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Access to Information Policy Freedom of Information, Environmental Information Regulations and Data Protection Requests

Accessibility Information

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1. Introduction

- 1.1 The Freedom of Information Act 2000 (FOI Act) and the Environmental Information Regulations 2004 (EIR) provide a right of access to information which is held by the Council and both must be considered in conjunction with the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA).
- 1.2 GDPR and the Data Protection Act 2018 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).
- 1.3 A Code of Practice has been issued by the Ministry of Justice under Section 45 of the FOI Act, which was updated in 2018. The Council will abide by the terms of the Code of Practice whenever appropriate.
- 1.4 The Council is committed to conducting its affairs in a transparent manner and enabling public access to its information whenever possible, in compliance with the statutory provisions.

2. The Aims of this Policy

2.1 The aims of this policy are to:

- Facilitate the disclosure of information under the FOI Act, EIR and GDPR/DPA;
- Set out the administrative practices which the Council will follow and any charges that may apply in handling requests for information (see Appendix A);
- Ensure that the interests of third parties who may be affected by decisions to disclose information are considered by the Council;
- Ensure an effective complaints procedure is available for applicants to use if they are dissatisfied with a decision; and
- Ensure that the Council considers the implications of the FOI Act, EIR and the GDPR/DPA, before accepting any confidentiality provisions in contracts or information which is provided in confidence.

3. Statement of Commitment

3.1 The Council will:

- Seek to publish key information proactively through an FOI Publication Scheme and also in line with the Freedom of Information Code of Practice 2018 and the Local Government Transparency Code 2015;
- Respond to information requests in accordance with the requirements of the FOI Act, EIR and GDPR/DPA;

- Uphold the requirements of the EIR which support the European Council Directive 2003/4/CE on public access to environmental information in the UK; and
- Uphold the Data Protection Principles in relation to all personal data with respect to which the Council is the data controller.

3.2 The Council has adopted the Model Publication Scheme for the FOI Act, as approved by the Information Commissioner. The model publication scheme is available on the Council's website and includes information on:

- How and what the Council spends its monies on;
- What the Council's priorities are and how the Council performs;
- How the Council makes decisions;
- The Council's main policies and procedures;
- The Council's lists and registers; and
- The services that the Council offers.

3.3 The Council is committed to data transparency and supports people's rights to be able to access data wherever it is legal and practical. The overarching principle is that data is 'Open by Default.'

3.4 The Local Government Transparency Code was issued by the Department for Communities and Local Government on 3 October 2014 and updated in February 2015 with additional requirements for data publication. The Code requires that local councils publish certain information to make it easier for local people to contribute to the decision making and enable them to shape public service. The Council seeks to comply with the Code.

4. Information

4.1 The Council will adhere to the FOI Act, EIR and GDPR/DPA by:

- Informing individuals if the information exists within the Council or with another organisation in response to requests;
- Enabling access to the information which it holds, subject to the conditions and exemptions by law; and
- Providing the information requested unless it is exempt from disclosure.

4.2 Information held on behalf of the Council, but not physically held on Council premises or systems is also covered by these Acts and Regulations. This can include information shared with contractors or partner organisations and information held by Councillors relating to Council business.

4.3 Applicants do not have to know or specify whether the information requested is covered by the FOI Act, EIR or the GDPR/DPA. The Council's Legal Services team will determine and advise on the appropriate provisions.

Freedom of Information Act

4.4 The FOI Act applies to all recorded information held by the Council. Information includes printed documents, all paper records, computer files, letters, emails, photographs, microfiche, maps, handwritten notes or sound and video recordings and recordings of telephone conversations whether or not they are accurate.

Other types of information covered by the FOI Act are:

- tables of raw, unrefined data (sometimes known as datasets); and
- Meta-data. This is the information that is sometimes automatically recorded on electronic documents, eg the author's name and creation dates.
- information received at the Council from third parties.

The FOI Act does not apply to information that is in a person's head and not currently recorded.

Environmental Information Regulations

4.5 Under EIR, 'environmental information' means any information in written, visual, aural, electronic or any other material form on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

5. Code of Practice

5.1 The Council will take account of the Code of Practice issued by the Ministry of Justice under Section 45 of the FOI Act. The Council will abide by the terms of the Code of Practice whenever this is possible or appropriate. In addition the Council will take account of any guidance which is issued by the Information Commissioner.

