



# Bristol City Council Freedom of Information and Environmental Information Request Handling Policy

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<b>Title:</b>	Freedom of Information and Environmental Information Request Handling Policy		
<b>Description:</b>	Policy setting out Bristol City Council's obligations to respond to information requests		
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<b>Document Status:</b>	Draft	<b>Version:</b>	1
<b>Classification:</b>	OFFICIAL - Public		
<b>Creation date:</b>	01/02/2021		
<b>Approval body:</b>	BCC Information Governance Board	<b>Date approved:</b>	Click here to enter text.
<b>Document Review Period:</b>	Annual	<b>Disposal Period:</b>	N/A

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### i. Version History

Version	Date	Changes	Officers
1.0	01/08/2020	Draft document created	J Ivey
1.1	01/02/2021	Draft document revised and updated	R Kanyangarara

## **1. POLICY STATEMENT**

### **1.1**

The Freedom of Information Act 2000 (the FOI Act) gives the public a right of access to information held by public authorities. The Environmental Information Regulations implement Council Directive 2003/4/EC on public access to environmental information. The definition of 'environmental information' is described in Article 2(1) of the Directive.

### **1.2**

Bristol City Council (BCC), as a public authority as defined by the Act, recognises its responsibility and is committed to promoting a culture of openness and transparency with all the information it holds to meet the requirements of the FOI Act and the EIR.

### **1.3**

The FOI Act and the EIR place a statutory obligation on all public bodies to publish details of all recorded information that they hold and to allow the general public to have access to this information on request, except where an exemption applies such as personal or other confidential data.

### **1.4**

BCC recognises the importance of the FOI Act and the EIR and it will ensure that appropriate systems are put in place to publicise what recorded information is kept by BCC and how this information can be accessed on request by the general public.

## **2. ABOUT THIS POLICY**

### **2.1**

BCC's FOI and EIR Request Handling Policy has been produced to ensure compliance with the provisions of the FOI Act and the EIR. The policy incorporates guidance from the Information Commissioner's Office (ICO).

### **2.2**

The policy provides a framework for compliance and is supported by appropriate procedures and guidance documents to provide advice and maintain good practice.

### **2.3**

This policy sets out BCC's duties and obligations in respect of the FOI Act and the EIR and highlights the responsibilities of all staff (temporary or permanent), councillors, contractors, agents and any other person working with the Council, to assist the council in complying with its duties under this legislation.

### **2.4**

This policy is approved by BCC's Information Governance Board which is accountable to the Corporate Leadership Board.

## **3. DUTIES AND CODES OF PRACTICE**

### **3.1**

BCC has a legal duty under the FOI Act and the EIR, to be open and transparent about the information it holds and must provide access to its information through FOI and EIR requests (information requests).

### **3.2**

The FOI Act places a legal duty on BCC to have an approved Publication Scheme whereby it routinely publishes information on its website. BCC's Publication Scheme can be found on the public website [here](#).

### 3.3

The EIR requires BCC to progressively make environmental information available to the public by publishing this information on the internet (in most cases) and take reasonable steps to organise its environmental information to make it easier to access and publish. BCC must also publish facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals. The Council publishes its environmental information on the public website at [www.bristol.gov.uk](http://www.bristol.gov.uk) and in some cases on Open Data Bristol <https://opendata.bristol.gov.uk/pages/homepage/>.

### 3.4

The FOI Act and the EIR place a legal duty on BCC to provide advice and assistance to applicants who want to make or have made information requests to the Council. BCC endeavours to assist the public in making a request, where it is practical and reasonable to do so.

### 3.3

The FOI Act is supported by two non-statutory Codes of Practice which the Council endeavours to comply with. The first [Code of Practice](#) provides guidance on the discharge of public authorities' functions under Part 1 of the Act - right of access to information and the second [Code of Practice](#) provides guidance on the management of records.

### 3.4

BCC also complies with the EIR [Code of Practice](#) which provides non-statutory guidance on the discharge of the obligations of public authorities under these regulations.

## 4. RESPONDING TO GENERAL ENQUIRIES

### 4.1

BCC receives a vast number of 'enquiries' from people every day. It is not always necessary or appropriate to treat every enquiry as a formal information request under the FOI Act and EIR (the legislation). If a request can be answered quickly and the information being requested is not confidential or controversial, the request should be handled by the person or team receiving it as 'business as usual', unless the applicant has an expectation that the request will be handled formally under the legislation. Where there is doubt, the Information Governance Team should be contacted at [data.protection@bristol.gov.uk](mailto:data.protection@bristol.gov.uk) for advice.

