

Freedom of Information and Environment Information Regulations Policy

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1. Introduction

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) are intended to promote a culture of openness and accountability amongst public authorities by providing rights of access to the information held by them.

Robust FOIA and EIR practices will not only enable the Council to meet its obligations, but will also aid the Council in understanding what the public is interested in, helping the Council to shape service delivery.

This policy is part of Bury Council's Information Governance Framework and should be read in conjunction with the other policies and procedures within the framework.

Scope

This policy covers both the FOIA and the EIR and all incoming requests for general information under both headings, will be called 'Information Requests' unless a further distinction is necessary. Information requests may also be received regarding personal information in which case these requests will be dealt with by a separate policy covering Data Protection and handling Subject Access Requests details of which can be found on the Council's Intranet Data Protection web pages.

This policy is a statement of what the Council intends to do to ensure compliance with the legislation. It is not a statement of how compliance will be achieved; this will be a matter of operational procedures.

This policy applies to all information the Council processes regardless of how it was created or received. It applies regardless of the way information is stored, or whether the information be in paper or electronic format. The legislation is fully retrospective.

Freedom of Information Act (FOIA)

The Freedom of Information Act 2000 provides public access to information held by public authorities:

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

It covers all recorded information held by the Council. 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.

Environment Information Regulation (EIR)

The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities:

- public authorities must make environmental information available proactively
- members of the public are entitled to request environmental information from public authorities.

It covers any recorded information that the Council hold that falls within the definition of 'environmental information'. It is not limited to official documents or information and it can cover, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings.

Main principles of the FOIA and EIR?

The main principle behind the FOIA and the EIR legislation is that people have a right to know about the activities of public authorities including those that relate to or affect the environment, unless there is a good reason for them not to.

This means that:

- everybody has a right to access official and environmental information. Information should only be kept private when there is a good reason to do so
- an applicant (requester) does not need to give a reason for wanting the information
- all requests for information must be treated equally, except under some circumstances relating to vexatious requests and personal data
- the Council should only disclose information under the Act and Regulations if they would disclose it to anyone else who asked

The FOIA and the EIR do not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a data protection subject access request.

What constitutes an information request?

The Council will comply with all requests for information in accordance with the appropriate legislation and will endeavour to advise and assist as far as reasonably possible members of the public in exercising their 'right to know' by ensuring that these are understood by its employees and internal procedures are in place to facilitate access.

The FOIA and the EIR allow anyone to request any information from the Council regardless of their age, nationality, location, motive or history, subject to a limited number of exemptions and exceptions laid down by law.

Under the FOIA requests need to;

- Be written (e-mail, letter or fax) Be legible
- Contain the name of the applicant
- Contain an address or e-mail address for the reply Describe the information that is sought.

Requests under the EIR do not need to be made in writing; however a written record should be made of any verbal requests that are received.

Applicants will not be required to explain the purpose of their request, although in the course of clarifying requests and ascertaining exactly what information is being sought it may be necessary to seek further information from them. Information requests do not need to mention any legislation to qualify as an official request. Information requests can be received by any employee of the Council but must be passed onto the Policy and Compliance team in the first instance, email address FOI@bury.gov.uk

If the information being requested is not held or does not exist in a recorded format i.e. held electronically or as a paper record, a 'refusal notice' should be issued. You should not attempt to create / generate new recorded information to respond to an FOI Request. If you hold part of the information being requested you should release only what you have as a record. A suitable letter template is available within the FOI Case Management system to provide you with the correct wording when issuing a refusal notice, or part refusal notice. It is very important that you seek advice from the Policy and Compliance Team in these instances.

If the information being requested is going to be published at a later date, the person making the request needs to be informed of the timeframe and a public interest test would need to be performed to see if the timeframe is acceptable.

If the information being requested is already published through the Council's online Publication Scheme i.e. it is already available and accessible then the person making the request should be directed to where they can obtain the information.

