

Mid Devon District Council

Freedom of Information and Environmental Information Regulations Policy

Policy Number IM 005

Aug 2022

Version Control Sheet

Title: Freedom of Information (FOI) and Environmental Information Regulations (EIR) Policy

Purpose: To detail the commitment of Mid Devon District Council (MDDC) to Freedom of Information and Environmental Information Regulations and to advise Officers and Members, on the standards to be implemented.

Owner: Senior Information Risk Owner (SIRO)

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Consultation This document was sent out for consultation to the following:

Group Managers Team
Leadership Team
Cabinet Member

Document History

This document obtained the following approvals.

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Group Managers Team	June 2019	<u>54.0</u>
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Freedom of Information and Environmental Information Regulations Policy

1. Introduction

Since 1st January 2005 all requests for information received by a public authority have had to be answered in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR). The only exception to this is a request for personal information where the individual can request their own personal data, called a Subject Access Request (SAR). The main principle behind FOI legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to. Access to information helps the public hold public authorities to account for their actions and allows public debate to be better informed and more productive. Access to official information can also improve public confidence and trust if government and public sector bodies are seen as being open.

The FOIA and EIR confer rights of access for members of the public to information held by public authorities. The Acts also place obligations on public authorities to proactively publish certain information and respond to requests for information in accordance with the legislation.

2. Scope

The Acts cover all recorded information held by the ~~MDDC Council~~. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings. It is not limited to official documents and it covers, for example, drafts, emails, notes, recordings of telephone conversations, and CCTV recordings. Nor is it limited to information ~~MDDC the Council~~ creates, so it also covers, for example, letters received from members of the public.

Meta-data, found within the properties of a document, is recorded information and therefore must be considered for release under the legislation. Information held on behalf of ~~MDDC the Council~~ is also covered, even if it is not held on ~~MDDC Council~~ premises.

Although individual Councillors are not public authorities in their own right, information that they hold about ~~MDDC Council~~ business or on behalf of the ~~MDDC Council~~ falls within the scope of the Acts and must also be considered for release.

Information held solely on behalf of another person, body or organisation is not covered by the FOIA but may be covered by EIR. An employee's purely private information is not covered, even if it is on a work computer or email account; nor is information that is stored solely on behalf of a trade union, or an individual Councillor.

~~MDDCThe Council~~ only has to provide information that is already held in recorded form in response to a request. ~~MDDCThe Council~~ is not obliged to create new information or find the answer to a question from an officer who may happen to know it.

3. Legal obligations under the Acts

A lot of the regulations are the same under both pieces of legislation but there are differences.

~~MDDCThe Council~~ has two main obligations under the Acts:

- To publish certain information proactively
- To respond to requests for information

In order to meet the requirement to publish information proactively, ~~MDDCthe Council~~ is required to maintain a publication scheme. This lists the information that is currently made available to the public, describes how such information can be accessed and any charges associated with providing this information.

~~MDDCThe Council~~ will use the Information Commissioners Office (ICO) template for the publication scheme. This is in accordance with ICO guidance and means that the scheme does not need to be submitted for approval. The scheme will be reviewed ~~annually and periodically~~ in accordance with the review date of the Policy, in accordance with changes made to the model scheme by the ICO.

Section 1 of the FOIA states:

- (1) Any person making a request for information to a public authority is entitled-
 - (a) To be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) If that is the case, to have that information communicated to ~~them~~ him.

A request for information under FOI is valid if it is made in writing (an EIR request may be verbal) and provides a name and a postal or email address to which the requested information can be sent. Organisations as well as individuals can make requests, including newspapers, companies and campaign groups. Under the

legislation, a response must be issued within 20 working days, providing the requested information or stating the reason that it has been withheld.

~~MDDC~~~~The Council~~ must make staff, contractors and customers aware of how the legislation may affect them. It should be made clear that ~~MDDC~~~~the Council~~ cannot guarantee complete confidentiality of information. As a public body, ~~MDDC~~~~the Council~~ must consider for release any information that is held if it is requested.