## 5. RIGHT OF ACCESS

### 5.1

The legislation provides that any person making an information request is entitled to be informed in writing by the public authority, whether it holds the information requested and if it does, to have that information communicated to them within 20 working days. There are some circumstances when BCC is not obliged to confirm or deny whether it holds information, which are described in section 2 of the FOI Act and regulation 12(6) of the EIR.

### 5.2

BCC is not obliged to comply with an information request under the FOI Act, unless it is in writing, it states the name of the applicant and an address to which BCC can correspond with them, and describes the information being requested. BCC is not obliged to accept requests where the applicant is clearly using a pseudonym, for example 'Mickey Mouse'. However, in such cases BCC will take a pragmatic approach and may accept requests where the identity of the applicant is not relevant.

### 5.3

A request is considered 'in writing' if it is transmitted by electronic means; is received in legible form and is capable of being used for subsequent reference. In most cases, BCC will receive information requests via the contact form on its external website (<https://www.bristol.gov.uk/data-protection-foi/freedom-of-information-foi>) email or letter, and may also receive requests via social networking sites such as Twitter or Facebook.

#### **5.4**

BCC is not obliged to respond to verbal information requests under the FOI Act. However, if an applicant is unable to make a written request, for example due to visual impairment, BCC will assist the applicant by making the request in writing for them, where it is reasonable to do so.

#### **5.5**

Applicants are entitled under the EIR to make verbal requests and are not required to put their request in writing. However, written requests are helpful for audit trail purposes and for ensuring that the original request has been recorded and understood correctly by BCC. If an applicant is happy to put their request in writing, they should be encouraged to do so, or confirm that the request is accurate.

### **6. CLARIFYING REQUESTS**

#### **6.1**

A request for information must adequately specify and describe the information sought by the applicant. BCC is entitled to ask for more detail, if needed, to enable it to identify and locate the information requested. BCC will, as far as reasonably practicable, provide assistance to applicants to enable them to describe more clearly the information requested, where required.

### **7. HANDLING FORMAL REQUESTS**

#### **7.1**

All formal information requests are acknowledged by the Customer Relations Team on receipt and allocated to the relevant service area within BCC.

#### **7.2**

The Service Area that holds the information prepares all disclosures and applies any relevant exemptions or exceptions before the information is released (see section 10 of this policy). Information will only be withheld from disclosure where a valid exemption or exception applies.

#### **7.3**

BCC recognises it is an offence under section 77 of the FOI Act and regulation 19 of the EIR, for any person employed by, is an officer of, or is subject to the direction of BCC, to deliberately alter, deface, block, erase, destroy or conceal any record held by the Council, with the intention of preventing its disclosure to the applicant, of all or any part of the information which they are entitled to. Council employees who are asked to assist with the processing of an information request will do so promptly and fully.

### **8. OBLIGATION TO PROVIDE INFORMATION 'HELD'**

#### **8.1**

BCC is required to disclose information to applicants if it is 'held' by the Council. The FOI Act states that information is considered 'held' if it is held by the authority (otherwise than on behalf of another person) or it is held by another person on behalf of the authority. The EIR state that information is 'held' if it is in the possession of the authority and has been produced or received by the authority. In cases where it is unclear whether information is held by the Council for the purposes of the legislation, advice will be obtained from the Information Governance team.

### **9. TRANSFERRING REQUESTS**

#### **9.1**

If BCC does not hold the information requested, but has reason to believe that some or all of the information is held by another public authority, BCC will inform the applicant of this. BCC will suggest to the applicant that they re-apply to the authority which may hold the information, and will provide their contact details.

## **10. COMMUNICATING INFORMATION TO THE APPLICANT**

### **10.1**

Applicants can request that BCC communicates the information to them as a copy in permanent form (for example, an electronic or paper copy); available for them to inspect or provide them with a digest or summary of the information (if one already exists). BCC will comply with any expressed preferences of communication, where it is reasonable to do so. In deciding whether it is reasonable, BCC will take into account all the circumstances and the cost in doing so.

## **11. CHARGING FOR REQUESTS**

### **11.1**

There is no provision for charging applicants a fee for making requests under the FOI Act. However, BCC is permitted to charge applicants for disbursements, such as postage or photocopying (at a rate of no more than 10p per sheet). As a general policy, BCC will only charge applicants a disbursement fee, if they request a printed copy of the information which amounts to 500 sheets or more. BCC will not charge applicants for disclosures made in electronic format. Where a fee is applied, BCC is not obliged to disclose the information until it has received the necessary payment beforehand.

### **11.2**

If an information request falls under the EIR, BCC may charge the applicant a reasonable fee for making the information available. Any charges made will be in accordance with Regulation 8 of the EIR (charging).

