

FREEDOM OF INFORMATION POLICY

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1. Introduction

The purpose of this policy is to ensure that Suffolk County Council (the Council):

- a) Handles information requests covered by the Freedom of Information Act (2000) (FOIA) and the Environmental Information Regulations (2004) (EIR) in accordance with the provisions laid out in the respective regimes.
- b) Satisfies the standards set out in the Lord Chancellor's Code of Practice on satisfying the obligations of public authorities under the FOIA, produced under Section 45 of that Act.
- c) SCC is committed to transparency in its dealings with the public and fully embraces the Information Management of the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and the relevant access provisions of the Data Protection Act 2018 (DPA). The Council will make every effort to meet its obligations under the respective legislation and will regularly review procedures to ensure that it is doing so.
- d) The underlying principle of this policy is that the public have the right of access to recorded information held by the Council, and that the Council should seek to promote an open regime regarding access to information, subject to the exemptions/ exceptions contained within the relevant legislation.
- e) Guidance associated with this policy sets out how employees should handle information requests received under the FOIA and EIR regimes. This guidance is published on the Council's intranet (mySCC).

2. Background

- a) The Freedom of Information Act 2000 applies to all public authorities and came fully into force on 1st January 2005.
- b) From that date, the FOIA provides the public with a statutory right of access to recorded information held by the authority, subject to certain exemptions, within 20 working days. The FOIA is fully retrospective and applies to all information that falls within the scope of the FOIA, not just information created after 1st January 2005.
- c) Section 19 of the FOIA obliges the Council to make information pro-actively available in the form of an approved "Publication Scheme". The public have held a statutory right of access, since February 2003, to information referenced in the Council's Publication Scheme.
- d) Individuals currently have a statutory right of access to their own 'personal data' under the UK General Data Protection Regulation 2018 and Data Protection Act 2018. Individual access rights to personal data are

extended by the FOIA, through amendments to the access provisions of data protection legislation.

- e) The Environmental Information Regulations 2004 provide a statutory right of access to "environmental information", as defined in these regulations. The EIR came into force on 1st January 2005 and fully replaced the previous Environmental Information Regulations 1992. These Regulations are also fully retrospective.
- f) The Information Commissioner's Office (ICO) will enforce these information regimes. Each regime contains certain categories of exempt information, where information can be withheld. Any decision to withhold information under an exemption can be referred by the applicant to the ICO, who can overturn any decision to withhold information.
- g) To manage information that is to be withheld, the FOIA has "exemptions", while the EIR has "exceptions". For the purposes of this policy, both will be referred to as 'exemptions'.
- h) For the purposes of this policy, "the public" is defined as any individual or organisation, anywhere in the world, and an "information request" refers to any request for recorded information made under the FOIA or the EIR.

3. Scope

- a) This policy is applicable to the employees of SCC, SCC Councillors, any partners, voluntary groups, third parties and agents who SCC employees have authorised to access SCC information, including contractors and vendors. For the purposes of this Policy all these individuals are referred to as 'user' or 'users' and they are responsible for taking the appropriate steps, as outlined below whilst working with SCC information.
- b) This policy applies to all recorded information held by the Council that relates to the business of the Council. This includes:
 - information created and held by the Council;
 - information created by the Council but held by another organisation, on our behalf;
 - information held by the Council provided by third parties, where this relates to a function or business of the Council (such as responses to consultation exercise, or contractual information); and
 - information held by the Council relating to elected members, where the information relates to the functions or business of the Council.

This policy covers information held by the Council in respect of information provided by third parties. Directorates/services should therefore consider the need to inform third parties supplying recorded information to the Council that information supplied might be subject to disclosure under the FOIA or the EIR.