A request for information must be about factual information that is held. Any FOIA requests that come through asking for an opinion is not to be treated as an FOIA request but as a general enquiry

Publication Scheme

The council has a publication scheme that lists the categories of information it regularly publishes. This is a statutory requirement. This helps the council to organise its information, so that the public can have easy access. Also, information can be efficiently organised and developed within the council.

There are seven classes of information in The Publication Scheme. These are:

1. Who we are and what we do including organisational information, structures, locations and contacts constitutional and legal governance.
2. What we spend and how we spend it including financial information about projected and actual income and expenditure, procurement, contracts and contracts
3. What our priorities are and how we are doing including strategies and plans, performance indicators, assessments, inspections and reviews.
4. How we make decisions including decision-making processes and records of decisions,
5. Our policies and procedures for delivering our functions and responsibilities
6. Lists and registers required by law and relating to the functions of the authority
7. Services provided by the council including advice and guidance, booklets, leaflets

With a few exceptions, the contents of our publication scheme can be downloaded from the council's website at www.bury.gov.uk. These are also available in hard copy form from the council's offices. The scheme is also available on request in large print or on audio tape. If the requester's first language is not English, the council can arrange for translators to provide the information in a range of languages.

All publications on the council's website may be freely downloaded unless otherwise indicated. Most printed publications are available free of charge, but a charge may be made at rates decided from time to time for others. Requesters should contact the council for further information.

The Information Commissioner requires that we continually develop our publication scheme by adding information and expanding the categories.

2. Policy

Receiving an information request

When an information request is received the following must be considered:

- If the information to be disclosed (or the fact that information is to be withheld) is contentious or in any other way likely to be newsworthy, the lead FOI Champion for that department must be consulted, so they can prepare for any follow up queries and/or assist in the production of an appropriate response to the request. In all cases the departmental Executive Director must be informed and approval given before any release.
- If the request involves elected members, the request must be raised with the FOI Champion for Democratic Services who will lead on the response.
- If the request involves potential legal repercussions, the request must be raised with the Team Leader of Legal Services who will lead on the response.
- If the request involves staff remuneration, the request must be raised with the FOI Champion for Corporate HR who will lead on the response.
- Ascertain which legislation the request falls under. To ensure that it is treated appropriately. If the request falls under both FOI and EIR, the respective parts will be dealt with under the relevant legislation. If the request relates to personal data, it must be processed in accordance with the Data Protection Act.

All FOIA and EIR requests need to be logged onto the FOI Case Management System unless the request can be solved directly with the customer in line with existing customer service standards and no exemptions or exceptions apply. The request should then be actively managed throughout its lifecycle.

Roles and Responsibilities

Policy Compliance Team

The Policy Compliance team are responsible for

- Allocating information requests to the relevant FOI Champion

- Acknowledging all information requests
- Keeping the information request process under review
- Contacting requestors for clarity on FOI's
- Reviewing responses to information requests
- Collating responses when the request is across several departments

FOI Champion

There are FOI Champions in each department who are responsible for:

- Gathering information and producing a response
- Responding to the information request within the timescales set out in this policy

FOI Lead

There are FOI Leads in each department who are responsible for:

- Approving information request responses

Timescales for responses

The Council is committed to dealing with requests for information promptly and no later than the statutory guideline of 20 working days of receipt. The Council would not expect every application for information to take 20 working days and will endeavour, where possible, to provide the requested information at the earliest opportunity from the date of the request.

Where a delay in reaching a decision beyond this period is expected to occur due to the consideration of the public interest test, (see paragraph 14 below) the Council must give a realistic and reasonable estimate of when a decision will be reached. This revised estimate must be complied with unless there is a valid reason for not doing so. If this estimate is exceeded, the applicant should receive an apology and an explanation for the delay. It is imperative that the applicant is informed if the estimate is proving unrealistic. Under the EIR no extension can be applied.

Clarifying a request

If the request is unclear, the Council has a duty to clarify the request with the

requestor. However, the requestor is not obliged to reveal their aims or motives for making the request.