## **12. EXEMPTIONS, EXCEPTIONS AND THE PUBLIC INTEREST TEST**

### **12.1**

The legislation recognises that there may be circumstances when information should not be disclosed as part of an information request. Part II of the FOI Act provides a number of exemptions from the duty to disclose information and regulation 12 of the EIR provides exceptions from the duty to disclose environmental information. The full list of exemptions and exceptions can be found on BCC's FOI and EIR pages on [the Source](#) and on the Information Commissioner's website at [www.ico.gov.uk](http://www.ico.gov.uk).

### **12.2**

The FOI Act exemptions are split into two types – 'absolute' and 'qualified'. When BCC relies on a qualified exemption, it must conduct a public interest test. Absolute exemptions do not require a public interest test to be conducted.

### **12.3**

The term 'public interest' is not defined in the legislation, but is generally considered as being something that serves the interests of the public. When applying the public interest test, BCC will decide whether it serves the interests of the public better to withhold or disclose the information. BCC will not take into account any potential embarrassment that might be caused by the disclosure. The public interest favours accountability and good administration and it is this interest that will be weighed against the public interest in not disclosing the information. There is an express presumption of disclosure under the EIR and unlike the FOI Act exemptions, all of the EIR exceptions are subject to a public interest test.

### **12.4**

In cases where BCC is considering using a qualified exemption, the 20 day deadline may be extended up to 40 working days. In such cases the applicant will be informed within 20 working days of the exemption being considered and if not apparent, why. The applicant will also be told when a decision is likely to be made by.

## **13. REQUESTS EXCEEDING THE £450 LIMIT (FOI ACT)**

### **13.1**

BCC is not obliged to comply with an FOI request if the cost in supplying the information would exceed the limit set out in [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(Appropriate Limit and Fees Regulations\)](#). The fees limit for the Council is £450, which equates to 18 hours of staff time. It should be noted that the Appropriate Limit and Fees Regulations do not apply to EIR requests. However, requests for environmental information which would be particularly voluminous to respond to, may fall under the Manifestly Unreasonable exception under the EIR (see section 12 of this policy).

### **13.2**

If BCC receives multiple FOI Act requests for information on the same or similar subject within 60 working days of each other from one applicant or from other applicants who appear to be acting in collaboration, BCC may aggregate the time it would take to answer all of the requests. If the requests exceed the £450 limit, the requests may be refused.

### **13.3**

When deciding whether or not a request will exceed the £450 limit, BCC recognises it can only take into account the time it would take to:

- determine whether it holds the information;
- locate the information, or a document which may contain the information;
- retrieve the information, or a document which may contain the information; and
- extract the information from a document containing it.

### **13.4**

BCC is not permitted to take into account the time it would take to consider any exemptions that may apply and redact (black out or edit) any exempt material.

### **13.5**

If BCC wishes to refuse an FOI Act request on the grounds of cost, it will issue the applicant with a refusal notice in writing and give a breakdown of the estimated cost or hours that would be taken to carry out the work. BCC will offer applicants advice and assistance to help them bring their request within the limit, where it is reasonable to do so.

## **14. MANIFESTLY UNREASONABLE REQUESTS (EIR)**

### **14.1**

As stated previously, there is no statutory equivalent to the Appropriate Limits and Fees Regulations, under the EIR. If an EIR request is received which is considered particularly voluminous, these requests may be refused under the Manifestly Unreasonable exception in regulation 12(4)(b) of the EIR.

### **14.2**

When considering whether an EIR request is Manifestly Unreasonable, BCC will follow the [Information Commissioner's guidance](#) and relevant case law.

### **14.3**

The Information Commissioner's guidance suggests that regulation 12(4)(b) provides an exception to the duty to comply with an EIR request in two circumstances: 1) where it is vexatious and 2) where it would incur unreasonable costs for the public authority or an unreasonable diversion of resources. These however, are only examples and each case will be decided on its own facts. When refusing a request on the grounds of Manifestly Unreasonable, BCC will offer the applicant advice and assistance.

## **15. VEXATIOUS REQUESTS**

### **15.1**

On rare occasions, BCC may receive a vexatious request. BCC does not have to disclose information in response to a vexatious request and can refuse such requests under section 14(1) (Vexatious Request) of the FOI Act or regulation 12(4)(b) (Manifestly Unreasonable) of the EIR. In such cases, BCC will consider the [Information Commissioner's guidance on vexatious requests](#) and any appropriate case law. The Information Commissioner's Office suggests that when determining whether a request is vexatious, the following five tests should be considered:

1. Can the request be seen as obsessive?
2. Is the request harassing the authority or causing distress to staff?
3. Would complying with the request impose a significant burden in terms of expense and distraction?
4. Is the request designed to cause disruption or annoyance?
5. Does the request lack any serious purpose or value?

