



CITY OF  
*Lincoln*  
COUNCIL

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

## Document control

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## Document Amendment history

<b>Revision</b>	<b>Originator of change</b>	<b>Date of change</b>	<b>Change description</b>
V1.1	Becky Scott LDSM	June 2018	Updating policy in view of General Data Protection Registration ("GDPR") and new Data Protection Act 2018 ("the Act"), and amendments to roles

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## **Overview**

City of Lincoln Council (the Council) takes its responsibilities for the management of the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) seriously.

This Policy addresses risks associated with failing to comply with relevant legislation and outlines our approach to responding to requests for information made under the FOIA and the EIR.

It provides a framework to make sure that we fully support and consistently apply the principles of Freedom of Information, and meet the standards set out in the Lord Chancellor's Code of Practice on satisfying public authorities' obligations under the FOIA and the EIR.

The Policy aims to promote greater openness and to build public trust by providing access to information. We believe that access to information about decisions we take can help local people to influence local service provision. This will be balanced against the need to protect the confidentiality of, for instance, personal and commercially sensitive information.

### **1 Purpose**

The purpose for having this Policy is to ensure that the Council foster a culture of openness and honesty in everything we do. By providing ready access to information we aim to build public trust and help local people to influence our decisions and improve our services.

### **2 Scope**

This Policy applies to all employees, elected members, contractors, volunteers, agents and representatives and temporary staff working for the Council.

This Policy does not cover requests for access to personal information. These are exempt from the FOIA under section 40 and are processed in line with the Data Protection Act 2018.

### **3 Policy**

#### **3.1 Responsibilities**

- The Council recognises there is corporate responsibility to give the public a general right of access to all information held by the Council.
- The senior officer with overall responsibility for the Council's compliance with legislation, and therefore this policy, is the Chief Executive. The implementation of, and compliance with, this Policy is delegated to the Senior Information Risk Owner (SIRO).
- Directors are responsible for promoting openness and accountability in their directorates.
- The Data Protection Officer's role is defined by the GDPR and is a statutory role

- The Legal and Democratic Services Manager, as the nominated FOI Officer, is responsible for drawing up guidance on freedom of information and promoting compliance with this policy to allow easy, appropriate and timely retrieval of information.
- The FOI Officer is also responsible for monitoring and reporting to the members of the Information Governance Board (AD Group) and Audit Committee on responses to requests for information.
- The FOI Officer will also provide an advisory service to the remainder of the Council.
- Information Asset Owners must make sure that all staff are aware of the requirements of the legislation and that all new staff receive an induction briefing on the access to information procedures.
- All staff must recognise that all recorded information may be given to the public and that in every case the law requires that there will be full and unconditional disclosure unless one of the legal exemptions/exceptions applies.

### **3.2 Available guidance**

Guidance on the procedures necessary to comply with this Policy is available for Council staff from the FOI Officer and on the Council's Intranet, City People.

### **3.3 The Council's Publication Scheme**

The Council is required by FOIA to maintain a Publication Scheme and to review this regularly. This is available on the Council's website or on request.

The Publication Scheme specifies:

- what information the Council will make routinely available to the public;
- how it will do so; and
- if information will be made available free of charge or on payment of a fee.

### **3.4 Specific requests for information**

Information not already made available in the Council's Publication Scheme is accessible through a specific request for information. In this regard the FOIA establishes two related rights:

- the right to be told whether information exists; and
- the right to receive the information (subject to exemptions).

The EIR provide public access to environmental information held by public authorities.

The Regulations do this in two ways:

- public authorities must make environmental information available proactively;

- members of the public are entitled to request environmental information from public authorities (subject to exceptions).

The rights under FOIA and EIR can be exercised by anyone worldwide. Requests for access to information not listed in the Publication Scheme will be processed through this Policy and the Council's Data Protection Policy.

Requestors will be entitled to all the information unless one of the legal exemptions/ exceptions applies. However, only those specific pieces of information to which the exemption/exception applies will be withheld.

Where the Council has decided that an exemption/exception applies it will, if appropriate, consider the prejudice test and/or the public interest test and may in some circumstances withhold the requested information.

The Council is required by FOIA and EIR to respond to all requests within 20 working days although further reasonable details can be requested to identify and find the information in line with the legislation. If a fee is required, the Council will issue a fees notice and the applicant has 3 months in which to pay before their request is considered as being withdrawn.

### **3.5 Charges**

Unless otherwise specified information made available through the Council's Publication Scheme will be free of charge.

The Council reserves the right to charge a fee for dealing with a specific request for information not listed in the publication scheme in line with the legislation.

### **3.6 Re-use of Public Sector Information**

The Re-use of Public Sector Information Regulations 2015 (RPSI) are based on the principles of fairness and transparency and require that information is available for re-use unless exempt. They also state how the Council should respond to a request for the re-use of information.

