



Liverpool City Council – Freedom of Information Policy



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1. Document Control

1.1 Authorisation and Approval

Title: Freedom of Information Requests Policy
Current Version: 1.0
Document Type: Paper and Electronic
Prepared by: Kevin Symm, Senior Information Officer
Approved by:
Approval Date:
Review Date: May 2014
Circulation: All employees
Document Revision dates:

1.2 Version Control

Version	Author	Date	Comments
1.0	Wendy Twigge Information Manger	07/2010	New updated format and content
2.0	Kevin Symm Senior Information Officer	05/2013	Review, update and amend

2. Overview

The Freedom of Information Act came into force on 1 January 2005 and gives individuals and companies the right to ask public authorities whether they hold certain information and, if they do, the right to be given that information. The Act does not deal with the collection and use of personal data which is governed by the Data Protection Act 1998.

The main principle behind Freedom of Information 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.

The City Council's contains publically accessible documents and information which are related to the functions of the City Council. Additionally, Section 45 of the Act places an obligation on public authorities to publish datasets. Datasets are collections of factual data gathered or generated as a part of the City Council's delivery of services and functions.

Requests must be responded to no later than 20 working days after the date of receipt. All requests for information are coordinated by the City Council's Information Team, who disseminates requests to the relevant service areas via designated 'champions'. Cases are recorded on the iCasework system which provides live data on deadlines and the status of each recorded case.

A large amount of information is already publically available via the City Council's [Publication Scheme](#)

3. Purpose

The purpose of this document is to ensure staff are familiar with the City Council's legal obligations under the Freedom of Information Act 2000 and will explain the processes and procedures the City Council must adhere to upon receipt of a request for information.

It will also explain what staff are to do if they receive a request under the Act and where this correspondence should be directed. It will also explain the responsibilities LCC staff have in terms of the Act and what expectations are placed upon them.

The policy will detail the deadlines the City Council must meet and what the consequences of not meeting these deadlines could mean to the City Council

4. Scope

The scope of this policy is to include all Liverpool City Council officers, elected members, consultants and agency staff as well as those staff who are providing services for and on behalf of Liverpool City Council.

Front line staff dealing with members of the public on a daily basis are (with the exception of the Information Team) the most likely staff to receive requests for information. As such they should familiarise themselves with this document.

All areas of the City Council are open to scrutiny via the Act, accordingly all staff should be aware of their responsibilities should they receive a request.

5. Policy

The Freedom of Information Act provides the public with a right to access information held by public authorities. It does this in two ways:

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities

Information must be provided to an applicant within the 20 working day deadline unless there is a legal basis upon which disclosure cannot be accommodated.

The Act creates and encourages more openness and transparency amongst Public Authorities.

Information will be deemed as 'held' by the City Council if:

- It is held by the City Council, otherwise than on behalf of another person or organisation, or
- It is held by another person or organisation on behalf of the City Council.

6. Publication Scheme

The City Council has adopted a model Publication Scheme, the basis and classifications of which have been approved the Information Commissioner's Office (ICO). These being:

1. Who we are and what we do
2. What we spend and how we spend it
3. What are priorities are and how we're doing
4. How we make decisions
5. Our policies and procedures
6. Lists and registers
7. The services we offer

As well as responding to requests for information the City Council must proactively publish information. The Freedom of Information Act 2000 requires every public authority to have a Publication Scheme, approved by the Information Commissioner's Office (ICO), and to publish information covered by the scheme.

The scheme requires the City Council to make certain classes of information routinely available, such as policies and procedures, minutes of meetings, annual reports and financial information. Additionally, we are required to maintain our Publication Scheme and continue to publish the information it lists. This means we are required to have in place a process to:

- review what information you are publishing;
- ensure you make newly created information that falls within the scope of the scheme available promptly; and
- replace or update information that has been superseded.

7. Receiving a request for Information

Everybody has a right to access official information. Disclosure of information should be the norm – in other words, information should be withheld only when there is a good reason and it is permitted by the Act via the application of appropriate **exemptions** (**Hyperlinked to ICO exemptions page**)

- An applicant (requestor) does not need to give the City Council a reason for wanting the information. On the contrary, the City Council must justify refusing them the information they have requested;
- An applicant need not quote or refer to the Act when asking for information. It is our responsibility to recognise what enquiries do and do not fall under the remit of the Act, not the applicant
- All requests for information must be treated equally. The information someone can get under the Act should not be affected by who they are. The City Council must treat all requesters the same whether they are journalists, local residents, public authority employees, or foreign based requestors; and
- Because the City Council must treat all requesters equally, we should only disclose information under the Act if we would disclose it to anyone else who asked. In other words, we should consider any information we release under the Act as if it were being released to the world at large.

