

# Freedom of Information Policy & Guidelines

July 2015

## Summary Sheet

### Document Information

<b>Protective marking</b> (Unclassified / Restricted Circulation / Confidential)	Unclassified
<b>Ref</b>	IG Policy 1.1
<b>Document purpose</b>	Policy information on handling Freedom of Information Requests
<b>Document status</b> (Draft / Active)	Active
<b>Partners</b> (If applicable)	N/A
<b>Date document came into force</b>	2005
<b>Date of next review</b>	Twelve month basis as part of Annual Information Governance statement taken to Information Management Group
<b>Owner</b> (Service Area)	Sefton Council – Business Information Performance Team
<b>Location of original</b> (Owner job title / contact details)	Data Protection Officer – as above.
<b>Authorised by</b> (Committee/Cabinet)	Information Management Group November 2014 Audit & Governance Committee June 2015

### Document History

Version	Date	Author	Amendments / Comments
1.0	2005	Richard Roscoe	Initial Draft
2.0	17 July 2015	Ben Heal	Document updated

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# 1 Background and Policy

## 1.1 Background

The Freedom of Information Act 2000 ('the Act') comes into force from January 2005. By granting a general right of access to records held by public Authorities it encourages an attitude of openness within those Authorities. It will enable the public to scrutinise their decisions and working practises. The key features of the Act, which comes into force in January 2005, are:

- Every Council employee has a duty to provide advice and assistance to requesters requesting information.
- The public has a general right of access to all recorded information held by the Council and some Independent Contractors ('the Council'). Subject to exemptions set out in the Act a requester has the right to know whether a record exists, and the right to a copy of that record supplied in a format of their choice.
- Every Council must adopt and maintain a Publication Scheme, listing what kinds of records it chooses to publish, how to obtain them, and whether there is a charge involved.
- The Information Commissioner's Office will oversee the implementation and compliance with this Act and the Data Protection Act 1998.

## 1.2 Scope of this policy

This policy relates to all recorded information held by the Council in any format.

## 1.3 Policy statement

This Council supports the principle that openness should be the norm in public life. The Council will respect the new right to access and will ensure that the exemptions outlined in the Freedom of Information Act are applied appropriately and consistently.

This Council will continue to respect the individual's right to privacy and will take steps to ensure that personal information continues to be protected, and is accessed only under the terms of the Data Protection Act.

This Council will handle requests for Environmental Information under the terms of the Environmental Information Act.

This Council will ensure that all departments, employees and contractual staff are made aware of their responsibilities and are provided with the resources, guidelines and expert advice necessary to maintain compliance with the Act in their area.

It is recognised that effective Information Management is essential in cost-effectively handling requests for information and for the long term stability and security of the

Council and this Council will put in place Information Management Steering Team and publish a Policy on Information Management.

## **2 What Sefton staff need to know**

### **2.1 The public right of access to records**

Each department of the Sefton Council must use these guidelines and contacts to ensure that, after January 1st 2005, any request for information is handled in a manner compliant with the Act. In particular the requester will be given the right to:

- Be informed in writing whether the Council holds the information requested, this is the duty to confirm or deny, and
- If the Council holds that information, have it communicated to them, where possible in a format of their choice.

The Act requires that requests are responded to within 20 working days. If the Council decides to make use of a condition or exemption to withhold information, the requester will be informed within 20 working days.

### **2.2 Advice and Assistance**

Under the Act every employee has a duty to provide advice and assistance to requesters and would-be requesters. Give guidance on how to access the information from the Council under the Publication Scheme. They must also:

- Inform the requester of the progress of their request
- Explain the basis for any charges or fees levied or exemptions applied
- Suggest routes through which the requester may wish to access information, including directing them to other public authorities
- Identify independent sources of help for requesters
- Direct requesters to the complaints procedure and/or the Office of the Information Commissioner if they are dissatisfied with any outcome.

### **2.3 The Sefton Council Publication Scheme**

Sefton Council has set up a Publication Scheme, clearly setting out the categories of information that each Service Area has undertaken to publish.