RPSI includes all information whatever its content or format, where the Council holds the copyright and either produces, holds or disseminates the information as part of the Council's public task.

RPSI is about permitting the re-use of information not accessing the information. All requests for access to information which are unpublished by the Council will be dealt in line the Council's Data Protection Policy if personal information or this Policy.

The request for re-use must in writing, indicating the requester's name and address for correspondence, specifying the information requested and purpose for which they intend to use the information. The Council must then respond to the request in 20 working days although there are extensions available for volume and complexity in line with the legislation.

The Council will allow published information on the Council's website and Publication Scheme, unless otherwise specified, to be available under the Open Government License. This means that no specific request has to be made for the information and the information can be used freely. This is providing the re-user follows the terms of the License and includes an attribution statement in their products and applications where they include the Council's information.

In respect of unpublished information the Council may, where appropriate, apply charges, fees and restrictions to the information requested, in line with the legislation.

### **3.7 Datasets**

The Protection of Freedoms Act 2012 added to FOIA duties in relation to providing datasets in response to requests and under a Publication Scheme. These provisions are contained in s11, 11A, 11B and 19 of FOIA.

The provisions state that where the Council is providing information which constitutes a dataset and the requester has expressed a preference to receive the information in electronic form, the Council must provide it in a re-usable form so far as is reasonably practicable.

Re-usable means machine readable and based on open standards. Factors that can affect whether it is reasonably practicable are time, cost of conversion, technical issues and resources of the Council.

These provisions do not apply to information subject to EIR although the Council should note regulation 6 of EIR relating to the form or format of environmental information provided.

### **3.8 Complaints**

An individual has the right to complain about the response they have received regarding their request for information. Details of the Council's Complaints Procedure are available for Council staff on request from the FOI Officer, on the Council's Intranet, City People and on the Council's website.

### **3.9 Compliance Measurement**

The Council is required to maintain a public record for monitoring purposes of all FOI and EIR requests.

The Council will monitor and record the level and nature of requests and where requests are refused, the reasons for the refusal, including the exemption/exception used.

The monitoring results will be used by officers to decide what information can be included in the Council's Publication Scheme.

### **3.10 Non-Compliance**

A deliberate or reckless breach of this Policy may result in a member of staff facing disciplinary action. Information Asset Owners must ensure that all staff familiarise themselves with the content of this policy.

The Council encourages the notification of breaches by staff in accordance with the Data Protection Breach Management Policy at the earliest opportunity. Notification will also be taken into account in any resulting disciplinary investigation, where the individual/s concerned have assisted in the containment of the breach.

Employees should also be aware that it is a criminal offence for individuals and/or the Council under s77 of FOIA to deliberately destroy, hide or alter requested information to prevent it being released.

Non-compliance of this Policy may result in an individual who is dissatisfied with the way their request for information has been handled, making a complaint through the Council's Complaints Procedure. If the requester remains dissatisfied then ultimately they have the right to make a report to the ICO.

The ICO is the body responsible for enforcement and arbitration under FOIA and EIR. The ICO through the Information Tribunal process has the authority to use the Courts to enforce its decision notices. Failure to comply with a decision notice is punishable by a fine.

A report to the ICO by a dissatisfied requester could therefore result in Council facing costly enforcement action, in addition to reputational damage.

### **3.11 Policy Review**

This Policy will be reviewed every two years and updated in the interim as required.

## **4.0 Related Standards, Policies, and Processes**

This policy relates to other Council Policies, in particular:

- Information Governance Policy
- The General Data Protection Regulation and Data Protection Policy
- Legal Responsibilities Policy
- Information Sharing Policy
- Data Quality Policy
- Data Protection Breach Management Policy
- Records Management Policy
- Information Security Policy
- Retention and Disposal Policy

## 5.0 Definitions

<ul style="list-style-type: none"><li>- Information</li></ul>	<ul style="list-style-type: none"><li>- <i>“Information is data imbued with meaning and purpose”</i>. Anon</li><li>- Information is something which tells us something and can also be communicated to someone else in a meaningful way. Information is data that is put into context, can be comprehended, understood and shared with other people and / or machines.</li><li>- FOIA and EIR covers any recorded information held by public authorities, regardless of how it was created, received, stored or whether in paper, electronic format, email, microfiche or film.</li></ul>
<ul style="list-style-type: none"><li>- ICO (Information Commissioner’s Office)</li></ul>	<ul style="list-style-type: none"><li>- The UK’s independent authority who upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. <a href="http://www.ico.org.uk">www.ico.org.uk</a></li></ul>
<ul style="list-style-type: none"><li>- Environmental Information</li></ul>	<ul style="list-style-type: none"><li>- Environment information includes for example, information about land development, pollution levels, energy production, and waste management. However the term is very broad and it is important to refer to the definition in regulation 2(1) before making a final decision as to whether the information is environmental.</li></ul>

