



Freedom of Information Act (2000)

Policy 2016-2019

Version: 7

Revised draft

To be reviewed: April 2019 (subject to changes in legislation)

Owner: Performance and Community

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Introduction

The Freedom of Information Act 2000 (“the FOI Act”) provides individuals and organisations with the right to request information held by public authorities. The FOI Act 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. Requests must be made in writing and the information must be provided within 20 working days, unless an exemption applies.

Erewash Borough Council is fully committed to the FOI Act and related legislation, and will make every effort to meet its obligations.

This policy outlines Erewash Borough Councils approach to responding to requests for information made under the FOI Act and its associated charging policy for such requests.

Aims

This policy aims to ensure access to information held by the council in order to promote greater openness, provide increased transparency of decision making and build public trust and confidence. Access to information about decisions we take can help local people to influence local service provision. These aims will be balanced against the need to ensure the confidentiality of certain information, where disclosure would not be in the public interest.

Erewash Borough Council is committed to openness about the way in which it operates and makes decisions and will favour disclosure of information where possible. This policy sets out the general principles that will be adopted by the Council in response to requests for information under the FOI Act.

Scope

This policy applies to all recorded information held by the Council.

This policy covers all requests for information except requests from individuals for their own personal data which will be dealt with under Data Protection subject access requests.

We will make information available proactively through our website and publication scheme.

We will provide access to environmental information through the Environmental Information Regulations 2004 (EIR). Requests under EIR will be dealt with in accordance with Erewash Borough Council’s Environmental Information Regulations Policy.

Validity of FOI Requests

To be valid under the FOI Act, requests;

- Must be in writing either by letter, fax or email
- Clearly describe the information being sought
- Can be made by an individual or an organisation
- Must be legible,
- Must contain the name of the applicant and a return address

- Requests do not need to be written in a special form and do not need to specifically mention the FOI Act or refer to Freedom of Information.

Publication Scheme

The Council is required to produce and maintain a Publication Scheme, which is a directory of information and publications that are routinely available. This scheme however is not definitive and items of information which may be published can be provided on request. Most of the information provided in our "Publication Scheme" will be available in electronic form via our website in the first instance. This will enable quick and easy access to documents on a self-service basis. When asked to provide information in hard copy the Council will do so wherever possible. We accept that it is important that all sections of the community should be able to access the Council's information.

A [hard copy of our publication scheme \[336kb\]](#) is available on request from our receptions. It details who to contact for various types of information, the format and any cost for obtaining the information.

The Publication Scheme outlines:

- the way we intend to present the information
- how we intend to publish it
- whether we intend to make a charge and if so, what the charge is.

Information covered by the Publication Scheme should be obtained in the manner described in the Scheme.

We will review our Publication Scheme as frequently as is reasonably practicable with the intention of increasing the scope and range of information covered by it. As a guide the following should be noted:

- The version provided on the council's website at www.erewash.gov.uk will be updated as and when new publications are added
- Where a printed copy of the scheme is requested by mail this will be the version available from the website.

We will at times release information in a database or spreadsheet format. Once these datasets are disclosed following an FOI request we will publish this information, in a reusable format, within our disclosure logs, which are available on our website.

Advice and assistance

The Council has a duty to provide advice and assistance to applicants under Section 16 of the FOI Act so far as it would be reasonable to expect the Authority to do so. The Council will offer advice and assistance to any person or organisation that wishes to make a request for information. The Council is committed to dealing with requests within the statutory guidelines of no more than 20 working days.

Responsibility and compliance

The Director of Community Services has overall responsibility for FOI within the Council. The Council's Performance and Information Security Officer has day-to-day responsibility for the management and co-ordination of the information requests.

The Freedom of Information Act Policy applies to all employees, councillors, agents, contractors and subcontractors. If employees knowingly fail to comply with this Policy, or legislation, the Council may take appropriate action under the Disciplinary Procedure.

FOI Act and Environmental Information Regulations (EIR)

The Council recognises that there are many similarities between the two regimes and that requests for environmental information must be answered in accordance with the Environmental Information Regulations rather than the FOI Act.

It is possible that in some cases both regimes 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 regime.

For more information please see the Environmental Information Regulation Policy.

Charges

This Policy is based on Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

Erewash Borough Council (EBC) can refuse to answer a request on the grounds of cost if the cost is more than £450, which equates to two and half days of work (or 18 hours at a rate of £25 per person per hour).

When calculating whether answering a request would exceed the appropriate limit, we will take account of the costs involved in the following activities:

- Determining whether we hold the information,
- Locating and retrieving the information, or a document which may contain the information, and
- Extracting the information from document(s) (including editing).

In all cases the costs must be 'reasonable'. In other words it would be 'unreasonable' for the council to charge an applicant due to a poor records management system.

In applying fees and charges the council cannot take account of the costs of considering whether information is exempt under the Act nor in the issue of Fees Notices.

If a request costs less than the appropriate limit, and there is no other basis on which it may be refused or otherwise dealt with, the council will answer the request. The maximum fee that can be charged in these cases is limited to the specified costs of postage, printing and photocopying, referred to as 'disbursement costs' i.e. the costs of:

- Informing the applicant whether we hold the information,
- Reproducing any document containing the information, and
- Communicating the information to the applicant.