- 5.2 The Council acknowledges the principles of the FOI Act, EIR and the GDPR/DPA including that:
- People have a right to know about the activities of public authorities, unless there is a good reason for them not to;
 - Any individual can make a request for information, regardless of who they are and where they live. Applicants do not have to be resident in the UK;
 - Applicants do not have to provide a reason for requesting information;
 - All requests are treated equally; and
 - The Council should only disclose information under the FOI Act and EIR, if it would also release this information to anyone else who asked for it.
- 5.3 In undertaking its role in providing information, the Council will continue to recognise its Public Sector Equality Duty under the Equality Act 2010 and make reasonable adjustments where applicable.
- 5.4 The Council will seek to publish a [disclosure log](#) of completed FOI and EIR requests on its website. This enables individuals to have instant, open access to previously completed requests and information. The disclosure log will not include the identities of any applicants or of any staff handling requests, for data protection reasons.

6. Requests for Information

- 6.1 The Council acknowledges the right for anyone to make a request for information. A person does not have to be a UK citizen or even live in the UK to make a request. Requests can be made by any person including an organisation or company.
- 6.2 Requests for information can be made to any officer in the Council.
- 6.3 All valid requests must include the applicant's name, an address for correspondence and a description of the information requested. All applicants should be treated alike and the Council should not normally seek to verify the applicant's identity in relation to FOI and EIR requests. However a check may be made if it is clear a pseudonym is being used, if there are legitimate grounds for refusing a request or if it is suspected that a person is trying to avoid this happening eg because the request may be vexatious or repeated.
- 6.4 Applicants making a Subject Access Request may be required to provide proof of their identity.
- 6.5 The Council will provide reasonable advice and assistance to those who make or propose to make requests for information.
- 6.6 There is no requirement for applicants to specify which type of information (FOI, EIR or GDPR/DPA) is being requested. This can be determined by the Council on receipt.

- 6.7 The Council requires that requests for information under the FOI Act must be submitted by email or in writing. It is recognised that they may also be created through the Council's media channels eg Twitter and Facebook. Ideally requests will be submitted by email to foi@eden.gov.uk or by post to FOI, Legal Services, Town Hall, Penrith CA11 7QF.
- 6.8 The Council recognises that applicants can submit a request under EIR and also Subject Access Requests under GDPR/DPA verbally, either in person or on the phone. Where this is preferred by the applicant, this can be arranged, by appointment, with an officer of the FOI team in the Legal Services section of the Council.
- 6.9 Whenever an information request is not absolutely clear, the applicant will be asked to clarify the request. If necessary, applicants may be provided with reasonable assistance to achieve this.
- 6.10 The Council will publish and maintain its procedures for dealing with requests for information. The Council's current procedures for managing requests are attached as Appendix A to this Policy.

7. Response Times

- 7.1 The Council will endeavour to respond to FOI and EIR requests within 20 working days of the date of receipt. For more complex requests, this time period may need to be extended and applicants will be informed about this through Legal Services.
- 7.2 If the original request is unclear and clarification is required, the 20 day response period will only begin when full clarification is achieved.
- 7.3 Occasionally the Council will have to consider the public interest or consult with third parties in connection with a request for information and this may give rise to a delay.
- 7.4 Wherever there is a delay and the 20 working days response time cannot be met, Council officers will try to provide an estimate to the applicant as to when the information will be available or when a decision on its availability can be made.
- 7.5 All Subject Access Requests will be completed within one month (30 calendar days) of receipt.

8. How Information is Provided

- 8.1 Wherever possible, responses to FOI, EIR and GDPR/DPA requests will be delivered electronically by email and may include an attachment or a link to a website where information is published.
- 8.2 Where the information is not published or it is too large to send electronically, it may be delivered in hard copy format. Where this is necessary, a charge may be levied on the applicant. A charge will be applied in the case of such responses to requests under EIR (unless the applicant is in receipt of relevant benefits – see 9.14).

9. Charges

- 9.1 The FOI Act and the EIR allow public authorities to charge for responding to requests in some circumstances.
- 9.2 Applicants will not be charged to view information that the Council is statutorily required to make available to the general public. Nor will there be a charge for copies of most of the leaflets and brochures produced by the Council. Charges may be payable for the supply of specific documents, as detailed in the Council's Fees and Charges.

