

NORTHAMPTON BOROUGH COUNCIL
Records Management

Freedom of Information Act 2000

Introduction

Principle 5 of Northampton Borough Council's (the Council's) Information Strategy states that "It is a guiding principle of this Council that no one should be excluded from access to public information held by the Council".

Other Records Management Policies and Procedures provide detailed information on the Freedom of Information Act 2000 (the Act). This document however expands and clarifies the policy statements and further explains how Northampton Borough Council intends to implement the Act.

NB. Information is not restricted to that held on computer, the security of paper-based information and data which may be communicated by fax or telephone is equally important. Documents can be faxed, e-mailed and posted anywhere in the world.

This is part 10 of the procedural documents supporting the Records Management Policy and it gives guidance on issues connected to freedom of information and some useful tips how to use the Freedom of Information Act 2000 Policy.

The Council believes that employees should have access to expert knowledge and all the relevant and current nationally produced guidance to assist and support them in understanding the implications of the Act. This Procedural Document sets out a framework to provide this knowledge and identify where additional information is available to officers.



1 Scope

To define:-

- The procedures which the Council needs to follow.
- The duties imposed on the Authority and how the Council intends to discharge those duties.
- Who is responsible for ensuring the Council complies with these duties.
- The role of the Information Commissioner.
- Signposting the correct Policy or Procedural Document for further information, Guidance, help and advice.

2 Publication Scheme

The Publication Scheme itself is part of the Records Management Policy 'Publication Scheme' RMP2 and its use is covered in the Procedural Document 'Publication Scheme Maintenance Schedules' RMP-PD02.

3 Access rights

From 1st January 2005 Section 1 of the Act gives a general right of access to anybody, from anywhere to recorded information held by the Council, subject to certain conditions and to Exclusions and Exemptions contained in the Act.

NB. These provisions are fully retrospective. If the Council holds the information it must provide it, unless it is the subject of conditions or an Exemption. This Procedural Document sets out how the Council will facilitate access by the public to all its recorded information from this date.

Section 14(1) states the Council is not obliged to comply with a request for information if the request is **vexatious**.

NB. In Law this means not having sufficient grounds for action and seeking only to annoy or cause distress

Section 14(2) "Where the Council has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request". The Council interprets this to mean a minimum of 3 months.

4 Disclosure Log

The Council will log all requests for information for monitoring purposes and will therefore be able to identify repeat, similar or vexatious requests. A second request for information may trigger the Publication Scheme Controller to consider adding this information to the Scheme. More information on the Councils 'Disclosure Log' can be found in 'Handling Information Requests' RMP-PD11.

5 Fees

The Council follows the 'National Fees Regulations' for general rights of access issued under section 9(3) of the Act. These set out maximum limits on costs of compliance, the manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied. Full information on the 'National Fees Regulations' is available on the Information Commissioners website or on request to the Records Officer.

The Council will generally not charge for information which it has chosen to publish in its Publication Scheme. Charges may however be levied for hard copies, multiple copies or copying onto removable media storage devices such as a floppy disc or CD/RW. The 'National Fees Register' provides full guidance on charging. (Generally if the information is more than 10 pages or sides and is not pre-printed each subsequent page or side will be charged at cost). If the print facilities at the One Stop Shop, other designated offices or Print Services Unit are used each printed page or side will be charged at cost (the current charges being clearly displayed). Payment must be made prior to printing.

In all cases where the Council chooses to charge for information published through the Publication Scheme, levy a fee arising from an information request under the 'General Rights of Access' or for printing and copying, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them. Failure to pay will remove the Council's obligation to comply with the request.

The duty to comply with a request for information does not arise if the Council estimates that the cost of compliance with the request exceeds the maximum limit set out in the 'National Fees Regulations' however, the Council will endeavour to keep compliance costs to a minimum but reserves the right to either

- (a) refuse or
- (b) charge the full cost of communicating any information which exceeds this limit.

The Council will endeavour to find alternative ways of releasing information which is cost-prohibitive in hard copy format, such as through the website. The preferred method of releasing information will be electronically however it is accepted this will not always be the best or required format and the Council will endeavour to respond to requests in the format the applicant chooses.

