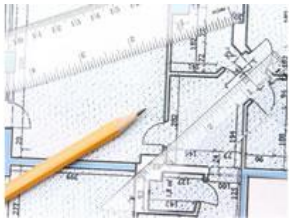
Tameside Metropolitan Borough

Freedom of Information 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 It supersedes any previous version of this document, which are now withdrawn.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 ('the FOIA') provides 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. Requests must be made in writing and the information must be provided to them within 20 working days.

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. 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, Environment 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 request cannot be treated as 'business as usual'.

2.4. We will make information available proactively through our website, publication scheme and FOI 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 will continue to promote its values and ensure that it is compliant with legislation.

4. APPLICATION

Requests for Information

4.1. 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).

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

4.3. The Council is only obliged to comply with a request if an applicant makes a request in writing either by email, letter, or online form and provides the following:

- 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.

Fees

4.4. Wherever possible, the Council will provide information free of charge. However, in some cases, this may not be possible. Where this is the case, we are entitled to charge for information under S.9 of the FOIA and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The Council will issue a fees notice which must be paid within three months. If no payment is received, we will close the request for information.

Time of compliance

4.5. The Council aims to comply with requests for information as quickly as possible. S.10 of the FOIA states that a public authority must respond to a request promptly and, in

any event, no later than the twentieth working day following the date of receipt. 'Working day' means any day other than Saturday, Sunday, or bank holidays. The time for compliance is subject to change if:

- The Council seeks clarification under s.1(3) of the FOIA;
- There is a need for an extension to consider the Public Interest Test under s.10(3) of the FOIA; or
- A fees notice is issued under s.9.

Joint Services Responses

4.6. 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.

4.7. 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.

4.8. 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.

Appropriate Limit

4.9. 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.

4.10. 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.

Vexatious or Repeated Requests

4.11. 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.

4.12. 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.

Advice and Assistance

4.13. 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.

Publication Scheme

4.14. 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.

4.15. 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.
- List and register.
- The service we offer.

Codes of Practice

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

- Access Code (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.

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

Refusals

4.18. 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.

4.19. 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.

Exemptions

4.20. 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.

4.21. 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

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

4.23. 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.

Internal Review

4.24. If a requestor is unhappy with a decision that the Council has made, it may request an internal review within 40 working days of the date of the date of the response, as detailed in the s.45 code of practice. The Council's internal review comprises a one stage review by the Council's Monitoring Officer or a senior legal officer. The Council has 20 working days to complete the review.

Data Protection

4.25. 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.

4.26. 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 20148. This process is detailed within the Council's Data Protection Policy and Subject Access Requests Policy

Re-use of Public Sector Information Regulations 2005

4.27. The regulations implement an EU directive that encourages the re-use of public information for purposes other than its original purpose.

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

4.29. 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.

Environmental Information Regulation 2004

4.30. 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.

4.31. 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.

4.32. 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.

Information Commissioner

4.33. 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.

Training

4.34. All new employees to the Council will be briefed in relation to FOIAs 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

4.35. 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.

Disposal and Destruction of Information

4.36. 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.

4.37. It is illegal under s.77 of FOIA to wilfully destroy or alter any original documents in order to avoid releasing information. 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 £5000. Any officers found guilty of such an offence will be subject to disciplinary proceedings.

5. RESPONSIBILITIES

5.1. The Council has a responsibility to ensure that:

- The Freedom of Information Policy and supporting documents reflect the corporate priorities of the Council.
- There is a genuine commitment throughout the Council to promote openness and accountability through the FOIA.

5.2. The Senior Management Team has a responsibility to ensure that:

- The Council is fully compliant with legislation.
- The policy is approved and the procedures that support the policy are implemented.
- Information in relation to the policy and procedures is circulated within their service areas.

5.3. Managers are responsible for ensuring that:

- Information held within their areas, including information processed by contractors, partners or other bodies working under a service level agreement, complies with the appropriate policies and procedures.
- Their team members are aware of the process for dealing with information requests and understand the possible risks of disclosing sensitive information.
- Requests are responded to within the timeframe set by legislation and that if they have any concerns they should be make the Information Requests Team aware.

5.4. The Information Requests Team is responsible for:

- The administration of FOI and EIR requests, including, but not limited to:
  - Recording, acknowledging, and allocating requests
  - Requesting clarification from the requester if there is any doubt about what information is being requested
  - Progress tracking requests to ensure responses are issued within the correct timeframes
  - Quality checking responses prior to issue
  - Producing and distributing statistical and performance data

- Assisting the Senior Management Team, Managers, Staff and Councillors in all aspects of requests for information; Freedom of Information, Environmental Information and Data Protection.

- Ensuring that the Council is compliant with legislation under:

  - The Freedom of Information Act 2000
  - Environmental Information Regulations 2004
  - Section 45 code of practice
  - Section 46 Lord Chancellors code of practice
  - Information Commissioner's guidance and records management

5.5. Tameside Councillors have a responsibility for ensuring that:

- They understand they are covered under the FOIA in their capacity as a Councillor.
- They promote openness and accountability in their role.
- They follow the Council's policy and procedures.

Management Control and Organisation

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

Monitoring

5.7. 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.

6. SUPPORTING POLICIES

6.1. This policy should be read in conjunction with the Information Governance Framework, and in particular the following policies and procedures:

- Data Protection Policy
- Publication Scheme.
- Records Management Policy
- Subject Access Request Policy