

Freedom of Information (FOI) and Environmental Information Regulations (EIR) Policy

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This is a live document effective from the issue date. It supersedes any previous version of this document, which are now withdrawn.

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1. Introduction

- 1.1. The [Freedom of Information Act 2000](#) ('FOIA') and [Environmental Information Regulations 2004](#) (EIR) provide individuals and organisations with the right to request information held by public authorities.
- 1.2. The FOIA gives two related qualified rights – the right to be told whether the information is held and the right to receive the information, subject to exemptions. The right of access applies regardless of the purpose of the application. It is referred to as 'applicant blind' and treats everyone consistently.
- 1.3. FOIA requests must be made in writing and the information must be provided to them within 20 working days. However, if the request is for Environmental Information this can be requested verbally.
- 1.4. The Council is fully committed to the aims of the FOIA and related legislation and will make every effort to meet its obligations.

2. Policy scope

- 2.1. This policy applies to all recorded information held by the Council. Recorded information can consist of emails, paper copies of records, videos, DVDs, photographs, digital files, pen drives or memory sticks, and any other form of 'recorded' information held at the time the request is received. The information does not belong to the Officers or Members, it is the Council's information. This policy applies to all members, employees, apprentices, volunteers, contractors and third parties handling Council information, where the information held belongs to the Council.
- 2.2. The policy covers all requests for information, including FOIA, Environmental Information requests and normal 'business as usual' requests. It does not cover requests from individuals for their own personal data.
- 2.3. A 'business as usual' request is a request for information or services that a service area would expect to receive in its normal day-to-day operation. Any request that indicates it is a FOIA or EIR request cannot be treated as 'business as usual'.
- 2.4. We will make information available proactively through our website, publication scheme and FOI/EIR disclosure log. The publication scheme includes a guide to information, which shows the types of information that we

make available. The information on the publication scheme will be made accessible in accordance with the provisions of the Equalities Act 2010.

- 2.5. We will provide access to environmental information through the [Environmental Information Regulations 2004](#) ('EIR'). EIR legislation states that councils must over time, increasingly disseminate environmental information.
- 2.6. The Council recognises that there are many similarities between FOI and EIR requests and that requests for "environmental Information" must be answered in accordance with the EIR rather than the FOIA.
- 2.7. It is possible that in some cases both FOI and EIR requests will be relevant. The Council will, when responding to such requests for information, endeavour to clearly identify which parts of the information fall under which scheme.

3. Policy statement

- 3.1. The Council supports the principles of openness, transparency and accountability and will continue to improve access to information. The Council will demonstrate its commitment to all aspects of the FOIA and EIR and will continue to promote the values to ensure compliance with both legislations

4. Roles and responsibilities

- 4.1. Roles and responsibilities for defined data protection related roles and for all staff are set out in the accompanying Information Governance Roles and Responsibilities document.
- 4.2. **Offences under the Freedom of Information Act:**
 - 4.2.1. Section 77 states that it is a criminal offence to alter, block, destroy or conceal information. Depending on the nature of the incident, either the Greater Manchester Combined Authority or its individual members of staff could be charged with an offence. The penalty is a fine.
 - 4.2.2. Should any employee deliberately alter, block, destroy or conceal information, this may also amount to gross misconduct.
 - 4.2.3. There are no financial or custodial penalties for failure to provide information on request or for failure to publish information, however the organisation could be found in contempt of court for failing to comply with a decision

notice, enforcement notice, or information notice. This could lead to a fine or, in theory, jail for a senior officer of the authority.

5. What is an FOI or EIR request?

- 5.1. The Freedom of Information Act (FOIA) and Environmental Information Regulations (EIR) give the public right of access to information held by public authorities which helps to build public trust by enabling transparency.
- 5.2. The FOIA obliges organisations covered by it to make information available to members of the public, through a [publication scheme](#) and, additionally, to make any other information (with a number of statutory exceptions) available upon request.
- 5.3. The EIR are similar to the FOIA but are limited specifically to information regarding the environment. The EIR grant a right for any person to request access to environmental information held by public authorities and for public authorities to take steps to proactively make environmental information available to the public.
- 5.4. The Freedom of Information Act and Environmental Information Regulations do not cover information, where an individual can be identified. This is addressed by the Data Protection Act 2018 and the General Data Protection Regulations.
- 5.5. Any applicant making a request does not have to identify the correct piece of legislation for that request to go forward. So an application from an individual for access to information under the FOIA or EIR that should, in fact, be dealt with under the Data Protection Act 2018 would still be processed by TMBC under the correct legislation.