Where the Council has offered all the advice and assistance that it deems to be reasonable and the applicant still fails to describe the information requested in a way which enables the Council to identify and locate it, no further attempts will be made to seek clarification.

The Council will, however, provide whatever information it has identified and located that it believes to be relevant to the application, subject to any exemptions, exceptions and, where relevant, the public interest test.

Transferring requests to other authorities / agencies

Information requests can only be transferred where the Council receives a request for information which it does not hold, but which is held by another public authority.

When transferring a request the applicant should be given the details of who holds the information. The Council will also offer to transfer the request on the applicant's behalf. In this instance the Council needs to consult with the second public authority to ensure that they hold the information. Requests should not be transferred until this has been ascertained. There is always a need to consider if the applicant is likely to have any grounds for objecting to the transfer.

If the Council can answer part of the request, it will endeavour to do so, as well as transferring the remainder of the request as soon as is reasonably possible.

Fees and charges

The Council aims to provide as much information as possible free of charge on the website for customers to download. Therefore the Council will not charge for information requests unless there are exceptional circumstances where the information cannot be gathered through normal working procedures.

In such circumstances the decision to charge needs to be authorised by the

Director of Law and Governance following advice from Legal Services. Under the FOIA there is an exemption under which the Council does not have to comply with a request if the costs would exceed £450, which in practice means that it would take more than 18 hours to comply with. In this instance, the Council still has a duty to confirm or deny whether it holds the information, unless this alone would exceed the limit.

There is a presumption in all cases where the 18 hours of staff time would be exceeded that the Council will offer advice and assistance to help the customer refine or narrow down their requests.

Third party consultation

The Council understands that unless a valid exemption is applicable it will be obliged to disclose the requested information about a company, public authorities or individual in response to a legitimate information request.

In general, it will be necessary and courteous for the request owner to consult third parties about the prospect of disclosing information regarding them. Their views will be important if it is necessary to assess the balance of public interest in the disclosure of information.

On all occasions where both parties fail to agree on disclosure the final decision will be made by the Data Protection Officer.

Tenders and Contracts

Unless an exemption or exception applies the Council will be obliged to disclose information relating to pre-tender and tendering process.

The disclosure of information relating to pre-tender and tendering processes is particularly time sensitive, for example potentially prejudicing an ongoing tendering exercise, and so advice must be sought from Legal Services when judging what information should be disclosed, and when.

The Council will not include within its standard terms and conditions contractual terms that attempt to restrict the disclosure of information held by the Council

beyond the restrictions permitted by the legislation.

Unless an exemption or exception applies in relation to any particular part of a contract, the Council will be obliged to disclose that information in response to an Information Request regardless of any terms of contract.

Where it is unavoidable to include non-disclosure provisions in a contract, the Council will agree a timeframe with the contractor for the period that the information will be held in confidence.

However, even in this instance the restrictions on disclosure may be overridden by the Council's obligations under the legislation, for example, where the public interest outweighs the confidentiality of the information.

Redaction

The legislation gives an entitlement to information rather than documents. Therefore if part of a document is exempt, the request owner needs to redact (edit the requested information to remove exempt material) the appropriate sections and release the remainder. A note should be kept on the FOI Case Management System as to the exemption / exceptions that apply. Copies of both the redacted and un-redacted response must be kept on the FOI Case Management System, unless the un-redacted copy is particularly sensitive. In this case a note of how to gain access to the un-redacted copy must be kept in case there is a request for an internal review.

If redaction would make a document incomprehensible or if the relevant information is contained within a small section of a document or dispersed throughout several documents, assemble it into a readable format such as a digest.

When redacting information seek advice from Legal Services if required.

Staff should also take note of the Pseudonymisation and Anonymisation Policy.

Exemptions – Absolute and Qualified

Exemptions under FOIA comprise of two types, Absolute and Qualified.

Absolute exemptions are exemptions that can be applied that do not require a public interest test to determine whether the information should be released. The release of information covered by absolute exemptions would have the potential to cause serious damage.