6 Requests

Freedom of Information requests are dealt with in Records Management Policy 'Document and Information Requests' RMP11 and the Procedural Document 'Handling Information Requests' RMP-PD11

7 Public Interest Test

Where any employee receiving a formal request for information is of the opinion that such information may be Exempt within the Act, or is otherwise in any doubt as to the validity or propriety of the request they shall refer this to their senior manager or Director as appropriate, and the latter shall, after due consideration of the relevant provisions of the legislation, the Council's Freedom of Information Policies and Procedures and any necessary consultation, give a formal response pursuant to the Act within the relevant timescales and advising of the applicant's rights under the Act, shall keep an auditable record of the same and provide a copy to the Records Officer for the 'Disclosure Log'.

In the event of any complaint or challenge to such a response, the same information, with all the relevant background information and the rationale for non-disclosure, shall be submitted to the Records Officer and to the Borough Solicitor in his capacity as Monitoring Officer to the Council who together shall arbitrate upon the complaint. Once advised of the decision the relevant Director shall then formally notify the complainant of the decision on such arbitration and the further rights of the complainant to appeal.

8 Assistance

The Council will ensure that the systems and procedures which are deployed to meet the section 16 duties also conform to the Code of Practice issued under section 45 of the Act. The Council is obliged to provide advice and assistance, so far as it would be reasonable to expect the Council to do so, to persons who propose to make, or have made, requests for information.

The Council also acknowledges its commitment for fair and equal access in regard to the demands of its Equality and Diversity Policy and the various equalities legislation such as the Disability Discrimination Act 1995 and the Race Equalities Act 1976 (amendment 2000) and will make such reasonable adjustments as might be required to assist with an access request under FOIA.

Further guidance can be found in the procedural document 'Handling Information Requests' RMP-PD11

9 Redacting

Redacting is the process of preparing material for disclosure and means the indelible removal of material not for disclosure. In documents this is usually done manually, by over-marking text with a pen. In other jurisdictions it has been found that there has been no marker pen yet invented for which could reliably over-mark text in such a way that it could not still be read on a photocopy. Best practice will be to photocopy the blanked out copy of the original for several generations of photocopy (a copy of a copy of a copy) or overlay the text to be excised with a fresh section of paper cut to size and then to photocopy this collage (this is recognised to be extremely labour-intensive, but foolproof).

It will be the responsibility of the Freedom of Information Officer to oversee the redacting process and approve information before disclosure to prevent the release of;

- (a) Personal Data
- (b) Sensitive Data
- (c) Excluded or Exempt information
- (d) Information that could lead someone to guess the nature of any of the redacted information

Electronic redacting is even harder as you must leave the document in such a condition as to show where the redacting has taken place. The only viable way at present would be to change the text to white and print out a copy. The Australian Government Solicitor's Department have developed software which can both redact and annotate scanned images.

Embedded information

Whenever you create, open or save a document using a MS Office programme the document may contain information such as your name and initials, NBC information such as Company name, the 'Name' of your computer, the name of the place you save it as well as the names of previous document authors, document revisions, document versions, template information, hidden text and comments. This information is called 'metadata'.

Removing such information is laborious and time consuming and the details of which are too long-winded to put into this procedure. The records officer has a separate 11 page summary of how to cleanse documents of metadata should you require a copy.

10 Exemptions

Under section 2 of the Act the Council is not obliged to comply with this Duty if the information is exempt under the provisions of Part II of the Act, (sections 21 to 44.) These provisions either confer an Absolute Exemption or a qualified Exemption. A qualified Exemption may be applied if, in all circumstances of the case, the public interest in withholding the information outweighs the public interest in disclosing it.