Freedom of Information Act

- 9.3 Under Section 12 of the FOI Act, the Council does not have to comply with a request for information if the cost of compliance exceeds the 'appropriate limit.' The FOI Act currently defines this limit as 18 hours or £450.
- 9.4 Where the cost exceeds the appropriate limit defined in the FOI Act, the applicant will be consulted to see if the original request can be simplified or the scope of it refined, so that the Council can respond to the request.
- 9.5 When estimating the cost of completing a request for information under the FOI Act, the Council can only consider the following factors:
- Determining whether the information is held by the Council;
 - Locating the information or documents containing the information;
 - Retrieving the information; and
 - Extracting the information from documents.
- 9.6 Where a fee is required for the Council to undertake an FOI Act request, the information will not be provided until the applicant has paid the fee. The applicant has three months from the date the application is received to pay this fee. If the fee is not paid during this period, then the request may lapse.
- 9.7 If an applicant splits a large request up into several smaller requests and these are submitted within 60 working days of each other, then the Council can add the costs of the requests together to estimate the cost. The Council can refuse to provide the information, if the total exceeds the appropriate limit.
- 9.8 Some FOI Act information requests may incur a charge to cover printing, postage or delivery.

Environmental Information Regulations

- 9.9 The Council may charge a 'reasonable amount' for information requested under the EIR. This can include the following:
- Reasonable costs of production and delivery of the information; and
 - Staff costs incurred to extract and provide the information.

- 9.10 The costs of providing environmental information are included in current [Fees and Charges](#) and charged at the following rates:
- £25 per hour for staff time for locating, retrieving and extracting information;
 - 10p per A4 sheet for any photocopying and printing; and
 - The costs of any postage.
- 9.11 Applicants will be informed in a fees notice of any potential costs payable, following submission of their request for environmental information. Officers will explain to applicants how to make payment and to advise that work will not commence until payment has been received.
- 9.12 The amount stated in each case would be fixed, even if the work were to take more time than estimated, as required under the EIR.
- 9.13 Under the EIR, an applicant has 60 days following issue of the fees notice in which to make the payment. If payment is not made within this period, the Council is not obliged to proceed with the request.
- 9.14 All charges relating to EIR requests will be waived for any applicant in receipt of certain benefits at the time of submitting their request for environmental information to the Council. Applicants in receipt of benefits will be required to provide evidence, such as their most recent award letter from the Department for Work and Pensions (DWP). These must be the originals or certified copies. Benefits eligible for exemption from the Council's EIR charges include at least one of the following:
- Income Support;
 - Income-based Jobseeker's Allowance;
 - Income-related Employment and Support Allowance;
 - Pension Credit - Guarantee Credit; and
 - Universal Credit.
- 9.15 There are costs that the Council cannot charge for under the EIR. These are the costs of maintaining a register of information or a database and also overhead costs or staff time spent redacting information.
- 9.16 If environmental information which the Council holds is readily available and does not require staff time to locate, retrieve or extract it, there will be no charge to the applicant and they will be informed of this at the time the information is supplied to them.
- 9.17 If the entirety of a request for environmental information is refused under a relevant exception under the EIR, there will be no charge to the applicant. If a partial refusal is issued, only the information disclosed will be subject to a charge (there will not be a charge for the refusal notice).

Subject Access Requests

9.18 Under GDPR/DPA, there is no charge for submitting a Subject Access Request, unless repeat requests or manifestly excessive.

10. Transferring Requests for Information

10.1 If the Council does not hold the information that is requested and it is aware that another public body does, officers will advise the applicant about which other authority or organisation to approach for the information.

11. Consultation with Third Parties

11.1 In some cases the disclosure of information may affect the rights of a third party. For example, where the information is subject to the common law duty of confidence or where it constitutes personal or sensitive personal data (special categories) within the meaning of the GDPR/DPA.

11.2 Where disclosure requires the consent of a third party, the Council will consult with that third party with a view to seeking consent to the disclosure. On occasion this may be impractical because, for example, the third party cannot be located or the costs of any consultation would be disproportionate.

12. Public Sector Contracts

12.1 In entering into contracts, the Council will not include terms or provisions which could restrict the disclosure of information held by that organisation, which relate to the contract and are contrary to the statutory provisions.