- c) The policy does not cover:
- information held by local education authority (maintained) schools — the FOIA applies to schools in their own right;
 - Trade Union communications, except where the Council holds the information for the purpose of its functions as a public authority, such as minutes of meetings between management and the unions;
 - information created by elected members, where it is created solely for party political matters; or
 - personal written communications (such as personal e-mails sent by employees).
- d) This policy should be read in conjunction with the following documents:
- Staff Acceptable Use of Information Systems Policy
 - Data Protection Policy
 - Classification and Labelling of Information Policy
 - Records Management Policy

4. Roles and responsibilities

- a) **Information Governance team:** has been tasked with implementing this policy and monitoring its effectiveness.
- b) **Managers:** are responsible for ensuring that adequate induction and training is undertaken by staff and that support is provided to them to facilitate the implementation of this policy.

The Monitoring Officer is responsible for ensuring that adequate induction and training is undertaken by Councillors and that support is provided to them to facilitate the implementation of this policy.

- c) **Users:** all users should attend any appropriate training courses, and complete any mandatory training programmes. Line managers have a responsibility to support this training, and must raise with HR if any staff member does not, or cannot complete the necessary training.

Staff should use this policy, in conjunction with the operating procedures, to ensure that they are responding to enquiries in compliance with the relevant legislation. Although advice can be sought from line managers where appropriate, further guidance on the use of this policy can be obtained from the Information Governance team.

- d) **Non-compliance with this policy:** non-compliance with this policy by staff could warrant further action and investigation under the Council's

Disciplinary Procedures. In certain circumstances, non-compliance with this policy may be considered gross misconduct and result in dismissal. It should be noted that breach of the policy could also lead to criminal or civil action if illegal material is involved or legislation is contravened. The Council will not hesitate to bring to the attention of the appropriate authorities any use of its systems which it believes might be illegal.

Councillors found to be non-compliant with this policy may have contravened the *Members' Code of Conduct* which may lead to a referral to the Council's Monitoring Officer.

- e) **Security incidents:** users must report all suspected breaches of security using the Information Security Incident report form via IT Self Service.

5. Handling requests for information

- a) The Council has a duty under both the FOIA and the EIR to provide advice and assistance to applicants making information requests. This will include assisting the applicant in making the application for information. The Information Governance team will provide a publicly advertised point of contact and provide advice to the public in formulating requests under the FOI and the EIR legislations.
- b) Once the Information Governance team has processed a request for information, it will be sent to the relevant Strategic Information Agent (SIA), or specified officer, who will deal with the request as per directorate guidelines.
- c) Employees must not alter, deface or remove any record (including e-mails) following receipt of an information request under the FOIA or EIR. Both the FOIA and the EIR contain provisions making such action a criminal offence.
- d) Any questions about a request for information need to be directed to the Information Governance Team.
- e) Training course requests are to be directed to the Information Governance team.

6. Charging for information

- a) The information request regimes contain different provisions permitting charges to be made for responding to information requests.
- b) The current FOIA fees regulations do not, in general, permit charges to be made for responding to information requests. However, if the Council estimates that it would cost more than £450 to locate the information, it can refuse to fully respond to the request or charge the full cost of locating the information over and above £450 (section 12). The Council can only charge for the cost of locating information (and disbursements), not for

time taken in reaching decisions regarding whether information is covered by an exemption.

- c) Charges can be made where a statutory charging regime is in operation, or where the information is listed within an approved "Publication Scheme".
- d) The EIR permits "reasonable" charges to be made when responding to requests for environmental information.
- e) The Council has listed its schedule of charges under the FOIA and EIR in its Publication Scheme.
- f) Where the Council estimates that the cost of locating the information will cost more than £450, it will consider issuing a fees notice in accordance with the relevant legislation.
- g) The Council's discretion to charge for copying material remains unaffected by FOIA and EIR and charges will be issued, where it is deemed appropriate.