6. Who is entitled to make a request?

- 6.1. Any person is entitled to make a Freedom of Information or Environmental Information Regulations request. The FOI Act does not mandate that the identity of an applicant must not be taken into account, though the ICO has advised that, as the Act enables disclosure of information on grounds of public interest, the handling of requests in most cases are applicant and motive blind and should be treated as such when responses are formulated by organisations.

6.2. On this basis, TMBC will assess all requests on the understanding that applicant identity is not a relevant consideration during the lifecycle of the request management process.

6.3. Possible exceptions to this include, but are not limited to:

- A request is deemed to be repeated
- The applicant has made a request for their own personal data
- Aggregated costs in line with the Fees Regulations
- Release would be likely to endanger the health and safety of the requester or any other person
- Prejudice may be caused by releasing the information either to the requester or to any other person (prejudice based exemptions only)
- Situations where TMBC is confident that the identity of the applicant means the requested information is reasonably accessible to that person by other means, and is therefore exempt by way of Section 21 of the Act
- If disclosure of third party personal data would be contrary to Data Protection principles and/or regulations to release the information to the general public

6.4. If the information is not exempt and procedures have been followed the information must be disclosed.

6.5. **Any person making a request for information to a public authority is entitled:**

- To be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to them.
- If a request is refused there is a duty to communicate the reason for the refusal. This decision must be provided within twenty working days of receipt of the request.

6.6. **Individual requests for information**

6.6.1. Individuals (or companies) can request information. The request must be made in writing, must contain a name and address (which can be an email address) and must describe the information being requested.

6.6.2. EIR requests can also be made verbally either by phone or in person, however a correspondence name and address is required if a written response is to be

provided. Additionally if the request cannot be answered verbally the requestor should be asked to put it in writing.

6.6.3. Where TMBC does not have information but is aware of another organisation which does, under the FOIA it is a requirement to provide advice and assistance to a requestor. The IG Team will do this by:

- contacting the requester and telling them where the information might be
- providing contact details for the other organisation
- if possible, negotiate with that other organisations to transfer the request directly to them (with the requester's consent).

6.7. Requests relating to potential media interest

6.7.1. TMBC will not process or compile a response to a Freedom of Information request differently even if it is felt that the response will prompt media interest, however the TMBC Communications team need to be sighted on the response to be aware of the media interest in the topic.

7. Application

7.1. Requests for Information

7.1.1. Information requests are motive blind, meaning that the requestor should not be challenged as to the reason for why the information is being asked. The only relevant factors are whether we hold information and whether circumstances exist as to why the information may not be disclosed (a statutory exemption is engaged).

7.1.2. Requests do not need to mention the FOIA and do not need to refer to 'Freedom of Information'.

7.1.3. The Council is only obliged to comply with a request if an applicant makes a request in writing either by email, letter, online form or using social media sites such as Facebook or Twitter. If the request is for Environmental Information this can be requested verbally. The following points will be required for processing:

- A description of the information so that it can be located. If there is any doubt about what information is being requested the applicant should be asked to clarify their request as soon as possible; this will be facilitated by the Information Requests Team;

- A means by which a response can be communicated to the requestor such as a postal or email address;
- The applicant's name. If the applicant only provides the name of an organisation this is also acceptable. There are occasions where applicants may use fictitious or assumed names. If it is suspected that this is the case officers should use their discretion. The real name of an applicant is only usually relevant if for instance personal information is being sought and the identity of the requestor is necessary to ascertain whether they are the data subject or a third party. The true identity of an individual is also necessary if the applicant is using a pseudonym to either circumvent the appropriate limit or because the applicant has previously been issued with a vexatious refusal notice. If in doubt Officers should seek advice from the Information Requests Manager.

7.2. **Time of compliance**

- 7.2.1. TMBC has a maximum of 20 working days to comply with a Freedom of Information or an Environmental Information Regulations request. This commences once a written request has been received. All requests received must be forwarded to the Information Governance team without delay.
- 7.2.2. It is possible to extend the time to process a request by up to a further 20 working days in specific circumstances, for example, to allow time for consideration of the public interest test in relation to an FOI request or where more time is needed to respond to a complex request under EIR.
- 7.2.3. In any event the requestor must be informed as soon as possible following receipt of the request of any time extension or exemption being relied on. Therefore it is essential that the IG team are advised as soon as possible on receipt of the harvesting email if an extension to the time needed maybe required.