Part II- Exempt Information¹		
Section (s)	What the Act says	Guidance
s21	Absolute Exemption: Information accessible to the applicant by other means	For example, information which the authority is required by law to communicate, or publishes in the context of its approved Publication Scheme. It must be 'reasonably' accessible to the applicant.
s22	Public Interest Test: Information intended for future publication	This applies where publication was planned at the time the request was made.
s23	Absolute Exemption: information supplied by, or relating to, bodies dealing with security matters	This only applies to information supplied by or relating to on of the security bodies listed in the section.
s24	Public Interest Test: National security	Information that is not covered by s23 above, but exemption is needed to safeguard national security.
s26	Public Interest Test: Defence	Information likely to prejudice national defence or the armed forces.
s27	Public Interest Test: International relations	Information likely to prejudice the UK's international relations or interests.
s28	Public Interest Test: Relations within the United Kingdom	Information likely to prejudice relations between the UK administrations: the UK government, the National Assembly for Wales, the Scottish administration and the executive committee of the Northern Ireland Assembly.
s29	Public Interest Test: The Economy	Information likely to prejudice the economic interests of the UK or part of the UK, or the financial interests of the government or any of the national administrations in the UK.

¹ Extracted from 'Delivering freedom of information' produced by The Constitution Unit for the Local Government Association, ISBN 1 84049 373 9

s30	Public Interest Test: Investigations and proceedings conducted by Public Authorities	Information held for the purposes of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising out of them.
s31	Public Interest Test: Law enforcement	Information not covered by s30 above, and which is likely to prejudice a wider range of investigations and conduct, including prevention of crime; assessment and collection of any tax; regulatory enforcement; health and safety; any civil proceedings.
s 32	Absolute Exemption: Court records	Information that is held only as part of the documentation for a court or tribunal case, or a statutory inquiry.
s33	Public Interest Test: Audit Functions	Applies to information held by public authorities which have functions relating to audit or examining the economy, efficiency and effectiveness of the use of resources of other public authorities; information is exempt if it's disclosure is likely to prejudice those functions.
s34	Absolute Exemption: Parliamentary privilege	
s35	Amendment clause: Formulation of Government Policy	Information held by a department or the National Assembly for Wales, relating to the formulation of government policy.
s36	Qualified Exemption: Prejudice to the effective conduct of public affairs (Absolute for either House of Parliament, Public interest test for all other information covered by this section)	This section applies to information held by any public authority. However with the exception of statistical information, 'a qualified person' is required to operate the Exemption. For authorities not listed in the section, including local authorities in England and Wales, this is either a minister of the Crown or someone authorised for this purpose by a minister.
s37	Public Interest Test: Communications with Her Majesty, etc. and Honours	This applies to information that relates to communications with Her Majesty, member of the Royal Family or Royal Household, or the conferring of Honours.
s38	Public Interest Test: Health and Safety	Information that would, or would be likely to, endanger the physical, or mental health and safety of an individual.
s39	Public Interest Test: Environmental Information	Environmental Information does not fall within the FOI Act if it must be released in accordance with the EIR's which will be introduced to implement the Aarhus

		Convention. However, if the information is subject to a discretionary exemption under the EIR's, then the FOI Act public interest test would apply.
s40	Absolute Exemption (for subject access requests and in certain other situations): Personal Information (The public interest test applies to third party requests)	This section operates as a gateway to the Data Protection Act 1998. Subject access requests are decided under the terms of the DPA. Third party requests for personal information are decided in accordance with the data protection principles, but with the overall framework of the FOI Act.
s41	Absolute Exemption: Information provided in confidence	This Exemption applies where disclosure would constitute an actionable breach of confidence.
s42	Public Interest Test: Legal Professional privilege	This Exemption applies where a claim to legal professional privilege could be maintained in legal proceedings.
s43	Public Interest Test: Commercial interests	This Exemption applies to trade secrets, and to information which if disclosed would, or would be likely to, prejudice the commercial interests of any person, including the authority holding it.
s44	Absolute Exemption: Legal prohibitions on disclosure	Information, the disclosure of which is prohibited by any other enactment, is incompatible with any community obligation, or would be a contempt of court.

Additional Exemption guidance

The Council will only use the qualified Exemptions where appropriate and will, in accordance with section 17 of the Act justify the use of such Exemptions in writing and record them in the Disclosure Log.