1 What makes a request valid?

- Requests must be submitted in writing, via email or via **online e-form**. Requests cannot be submitted verbally. Requests must include the requester's real name. The Act makes provision for the City Council to, where appropriate, seek to clarify the requestor's identity if it is clear they are using a pseudonym or false name.

However, it is worth noting that a request can be made in the name of an organisation, or by one person on behalf of another, such as a solicitor on behalf of a client;

- Requests must include an address for correspondence. This does not need to be the requestors residential or work address – it can be any address at which you can write to them, including a postal address or email address;
- Requests must describe (as accurately as possible) the information required. Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way. If any confusion arises over what information is required it is the duty of the City Council to seek clarification before progressing the request any further.

The Act covers information not documents, so a requestor does not have to ask for a specific document (although they may do so). They can, for example, ask

about a specific topic and expect you to gather all relevant information held by the City Council.

2 Can questions be treated as valid requests?

- Yes – if correspondence is received asking questions but in order to answer them we would need to provide information then it is a formal request for information under the Freedom of Information Act 2000 and should be treated accordingly.
- The requestor does not need to be specific in what information they require i.e. “what information does LCC hold about the Edge Lane development?” This is obviously a question; but is clearly appropriate to be handled under the Act
- If there is any confusion over the terms of the request as explained previously, it is the City Council’s responsibility to seek clarification with the requestor and not to look to refuse the request on the grounds of misunderstanding.

3 How long do we have to answer requests?

- The City Council’s main obligation is to respond to requests it receives in as timely a manner as possible. However, the Act recognises that not all requests are easy to respond to quickly and has set a 20 working day response deadline for the vast majority of Local Authorities.
- The 20 working day deadline begins once the request is received by the City Council; not when it is forwarded to the Information Team. Any delays in providing requests to the Information Team are likely to impact upon the time the City Council has to respond.

4 What if we are not clear about the information requested?

- Correspondence can often be ambiguous and include complaints, suggestions and requests for information. It is the job of the City Council to recognise any potential requests and, if necessary, confirm what is being asked for with the requestor.
- It is seen as good practice for Local Authorities to clarify terms with a requestor as soon as possible. The response deadline is put on hold while clarification is sought and re-started once received.

5 What do we do if we don’t hold the information requested?

- The Act only relates to information the City Council physically holds. It does not require staff to create information to meet the specific terms of a request. If we do not hold the information being asked for we must inform the requestor in writing by way of our response.
- If we feel the information being asked for is held elsewhere, (another Local Authority or the NHS for example) we can direct the requestor accordingly

6 Can we ask for an extension if it will take us a long time to gather the information asked for?

- No – there is no provision within the Act to extend response deadlines. All requests must be responded to within the 20 working day timeframe
- However, the Act recognises that in some circumstances collating information requested would place too great a burden upon the resources of Local Authorities and, as such, sets an appropriate limit in terms of time and cost. If providing requested information would exceed either limit we can refuse the request on such grounds.
- The current cost limit for complying with a request, or a series of linked requests from the same person or group, is set at £450 for all Public Authorities. We can refuse a request if we can demonstrate to the requestor that the time deemed appropriate to provide the information requested would exceed this limit.
- We can also refuse a request on similar grounds if compliance would exceed 18 hours. However, as per refusal on the grounds of cost we would need to demonstrate how compliance would exceed this limit.
- We are also able to refuse a request if deciding whether we hold the information being asked for would mean we exceed the cost limit. If, for example, it would require an extensive search in a number of locations we are able to say we hold the information, but are unable to provide the information itself within the appropriate limits.
- We can, however, apply an additional 20 working day period when considering the public interest test when refusing disclosure in accordance with the criteria of a qualified exemption

7 Can't we just say 'No'?

- The rule of thumb is 'if we hold it, we must provide it' and as a public authority we are legally obliged to provide any information we hold under the Act. If information is held, and this information is deemed relevant to the terms of a request, it must be passed to the Information Team for consideration.
- However, the Act provides legal reasoning (exemptions) which Local Authorities can apply to requests if they feel the information should not be released.