Qualified exemptions are exemptions that will require a public interest test which means you must consider the public interest arguments before deciding whether to disclose the information. The test to be applied is that in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing it.

The Council will not withhold information, unless

- the information sought is not held or
- the request is considered to be vexatious or manifestly unreasonable or
- The request is identical or substantially similar to another request that the Council has received in the previous six months. In this instance the Council should still provide duplicate information in certain circumstances, for example if the original information has been lost or disposed of in error. An absolute exemption applies or
- A qualified exemption applies and the public interest in maintaining the exemption outweighs the public interest in disclosing it or

Under EIR most exceptions are subject to the public interest test as mentioned earlier to determine whether it is or it is not in the public interest to disclose. You must ensure that you provide a full explanation within your response letter covering the outcome of the public interest test.

FOI Champion must seek advice from the Data Protection Officer or the SIRO if applying an Absolute or Qualified Exemption to ensure all relevant information in accordance with the FOIA has been included.

The Public Interest Test

The public interest test is undertaken to determine whether it is within the public interest to release the information being requested. Guidance is available on the Council's Intranet FOIA web pages to help you identify whether the information being requested would come under an absolute exemption or would be considered under a qualified exemption. An absolute exemption applies to specific types of information held that would cause serious harm if it was to be released, or other things such as personal or confidential information. No public interest test is needed. A qualified exemption may be applied to withhold information but the public interest test must be undertaken to determine this.

There is no fixed definition of 'public interest' and this assessment will be a matter of judgement on a case by case basis. The test to be applied is that in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing it.

This judgement should be made by employees who are familiar with the subject concerned, in conjunction with the relevant FOI Champion.

Public interest tests regarding contentious or potentially newsworthy information requests should be signed off by the relevant Executive Director or Assistant Director in consultation with the DPO or the SIRO.

If consideration of the public interest test is likely to take the request over the 20 day limit, the requester needs to be informed immediately of the extension, and the circumstances that have led to the extension being required. Under the EIR no extension can be applied.

Staff should contact the policy and compliance team for guidance when applying the public interest test.

Vexatious or repeated requests

The FOIA states that there is no obligation to comply with vexatious or repeated requests. This means that if a request is manifestly unreasonable and would require a substantial diversion of resources or otherwise undermine the work of the council. This argument for not complying with a request need not only be used as a last resort, but should be used in cases where the request:

- Is disproportionate.
- Is burdensome, or the gathering of the data is likely to cause unjustified disruption.
- Has been received from a requester with a personal grudge against the council or a member or employee of the council, and there are reasonable grounds for believing the request may have been motivated by that grudge.
- Is persistent for information which has already been provided, or where it has already been explained that it is not possible to provide the requested information.
- Is likely to harm the public interest if the information is provided.

In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the council and weighing this against any evidence about the purpose and value of the request.

Following consultation within the department and with the policy and compliance team, the requester must be told that the council cannot provide the information (unless it has already given the same individual a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one).

If the cost of compliance is the only or main issue, it should first be considered whether section 12 of the FOI Act applies (there is no obligation to comply where the cost of finding and retrieving the information exceeds the appropriate limit). If another exemption is also being used, the reasons should be explained. If this exemption is non-absolute, information about how the public interest test has been applied and the factors considered must be communicated.

The definition of vexatious differs from the definition in the council's Unreasonably Persistent Complainants and/or Unreasonable Complainant Behaviour Procedure, which is based on guidance by the Local Government Ombudsman. Therefore, a course of conduct by a requester could meet one standard but not the other. However, in most serious cases a course of conduct could meet the definitions laid down by both regimes. For freedom of information requests, the vexatious and repeated conduct must relate to the requester's making of information requests itself and does not focus too much on the general conduct or behaviour of the requester.

The EIR rules have a similar provision called manifestly unreasonable requests. Lead officers should seek legal advice if any request appears to fall within this definition.

Where a request for information has previously been answered, the council is not obliged to comply with a subsequent identical or substantially similar request from the same requester, unless a reasonable interval has elapsed since the previous request.