### **15.2**

If a request is deemed vexatious, BCC will notify the applicant of this by issuing a refusal notice and provide a clear explanation as to how and why it meets one or more of the Information Commissioner's 5 tests. A request does not need to meet all 5 tests for it to be considered vexatious.

### **15.3**

If BCC has notified an applicant that a request is vexatious and receives a further request for similar or the same information, BCC is not obliged to provide the applicant with a further refusal notice.

## **16. DISCLOSURE WOULD PREJUDICE THE EFFECTIVE CONDUCT OF PUBLIC AFFAIRS**

### **16.1**

[Section 36](#) of the FOI Act provides an exemption from the right to know, if the disclosure of information would prejudice the effective conduct of public affairs, through the inhibition or likely inhibition of the free and frank provision of advice or exchange of views (guidance on this exemption can be found on the [Information Commissioner's Office website](#)).

### **16.2**

This exemption can only be applied to an FOI request with the express permission of BCC's 'qualified person', who will consider the relevant facts of the case and make an objective and reasonable decision as to whether the exemption applies. BCC's qualified person for the purposes of this exemption is the Monitoring Officer. Please refer all FOI's subject to this exemption to the Data Protection Team.

## **17. ACCESS TO INFORMATION ABOUT EMPLOYEES**

### **17.1**

On occasion, BCC receives requests for information about employees or other individuals, such as Members. These requests sometimes ask for information in relation to salaries, job descriptions, pensions, expenses and correspondence generated by them or contains reference to them.

### **17.2**

Section 40(2) of the FOI Act and regulations 12(3) and 13 of the EIR provide an exemption/exception from the duty to disclose 'personal data' about identifiable individuals, where the disclosure would breach any of the data protection principles set out in the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

### **17.3**

Generally, this means BCC must balance the legitimate interests of the public in having access to the information, against the interests of the individual under the first data protection principle (personal

data shall be processed fairly and lawfully) and in particular, considering whether it is unfair to release the information.

#### **17.4**

It is acknowledged that as a public authority, justification exists for the disclosure of employee names and job titles for Senior BCC Officers at Tier 3 and above unless a valid exemption applies. Consent will be sought from all other staff to release their information where it is reasonably practicable to do so.

## **18. COMMERCIAL INTERESTS AND CONTRACTORS**

### **18.1**

BCC has a duty to comply with the legislation and as such, information obtained from contractors and other third parties may be disclosed, unless an exemption or exception applies.

### **18.2**

BCC endeavours to make all third parties aware that their information may be disclosed in response to information requests, during the tendering stages and in their contract. There is an expectation that contractors who want to work with BCC will familiarise themselves with the obligations imposed on the Council, in relation to the FOI Act and EIR.

### **18.3**

The legislation recognises that there are valid reasons for withholding some information from disclosure, where it can be justified that disclosure would prejudice the commercial interests of BCC or a third party or if the information is confidential and disclosure would amount to an actionable breach of confidence. BCC will therefore take into account the exemptions provided under the FOI Act, namely [section 41](#) (information provided in confidence) and [section 43](#) (commercial interests) and regulation [12\(5\)\(e\)](#) (confidentiality of commercial or industrial information) when considering an information request for this type of information.

### **18.4**

If a request is received for information relating to a contractor or other third party, BCC will notify the company or person of this and give them the opportunity to state whether they believe that some or all of the information requested is exempt under the legislation and the reasons why. The final decision on whether or not to disclose information rests with BCC.

## **19. RIGHT TO COMPLAIN**

### **19.1**

BCC has a procedure in place for dealing with complaints in relation to its handling of information requests. This procedure is in accordance with the FOI Act Code of Practice and the EIR.

### **19.2**

A request for an internal review should be submitted within 40 days of receipt of the response by the requester. The requestor should specify why they do not agree with the initial response and what factors they would like to be taken into account as part of the review. This should include any public interest arguments for disclosure.

### **19.2**

The Information Governance Team handle all complaints related to information requests and reviews will be carried out by a senior officer who was not involved in the original response. The request for review will be dealt with within 20 working days of receipt. If the review will take longer to conduct, the requestor will be informed why and when to expect a response. If applicants are not satisfied with the outcome of their complaint, they have the right to appeal to the Information Commissioner's Office at [www.ico.gov.uk](http://www.ico.gov.uk).

## **20. CHANGES TO THIS POLICY**

### **20.1**

This policy will be updated as necessary to reflect best practice and to ensure compliance with any changes or amendments to the legislation.