By listing a particular information service in our Publication Scheme, a Service Area can avoid all the constraints of the Act (delivery within 20 days, inability to charge for processing). Each Service Area is responsible for ensuring that their items in the Publication Scheme are kept up to date. It will also be available on the Sefton Council Website.

## **2.4 Records Management**

This Council recognises that the key to efficient and cost-effective handling of these new obligations is effective records management. To this end it has implemented a Records Management Policy based upon government approved Retention and Disposal Guidelines. Each department is responsible for ensuring that any documents that have exceeded their retention date will be disposed of securely.

## **2.5 Roles and Responsibilities**

It is essential that all Sefton Staff are aware of their responsibilities under the Act.

### **2.5.1 Corporate versus Departmental responsibilities**

As individual departments within Sefton Council have widely differing business processes, structures and underlying information management mechanisms it is not possible for Corporate to tell each department in detail how to handle the constraints of the Act after January 2005.

The Corporate Project Team have put in place departmental information management specialists, determined the key risks and provided practical guidance and generic instructions on the easiest and most cost-effective approach to handling information requests under the Act.

It is the responsibility of the Heads of Service to ensure that their departments adapt their working practices where necessary to comply with the Act.

### **2.5.2 Chief Executive**

The Chief Executive will:

- Champion good information management at the top level,
- Provide support and approval for the Freedom of Information Policy and any related initiatives across the Council.
- Ensure that Sefton Council comply with the Act.

### **2.5.3 Sefton Council's Monitoring Officer**

The Monitoring Officer will be responsible for making final decisions on the application of certain exemptions and the handling of certain FOI related complaints.

### **2.5.4 Heads of Service**

Heads of Service will be responsible for:

- Approving any application of Exemptions or the Public Interest Test in their Service Area.
- Ensuring that their Service Area complies with the Act,

- Communicating operational issues back to their strategic directors,
- Ensuring Records management in their Service Area is compliant with current
- Council Records Management Policy.

### **2.5.5 Departmental managers**

Departmental managers are responsible for:

- Ensuring that their departmental processes comply with the Act.
- Approving their departmental amendments to the Sefton Council Publication Scheme.

### **2.5.6 Information Management Group**

This group are responsible for steering the Council's information management strategy.

### **2.5.7 Sefton Employees**

Individual employees will be responsible for ensuring that:

- They provide advice and assistance to Requesters and would-be Requesters.
- They handle all requests in compliance with their departmental policy.
- Any non-compliance is reported immediately to their manager.

Individual employees should be aware that they may be personally held legally liable for if they themselves knowingly alter or destroy records in any way to prevent disclosure in contravention of the Act. (Section 77 FOIA).

### **2.5.8 Information Asset Owners**

Information Asset Owners (IAOs) will provide first line advice on information management in their department. These are not necessarily information management experts. Their role is to provide staff with basic advice and to assess each case for risks, and to refer them to their management.

### **2.5.9 Legal Department**

The Legal Department will provide advice on the application of exemptions and all legal issues relating to the handling of requests for information, the general practicalities of handling information requests, for monitoring legal aspects of the Act and providing updates where necessary.

### **2.5.10 Data Protection Officer**

Will provide staff with advice on the identification and handling of requests for information, and the general practicalities of handling information requests.

## **3 Practical Guidelines for Departments**

### **3.1 What is a Freedom of Information Request?**

The Act covers any written request for information. It can be addressed to anyone in the Council. It must give the name of the requester, an address for correspondence and a description of the information requested. This will include information transmitted by electronic means (e-mail or fax) provided it is legible and capable of subsequent reference. There is no need for the request to refer to the Freedom of Information Act in any way.

However, for practical purposes we will only be tracking those requests that are not covered by the department's normal working processes.

### **3.2 What are the risks for my department?**

#### **3.2.1 Your normal service provision may be impacted**

Follow the guidelines provided to eliminate all unnecessary information legally and properly from your department. Make sure all your normally information services (leaflets, searches, database checks etc) are listed in the Publication Scheme. Classify and label your documents beforehand. Make sure all your staff understand the 20 day requirement for anything not in the Publication scheme, even if they are passing on the request to another person or department.

Talk to the requester and narrow down or focus the request if possible. Remember that the clock stops for charges and is restarted for clarification of requests where clarification is reasonably necessary.

