

Working together to create a great future for Cheltenham

Access to information policy

Freedom of Information Act, Environmental Information Regulations and Data Protection Regulations

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1 Introduction

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs) provide a right of access to information which is held by Cheltenham Borough Council, the council. Both FOIA and EIR must be considered in conjunction with the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA).

FOIA provides the public access to information held by the council, the EIRs provide public access to environmental information held by the council.

GDPR and the DPA entitle individuals to certain rights over their own information, including the right to request access to personal information about themselves. This is the Right of Access, often known as a Subject Access Request (SAR).

The council is committed to conducting its affairs in an open and transparent manner and the council proactively enables public access to its information whenever possible, in compliance with the statutory provisions.

The council has adopted the model publication scheme prepared and approved by the Information Commissioner. In order to minimise the need for specific information requests, the council makes available as much information as possible on its website. Any material which is published and accessed on the website will be available free of charge. The council also publishes information released in response to information requests in its disclosure log.

2 Information that can be requested

FOIA gives a general right of access to all types of recorded information held by the council; recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

The EIRs apply to all information which relates to the environment, in its broadest sense, including land, air, water, soil, buildings, animals and people, pollution of all kinds, waste, health and safety. This also includes reports, measures and analysis of environmental information.

Neither the FOIA nor the EIRs cover information that is in someone's head and not currently recorded. The council will provide information that is already in recorded form; the council will not create new information or find out the answer to a question.

Requestors do not need to specify whether they are requesting information under FOIA or the EIRs. The council will handle requests under the relevant legislation.

The FOIA and the EIRs do not give people access to their own personal data (information about themselves). If a member of the public wants to see information that the council holds about them, they should make a data protection subject access request.

SAR; a Data Subject has the right of access to the personal data held about them by the council. In general, personal information will only be given to an individual, and then only with appropriate identification. The council is entitled to ask reasonable questions to identify what information is required and to locate where the data may be held; the council aims to provide as much information as possible.

Any person making a request for information is entitled to be informed whether the council holds that information and be supplied with that information, these rights are subject to any **exemptions**.

3 Making a request for information

There is no requirement for applicants to specify which type of information (FOIA, EIR or GDPR/DPA) is being requested. This will be determined by the council upon receipt, and the request will be handled in line with the relevant legislation

The council will provide reasonable advice and assistance to those who make or propose to make requests for information.

3.1 FOIA and EIR

All requests for information must include the name of the requestor, an address for correspondence, describe the information requested. Requests made under FOI must be made in writing.

The Council will endeavour to respond to FOIA and EIR requests within 20 working days of the date of receipt, (where the first working day *after* receipt is the first day to count toward the deadline); but deadlines may be extended in the following circumstances:

- The request is under the Freedom of Information Act 2000 (FOIA) and a 'public interest test' is being conducted; or
- The request is under the Environmental Information Regulations 2004 (EIR) and the request is complex and involves lots of information.
- If the original request is unclear and clarification is required, the 20 day response period will be paused until full clarification is achieved.

In all cases, the requestor will be informed as to why the deadline is being extended, and by how long.

3.2 SAR

Applicants making a Subject Access Request may be required to provide proof of their identity.

All Subject Access Requests will be completed within one calendar month of receipt.

3.3 Request procedure

- An information request is submitted to the council;
- the council will acknowledge receipt of the request;
 - the council may request clarification;
 - the council may (in the case of SAR requests) request identification;
 - the council may issue a charge;
 - the council may direct the requestor to another authority.
- The council will respond to requests as soon as possible and within the stated timeframes.

- If the information requested has already been published, the council will direct the requestor to the published information. These are still recorded as requests for information.
- Where possible the council will disclose the requested information and where reasonable the information will be disclosed in the requested format.
- The council may refuse to disclose some or all of the requested information, or refuse to confirm or deny that it is held. In either case, the council will explain why the information is exempt and if applicable, why disclosure was not considered to be in the public interest.
- All requestors will be provided with information about avenues of redress if they are not satisfied with the information provided or the management of the request.

4 Charges and fees

Generally, the council provides information in response to requests free of charge. However, on some occasions the council may charge to cover disbursement costs, for example, photocopying, envelopes, postage and alternative media. The council may refuse a request if we estimate that it will cost us more than £450.

4.1 Charges

4.1.1 FOIA

The Freedom of Information Act 2000 sets out a limit for the amount of work (the “Appropriate Limit”) which a public authority is expected to undertake in order to comply with a request, and the method of estimating that limit; for local government the ‘appropriate limit’ is currently £450. This breaks down as 18 hours of employee time at an hourly rate of £25 per hour spent on certain prescribed activities;

- Establishing whether information is held;
- Locating and retrieving the information; and
- Extracting the relevant information from a document containing it.

Where that limit is exceeded the council will notify the requestor and either;

- issue a refusal notice, and give the requestor the option of refining the request,
- issue a fees notice. All payments must be received before the council processes the request.

4.1.2 EIR

In responding to requests for information under EIRs the council is entitled to charge a reasonable amount towards making the information available, there is no limit on the cost of staff time that can be spent on responding to such requests.