Where a request has been classed as vexatious or repeated, it should be ensured that the salient details are recorded appropriately on the Respond database.

Note that while requests can be deemed vexatious, applicants cannot. Therefore if one requester makes a request which is refused on the grounds it is vexatious, and the same requester subsequently makes another request, it cannot be dismissed out of hand and must be considered as if it was a new request from an unknown requester – though this does not necessarily preclude the possibility that the new request in and of itself might also be deemed vexatious.

Section 17(6) of the FOI Act states there is no need to issue a new refusal notice if the authority has already given one to the same person for a previous repeated request and it would be unreasonable to issue another one.

Information that has already been made public

If the information requested is already in the public domain, for instance through the Publication Scheme, the enquiry can be treated as exempt under section 22 of the Freedom of Information Act, namely, "information accessible through other means." However, staff must direct the enquirer to the information and describe how to gain access. This could be done verbally or in writing, but this must be recorded internally as evidence of compliance with the Act.

Appeals and Complaints

Where an applicant is dissatisfied with a decision they are entitled to an independent review of the decision, through the Council's FOIA and EIR internal review procedure.

A review can be made with regards to the following:

- The Council not following its publication scheme
- Requests that have not (in the applicant's opinion) been handled properly
- Where the requestor is dissatisfied with the outcome of the consideration of the request.
- Where the issue is such that it cannot be resolved informally in discussion with the officer dealing with the request.

All requests for internal review will be logged on the FOI Case Management System and the Reviewing Officers notified. Reviewing Officers are: the Council's Data Protection Officer and the SIRO.

Reviews relating to requests made under the FOIA will be dealt with within 20 working days of a written complaint being received by the Council.

Reviews relating to requests made under the EIR will be dealt with within 40 working days of a written complaint being received by the Council.

After the Council's internal review procedure has been exhausted, further reviews about the same information request must be directed to the Information Commissioner's Office for adjudication.

3. Compliance and Monitoring

Training

Bury Council will provide relevant training both online and face to face to ensure that staff understand the legislation and its application to their role.

All staff must complete mandatory data protection training every year and undertake any further training provided by Bury Council to enable them to perform their duties appropriately specifically those staff responding to complaints, Subject Access Requests and Freedom of Information requests.

Completion of training will be monitored by the Policy and Compliance Team and all employees must have regard to the Data Protection Legislation and this policy when collecting, accessing, using, disclosing or destroying personal information. Failure to do so may result in disciplinary action and legal prosecution.

Reporting

The Policy and Compliance team will provide regular reports on the performance of FOIA and EIR to:

- The lead member
- Director of Law and Governance
- Executive team
- Strategic Leadership team

These reports will include, but not be limited to;

- Total number of requests received during the period
- Date received
- Days left to respond
- Current Status
- Type of information requested
- Lead FOI Champion for each request

All FOI Leads and Champions should monitor incoming request types and this information should be used to guide online content and shape future service

delivery. Where strong trends in requests emerge, FOI Leads must evaluate if the information they routinely publish meets the requirements of its audience, and work with their respective FOI Champions to develop new content accordingly.

Policy review

This policy will be formally reviewed regularly by the Policy and Compliance Team to ensure it is updated in line with any change in legislation.

Bury Council will continue to review the effectiveness of this policy to ensure that it is achieving its intended purpose.

Any breaches of the principles in this policy must be reported to the information governance team immediately by emailing ig@bury.gov.uk

Where staff fail to follow and comply with this policy it may result in disciplinary action via the HR channels.

4. Policy exemption

Occasionally there may be situations where exceptions to this policy are required, as full adherence may not be practical, could delay business critical initiatives or could increase costs.

Where the significance and purpose of the data does not justify a particular aspect (for example the cost of building an internal system validation check outweighs the benefit of the additional data accuracy) then this should be risk assessed on a case-by-case basis. Where there are justifiable reasons, the Information Governance Manager and Data Protection Officer must be consulted immediately using ig@bury.gov.uk.