#### **3.2.2 You may accidentally release personal information**

Make sure your staff know how to recognise personal information in their department and handle it properly. Label your existing documents if possible.

#### **3.2.3 You may try to withhold information that is not legally exempt**

We cannot withhold information unless we have a specific exemption under the Act. Any attempt to withhold information because the public does not 'need to know' could now lead to legal action and major embarrassment for the Council and must now be approved by a Service director.

#### **3.2.4 You may be forced to release embarrassing information**

This is highly likely and if you suspect this is about to happen then it should be reported to your manager who may choose to refer it up to the Chief Executive, the Legal Department or the Communications Department.

### **3.3 Good record management makes responding easier**

If you do not hold the information requested then you cannot be required to provide it to a requester. It makes sense therefore to get rid of any information that the Council and your department no longer need and are no longer legally required to retain. You must however inform the requester that you do not hold it and why it was disposed of.

Sefton Council Cabinet has now adopted a set of guidelines telling you how long you are obliged to keep the documents in your department. They are called the Guidelines for Retention and Disposal and can be accessed from the FOI Index on the front page of the Sefton Intranet. By identifying information you no longer need, and disposing of it legally and properly you can reduce the volume of information you have to search and collate.

Also on the Intranet are guidelines on clearing out your information storage areas and making an inventory of your information using the Guidelines for Retention and Disposal.

**Caution: Never delete documents that you are legally obliged to retain.**

### **3.4 Requests for Publication Scheme items are not covered by the Act**

If any information (leaflets, documents, Sefton related websites etc) normally handed out by your department are listed in the Sefton Council Publication Scheme, they are then classed as 'available reasonably elsewhere' and are automatically exempt from any of the conditions of the Act. They do not have to be provided in less than 20 days and they can be chargeable.

If possible put the actual document on the website itself. Requesters can then access the document without having to call your department.

You can list personal or environmental information in the Publication Scheme too but you must specify in the description that this is not available under FOI.

**Caution: If you do list an item here then you must guarantee that it can be provided to the public within a reasonable time through the contact provided, for the cost specified and in the format specified.**

#### **3.4.1 Updating the Publication Scheme**

As you find out what information the public are interested in then publish it on the Publication Scheme. Changes or additions to the publication scheme must be approved by your Departmental Manager and can be added by your departmental web update specialist or by the Data Protection Officer on the form provided in the Appendix.

### **3.4.2 Publication Scheme Categories and Classes**

Publication scheme classes of information cannot be altered or removed without the approval of the Information Commissioner. Requests for changes should be referred to the Data Protection Officer for consideration. The Sefton Council Publication Scheme categories and classes are contained in the scheme at [www.sefton.gov.uk](http://www.sefton.gov.uk).

### **3.5 Requests for personal information are not covered by the Act**

Requests for personal information must be handled under the Data Protection Act and must not be handled as FOI requests. The general public has no right to see personal information unless they are the Data Subject. Such requests must be handled using your departments existing Data Protection processes.

Personal information is: information which relates to a living identifiable individual. The law is there to protect an individual's privacy.

**Caution: Under FOI, information about an individual acting in their professional capacity may not be considered personal or private (e.g. Manager's expenses).**

### **3.6 Requests for Environmental Information are not covered by the Act**

Requests for environmental information must be handled under the Environmental Information Regulations. The requirements are very similar to FOIA but they also cover spoken requests for information.

### **3.7 Any other requests must be tracked and handled under the Act**

#### **3.7.1 Who owns and tracks an FOI request?**

Every department must decide who owns requests. As we are obliged to handle them within a set time, the initial recipient is the owner of the request must quickly transfer it to a more suitable person or department. The final owner or 'key responder' of the request must track it to completion and ensure compliance.

A simple letter management system is being installed so departments can log FOI requests received. This will be an extension of the software used by the Customer Service Desk. In the meantime a form is provided in the appendix.

### **3.7.2 How can we track FOI requests?**

A Corporate letter tracking system is being implemented. It will allow all departments to register their FOI requests simply. Unfortunately this will not be properly implemented until late 2015 as it needs to be tuned to the actual workload we experience in the New Year. Users will be allocated and trained to suit the way each department implements FOI.

