

Mid Devon District Council

**Freedom of Information and Environmental
Information Regulations Policy**

Policy Number ICT 010

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Version Control Sheet

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

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

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Management Team

Cabinet Member

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This document obtained the following approvals.

Title	Date	Version Approved
Management Team	14.11.16	1.0
Cabinet	1.12.16	1.0

Freedom of Information 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 (FOI) Act 2000 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 confers rights of access for members of the public to information held by public authorities. The Act 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 Act covers all recorded information held by the 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 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 the council is also covered, even if it is not held on council premises.

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

Information held solely on behalf of another person, body or organisation is not covered by the legislation. 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.

The council only has to provide information that is already held in recorded form in response to a request. The 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 Act

The council has two main obligations under the Act:

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

In order to meet the requirement to publish information proactively, the 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.

The 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 have to be reviewed annually and periodically, in accordance with changes made to the model scheme by the ICO.

Section 1 of the Act 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 him.

A request for information under the FOI and EIR is valid if it is made in writing and provides a name, and an 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 Act, a response must be issued within 20 working days, providing the requested information or stating the reason that it has been withheld.

The council must make staff, contractors and customers aware of how the Act may affect them. It should be made clear that the council cannot guarantee complete confidentiality of information. As a public body, 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. The Section 45 code of practice gives recommendations for public authorities about their handling of requests. The section 46 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 Act. In particular there is a link between following part II of 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 the council. A member of staff who fails to comply with the policy may be subject to disciplinary action under 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 Act

FOI and EIR is regulated by the ICO, who provide guidance in relation to the Act and can issue decision notices that require the council to release previously withheld information. Under the provisions of section 54 of the Act, if 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 Act. 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 Environmental Information Regulations (EIR) 2004 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 Assistant to determine whether the information requested falls within the scope of the EIR and to process the request appropriately.

6. Personal information

A member of the public is entitled to request third party personal information under the FOI. It is important to carefully balance the case for transparency and openness under the FOI against the data subject's right to privacy under the Data Protection Act 1998 (DPA). A decision will have to be made on a case-by-case basis whether the information can be released without breaching the data protection principles.

FOI does not give people a right of access to their own personal data. If a member of the public wants to see information that the council holds about them, they should

make a Subject Access Request under the DPA. For more information please refer to the separate Data Protection Policy (ICT 003).

7. Copyright and intellectual property rights

The council is not entitled to place any conditions or restrictions on access to information under the Act. 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 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 to open government license provided by the National Archives. This describes any restrictions on redistribution and reuse of information provided.

8. 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 the council. Information should only be withheld when there is a good reason to do so and it is permitted by the Act.

The Act contains several conditions under which 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 Information Management Assistant 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. Please refer to Appendix 1 for a complete list of these exceptions.

Information should only be disclosed under the Act if it would be disclosed to anyone else who asked for it. Information should be released under the Act as if it was being released to the world at large.

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

9. Advice and assistance

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, and identifying the potential location of information that is not held by the council.

10. Costs

There is a limit to the amount of time a local authority can be asked to spend on a single request. This 'appropriate limit' is 18 hours and is set out in section 12 of the FOIA. The council is entitled to refuse a request if it is estimated that responding to the request will exceed this limit.

Mid Devon District Council 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 and Data Protection (Appropriate Limit and Fees) Regulations 2004 SI No. 3244.

It is the policy of Mid Devon District Council to provide information free of charge whenever possible. The Authority does retain the right to charge for particularly voluminous requests on a case by case basis.

11. Complaints procedure

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

Information Management Assistant
Mid Devon District Council
Phoenix House
Phoenix Lane
Tiverton
Devon EX16 6PP
Email: foi@middevon.gov.uk

Complaints are to be passed to the Information Management Assistant who will then convene a review panel. The review panel will consist of the Senior Information Risk Owner (SIRO) or their nominated representative with relevant FOI 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 have no statutory time limits but every effort would be made to complete the review within 40 working days.

If the requestor remains dissatisfied, they are entitled to complain directly to the Information Commissioner and request that he/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 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 requests.

12. Identification of roles and responsibilities

The Information Management Assistant will be responsible for processing requests for information. This will include logging each request on the Freedom of Information system, 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 requests received and completed in the month is published on our website.

Service FOI Representatives will be nominated from each service area. FOI Reps will be responsible for the retrieval of requested information and providing it to the Information management Assistant. They will also be responsible for communicating any concerns or problems with the disclosure of the requested information.

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

Requests for information will be passed to the Information Management Assistant at the earliest opportunity and information requested under the Act will be retrieved in sufficient time for any exemptions to be considered and a response issued within the statutory twenty working day time limit.

13. Training and awareness

It is essential that all council officers and elected members are familiar with the requirements of the Act.

The SIRO will ensure that there is a training plan to raise awareness of the Act across the Council. Reference material and guidance is available on the Phoenix Portal (sharepoint) and regular updates are provided via the council's internal communications news- letter.

Training will be offered to councillors, this training will be specifically tailored to ways in which the Act applies to elected members in addition to more general guidance and information about the legislation.

The council'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.

14. Performance measures

The Information Management Assistant will maintain records of all requests received and the response issued. Monthly statistics will be reported to Information Management Assistant's line manager and the SIRO, using the information collected on the Freedom of Information system. 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 data set includes details of what is contained and how frequently it will be updated.

15. Review of policy

This policy will be reviewed in 2018 in accordance with any changes made to relevant legislation and to ensure the policy reflects any changes required due to the implementation of the General Data Protection Regulations which come into effect in 2018.

16. Relationship with existing policies

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

- ICT 003 Data Protection Policy
- ICT 009 Records Management Policy

Compliance with this policy will also facilitate compliance with the Data Protection Act 1998 and the Environmental Information Regulations 2004.

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