In addition, two codes of practice contain recommended good practice when applying the Act. ~~S~~~~The~~ section 45 code of practice gives recommendations for public authorities on their handling of requests. ~~S~~~~The~~ section 46 code of practice covers good records management practice and the obligations of public authorities under the Public Records Acts to maintain their records in an ordered and managed way, so they can readily retrieve information when it is needed.

These codes of practice are not directly legally binding but failure to follow them is likely to lead to breaches of the Acts. In particular there is a link between following part II of ~~S~~~~the~~ section 45 code of practice and complying with section 16 of the Act in relation to advice and assistance.

Compliance with this policy is compulsory for all staff employed by ~~MDDC~~~~the Council~~. A member of staff who fails to comply with the policy may be subject to disciplinary action under ~~MDDC's~~~~the Council's~~ disciplinary policy.

Managers are responsible for ensuring that their staff are made aware of the existence and content of this policy.

4. Enforcement of the Acts

FOI and EIR are regulated by the ICO, who provide guidance in relation to the Acts and can issue decision notices that require ~~MDDC~~~~the Council~~ to release previously withheld information. Under the provisions of section 54 of the FOIA, if ~~MDDC~~~~the Council~~ fails to comply with a decision notice, the Commissioner may certify in writing to the court that the public authority has failed to comply with that notice. The court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of, the public authority, and after hearing any statement that may be offered in defence, deal with the authority as if it had committed a contempt of court.

Destruction or concealment of information with the intention of preventing disclosure is a crime under section 77 of the FOIA. Depending on the nature of the incident, an authority, or its individual members of staff could be charged with this offence. The penalty is a fine.

There are no financial or custodial penalties for failure to provide information on request or for failure to publish information. But you could be found in contempt of court for failing to comply with a decision notice, enforcement notice, or information notice. This could lead to a fine or, in theory, jail for a senior officer of the authority.

5. Environmental information

The EIR create additional rights of access to environmental information. It is important that requests for environmental information are identified as such and dealt with in accordance with the appropriate legislation. The EIR operate broadly in the same way as the FOIA. The most significant differences relate to the circumstances under which information can be withheld. It is the role of the Information Management Officer (IMO) to determine whether the information requested falls within the scope of the EIR, to process the request appropriately and to determine the correct exemptions.

6. Personal information

A member of the public is entitled to request third party personal information under the FOI/EIR. It is important to carefully balance the case for transparency and openness under the FOI/EIR against the data subject's right to privacy under the Data Protection Act 2018 (DPA). A decision will have to be made on a case by case basis as to whether the information can be released without breaching the data protection principles, redacting information before release as necessary.

FOIA does not give people a right of access to their own personal data. If a member of the public wants to see information that MDDC~~The Council~~ holds about them, they should make a Subject Access Request under the DPA / UK GDPR. For more information please refer to the separate Data Protection Policy (IM 002).

7. Copyright and intellectual property rights

MDDC~~The Council~~ is not entitled to place any conditions or restrictions on access to information under the Acts. MDDC~~The Council~~ is entitled to include a copyright notice with the information that is disclosed, bringing the requestors attention to any restrictions on redistribution of the requested information. This will enable MDDC~~the Council~~ to make a claim in the courts if the requestor or someone else uses the information in breach of copyright.

The ICO encourages public authorities to use an open government license provided by the National Archives. This describes any restrictions on redistribution and reuse of information provided.

9. Withholding information

An applicant does not need to provide a reason for wanting the information but justification must be made for refusing to disclose the information. When deciding whether to release information to the public there is a presumption in favour of disclosure. This means that disclosure of information should be the default position for ~~MDDC~~~~the Council~~. Information should only be withheld when there is a good reason to do so and it is permitted by the legislation.