7.3. **Third party information**

- 7.3.1. In some circumstances it may be necessary to consult with third parties prior to any disclosure particularly where this relates to confidence and commercial sensitivity. However, whilst TMBC will take into consideration the views of third parties, the decision on whether or not to disclose remains with TMBC. The only real exception to this is when the third party considers that the release of the information would be an actionable breach of confidence. In which case TMBC will consult that third party with a view to seeking their consent, unless such consultation is not practicable.

7.3.2. If the request is likely to involve the disclosure of third party information then advice should be sought from the IG Team who will consult with the FOI/DPO lead or Legal Services in order for an appropriate decision to be made regarding the disclosure.

7.3.3. The decision to consult with third parties or not should be fully documented and provided to the IG Team to be held with the response to the requestor

7.4. **Joint Services Responses**

7.4.1. A response requiring contributions from more than one service must be handled efficiently and seamlessly. A response must in any event be consolidated so that all the information requested is provided in a single response back to the applicant.

7.4.2. It is recommended that there is a lead officer who takes responsibility for handling the response. The lead officer will normally be in the service that either holds the bulk of the information requested or holds any contentious information, which may have been requested and may be subject to statutory exemptions.

7.4.3. The Information Requests Team will provide direction and monitor the progress of requests where contributions are required from several services and will ensure that a lead officer has been identified for handling the response as early as possible. They will also ensure that the request is logged on the system once only. This is to avoid double counting and any confusion in the handling of a request.

7.5. **Appropriate Limit**

7.5.1. Under [s.12 of the FOIA](#), the Council does not have to comply with requests where the cost of compliance exceeds the appropriate limit. S.12 applies if the following factors would cost the Council more than £450 or 18 hours of officer time:

- Determine whether the information is held.
- Locating the information.
- Retrieving the information.
- Extracting the information.

7.5.2. Under [s.13 of the FOIA](#) and the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004](#), the Council can charge for the cost of disbursements.

7.6. **Vexatious or Repeated Requests**

- 7.6.1. Under [s.14 of the FOIA](#), the Council will not comply with vexatious requests where there is a strong likelihood that such requests are being made to intentionally cause disproportionate or unjustified levels of disruption, irritation, or distress.
- 7.6.2. The Council will not comply with a request where it has received an identical or similar request from the same individual unless a reasonable interval has elapsed between compliance with the original request and the current request.

7.7. **Public interest test**

- 7.7.1. **Public interest test** - some exemptions are subject to the public interest test. This test will need to be applied in these circumstances in order to establish if the greater public interest lies in disclosing the information or not.
- 7.7.2. If it is considered that the information should be disclosed the IG Team will send this information to the requester.
- 7.7.3. If it is considered that the greater public interest (not necessarily TMBC interest) lies in not disclosing the information, a response will be sent to the requester giving full reasons why the information cannot be disclosed.
- 7.7.4. It is therefore essential that the FOI lead in the service area informs the IG team without delay if an exemption is likely to be applied so that there is time, where necessary, to apply the public interest test.

- 7.8. Further detail on the exemptions are available in the exemptions guide.

7.9. **Advice and Assistance**

- 7.9.1. In compliance with [s.16 of the FOIA](#), the Council will provide advice and assistance in response to all requests for information as far as reasonably practicable.

7.10. **Publication Scheme**

- 7.10.1. Every public authority has a duty to adopt and maintain a Publication Scheme in order to facilitate the pro-active release of information. The Council has adopted the model Publication Scheme produced by the Information Commissioner and it is available on our website.

7.10.2. Our publication scheme contains the following seven classes of information:

- Who we are and what we do;
- What we spend and how we spend it;
- What our priorities are and how we are doing;
- How we make decisions;
- Our policies and procedures;
- Lists and registers;
- The service we offer.

7.11. **Codes of Practice**

7.11.1. The FOIA is supported by two codes of practice:

- [Freedom of Information Code of Practice \(Section 45\)](#) - Detailing good practice within Freedom of Information.
- [Code of Practice on the management of records \(Section 46\)](#) - Detailing good practice within record management.

7.11.2. The Council will ensure that wherever possible the codes of practice will be applied.

7.12. **Refusals**

7.12.1. In some cases, the Council may refuse requests for information under [s.17 of the FOIA](#). The Council may issue a refusal notice for the following reasons:

- The information being requested is not held, or
- An exemption applies.