In the meantime each request should be tracked by the owner on the paper form available in the FOI Guidelines page on the Sefton Intranet. Some areas have their own local tracking systems in place and they do not need to adopt the paper tracking form.

### **3.7.3 What if my department doesn't have enough resources?**

Lack of resources does not excuse a department from its obligations and if you suspect that you may fail to comply with the Act this must be raised with your manager immediately.

No extra resources have been provided for searching and collating FOI requests, and departments will be responsible for ensuring their information management processes are adequate for the task. Difficult cases will be referred to a Head of Service, and Specialist advice will be available from the Legal Department and the Data Protection Officer.

### **3.7.4 What is a 'working day'?**

A working day means Monday to Friday, 9-5, excluding Bank Holidays. This definition applies even to those whose departments are working 24 hour shift patterns or 7 day weeks.

### **3.7.5 When does the 20 working day clock start?**

The 20 day clock potentially starts as soon as a letter or e-mail arrives in the Authority. Do not leave letters standing in in-trays or inboxes. The clock starts ticking as soon as we receive the request into the organisation, not when you finally open it.

Any letter must be date stamped with the date of receipt into the Council. In a similar way an e-mail will automatically have a delivery date.

It is recommended that when going on holiday, the Out of Office message in your e-mail should give the name of an alternate person to whom the request should be sent.

### **3.7.6 Can I stop the clock to clarify the FOI request?**

Yes, if you need more information to identify and locate the information requested, the clock can be stopped until a full final request has been agreed. You must make all reasonable efforts to contact the requester for the additional information. Once the updated request is received the clock can be restarted at zero days.

It is always recommended that you contact the requester to help clarify the request and minimise the impact on your department, but you cannot restart the clock for this.

### **3.7.7 What can my department charge for FOI requests?**

Costs for processing FOI requests fall into two categories.

- Disbursements (Photocopying, materials etc) which can be charged for.
- Searching and Processing costs which cannot be charged for.

You can charge a reasonable fee for disbursements. Departments that already have a standard charge for such things should use this. Departments that do not should contact Finance for assistance. There is currently no standard charge for disbursements across Sefton Council.

You cannot charge for the searching and processing associated with an FOI request unless the costs exceed £450 (based upon labour at £25/hour). Estimated costs for the job should be recorded on the tracking form as some costs may be reclaimable from the Government at a later date.

If searching and processing costs do exceed £450, then the key responder can either:

- Contact the requester and reduce the scope of the request,
- Refuse to supply the information,
- Charge the requester the full cost.

### **3.7.8 Can I wait for fees before I start the work?**

Yes. You do not have to start the work until the fees have been paid.

You can stop the clock once you have asked the requester for a fee, and restart it once the money has been collected. After 30 days, if no fee is forthcoming, the request can be considered withdrawn. Although there is no legal requirement, the requester should be notified of your intentions if possible.

### **3.7.9 Can I delay a response?**

In rare, difficult cases where the Public Interest has to be considered, you may be forced to overrun the 20 day limit. You must inform the requester of this delay and give a reasonable estimate of the date by which a decision is expected.

### **3.7.10 When can I refuse to release information (The Exemptions)?**

Any refusal to supply information requested in an FOI request must be approved by the Head of Service for your area. Before a final decision is taken, they must also make a judgement on whether the Public Interest Test should be applied.

A request will be refused if any of the following conditions apply:

- The information requested is exempt under the Act (see exemptions below).
- A fees notice or charges has not been paid within the 3 months' time period.
- The cost of compliance exceeds £450 (based on £25/hr labour costs).
- The request can be demonstrated to be vexatious or repeated.

The requester must be informed in writing of the decision to withhold within 20 working days of the request and will be told the following:

- The exemption(s) that apply.
- The justification for the use of the exemption(s).
- Details of the complaints procedure if they are not satisfied with the outcome.

If the exemption is absolute, then the Council may be exempt from the duty to confirm or deny the existence of the record. In these circumstances, the requester will be informed within 20 working days of the following:

- The fact that the Council is exempt from the duty to confirm or deny.
- Which exemption was applied?
- Why the exemption was applied.