12.2 The Council will acknowledge and apply the restrictions which are permitted under the statutory provisions.

13. Copyright and Intellectual Property Rights

13.1 The Council will not place any conditions or restrictions on an applicant, for any information supplied under the statutory provisions. The Council may however include a copyright notice with the disclosed information.

13.2 The FOI Act does not affect an information owner's copyright and intellectual property rights allowing them to protect their original work against commercial exploitation by others. Any FOI applicant who wishes to re-use the information for commercial purposes should make an application to the Council, under the Re-use of Public Sector Information Regulations 2015.

14. Accepting Information in Confidence

14.1 The Council will only accept information from third parties in confidence if it is necessary to do so in connection with the exercise of the Council's functions.

15. Refusal of Requests

15.1 A refusal of a request for information will only be made in accordance with the relevant statutory provisions.

15.2 All refusals will be made by the Assistant Director Governance or a delegated representative and the applicant will be notified as soon as possible about the refusal and the grounds for the refusal.

- 15.3 Requests under the FOI Act may be refused if they are regarded as vexatious, are repetitive, will incur costs greater than the defined appropriate limit (currently 18 hours or £450) or where it is deemed that the harm in disclosing the information is greater than the public interest in its disclosure.

16. Monitoring

- 16.1 The Council will keep a record of all applications which are made under the FOI Act, EIR and GDPR/DPA. The Assistant Director Governance will seek to monitor and report compliance and performance to the Council's Corporate Leadership Team and the relevant portfolio holder.

17. Complaints Procedure

- 17.1 The Council has an established complaints procedure. Any applicant who is dissatisfied about the way in which a request for information has been managed, will be informed of the right to complain under the Council's complaints procedure. Applicants will need to submit their complaint to the Council within 40 working days after their response has been issued.
- 17.2 Complaints relating to EIR requests must be in writing. The applicant will receive a response within 40 working days of the complaint being lodged.
- 17.3 Whenever possible, a complaint will be dealt with informally. The formal procedure will only be invoked if it is not possible to resolve a complaint informally.
- 17.4 Whenever appropriate, an applicant will be informed of their right to refer a matter to the Information Commissioner.
- 17.5 The Council maintains a record of all formal complaints and their outcome.

18. Corporate Responsibility

- 18.1 The Assistant Director Governance or nominated deputy has overall responsibility for requests made under the FOI Act, EIR and the GDPR/DPA.
- 18.2 All employees of the Council will be informed about the Council's obligations under the FOI Act, EIR and the GDPR/DPA. Information about the statutory provisions is available on the Council's website.
- 18.3 Specific training will be provided to the appropriate officers of the Council involved in the provision of information to satisfy FOI, EIR and GDPR/DPA requests. Guidance and training will be provided to employees with regard to their levels of responsibility in handling data and dealing with these requests.

ICO Contact Details

The Information Commissioner can be contacted at:

www.ico.org.uk

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Telephone - 0303 123 1113

19. Review

- 19.1 This policy will be reviewed by April 2022, in line with any changes to legal and regulatory requirements, relevant guidance and best practice. It will be reviewed by the Assistant Director Governance (Monitoring Officer), Information Governance Manager and Member Services Team Leader.

Appendix A

Freedom of Information Act, Environmental Information Regulations and Data Protection Requests - Information Request Processing Procedure

1. Applications

- 1.1 Any request for information under the FOI Act, EIR or GDPR/DPA should preferably be made;
- by email to foi@eden.gov.uk;
 - using the forms available on the Council's website; or
 - in writing marked for FOI, Legal Services, Town Hall, Penrith CA11 7QF
- 1.2 Requests for information under the EIR may also be made verbally on the phone or by appointment with a member of the FOI team. It is preferable for all requests for information to be in writing so that they are clear.
- 1.3 Requests for information may also be raised through social media channels eg Facebook and Twitter. The delegated officers in the Council who monitor these channels should obtain contact details (minimally an email address) from the applicant (using private messaging) and forward these details and the information request to foi@eden.gov.uk.
- 1.4 All Access to information applications are co-ordinated and administered by the FOI team, based in Legal Services.