7.12.2. In some cases we may not hold the information requested - it may be that it is held by another party. If possible, the Council shall provide the requestor with information to redirect the request. However, for Data Protection reasons the Council will not transfer the requestor's request.

7.13. **Exemptions**

7.13.1. There may be certain circumstances under which the Council is not obliged to release information. The Council may decide to apply exemptions under [Part II of the FOIA](#). The exemption, if relied upon, will be explained thoroughly in the Council's refusal notice under [s.17](#).

7.13.2. A list of the exemptions to the FOIA can be found on the Information Commissioner's website, the following provides a list of exemptions:

- Section 21 – information already reasonably accessible
- Section 22 – information intended for future publication
- Section 22A – research information
- Sections 23 and 24 – security bodies and national security
- Sections 26 to 29
- Sections 30 and 31 – investigations and prejudice to law enforcement
- Section 32 – court records
- Section 33 – prejudice to audit functions
- Section 34 – parliamentary privilege
- Sections 35 and 36 – government policy and prejudice to the effective conduct of public affairs
- Section 37 – communications with the royal family and the granting of honours
- Section 38 – endangering health and safety
- Section 39 – environmental information
- Section 40(1) – personal information of the requester
- Section 40(2) – Personal information
- Section 41 – confidentiality
- Section 42 – legal professional privilege
- Section 43 – trade secrets and prejudice to commercial interests
- Section 44 – prohibitions on disclosure

7.13.3. Some exemptions are 'absolute', which means that the exemption applies to any information falling within a defined type.

7.13.4. Other exemptions are 'qualified' and require a public interest test to be applied. The Council will ensure that the public interest test is carried out for each of the qualified exemptions. If an exemption is applied, it will be authorised by a senior officer.

7.14. **Staff Names and Details**

7.14.1. It is acknowledged that as a public authority, some justification exists for the disclosure of employee names and contact details. TMBC will release the names of TMBC Board members, Directors and all staff at £50,000 and above pay grade upon request, unless a valid exemption applies. Names and details of staff published on the TMBC website will also be provided without gaining additional consent.

7.14.2. Consent will be sought from all other staff to release their information where it is reasonably practicable to do so. The Information Governance team will decide when it may or may not be reasonably practicable to obtain consent.

7.14.3. Requests for salary information will be answered, if applicable, by providing the TMBC pay bands. Where a person falls outside of these pay bands, their salary will be given in £5,000 bands. Requestors will be referred to the Annual Report/Annual Accounts if requesting information regarding senior leader's salaries.

7.15. **Internal Review**

7.15.1. If a requestor is not satisfied with the response received for their Freedom of Information / Environmental Information Regulations request, they are entitled to request an internal review.

7.15.2. The internal review is a process that must be undertaken by an independent senior officer within the service area that was not involved in collating the initial information for response.

7.15.3. The internal review officer will conduct an investigation to conclude if they are satisfied that the original response was correct or where not been answered appropriately, disclose any further information required to satisfy the request.

7.15.4. Internal reviews have a deadline of 20 working days. The Information Governance team will log the internal review request and they will acknowledge receipt of the internal review request, identify a reviewer and send all relevant information to the reviewing officer to enable them to undertake their investigation. The IG team will also provide a deadline for receipt of the internal review.

7.15.5. Simple reviews should be dealt with within 2 weeks of receiving the complaint. Complex reviews e.g. where it is necessary to reconsider the public interest test - should aim to be dealt with within 4 weeks of receiving the complaint. In any case the IG team will keep the requester fully informed.

7.15.6. Once the investigation is completed then the outcome of the investigation and accompanying response will be returned to the IG Team who will then reply to the requestor.

7.15.7. Where the original decision is reversed the requester **will** be told, and made aware of when they can expect the information originally requested to be provided.

7.15.8. Where the original decision is upheld the requester **must** be made aware of their further rights of appeal to the Information Commissioner's Office.

7.16. Data Protection

7.16.1. A request for information may relate to the personal data of the requestor or third parties. The Council may refuse the request if to disclose information in relation to third parties would be an actionable breach of confidence or would breach one or more of the data protection principles.

7.16.2. In cases where the request relates to personal data of the requestor, the authority will refuse under [s.40\(1\)](#) and shall ask for the request to be submitted as a Subject Access Request under the [Data Protection Act 2018](#). This process is detailed within the Council's [Data Protection Policy](#) and [Subject Access Requests Policy](#).

7.17. Re-use of Public Sector Information Regulations 2005

7.17.1. The [regulations](#) implement an EU directive that encourages the re-use of public information for purposes other than its original purpose.