<ul style="list-style-type: none"> <li>- Personal information/data</li> </ul>	<ul style="list-style-type: none"> <li>- Article 4 of GDPR defines personal data as meaning <i>any information relating to an identified or identifiable natural person ('the Data Subject'). An identifiable natural person is one who can be identified directly or indirectly in particular by reference to an identifier'</i></li> <li>- The GDPR has expanded the definition of personal data to reflect changes in technology and includes online identifies such as an IP address and location data where they directly or indirectly identify individuals. Data which has been Pseudonymised (key coded) can also fall within the definition of personal data depending on how difficult it is to attribute the pseudonym to a particular individual.</li> <li>- Personal information is exempt from FOIA and EIR and a request for such information should be processed in line with the Council's GDPR and Data Protection Policy.</li> </ul>
<ul style="list-style-type: none"> <li>- Information Asset Owner</li> </ul>	<ul style="list-style-type: none"> <li>- The IAO was established by the Security Policy Framework and the role is included in the Information Governance Strategy. Their role is to protect and manage information held in the Council, and ensure that its value to the organisation is recognised. They are also responsible for promoting and fostering a culture of security of data within their teams and wider organisations</li> <li>- Information Asset Owners within the Council are all Service Managers and where appropriate Team Leaders.</li> </ul>

- Absolute Exemptions under FOIA

- Absolute exemptions are where the information does not need to be provided. There is no need to apply any Public Interest Test as harm to the public has already been established.
- Absolute exemptions are included in Part II of FOIA and can be applied where;
  - the information is already reasonably accessible by other means
  - information supplied or relating to security matters (not likely to be used by the Council)
  - court records (legal proceedings)
  - parliamentary privilege (only applies to central government)
  - personal information
  - information provided in confidence (provided from outside of Council and to disclose would lead to breach of confidence actionable in Court)
  - disclosure prohibited by any other legislation

- Qualified Exemptions under FOIA

- These exemptions are not absolute and are subject to the 'Public Interest Test' i.e. is the public interest in withholding the information and therefore applying the exemption greater than the interest in disclosing the information.
- If the answer to the test is yes, then the information need not be provided if one or more of the Qualified Exemptions apply. These are also detailed in Part II of FOIA and can be applied where;
  - the information is intended for future publication
  - national security (unlikely to be used by the Council)
  - investigations and proceedings by public authorities
  - formulation of government policy
  - prejudice to effective conduct of public affairs
  - communications with Her Majesty
  - information that if released would endanger the safety, physical mental health of an individual.
  - environmental information
  - legal professional privilege
- There are further Qualified Exemptions detailed at Part II of FOIA where a further test is to be applied following the Public Interest Test being the 'Prejudice Test' i.e. would the release of the information cause prejudice to individuals or processes.
- If the answer to both tests is yes then the information need not be provided if one or more of the relevant Qualified Exemptions apply. These are also included in Part II of FOIA and can be applied where;
  - information relates to defence (not relevant to Council)
  - would cause prejudice to international relations

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|  | <ul style="list-style-type: none"><li>• would cause prejudice to relations between central government and devolved assemblies</li><li>• would prejudice the economic interest of the UK or part of it and the financial interest of the UK government or any administration within the UK.</li><li>• would prejudice an investigation or legal proceedings</li><li>• a statutory audit of another public authority (only applies up to publication of the final report and not to internal audits)</li><li>• information containing third party personal information covered by the Data Protection Act</li><li>• information constituting a trade secret or disclosure would prejudice the commercial interest of any person, including the Council.</li></ul> |
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<p>Exceptions under EIR</p>	<ul style="list-style-type: none"> <li>- These are included in Regulations 12 and 13 of EIR. They are all subject to the 'Public Interest Test'. These include; <ul style="list-style-type: none"> <li>• not holding the information at the time of the request</li> <li>• request is manifestly unreasonable</li> <li>• request too general and have provided advice already</li> <li>• information is in draft or unfinished</li> <li>• information is an internal communication</li> </ul> </li> <li>- To rely on the following exceptions the disclosure would need to adversely affect those listed below, although these particular exceptions cannot be used if the information is on emissions. <ul style="list-style-type: none"> <li>• international relations, defence, national security and public safety</li> <li>• course of justice, fair trial, public authority to conduct criminal or disciplinary enquiry</li> <li>• intellectual property rights</li> <li>• commercial confidentiality provided by law</li> <li>• interests of a person who provided the information where not obliged to provide</li> <li>• protection of environment</li> <li>• personal data.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>- Datasets</li> </ul>	<ul style="list-style-type: none"> <li>- A dataset is collection of factual, raw data (neither the product of analysis or interpretation, nor an official statistic which has not been materially altered) that the Council gather as part of providing services and delivering functions as a public authority, and that the Council hold in electronic form.</li> </ul>