

Mid Devon District Council

Freedom of Information and Environmental Information Regulations Policy

Policy Number IM 005

Aug 2025

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: Head of Digital Transformation & Customer Engagement

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IT & Information Governance Board (ITIG)

Document History

This document obtained the following approvals.

Title	Date	Version Approved
ITIG	Aug 2025	6.0
Cabinet	Sept 2025	6.0

Freedom of Information and Environmental Information Regulations Policy

1. Introduction

The main principle behind the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR) 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 legislation also places obligations on public authorities to proactively publish certain information and respond to requests for information in accordance with the legislation.

2. Scope

The FOIA and EIR cover all recorded information held by the MDDC. 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 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 is also covered, even if it is not held on MDDC premises.

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

Information held solely on behalf of another person, body or organisation is not covered by the FOIA (unless there is some control over the information that is held) 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.

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

3. Relevant Legislation:

- **Freedom of Information Act 2000 (FOIA)**
- **Environmental Information Regulation 2004 (EIR)**
- **Re-use of Public Sector Information Regulation 2015 (RPSI)**
- **Transparency Code 2015**
- **UK General Data Protection Regulation 2016 (UK GDPR)**
- **Data Protection Act 2018 (DPA)**

4. Legal obligations under the Acts

The FOIA, and the EIR regulations are similar in many ways.

MDDC has two main obligations under both:

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

To meet the requirement to publish information proactively, MDDC maintains 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.

MDDC's publication scheme will be reviewed in accordance with the review date of this Policy, in accordance with changes made to the model scheme provided by the Information Commission.

Section 1 of the FOIA (in part):

- (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 him.

A request for information under the FOIA 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

both regimes, a response must be issued within 20 working days. Under certain circumstances, this period may be extended.

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

In managing its business records and handling requests for information under the FOIA and the EIR regulations, MDDC is committed to complying with the respective statutory Codes of Practice, and with the Public Records Act, which set out good records management practice and the obligations of public authorities to maintain their records in an ordered and managed way, so they can readily retrieve information when it is needed.

Whilst Codes of Practice in their entirety are not legally binding, failure to follow them is likely to lead to breaches of the relevant legislation.

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

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

5. Enforcement of the Legislation

FOIA and EIR are regulated by the Information Commission (IC), which provides guidance in relation to the legislation and can issue decision notices that require MDDC to release previously withheld information. Under the provisions of section 54 of the FOIA and Regulation 11(3) of the EIR, if MDDC fails to comply with an IC decision notice, the Commissioner may certify in writing to the court that the public authority has failed to comply with the regulations. 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, and Regulation 19 of the EIR. Depending on the nature of the incident, an authority, or its individual members of staff could be charged with an offence. The penalty could be a hefty fine.

There are no financial or custodial penalties for failure to provide information on request or for failure to publish information, however you could be found in contempt of court for failing to comply with a decision notice, enforcement notice, or information notice.

6. 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.

7. Personal information

A member of the public is entitled to request third party personal information under the FOIA/EIR. It is important to carefully balance the case for transparency and openness under the FOIA/EIR against the data subject's right to privacy under Data Protection legislation. A decision will be made on a case-by-case basis as to whether the information can be released in accordance with data protection legislation. 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 holds about them, a Subject Access Request should be submitted under the UK GDPR. For more information, please refer to the Data Protection Policy (IM 002).third party

8. Copyright and intellectual property rights

Information that is released under the FOIA or the EIR can be protected by copyright. n This will enable MDDC to make a claim in the courts if the requestor or someone else uses the information in breach of copyright.

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

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 information. When deciding whether to disclose information to the public there is a presumption in favour of disclosure. This means that disclosure of information is the default position for MDDC. Information will only be withheld when there is a legal reason to do so.

Exemptions under the FOIA include where the information has been provided in confidence, commercial interests, personal information and when there are statutory prohibitions on disclosure. It is the responsibility of the Information Management team to decide whether information can be withheld under the legislation, and to provide written justification to the requestor within the formal response. Any appropriate exemptions will be quoted as will any associated prejudice and public interest test as required. 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.

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

10. Advice and assistance

MDDC 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 make it 'manifestly reasonable', with the 'appropriate limit' set out in Section 12 of the FOIA, and under Reg 12(4)(b) of the EIR, and signposting to other FOI organisations that may hold relevant information when the information requested 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 FOIA the 'appropriate limit' equates to 18 hours. MDDC 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.

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 FOIA, EIR 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 (by email) whenever possible. MDDC does reserve the right to charge for particularly large or complicated requests, or those requested by post 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 FOIA/EIR request, or believes the charges to be excessive, they are entitled to complain to MDDC 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

A review is undertaken by the Senior Information Officer (SIO) or their nominated representative in consultation with other relevant Officers / departments as appropriate. The review will assess the way in which the request was handled and address any concerns that were referred to in the complaint. EIR reviews must be completed within 40 working days, FOIA reviews are not a statutory requirement however it is MDDC's policy to undertake a review within 20 working days.

If the requestor remains dissatisfied, they are entitled to complain directly to the Information Commission and request that they investigate the way in which their request (and review where undertaken) has been handled. The information Commission may then decide to issue a decision notice which upholds, partially upholds or overturns MDDC's decision.

Either party can appeal a decision notice issued by the Information Commission 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 FOIA/EIR requests.

13. Identification of roles and responsibilities

The Information Management Officer 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 can 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.

A disclosure log of all FOIA/EIR requests completed is published on our website. This is a live document that is updated regularly.

Service FOIA/EIR Representatives will be nominated from each service area. FOIA/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 legislation 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 Information Management Officer at the earliest opportunity and information requested 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. Re-Use of Public Sector Regulations 2015 (RPSI)

RPSI Regulations 2015 gives members of the public the right to ask permission to re-use information held by a public authority. This can include distribution and the selling of the provided information.

Under RPSI the council is obliged to publish an asset list of information already in the public domain. MDDC publishes this in the form of a publication scheme. To Re-use, a RPSI request will need to be made.

For a Re-Use request to be valid the information must be readily available through either open data sets or information already put in the public domain through Freedom of Information requests.

These requests must be made in writing and will include the name and address of the applicant, a formal Identification of the document requested for re-use and a reason for re-use. MDDC will then have 20 working days to respond to the request. MDDC may extend the period of responding by such time as is reasonable in the circumstances if the request is complex.

Where an Open Government License (OGL) has been identified there is no need to complete a RPSI request as this information can be Re-used subject to

the terms of the license. For more details around OGLs please read here: [Open Government Licence](#)

15. Training and awareness

It is essential that MDDC officers and elected members are familiar with the requirements of the FOI and EIR legislation and the requirements that are placed upon them.

The Senior Information Officer will ensure that there is a training plan to raise awareness of FOI and EIR across MDDC. Reference material and guidance is available on SharePoint and regular updates are provided via MDDC's internal communications. There is also mandatory training on MDDC'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 legislation applies to elected members in addition to more general guidance and information about the legislation.

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.

16. Performance measures

The Information Management Officer will maintain records of all requests received and the response issued. Monthly statistics will be reported quarterly to Scrutiny committee and published on the website.

Under the Transparency Code 2015, the Council publishes open datasets. Additional open data is 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.

17. Review of policy

This policy will be reviewed no later than 2028. The Head of Digital Transformation and Customer Engagement is given delegated authority to make minor amendments to the policy as required by legislative changes, formal guidance, or local operational considerations.

18. Relationship with existing policies

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

IM 004 Records Management Policy

IM 003 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 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