7. Publication Scheme

- a) Section 19 of the FOI Act obliges the Council to make information proactively available in the form of a 'Publication Scheme'. The scheme should list categories, or "classes" of information that will routinely be made available, without the need for a specific information request.
- b) The Council will undertake a review of its Publication Scheme a minimum of once a year to ensure it is accurate and up to date. The Council will ensure that once it undertakes its review of the Publication Scheme that it is kept up to date and reviewed at regular intervals.
- c) Where the Council wishes to charge for providing particular categories of information, it will ensure that this information is listed in the Publication Scheme.
- d) The Council's Publication Scheme will be published on the Council's public website.

8. Withholding information and exemptions

- a) The FOIA contains a considerable number of exemptions. There are two categories of exemptions: absolute exemptions and qualified exemptions. Where an absolute exemption applies, the Council can automatically withhold the information if the criteria of the exemption are met. However, where the exemption is qualified the information can only be withheld where the Council conducts a public interest test. This test must conclude that public interest is best served by withholding the information. Certain exemptions also contain a "prejudice test", which means that the

exemption can only be claimed if disclosing the information would prejudice the interest protected by the exemption.

- b) The EIR also contains exemptions. These are all qualified exemptions and requires the Council to conduct a public interest test. As in 12.1, this test must conclude that public interest is best served by withholding the information.
- c) The Information Governance team will provide support to directorates to ensure that sufficient numbers of appropriate employees are provided with training in the use of the exemptions.
- d) Whenever a Council directorate is considering an exemption, it must always inform the Information Governance team that it intends to do so. Where appropriate, the Information Governance team will seek specialist advice from Legal Services. The final decision to withhold information will rest with the directorate and will be taken at an appropriately senior level, in light of advice provided by subject matter experts in the Information Governance team.
- e) The Council will only withhold information covered by the exemption. Exemptions must be applied in line with guidance from the Information Governance team and all relevant tests ("Public Interest" and "Prejudice") must be conducted in full. Complete files or documents will not be withheld simply because part of the information is covered by an exemption.
- f) The Council will only apply an exemption where it has reason to believe that prejudice might occur to the interest protected by the exemption. In addition, wherever the "public interest" is considered, the Council will only withhold information where it can demonstrate that the public interest will be best served by withholding the information. It will be cautious about withholding information under a non-absolute exemption where the release of the information would:
 - promote further understanding of current issues of public debate;
 - promote the accountability of decisions taken by the Council and the spending and allocation of public money;
 - bring to light matters of public safety; and
 - allow the public to understand and challenge decisions made by the Council.
- g) Where information is withheld under an exemption, the reason behind the decision will be made clear to the applicant, citing the exemption under which the information is being withheld. Details of the right to challenge the decision through the Council's corporate complaints policy will be outlined to the requestor, as well as informing the applicant of the right of appeal to the Information Commissioner's Office.

- h) The Council will also refuse to supply information under the FOIA, where the request is considered 'vexatious' or 'repeated'; and under the EIR, where the request is considered 'manifestly unreasonable'.

9. Release of third-party information

- a) Where, in response to an information request, third-party information has to be considered for release, whether this relates to an individual or other organisation, the directorate that receives the request will seek advice from the Information Governance team prior to the release of the information.
- b) The release of third-party information will be considered carefully, to prevent actions for breach of confidence, or, in the case of living individuals, breaches of Data Protection legislation. Both the FOIA and the EIR permit information to be withheld where its release would breach Data Protection legislation provisions.
- c) Where the requested information relates to a living individual and amounts to "personal data" as defined in Data Protection legislation, the disclosure of this information could breach the law. Therefore, the release of third-party personal information relating to living individuals will be considered in accordance with the data protection principles and, in particular, the "third-party" provisions of Data Protection legislation.
- d) The decision to disclose third-party information will also take into account the impact to the third party of disclosure against the impact to the applicant in withholding the information. Where the third party has been acting in an official, rather than private, capacity, the Council will be minded to disclose the information, although decisions will be taken on a case by case basis, with where appropriate, input from Legal Services.
- e) Where the information relates to an employee, Data Protection legislation will still apply in many circumstances, although the nature of the information will inform the Council's decision whether to release the information. Where the information relates to a matter clearly private to the individual, such as a disciplinary hearing, the information will almost certainly be withheld. However, where the information relates to the member of staff acting in their official capacity, such as an expenses claim, the information will normally be released. The exemption relating to the release of third-party personal data will not be used to withhold information about administrative decisions taken by the Council.
- f) Data Protection law only relates to living individuals, consequently the exemption relating to data protection under both the FOIA and the EIR will not apply to information held about the deceased. Where the request might be controversial, the directorate will seek advice from the Information Governance team, who will, where appropriate, take advice from Legal Services.
- g) Where the third party is an organisation, rather than an individual, Data Protection legislation will not apply.