The FOIA contains several conditions under which ~~MDDC~~~~the Council~~ is entitled to refuse information. These are described as exemptions and are contained within different sections of the Act itself. Requests can be refused for a number of reasons, including confidentiality, commercial interests, personal information and when there are statutory prohibitions on disclosure. It is the responsibility of the IMO to decide whether information can be withheld and to provide written justification to the requestor within the formal response. Any appropriate exemptions will be quoted as will any associated public interest test. Please refer to Appendix 1 for a complete list of these exemptions.

The EIR contain exceptions under which environmental information can be withheld, these are similar but not the same as the exemptions under FOIA. Please refer to Appendix 1 for a complete list of these exceptions.

Information should only be disclosed under the Acts if it would be disclosed to anyone else who asked for it. Information should be released under the Acts as if it was being released to the world at large i.e. it can be made public unless there are express reasons why not.

The FOIA itself does not prevent ~~MDDC~~~~the Council~~ from voluntarily disclosing information outside the provisions of the Act.

10. Advice and assistance

~~MDDC~~~~The Council~~ is obliged to provide advice and assistance to members of the public who wish to request information. This obligation extends to assistance with the formulation of a request, modifying a request to bring it in line with the 'appropriate limit' set out in section 12 (FOIA), and identifying the potential location of information that is not held by the Council.

11. Costs

There is a limit to the amount of time a local authority can be asked to spend on a single request. For FOI the 'appropriate limit' is 18 hours and is set out in section 12 of the FOIA. ~~MDDC~~~~The Council~~ is entitled to refuse a request if it is estimated that

responding to the request will exceed this limit. The EIR do not have this same time limit.

~~Mid Devon District Council~~MDDC is entitled to charge a fee against costs reasonably incurred when informing the requestor whether information is held and communicating that information. Such costs may include postage and photocopying but not locating or retrieving the information itself. Any fee charged must be calculated in accordance with the Freedom of Information, Environmental Information Regulations and/or Data Protection (Appropriate Limit and Fees) Regulations 2004 SI No. 3244 as appropriate.

It is the current policy of MDDC to provide information free of charge whenever possible. ~~MDDC~~The Authority does reserve the right to charge for particularly large or complicated requests on a case by case basis.

12. Complaints procedure

If a member of the public is not satisfied with the response that they receive to an FOI/EIR request, or believes the charges to be excessive, they are entitled to complain to ~~MDDC~~the Council and request that an internal review of the decision is conducted. Complaints can be submitted to:

Information Management Officer
Mid Devon District Council
Phoenix house
Phoenix Lane
Tiverton
Devon
EX16 6PP

Email: foi@middevon.gov.uk

Complaints are to be passed to the IMO who will then convene a review panel. The review panel will consist of the ~~Senior Information Risk Owner~~Data Protection Officer (SIRODPO) or their nominated representative with relevant FOI/EIR and Data Protection knowledge and in contentious cases a member of Legal Services. The panel will review the way in which the request was handled and address any particular concerns that were referred to in the complaint. A formal response will be sent out detailing the outcome of the review. EIR reviews must be completed within 40 working days, FOI reviews are best practice rather than a statutory requirement but it is ~~MDDC~~our policy to do them and every effort would be made to complete the review within 20 working days.

If the requestor remains dissatisfied, ~~they/he are~~ is entitled to complain directly to the Information Commissioner and request that ~~they/she~~ investigates the way in which their request has been handled. The Commissioner may then decide to issue a decision notice which upholds, partially upholds or overturns ~~MDDC's/the Council's~~ decision.

Either party can appeal a decision notice issued by the Information Commissioner to the Information Tribunal which will then either uphold the decision notice or substitute it with an amended or entirely new decision. This is the final point of appeal for FOI/EIR requests.

13. Identification of roles and responsibilities

The IMO will be responsible for processing requests for information. This will include logging each request on the Register, coordinating the retrieval of requested information, determining what of the requested information should be released and issuing a formal response to the requestor.

They will also be responsible for maintaining the publication scheme and conducting an annual review of its contents. This will involve ensuring that the most recent versions of documents are available and that the information published is accurate and up to date.

At the end of each month a disclosure log of all FOI/EIR requests received and completed in the month is published on our website.

