
- If the applicant already has reasonable access to the information they want then they should use that means. Therefore if information is available through a publication scheme the public authority can simply direct the applicant to its scheme.

Some of the exemptions require the public authority to consider whether it is in the public interest to withhold information. Consideration of the public interest may take longer than the 20 days normally allowed for responding to requests. In these cases the public authority must give the applicant an estimate of when it will have reached a decision on where the public interest lies within 20 days of receiving the request.

How should the information be provided?

The applicant can either ask for a copy of the information they seek, the chance to inspect the records, or even to be provided with a summary of the information. The public authority should try and provide the information in the form requested unless it is unreasonable to do so. If any of the information requested is exempt the applicant should be told which of the exemptions has been relied on to withhold the information.

How will the access rights in the Act be enforced?

The Act establishes an Information Commissioner who has wide-ranging powers of enforcement and is already taking a close interest in how public authorities are preparing to implement the Act. From 1 January 2005, anyone can complain if dissatisfied with the way a request has been dealt with, or with the information supplied.

Can information already published be used?

The Act places a duty on public authorities to adopt and maintain publication schemes which must be approved by the Information Commissioner. Such schemes are intended to advise people how they can gain access to information, which has been pro-actively published. A publication scheme is a guide to the types of information that the authority routinely publishes, the format in which the information is available in and how much it will cost if there are any charges.

Information that is available by other means or is intended for future publication is always exempt and a request for such information may be refused.

A person can contact the authority in any way, such as telephone, email, fax or in writing and ask to see their publication scheme. They can then make a request for any of the information included within the scheme.

Are there codes of practice? Where can I get advice?

Two codes of practice have been created under the Act which will be of help to public authorities in meeting their new responsibilities.

The first code produced under section 45 of the Act is sometimes referred to as the Access Code. It deals with how to handle requests for information including:

- the level of advice and assistance it is expected,
- transferring requests from one public authority to another,
- consulting with third parties who may be affected by the release of information.

It also deals with complaints procedures and how the Act impacts on public sector contracts.

The second code is made under section 46 of the Act and deals with records management. If a public authority does not have good records management procedures in place it may well find it difficult to comply with its obligations under the Act.

Also available are full information and guidance on the Act on www.dca.gov.uk (the website of the Department of Constitutional Affairs and on the Information Commissioners website at www.informationcommissioner.gov.uk.

Do Public Authorities have a duty to provide assistance?

Public authorities are required to provide advice and assistance to people who have made or who are thinking of making a request. This will help applicants understand their rights under the Act and identify the information they want.

Can we Charge for the information?

The Act only allows the Council to charge for answering Freedom of Information requests in the following circumstances:

1. Disbursement costs such as printing, photocopying and postage; and
2. When estimated staff costs involved in locating and or compiling the information exceed £450. Under these circumstances, the Council can refuse the request on the grounds of cost, or charge the applicant £20 per hour, plus disbursements for the estimated work.

For the majority of requests, or a series of requests from the same applicant within a 12 month period, it is expected that the charge for locating and compiling information will be less than £450 and therefore, except for disbursement costs, no reimbursement can be sought. However, where costs are estimated to exceed £450 (based on an hourly charge-out rate of £20), the Council can decide to:

- refuse the request; or
- comply with the request and charge for allowable costs as prescribed in the regulations; or
- comply with the request free of charge.
- If the estimated cost of a request is more than £450, and it is decided to release the information and make a charge for the information then:
 - A fee notice will be sent to the applicant requesting the appropriate fee.
 - The request will not be answered until the fee has been received.
 - If the actual cost of completing the request is more than the estimate then the Council will incur the additional cost.
 - Where the cost is less than the estimated cost then the difference will be refunded to the applicant.

For disbursements costs the Council will charge 10p per sheet for black and white photocopying and printing of documents and £1.00 per sheet for colour. We would also recover the actual cost of postage (ordinarily posted second class) or any other transmission costs from the applicant.

What if you are not satisfied with our response - how can you complain?

Responses to requests for information should be as detailed as possible, taking each individual request and responding with either:-

- a) the requested information;
- b) a request for clarification or
- c) a written Refusal Notice

Where you are dissatisfied with the way in which your request has been handled please follow the procedure outlined below and we will do everything we can to resolve your complaint on an informal basis in the first instance.

You will initially need to follow the internal review procedure noted below.

Internal Review Process

The following procedure applies:-

Put your complaint in writing, providing any supporting evidence, to the Clerk to the Council. This information will be passed to the internal Reviewing Officer for investigation.

You will normally receive a response within 40 working days.

If you are still dissatisfied with this response please follow the formal complaints procedure outlined below.

Formal Procedure

If you were dissatisfied with the outcome of the internal review procedure you should make a formal complaint. The following procedure applies:-

Put your complaint in writing, providing any supporting evidence, to the Clerk to the Council, who will investigate and respond to your complaint within 40 working days.

If the Clerk to the Council dealt with your initial request for information your complaint will automatically be referred to the Chairman of the Council for independent consideration. In this case your complaint will also receive a response within 40 working days.

If, after pursuing the above complaints process, you are still dissatisfied with the response you have been given, you may refer the matter to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

The Information Commissioner's contact details are:

By Post: Information Commissioner's Office, Wycliffe

House, Water Lane,

Wilmslow, Cheshire SK9 5AF

Telephone: 01625-545745

E-mail: mail@ico.gsi.gov.uk

What can the Information Commissioner do by way of enforcement?

Both the applicant and the public authority are informed of the Commissioner's decision in a Decision Notice. Where appropriate the Decision Notice will instruct the public authority what steps it needs to take to comply with the Act, this may include the release of information. Both the applicant and the public authority may appeal against a decision notice to the Information Tribunal.

The Commissioner can also issue a public authority with an Enforcement Notice stating what steps it should take to comply with the Act. Although it is similar to a Decision Notice in some respects, the Commissioner does not need to wait to respond to a complaint from an applicant that a request has been incorrectly handled before taking this form of enforcement action. Only the public authority may appeal to the Information Tribunal against such a notice.

Approved by Full Council on June 28th 2021

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