- h) The Council will consider consulting the third party concerning release of the information where:
- the views of the third party may assist the authority to decide whether an exemption/exception under the FOIA or the EIR applies to the information; and
 - in the event of the public interest test being applied, where the views of the third party may assist the authority make a decision relating to where the public interest lies.
- i) Consultation will not be undertaken where:
- the authority will not be disclosing the information, due to some valid reason under the FOIA or the EIR;
 - the authority is satisfied that no exemption/exception applies to the information and therefore cannot be withheld; or
 - the views of the third party will have no effect on the decision, for example where there is other legislation preventing disclosure.
- j) Information about third parties contained in contracts should be considered in accordance with section 14 of this policy, "Information held in contracts".
- k) Information will only be accepted in confidence where it is necessary to obtain that information in connection with the exercise of any of the Council's functions and will only hold information "in confidence" where the information is deemed to be confidential in nature.
- l) Where input from a third party is required, the response time for the request remains the same. Therefore, it will be made clear to the third party at the outset that they have a limited time for their views to be provided and that, where responses are not immediate, the decision to disclose may have to be made without their input, in order for the Council to comply with the statutory time limits dictated by the legislation.
- m) The Council will endeavour to inform individuals and organisations submitting information that the information might be released following an information request and, where appropriate, will provide the supplier of the information opportunity to request confidentiality, or supply reasons as to why the information should be treated confidentially.

10. Information held in contracts

- a) Any contractual information or information obtained from organisations during the tendering process that is held by the Council is subject to the provisions of the FOIA and the EIR.

- b) Whenever the Council enters into contracts, it will seek to exclude contractual terms forbidding the disclosure of information beyond the restrictions contained in the legislation.
- c) The Council can withhold contractual information where its disclosure under either the FOIA or the EIR would be treated as actionable breach of confidence.
- d) Where the Council intends to include non-disclosure provisions in a contract, it will agree with the contractor a schedule of the contract that clearly states which information should not be disclosed. The Council will only agree to enter into confidentiality clauses where the information is confidential in nature and that it is confident that the decision to restrict access to the information could be justified to the Information Commissioner.
- e) Where information is not covered by the exemption relating to information accepted in confidence, a further exemption specifically under the FOIA may be relevant, relating to commercial interests. This exemption is subject to a "public interest" test. Whenever the Council has to consider the release of such information, it will contact the relevant organisation to obtain its opinions on the release of the information and any exemptions they may think relevant. However, the Council will make the final decision relating to the disclosure of the information.
- f) The Council can also withhold information contained in contracts where any of the other exemptions listed in the FOIA or the EIR are appropriate, although information will only be withheld in line with the Council policy on the use of the exemptions under these regimes.
- g) All future contracts should contain a clause obliging contractors to cooperate fully and in a timely manner where assistance is requested in responding to a request made under the FOI or the EIR legislations.

11. Complaints Procedure

- a) Whenever the Council withholds information under an exemption, or for any other reason, it will inform the applicant of their right to complain about the decision through the Council's complaints procedure and of the right of appeal to the Information Commissioner's Office.
- b) Any complaint received will be dealt with in accordance with the Council's Internal Review process as stated in the FOIA and the EIR.
- c) If the result of the complaint is that any decision to withhold information be overturned, this information should be supplied as soon as is possible.