Service FOI/EIR Representatives will be nominated from each service area. FOI/EIR Representatives will be responsible for the retrieval of requested information and providing it to the IMO. They are also responsible for communicating any concerns or problems with the disclosure of the requested information, as soon as possible after the request is allocated to them.

All officers will have a responsibility under the Acts to ensure that requests are identified and handled in accordance with the legislation. Officers will undertake mandatory training to ensure they are aware of these responsibilities.

Requests for information will be passed to the IMO at the earliest opportunity and information requested under the Act will be retrieved in sufficient time for any exemptions or exceptions to be considered and a response issued within the statutory 20 working day time limit.

14. Training and awareness

It is essential that ~~MDDC~~~~all Council~~ officers and elected members are familiar with the requirements of the Acts.

The Data Protection Officer will ensure that there is a training plan to raise awareness of the Act across ~~MDDC~~~~the Council~~. Reference material and guidance is available on SharePoint and regular updates are provided via ~~MDDC's~~~~the Council's~~ internal communications. There is also mandatory training on ~~MDDC's~~~~the Council's~~ e-learning software; completion of this is monitored.

Training will also be offered to Councillors, this training will be specifically tailored to ways in which the Acts apply to elected members in addition to more general guidance and information about the legislation.

~~The Council's~~~~MDDC's~~ commitment to proactive publication will be communicated to the public through the website. This will include details of how a request can be submitted, advice about what information is already published and guidance about how to submit a request.

15. Performance measures

The IMO will maintain records of all requests received and the response issued. Monthly statistics will be reported to the DPO, the SIRO and Members and are published on the website. A disclosure log of all FOI and EIR requests is published on the website at the end of each month.

Open data is also published on the website, providing details of statistics that are regularly requested. Each dataset includes details of what is contained and how frequently it will be updated.

16. Review of policy

This policy will be reviewed in 202~~5~~2 in accordance with any changes made to relevant legislation and to ensure the policy reflects any changes required.

17. Relationship with existing policies

This policy has been formulated in accordance with the following Council documents:

IM 001 Records Management Policy
IM 002 Data Protection Policy

Compliance with this policy will also facilitate compliance with the Data Protection Act 2018 and the UK GDPR.

Appendix 1

Exemptions under the FOIA

- Section 12 – Exceeds the appropriate limit for cost and time.
- Section 14 – Repeated or vexatious requests
- Section 21 – Information reasonably accessible by other means
- Section 22 – Information intended for future publication
- Section 23 – Security bodies
- Section 24 – Safeguarding national security
- Section 25 - Certificates under ss.23 and 24: supplementary provision
- Section 26 – Defence
- Section 27 – International relations
- Section 28 – Relations within the UK
- Section 29 – The economy
- Section 30 – Investigations
- Section 31 – Law enforcement
- Section 32 – Information contained in court records/transcripts
- Section 33 – Public audit
- Section 34 – parliamentary privilege
- Section 35 – Policy formulation
- Section 36 – Effective conduct of public affairs
- Section 37 – Communications with Her Majesty and the awarding of honours
- Section 38 – Health and safety
- Section 39 – Environmental information
- Section 40 – Personal information
- Section 41 – Information provided in confidence
- Section 42 – Legal professional privilege
- Section 43 – Public sector contracts, commercial interests
- Section 44 – Prohibitions on disclosure

Exceptions under the EIR

- Regulation 12(4)(a) – Information not held
- Regulation 12(4)(c) – Request formulated in too general a manner
- Regulation 12(4)(d) – Material in the course of completion
- Regulation 12(4)(e) – Internal communications
- Regulation 12(5)(a) – Internal relations, defence, national security or public safety
- Regulation 12(5)(b) – The course of justice and enquiries
- Regulation 12(5)(c) – Intellectual property rights
- Regulation 12(5)(d) – Confidentiality of proceedings
- Regulation 12(5)(e) – Confidentiality of commercial or industrial information
- Regulation 12(5)(g) – Protection of the environment