7.17.2. The regulations do not oblige the Council to make their information available for re-use unless there is a statutory obligation to do so.

7.17.3. The regulations apply to any recorded information (Freedom of Information), including whole or part of documents. Requests for re-use should be in writing and the Council will aim to respond within 20 working days.

7.18. Environmental Information Regulation 2004

7.18.1. The [Environmental Information Regulations 2004](#) (EIR) came into force on 1 January 2005 and give members of the public the right of access to environmental information held by public authorities, which includes the Council.

7.18.2. The Council will class a request for information as an EIR request if it falls within the description stated in the regulations under Part 1 Regulation 2.

7.18.3. The Council is not obliged to disclose all information requested if an exception applies under [Part 3 Regulation 12](#). The Council will carry out a public interest test for any exception that is applied.

7.19. Information Commissioner

7.19.1. The Council will consult with the Information Commissioner's Office (ICO) when required. The Council will refer to Commission guidance and ensure that it is compliant with any good practice that the Commissioner promotes. The Commissioner will investigate complaints in relation to Freedom of Information and Environmental Information Regulations requests.

7.20. Training

7.20.1. All new employees to the Council will be briefed in relation to FOIAs/EIRs as part of their induction to the authority. All employees of the Council are also required to complete the Freedom of Information Act 2000 mandatory course to support them to understand more about the Act and the Council's duty as a public authority to be accountable for its actions.

7.20.2. The Information Requests Team will ensure that staff and members receive appropriate training to ensure they are fully informed of their obligations under the FOIA and EIR.

7.21. Disposal and Destruction of Information

7.21.1. FOIA only applies to information that a public body holds. Where information is earmarked for disposal, as it is no longer required, there is nothing preventing public bodies from carrying out these routine records management responsibilities.

7.21.2. It is illegal under [s.77 of FOIA](#) to alter, deface, block, erase, destroy or conceal any record held by the public authority, with the intention of preventing the disclosure. It is important to note that it is the individual that is responsible rather than the public body and carries a fine of up to £5,000. Any officers found guilty of such an offence will be subject to disciplinary proceedings.

7.22. Management Control and Organisation

7.22.1. The Council will provide suitable management and control arrangements for its information and records. The Council will seek legal advice if and when required.

7.23. Monitoring

7.24. Requests for information will be assessed thoroughly through the Council's performance indicators and a robust reporting system. Managers will receive

updates on a scheduled basis and will also be made aware of any pressing matters.

8. Contact details

Data Protection Officer; Head of Information Governance

TMBC, Tameside One, Market Place, Ashton-under-Lyne, Tameside

Email: information.governance@tameside.gov.uk

Information Governance Team;

TMBC, Tameside One, Market Place, Ashton-under-Lyne, Tameside

Email: information.governance@tameside.gov.uk (general queries),
foi@tameside.gov.uk (FOI/EIR specific queries)

Information Commissioner

Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow,
Cheshire SK9 5AF

Tel: 0303 123 1113

www.ico.org.uk

APPENDIX 1: Related Policies and Procedures

- Data Protection Policy
- Data Sharing Policy
- Data Quality Policy
- Information Asset Management Policy
- Records Management Policy
- Records Retention and Disposal Policy
- Records Retention Schedule
- Individual Rights Policy
- Disciplinary Policy
- Employee Code of Conduct
- Freedom of Information Act (FOI) and Environmental Information Regulations (EIR) Policy

APPENDIX 2: Legislative Framework

The Anonymisation and Pseudonymisation Policy is set in the context of the following legislation and guidance:

- [UK General Data Protection Regulation 2018](#) and [Data Protection Act 2018](#) – that requires that personal information must be handled and stored in a confidential manner
- [The Human Rights Act 2000](#) - everyone has the right to respect for their private and family life, home and correspondence.
- [Freedom of Information Act 2000](#) and [Environmental Information Regulations 2004](#) - Public authorities, if requested, must disclose information that they hold.
- [Localism Act 2011](#) - Highlights the importance of transparency and accountability of public bodies and raw data.
- [Local Government Transparency Code](#) - All local authorities must publish the datasets required by the code, in some cases in prescribed formats [The Re-use of Public Sector Information Regulations 2015](#) (PSI) Encourages the reuse of public sector information by third parties for purposes other than the initial public task it was produced for. The Regulations govern what and how information has to be made available for re-use.

Online Resources

- ICO – <https://ico.org.uk/>
- TMBC intranet