The following is a brief discussion of the exemptions likely to be available to a Local authority. See the 'Sefton Council Managers Guide to the FOI Exemptions' for a detailed guide to the exemptions and how they can be applied.

Use of most exemptions should be approved by a Head of Service.

### 3.7.11 What are the 'Absolute' Exemptions?

An absolute exemption means that the Council is allowed to withhold this information without having to consider the Public Interest. In some cases the Council does not have even to admit or deny holding this information. The main ones of use to a Local Authority are:

Information is reasonably accessible to the requester by any other means	This will be the most widely used and useful exemption. If the information is made publicly available and listed in the Council Publication Scheme then we can tell the requester to go there and find it. Likewise if the information is 'reasonably' available anywhere else outside the Authority then you can ask the requester to go there.
Personal information about the person making the request.	This does not allow you to withhold the information. This information must however be processed and released only under the Data Protection Act. If in doubt, refer to your Data Protection Officer.
Information provided in confidence	This is not as useful as it looks. We must be able to prove that the release of the information will result in court action against us. Frivolous use of blanket confidentiality statements will not be tolerated by the Information Commissioner. See note below.
Prohibitions on disclosure	If disclosure is prohibited by any other existing Law then the Freedom of Information Act does not override this.
Court records	Created by, in custody of, or served on Public Bodies by a Court

### 3.7.12 The Public Interest Test and the ‘Qualified’ Exemptions.

The rest of the exemptions (known as Qualified exemptions) may be over-riden where the action is considered to be in the Public Interest. The Public Interest decision must be taken by the Head of Service for the area in question.

It is worthwhile the Head of Service considering the Public Interest in releasing information before considering any of these exemptions, as the former may over-ride the latter.

Information intended for future publication.	This would exempt draft copies of documents or reports provided a clearly identified timeline for publication is given.
Investigations and proceedings conducted by public authorities.	Relates to investigations by a Public Authority with a view to bringing civil or criminal proceeding, and information from confidential sources.
Law enforcement.	Administrative functions of justice.
Prejudice to effective conduct of public affairs	The Monitoring Officer must make the decision on whether to apply this exemption.
Health and safety	Applies if disclosure threatens the mental or physical health of individuals. There is also no need to confirm or deny whether the information is held.
Environmental Information (Covered by the Environmental Information Regulations.)	This is not an exemption. If anything the requirements for the release of this kind of information are more onerous than FOI. See above.
Personal Information concerning a third party.	If in the Public Interest, then this kind of information may be released.
Legal professional privilege	Information subject to legal professional privilege.
Commercial interest	If information constitutes a trade secret, or likely to prejudice commercial interests of any party.
The Economy	Protects the economic interests of the UK, and the major administrations within the UK. No need to confirm/deny. This may apply to the local economy

### 3.7.13 Commercial Interest and Public Sector Contracts

Contractors may put pressure on the Council to accept confidentiality clauses covering information about the terms of the contract, its value and performance. Where it is necessary to include a non-disclosure provision in a contract (exceptional circumstances only) an option could be to agree a schedule with the contractor that clearly identifies the information that should not be disclosed. The Council would have to be aware that any restrictions on disclosure in such a schedule could be overridden by the obligations of the Act.

The Council will not hold information ‘in confidence’ that is not confidential in nature. The confidential information exemption under the Act only applies if the release of such information constitutes a breach of confidence actionable in a court of law.

### **3.7.14 Unofficial copies of documents and ‘splinter’ documents**

If you are requested to release your own unofficial or working photocopy of a file or document then you should not release this but you should pass the request over to the holder of the Master Copy.

**Caution: The requester may actually be asking for your unofficial copy in order to see personal notes or comments in the margins. They have a legal right to demand this and you will be personally breaking the Law if you destroy the document after the request has been made.**

### **3.7.15 Complaints**

Ideally the department should keep up a dialogue between the 'departmental owner' and the 'requester' until the requester is satisfied. Any initial dissatisfaction on the part of the requester is not a complaint; it is just a request for further service. It should be dealt with by the departmental request owner and should not go anywhere near Corporate Complaints. This interaction allows us to establish the requester's intentions and to adjust our response and avoid a formal complaint if possible.