8 Can we ask why information is being requested?

- No – we must treat every request we receive as 'motive blind'. We cannot contact a requestor to ask why they have asked for specific information. This is to ensure all requests are treated the same and any possible motive for requesting information does not interfere with the response provided by the City Council.

9 Can we refuse the request if we know it's a business making it?

- No – anyone can make a request under the Act, including businesses, charities, journalists, political groups and individuals.

10 Can we charge for providing information?

- Yes – in accordance with the application of Section 12 of the Freedom of Information Act 2000. This exemption sets out a time and cost limit to by which Local Authorities can, where it can be demonstrated the relevant limits will be breached, refuse to provide information.

Regulation 3 of the Freedom of Information and Data Protection Act (appropriate limit and fees) Regulations 2004 sets the appropriate limit as £450 for Local Authorities. A standard rate of £25 per hour is used as the basis for calculating the cost of providing the response, regardless of the actual staff time-cost taken. To clarify; while an officer may not be paid £25 per hour by way of their salary £25 per hour is the figured used to calculate the time and costs taken.

When refusing a request for information in accordance with Section 12 of the Freedom of Information Act 2000 it is good practice to demonstrate, where possible, how we have arrived at the time/cost. It is then usual to also cite Section 16 of the Freedom of Information Act 2000 which is concerned with Local Authorities providing advice and assistance regarding a request, where it is deemed practicable to do so. In such instances a requestor should be informed that while we are unable to respond to the original request within the parameters of Section 12 they are able to refine the terms of the request and resubmit if they wish to do so.

8. Exemptions

A requestor can ask for any information from a public authority. They do not need to explain why and we cannot question their motives. However, this does not mean we are always obliged to provide the information being asked for.

There are two types of exemption:

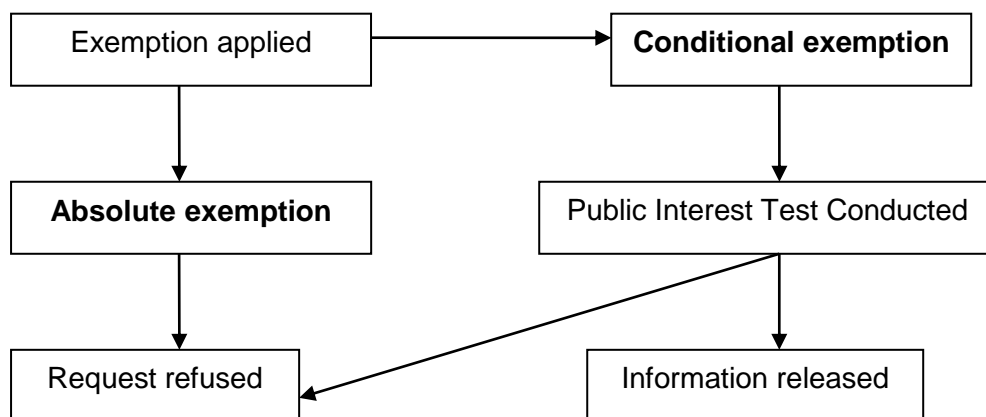
- Absolute – where the City Council only has to demonstrate that the exemption applies. And;
- Qualified – where, although the exemption may well apply, the City Council must weigh up the potential affect of disclosure and, if such disclosure, is in the public interest

When applying a qualified exemption a test of public interest must be carried out. (See section 7 for further information)

The Act lists 23 exemptions under which public authorities can rule when refusing the release of information requested under the Act. They cover all areas of activity which could potentially be affected should certain information be disclosed to the public. For example, if the City Council were to reveal how much we were paying an organisation for a service arranged by tender, when that tender is up for renewal, potential bidders would already be aware of the previous terms and conditions and, as such, the City Council would be at a disadvantage should this information be in the public domain. As a result, if we were to be asked for this information we would rule it exempt from disclosure by virtue of Section 43 of the Freedom of Information Act 2000.

A detailed explanation of each exemption is provided via the link on page 4. However, a quick guide to each section is provided [HERE \(hyperlink to list of exemptions on TDrive\)](#) with a hyperlink to further explanation supplied.