2. Initial Validation

- 2.1 A request for information need not refer to the statute under which it is made. If a request is made to an officer in the Council rather than to a representative in the FOI team and the officer is unsure whether the request is routine business, they should consult with the FOI team on how to manage the request.
- 2.2 A formal request for information which specifically refers to the statutory provisions should be referred, preferably by email to the FOI team, via: foi@eden.gov.uk.
- 2.3 Applicants making a Subject Access Request may be required to provide proof of their identity.
- 2.4 If the question can be answered quickly and easily, the officer should action it as part of their normal duties. If a more in-depth response is required, the request should be forwarded to foi@eden.gov.uk so that it can be logged and actioned as a FOI or EIR request. Similarly, the request should be forwarded to foi@eden.gov.uk if it is complicated or has implications relating to disclosure.
- 2.5 The FOI team will decide whether the request is made under the FOI Act EIR or the GDPR/DPA and the request logged onto the database. All requests will be considered and processed in compliance with the relevant Act or Regulation.
- 2.6 The applicant will be contacted and informed as to the relevant legislation that applies and how it affects their request.
- 2.7 All valid requests for information will be entered onto the FOI/EIR/DPA database and dated either with:

- the date the application was received, if it is received within office hours on a working day; or
- the next working day if the application arrives out of office opening hours or on a non-working day (ie weekends, bank holidays or public holidays)

2.8 It should be noted that any period of office closure, for example between Christmas and New Year, may still be regarded as a working day, if it is not a Saturday or Sunday or a public holiday.

3. Processing Valid Applications

3.1 All validated information requests are logged in the database and are allocated a unique case reference number for use on all future correspondence. All valid information requests will be acknowledged promptly by the most efficient and appropriate communication channel.

3.2 The initial approach to satisfying any validated request is to check existing data to see if this can answer or satisfy this request. This includes a review of;

- The Council's publication scheme;
- The disclosure log; and
- The current data files in Legal Services

(Note: Some departments provide regular data in anticipation of FOI requests, eg Non Domestic Rates statistics)

If any of the above can satisfy the request, then officers will refer the applicant to the source of the information, or provide the pre-obtained data and the request will be completed and closed.

3.3 If the information requested is not currently available, then the request is forwarded to the appropriate Council officer(s) who will be advised at that time, about the deadline for the completion of the request.

As information owners, Council officers are required to review the information request and select one of 3 possible outcomes as follows:

Outcomes	Follow up Actions
1. The information is already publicly available.	If this is the case, the officers should provide the FOI team with a link to a specific web page that can be provided to the applicant. If the link is to a large document eg budget information, officers should also provide a page number for the document which will be passed to the applicant.

Outcomes	Follow up Actions
2. The information is not currently publicly available and should be provided.	Council officers would then arrange for the information to be sourced and provided to the FOI team to enable the request to be fulfilled within the defined timescale.
3. The information request should be refused.	Officers would have to send a response to the FOI team, outlining why they would recommend that the request should be refused. This will be considered by the Assistant Director Governance and a decision made on whether the request should be refused and the basis of that refusal.

- 3.4 Where the information is not currently available to the public and the request has not been refused, the officer receiving the request is required to source and provide the data to the FOI team within the specified timeframe. Responses should be emailed to foi@eden.gov.uk.
- 3.5 On receipt of the information, the FOI team will review and check the information. They will make any redactions as necessary, in accordance with the Council's Redaction Policy, before the final response is sent to the applicant. Details of all responses are uploaded onto the database and FOI/EIR responses are published. Once completed, a member of the FOI team will despatch the information to the applicant and close the case in the database.

4. Refused Requests

- 4.1 The Council aims to provide applicants with all the information they request to which they are entitled. Occasionally, applications have to be refused and the information withheld. Whenever a refusal is recommended by the relevant officer, the proposed reasons and justification for this refusal will be communicated to the Assistant Director Governance.
- 4.2 If the Assistant Director Governance considers that the information should be exempt, a refusal notice will be drawn up, which will be sent out to the applicant through Legal Services. The refusal notice must be in the form required by statute. If the Assistant Director Governance does not consider that the requested information should be refused, then the request will be returned to the officer to complete.
- 4.3 An applicant will be notified as soon as possible about any decision to refuse their request for information. This will include details of the reasons and grounds for refusal.
- 4.4 Applicants who are refused information will be informed about the internal complaints procedure. In some cases the applicant may be offered advice and assistance to simplify their initial request, which may enable the request to be re-requested and satisfied. They will also be informed about how they can contact and complain to the Information Commissioner.