However, the Act states that when we have really reached loggerheads and neither requester nor Council will shift, for example in the disputed application of a particular exemption or the Public Interest Test, then the requester must make a formal complaint to the Council before they are allowed to approach the Information Commissioner.

At this stage we would advise them to put in a formal complaint to Sefton Council using the corporate system, for the attention of the Head of Service.

Once the requester is informed of the outcome of this process, they will be given the details of the Office of the Information Commissioner and informed of their right to take their complaint to that Office.

### **3.7.16 Legal Liabilities**

Employees may be personally legally liable for their actions if they alter records in any way to prevent disclosure. (Section 77 FOIA).

If in doubt contact the Legal Department.

### **3.7.17 Foreign languages and disabilities.**

Each department must take into account other statutory duties governing access to information for example use of Braille, on audio tape. Because FOI requests can come from any country, requests in languages other than English will be considered on a case by case basis.

### 3.7.18 Copyright Issues.

#### *Requests for OS maps without additional information/derived data*

These should be refused. The mapping is reasonably accessible to the applicant by other means, & is therefore exempt from FoIA (Section 21). Mapping can be obtained from OS Agents, direct applicant to [www.ordnancesurvey.co.uk](http://www.ordnancesurvey.co.uk).

We can of course, allow the inspection of OS mapping at our premises.

#### *Requests for OS maps with additional information/derived data*

In the interest of open access to information, OS are content for us to supply a single copy of a map (which shows the requested information) to an applicant. Subject to the following requirements:

- the map must be in hard copy paper form or an electronic image in raster format only (eg jpg, bmp)
- the map must contain the Crown copyright acknowledgment and licence number
- the map must contain your additional information/derived data as required for whole or partial response to the FoIA enquiry
- the map must be of an appropriate scale on which to view the additional information/derived data
- we must draw attention to the Copyright Designs and Patents Act 1988, which continue to apply to the map

#### *Provision of OS digital data*

OS view is that this should not be provided as it would or would be likely to prejudice their commercial interests. If data is made available without a licence, any unauthorised use of the data could not be tracked, and this would completely undermine their legitimate licensing.

OS opinion is that FoIA requirements are satisfied with the provision of hard copy papers maps, or electronic raster imagery.

If an applicant specifically requires digital data, it is available to them via other means, ie by entering into a licence agreement with OS. We can of course, allow applicants to inspect digital data at our premises.

## 4 Glossary of FOIA Terms

<b>Environmental Information</b>	Information related to the environment. This is governed principally by the Environmental Information Regulations.
<b>Exemption</b>	A legally acceptable reason for refusing to release information.
<b>Fees</b>	The money that can be charged by the Council for processing and providing information for a requester.
<b>Information</b>	See record
<b>Environmental Information</b>	Information related to the environment. This is governed principally by the Environmental Information Regulations.
<b>Exemption</b>	A legally acceptable reason for refusing to release information.
<b>Fees</b>	The money that can be charged by the Council for processing and providing information for a requester.
<b>Information</b>	See record
<b>Information Commissioner</b>	The Council charged with policing the Act.
<b>Key responder</b>	See Request Owner.
<b>Personal Information</b>	Information about an identifiable living individual. Access to this is governed principally by the Data Protection Act.
<b>Publication Scheme</b>	A website and paper-based list of all the records that the Council publishes, how they can be obtained, and whether there is a charge involved.
<b>Recipient</b>	The person to whom the information will be sent
<b>Record</b>	Any item of information recorded and held by the Council in any format. This includes electronic files, paper, text and images.
<b>Request</b>	A written request to a department for information, on paper or by e-mail.
<b>Request Owner</b>	The person responsible for tracking an FOI request and ensuring it is completed on time.
<b>Request Recipient</b>	The person to whom the original request is directed. Email or Written.
<b>Requester</b>	Any person making a written request for information from the Council. Also known as an applicant.
<b>Tracking System</b>	A computer-based system that allows the recipient within any Sefton Service area to register receipt of a Freedom of Information request, to monitor its progress. It will allow centralised monitoring to drive improvements in the publication scheme, to gather knowledge and to detect repeated or vexatious requests.