9. Public Interest Test



The flow diagram above shows the two different ways in which absolute and conditional exemptions are applied and where in this process the public interest test fits in.

Once it has been established that a conditional exemption is appropriate a test of public interest must be conducted in order to determine whether or not the public interest is best served via the disclosure or the withholding of the information being requested.

The key term in the process is 'public interest'. It is vital to differentiate between what will interest the public if it is released, and what is in the public interest to be released. With regards to this, information which may interest the public and spark a debate may be deemed as appropriate to be disclosed. However, any decision taken regarding the release of previously exempted information must be made in specific terms of the appropriate exemption and not merely because the information is deemed interesting.

A thorough public interest test must weigh up each side of the argument. For example, if a request is received for information regarding the City Council's pricing structure with a supplier it would be a reasonable assumption that this information would be exempt from disclosure by virtue of Section 43 of the Freedom of Information Act 2000 as to reveal the pricing structure would place the City Council at a commercial disadvantage when/should they come to re-negotiate such terms.

If we were to rule this information as exempt under Section 43 we would then need to carry out a public interest test based examining the impact upon the City Council should the information be released. Various factors would need to be assessed in order to provide a balanced response. The length of the contract, the expiry date, and value of the contract, along with nature of the work should all be primary factors when considering a public interest test of this type. A further consideration would be the impact upon the City Council should the information be released.

For example, if we were to rule that the information requested, while appropriately withheld in accordance with Section 43, could be released as deemed sufficiently in the public's interest to do, we would need to consider future potential partners or bidding organisations as they may well be apprehensive about entering into negotiations and contracts with the City Council if they feel that, if requested, the details of their contracts, terms and conditions and financial detail may eventually be made publically available under the Freedom of Information Act 2000. This, in-turn, could negatively

impact the value the City Council is able to lever with organisations and, as such, not prove to be a sound decision based upon the impact on taxpayers.

This is only one such scenario which needs careful consideration when applying a test of public interest to the application of an exemption.

An absolute exemption does not require the application of a public interest test. However, when applying an absolute exemption we must explain what provision of the Act (exemption) we are applying and why; give details of any internal review (complaints) procedure by way of the inclusion of a Section 17 notice and explain the requester's right to complain to the ICO, including contact details for this.

10. Internal Reviews

The City Council's current Section 17 notice states that:

"The City Council will consider appeals, referrals or complaints in respect of your Freedom of Information Act 2000 and you must submit these in writing to Informationrequests@liverpool.gov.uk within 28 days of receiving your response.

The matter will be dealt with by an officer who was not previously involved with the response and we will look to provide a response within 28 working days"

This forms the basis of our internal review process and explains how requestors can ask for a response to be reconsidered and what the associated timeframes area.

When we receive a request for an internal review we must formally acknowledge receipt and ensure we are clear about the terms upon which the requestor is asking us to reconsider. For example, if we send a response out which, we feel provides all of the information being requested, or we apply an absolute or conditional exemption, we must be clear about what element of the response the requestor is unhappy about. This must be clarified before we can treat the original request as an internal review.

It is worth noting that when applying a conditional exemption, and carrying out a public interest test, a requestor is still within their rights to request an internal review.

Once the internal review has been conducted its outcome must be forwarded to the requestor along with any supporting argument why the response has been upheld, or with any additional information we may not have originally provided. We must then inform the requestor that, for the purposes of this request, the City Council is unable to provide any further information and if they remain unhappy they must contact the ICO who will, in turn, contact the City Council should they deem it appropriate. Their contact details should be provided within the body of the Section 17 notice and again at the conclusion of the internal review response.

11. Service Area Champions

As already stated each service area has an FOI champion who is responsible for the coordination of responses to requests received in their area.

It is the responsibility of the champion to identify the relevant officer(s) when a request is received and make them aware of the terms of the request, the level of detail required and the internal and external response deadlines.

Internal response deadlines are applied in order to ensure the Information team have a suitable period in which to appropriately apply any exemptions if information is being withheld. The external deadline is the final deadline we have by which the response must be provided to the requestor.

12. Monitoring and Review

This document will is available on both the intranet and internet and will be periodically reviewed and, where appropriate and necessary, amended in accordance with any legislative change