The Duty to Confirm or Deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

The duty to comply with a request for information does not arise if the Council estimates that the cost of compliance with the request exceeds the appropriate limit set out in national Fees Regulations

Regulatory functions

The disclosure of information which is likely to prejudice the discharge of a wide range of investigatory and regulatory functions of Public Authorities is similarly exempt. These relate to functions conferred on a Public Body in the public interest and the purposes include:-

- ascertaining whether any person is failed to comply with the Law
- ascertaining whether any person is responsible for improper conduct
- ascertaining whether circumstances exist which would justify regulatory action
- ascertaining a person's fitness or competence in relation to management of companies or any professional capacity
- ascertaining the cause of an accident
- securing the health safety and welfare of people at work

If the information in question comes within the Section the Duty to Disclose does not apply if the public interest in maintaining the Exemption out weighs the public interest in disclosing the same.

Legal Professional Privilege

Information in respect of which a claim to legal professional privilege could be maintained is similarly Exempt information. This is not an absolute Exemption however and must be justified; it includes:-

- (a) Information imparted by a Client (which includes Council Departments) to a legal advisor for the purposes of seeking advice.
- (b) Communications in which advice is given and
- (c) Communications between a lawyer and 3rd parties for the purposes of preparing for litigation

Information intended for future Publication

This spares a Public Authority which at the time of a request for information is actively engaged in the collation of information intended for future publication from being disrupted in that task by having to edit and copy parts or all of that information in order to answer the request. It is not however concerned to protect a Public Authority from harm resulting from the premature release of information.

11 Notices

- Fees

In determining whether it is reasonably practicable to communicate information by a particular means, the Council will consider all the circumstances, including the cost of so doing. If the Council determines that it is not reasonably practicable

to comply with any preference expressed by the applicant in making their request, the Council will notify the applicant of the reasons for its decision in a 'Fees Notice' and offer to provide the information by such means as which it deems to be reasonable and cost effective in the circumstances. NB The Council is not required to produce any form of summary; consequently if this does not exist there would always be a charge for compiling it.

- **Exclusion and Exemption**

If the Council is to any extent relying on a claim that any provision of a Part II Exemption relating to the Duty to Confirm or Deny is relevant to the request a 'Refusal Notice' will be issued within 20 working days under section 17 of the Act. The notice must:

- (a) specify the Exemption(s) in question, and
- (b) state (if it would not otherwise be apparent) why the Exemption applies.

Where the Council is relying on a claim:

- (a) that any provision of Part II which relates to the Duty to Confirm or Deny and is not specified in section 2(3) of the Act as an Absolute Exemption is relevant to the request, or
- (b) that the information is Exempt only by virtue of a qualified Exemption, a provision not specified in section 2(3),

and at the time when the 'Refusal Notice' under section 17 is given to the applicant a decision has not yet been reached as to the application of subsection (1)(b) or (2)(b) of section 2 of the Act – the application of an Exclusion or Exemption – the notice will indicate that no decision has been reached and contain an estimate of the date by which the Council expects that a decision will have been reached.

If the Council is relying on a claim that section 12 (cost limit) or sections 14 (vexatious request) of the Act apply, the notice will state that fact. If the Council is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.

As indicated by the Lord Chancellor's Code of Practice issued under section 45 of the Act, such estimates as described in 2.8.4 should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Council. If the Council finds, while considering the Public Interest, that the estimate is proving unrealistic, the applicant must be kept informed. The Council will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and amend this procedure.

12 Complaints and Appeals

The Act has a specific complaints procedure which is signposted in the Corporate Complaints Policy. Full information on making a complaint or appealing a disclosure decision after an information request can be found in the policy 'Complaints and Appeals' RMP 4.7.12 and the procedural document 'Handling Complaints and Appeals after Information Requests' RMP-PD12.

13 The Information Commissioner

The Information Commissioner is responsible for arbitrating on information requests that have not been resolved to the satisfaction of applicants after their own internal complaints and appeals procedures and have been forwarded to him. He has the power to request and inspect all documentation pursuant to the initial request to provide an impartial decision. However he also has the powers to enforce his decision through the courts if we still fail to satisfy the applicant to his satisfaction. The Council has the right to appeal any decision made by the Information Commission in the same way as an applicant can appeal to the Council.

The Information Commissioner is also charged with providing national guidance to public authorities on the implementation of the Act including producing and maintaining a National Fees Register.

The Information Commissioner also oversees the implementation of the Data Protection Act and the Environmental Information Regulations and is responsible for providing guidance on them.