However, the EIRs permit the council to refuse to respond to a request which is formulated in too general a manner, where the council has asked for more particulars and provided advice and assistance. A request can also be refused where it is manifestly unreasonable.

The council has decided that in responding to an EIR request there will be no charge for the cost of staff time up to £450 at a notional rate of £25 per hour. If those costs exceed £450 the requestor may be asked to pay the total staff costs involved in dealing with the request at the rate of £25 per hour for those activities.

4.1.3 SAR

There is no fee for making a subject access request.

4.2 Costs

Any costs of photocopying, electronic copying or postage will only be charged if they exceed £10.00. The council will ensure that cost estimates are arrived at consistently across all the service areas. Council staff are expected to apply a consistent approach to estimating the cost of each request they process.

Item	Cost
Printing or photocopying (A4 and A3)	10p per side
Printing or photocopying (A2)	£1.00 per side
Postage costs	Full cost
Electronic formats - CD Rom	£1.00 each

4.3 Fees notice

Where a charge is payable, a fees notice will be issued within 20 working days following receipt of the request, specifying the amount of the charge. Payment should be received and processed before a request is actioned and any associated information is disclosed.

If the required fee is not paid within the periods set out below, the council does not have to respond to the request. The periods are:

- 3 months from the date the fees notice was given in the case of an FOI request;
- 60 working days from the date the fees notice was given in the case of an EIR request.

5 Refusing a request

There are some circumstances where the council will not be able to provide the requested information. This includes:

- if the information requested is not held;
- if the requested information has been destroyed due to data retention policies;
- if the information requested is exempt from disclosure under FOIA, EIR, DPA or GDPR;
- if the cost of providing the information exceeds £450

5.1 Vexatious requests

The council will not respond to requests that are deemed to be vexatious, or repeated requests from the same person or group on substantially similar information received within 60 consecutive working days. If a request falls into either of these categories, a written refusal notice will be issued.

6 Information held in contracts

The Council cannot accept blanket confidentiality clauses in contracts. Organisations contracting with the Council should identify information that they considered to be exempt under FOI or EIR and the reasons why they consider it to be exempt when entering into the contract. The Council is required to publish all contracts in full except where an exemption can be claimed.

The Council can only withhold confidential information where its disclosure under either the FOIA or EIR would be treated as an actionable breach of confidence.

The Council can also consider a further exemption under FOIA where the information is considered to be a trade secret or commercially sensitive. This exemption is subject to a “public interest” test.

Whenever the Council has to consider the release of such information, it will discuss with the relevant organisation their opinions on the release of the information and any exemptions they may think relevant. However, the Council will make the final decision relating to the disclosure of the information based on evidence provide by the other party.

The Council may also withhold information contained in contracts where any of the other exemptions listed in the FOIA or EIR are appropriate, although information will only be withheld in line with the Council policy on the use of the exemptions under these regimes.

All contracts must contain a standard clause giving the Council leave to publish contracts and should contain a clause obliging contractors to co-operate fully and in a timely manner where assistance is requested in responding to an FOI or EIR request.

7 Appeals and complaints (FOIA and EIR)

If a requestor is dissatisfied following the councils response to an information request, and wishes to complain about how their request was handled or appeal the decision that was made they can request that their case be reviewed under the council’s appeals process.

The appeals process is a straightforward, single-stage process, which is triggered whenever a requestor expresses dissatisfaction with the outcome.

Following a review the council will make a fresh decision based on all the available evidence that is relevant to the date of the request, not just a review of the first decision. Where possible a review will be carried out by someone who did not deal with the request, and preferably by a more senior member of staff. A review will take no longer than 20 working days in most cases, or 40 in exceptional circumstances.

If the result of the review is that any decision to withhold information is overturned, the information will be supplied to the requestor as soon as possible.

If the requestor remains dissatisfied following the internal review they have the further right of appeal by making a complaint to the Information Commissioners Office (ICO).

Details of the internal appeal process and how to complain to the ICO will be included in all information request responses.

8 Recording, reporting and KPIs

8.1 Recording information requests

The council maintains a single record of all information requests that are handled under the FOIA, EIR and GDPR/DPA. The record also contains details of all internal reviews and complaints to the ICO, and their outcome.

8.2 The disclosure log

Details of previous requests for information that have been received under either FOIA or the EIRs are published in the council's disclosure log. The purpose of the disclosure log is to make information released in reply to individual requests available to the widest possible audience; giving the public greater understanding of what information the council holds, thus enabling the public to make better-informed information requests in the future. The disclosure log can be found on the council's website.

8.3 Key Performance Indicators (KPIs)

- Percentage of FOI requests responded to within timescale
- Percentage change in FOI requests received compared with previous year

8.4 Information request reporting

8.4.1 KPI reporting

KPI data will be inputted into Clearview allowing for real time reporting.

8.4.2 Annual reporting

Customer relations will report annually to ELT and the Audit, Compliance and Governance Committee with the annual KPI performance, statistical data and key learnings.

9 Appendices

Appendix 1: Information Requests - Internal procedure

Appendix 2: Guide to redacting

Appendix 3: Exemptions explained