

BUXTED PARISH COUNCIL

FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS REQUESTS POLICY

1.0 Background

Under the Freedom of Information Act, individuals have the right to access information held by the Council. The Council must also advise and assist the individual in making their request.

The Freedom of Information Act 2000 (FOIA) was passed on 30th November 2000. It gives a general right of access to all types of recorded information held by public authorities. It sets out exemptions from that right and places a number of obligations on public authorities.

The Act came into force in January 2005 and anyone wishing to exercise the right has to make a written request to the local authority. If such a request is made the Council is under obligation to inform the person whether or not the requested information exists and to supply access to the information, unless it is subject to an exemption.

Section 39 of the Freedom of Information Act exempts environmental information from being dealt with under the Freedom of Information Act and provides it should be dealt with under the Environmental Information Regulations [EIR], which also came into force on 1st January 2005.

Environmental Information is defined in the EIR as information falling into one of the six categories below:

1. the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements.
2. factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in
3. measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the state of the elements and factors mentioned above, and as well as measures or activities designed to protect those elements.
4. reports on the implementation of environmental legislation.
5. cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to above.
6. the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment or, through

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those elements by any of the factors or measures referred to above.

2.0 Procedure

The FOIA requires that all requests must be made in writing (by letter or email) whereas the EIR also allow requests for environment information to be made verbally. Requests must clearly indicate what information is being required and state the name of the applicant and contact details for correspondence. Applicants do not have to state the purpose of their request.

2.1 Any individual making an enquiry under the FOIA should be advised that all requests for information must:

- be made in writing, including email.
- include a name and address for the response to be sent to.
- state clearly the information required.

2.2 Any individual making an enquiry, written or verbal, under the EIR should be advised that all requests for information must:

- include a name and address for the response to be sent to.
- state clearly the information required.

2.3 On receipt of a request for information under the FOIA or EIR, an acknowledgement should be sent out within three working days advising whether the information is subject to the Act or not and how the Council will be responding to the request.

Where the request is deemed to be contentious the Responsible Officer may convene an FOI panel to assist him with the compilation of the response.

Where the information is subject to the Act or Regulations, it should be dealt with accordingly, and a response given to the enquirer within 20 working days. The Act or Regulations allow the Council to extend this deadline if further clarification of the request is needed but must advise the individual accordingly.

Where the information is not subject to the Act, it should be dealt with in line with the Council's complaints procedure.

2.4 Most requests for information will be free of charge. However, the Council reserves the right to charge the enquirer for photocopies or postage.

The individual may request that the information be given to them in a particular form and the Council may take into account the cost of providing the information in this form before complying with the request.

If the Council believes that it will cost more than £450 to find the information and prepare it for release, then the request can be refused. However, in all such cases the Council will ask the enquirer to narrow down the request by being more specific.

2.5 The FOIA and EIR do not place restrictions on how the individual may use the information but does not transfer copyright in any information sent to the enquirer. The Council should advise the enquirer in writing if any of the information is copyrighted.

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2.6 Under Section 36 of the Freedom of Information Act 2000 the Clerk together with the Chairman/Chairman of the relevant committee will make decisions about the disclosure of information that is believed to prejudice the conduct of public affairs. In the absence of the Clerk, this will be performed by the Deputy Clerk together with the Chairman / Chairman of the relevant committee.

2.7 If the Council refuses a request or withholds some of the information that has been requested, the enquirer will be advised of the reasons for the refusal. (see Section 3.0 Exemptions).

2.8 Under Section 16 of the FOIA and Section 9 of the EIR, the Clerk has a duty to provide advice and assistance to applicants. The Council will provide advice and assistance so far as it would be reasonable to expect it to do so to anybody who proposes to make or have made an Information Request.

2.9 Where the cost of compliance in providing the information to a number of related requests, whether from the same or different individuals, exceeds the "appropriate limit" the Council will not be obliged to comply with the request. However, the Council may, on a discretionary basis, be prepared to offer assistance as to what could be disclosed in a more cost effective manner. It will be a matter for the Council to determine whether the various requests are related and form part of an organised campaign.

2.10 If the Council receives an Information Request for information that it does not hold, but is aware that another public authority holds this information, the Council will provide assistance to the applicant and transfer their request to the public authority known to hold the requested information. If the Council holds any part of the information that has been requested by the applicant it will treat that part of the request as an official Information Request and process it accordingly.

3.0 Exemptions

3.1 In certain instances, the Council will withhold information if it considers an information disclosure would be subject to one or more of the exemptions included in the FOIA and EIR, e.g.

- Regulation 12(3) Personal Information
- Regulation 12(4) – exemptions based on the type of information:
 - o Regulation 12(4)(a) – the Council does not hold the information
 - o Regulation 12(4)(b) – the request for information is manifestly unreasonable
 - o Regulation 12(4)(c) – the request is too general
 - o Regulation 12(4)(d) – the request relates to information which is unfinished or in the course of being completed
 - o Regulation 12(4)(e) – the request involves the disclosure of internal communications.
- Regulation 12(5) – exceptions based on the content of the information requested
 - o Regulation 12(5)(a) – international relations, defence, national security and public safety.
 - o Regulation 12(5)(b) – the course of justice, the ability of a person to obtain a fair trial or the ability of a public authority to conduct an inquiry of a criminal or

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disciplinary nature.

- o Regulation 12(5)(c) – Intellectual property rights.

- o Regulation 12(5)(e) – the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

- o Regulation 12(5)(f) – the interests of the supplier of the information

- o Regulation 12(5)(g) – Protection of the environment

- Regulation 12(6) and (7) – Neither confirm nor deny

- Regulation 12(9) – Emissions

3.2 The Council will always explain its reasons for applying an exemption to the applicant within 20 days.

3.3 The Council will not classify information as exempt unless there are reasons for doing so. Where documents contain exempt information, the remaining information contained within the requested document will be available under the FOIA and EIR.

3.4 Qualified exemptions will only be applied if the Council believes it is not in the public interest to disclose the information having considered the Public Interest Test.

4.0 Public Interest Test

The Public Interest Test (PIT) will apply to all qualified exemptions under the FOIA. The PIT requires that information should be withheld under an exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

5.0 Appeals

5.1 If the Council refuses a request for information, the individual has the right to appeal the decision and should, in the first instance, request an internal review of the decision in writing within 5 working days of notification of the refusal.

5.2 The Council does have the right to refuse to review the decision.

5.3 The review should be conducted by a panel of three Councillors who were not connected with the initial decision having been appointed by Full Council. The Chairman or Vice Chairman will Chair the review. The individual should be advised of the outcome of the review within 15 working days.

5.4 If the individual is unhappy with the outcome of the review, or the Council has refused to undertake a review, the individual has the right to appeal directly to the independent Information Commissioner. The Commissioner has the power to investigate the way the Council handled the request and the response given by the Council. If the Commissioner agrees that the Council has wrongly withheld information, the Council can be ordered to disclose it.

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The Information Commissioner can be contacted as follows:

Information Commissioner's Office Helpline:

08456 30 60 60 or 01625 54 57 45

Fax: 01625 524510

By post: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

By email: If your enquiry is about a new or existing notification under the Data Protection Act, please email notification@ico.gsi.gov.uk