An estimate of the level of these 'disbursement' costs is indicated below (plus postage which will be applied at standard Royal Mail rate(s)):-

FREEDOM OF INFORMATION	CHARGE FOR 2014/15 £	CHARGE FOR 2015/16 £	VAT RATE
FREEDOM OF INFORMATION ACT 2000 Prepared with reference to the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004		(Charges shown exclude VAT)	
Officer Time – Hourly rate	28.00	25.00	IF EBC ARE THE ONLY SOURCE OF THE INFORMATION THEN THE VAT TREATMENT IS NON-BUSINESS
Photocopying – price per sheet:			
A4	0.15	0.15	
A3	0.25	0.25	
A2	0.45	0.45	
A1	0.90	0.90	
A0	1.80	1.80	IF EBC SUPPLIES INFORMATION WHICH IT IS NOT OBLIGED TO UNDER THE ACT OR OTHER STATUTORY REQUIREMENTS TO PROVIDE THEN THE SUPPLY IS STANDARD RATED
CD-Rom	1.15	1.15	
Postage	As per actual cost	As per actual cost	
Accessible Formats	No additional cost to apply	No additional cost to apply	
Recommended waiver amount	Under 10.00	Under 10.00	

The council has determined to waive all costs under £10 in respect of a single request made under the Freedom of Information Act 2000. This decision may be reviewed periodically within the terms set out in this policy.

If a request would cost more than the appropriate limit (£450), the council will normally refuse to answer the request. However, if the limit is only likely to be breached because of our poor records management and the information is of the type that should be available then we are liable to be criticised by the Information Commissioner on appeal.

We recognise that in such circumstances the Commissioner may overturn our decision. There is a formal Guidance Code on Records Management issued by the Lord Chancellor under S46 of the FOI Act. We are required to apply the code to our records management. The council acknowledges that poor records management cannot be accepted as an excuse for non-compliance with FOI.

Where this exception is proposed to be relied upon the council's Performance and Information Security Officer will seek approval from the Monitoring Officer to consider disclosing the information if it appears that:

1. the failure to be able to disclose is due to poor record management, and
2. the information is of such a nature and public interest that it ought to be reasonably accessible and available.

The Monitoring Officer will then decide whether or not there should be such disclosure despite the right to refuse. Where any continued refusal is likely to be controversial or the matter is sensitive, the Monitoring Officer should consult with the Chief Executive or Director of Resources prior to any decision not to disclose.

If the council chooses to answer the request we will contact the applicant and advise what information would be available within the appropriate limit i.e. discuss with the applicant whether he/she would prefer to modify the request to reduce the cost.

If an applicant still wishes to proceed with the original request the maximum fee that may be charged is equivalent to the total costs of:

- Determining whether the council holds the information, locating and retrieving the information, and extracting the information from a document containing it (prescribed costs), and
- Informing the applicant whether the council holds the information and communicating the information to the person making the request (disbursement costs).

If the applicant does not agree with the proposed fee, they can appeal through the council's complaints procedure in the first instance.

Consecutive or Campaign Requests:

This refers to where two or more requests for information are made to the council by one person or by different persons who appear to be acting in concert or in pursuance of a campaign.

The rule: the estimated cost of complying with these requests is to be taken to be the total cost of complying with them all. However, for this rule to apply the requests would need to relate to the same or similar information and be received within a period of 60 consecutive working days.

Reviewing the Charges

Charges will be reviewed annually to take account of the 'de minimis' level for waiving charges (if any), increases in postal charges, printing, or other costs. Any subsequent revisions to statutory Fees Regulations will be incorporated in to this policy as required for the council to comply with its statutory duties.

Exemptions

Certain information held by the Council is exempt from release. Under FOI regulations there are 23 exemptions.

Under FOI the exemptions fall into two categories.

- **Absolute exemptions.** These exemptions are unconditional. Examples of absolute exemptions include information accessible by other means, information provided to the Council in confidence and personal information covered by the Data Protection Act 1998.
- **Qualified exemptions.** This category of exemption is subject to a public interest test. In these cases we will look at whether the balance of public interest is weighted in favour of giving the information requested. Where this is found to be the case, the information will be released. Examples of qualified exemptions

include commercially sensitive information and information that would prejudice the health and safety of an individual.

It is our intention to apply exemptions in appropriate circumstances although we will always look for a balance in favour of disclosure

We will make clear statements to parties contracting with the Council to make sure they are aware of our obligations to disclose under FOI and we will resist attempts to impose confidentiality obligations on the Council where the information is not confidential in nature.

If a request is turned down or refused

We will always be clear to confirm or deny whether or not we hold information requested and we will respond promptly to information requests. We will either provide the information requested or, if it is withheld, explain why it has not been provided, quoting the relevant exemption under the Act. We will only turn down a request or refuse to provide information in the following circumstances:

- the request falls into one of the exemption/exception categories
- the request is considered vexatious
- the required fee is not paid within three months.

If a request is refused, the applicant has the right to ask for that decision to be reviewed under the Council's complaints procedure.

If after the complaints procedure has been exhausted the information is still not disclosed, the applicant has the right to ask the Information Commissioner to review the decision.

Transferring a request to third parties

If it is found that another public body holds the information requested, we will either transfer the request to that organisation or advise the applicant where that information can be obtained. Once the request has been appropriately directed the role of the council in this request is deemed to have been satisfied. Any part of the request that relates to the Council will be handled in the normal way.

We will inform the applicant if all or part of an enquiry has been transferred to another public body. In cases where there are reasonable grounds to believe that the applicant would object to a transfer, we will first ask for consent from the applicant.

Records Management

We recognise that to successfully meet our obligations under FOI we must have efficient and effective methods of managing and identifying information held by us. In particular we will have regard to the Code of Practice on Records Management issued under section 46 of the Act and the Council's own Document Retention Policy.

All Councillors and employees must make sure that information for which they are responsible is held in an organised and systematic way that will allow it to be identified and easily retrieved.

Complaints Procedure

The Council has a comments, compliments and complaints procedure for dealing with complaints made in relation to the handling of requests for information under the FOI Act. Any person who is unhappy with the way in which the Council has handled their request for information may use this procedure. The Information Commissioner is unlikely to investigate any complaint about the Council's handling of an information request unless the complaints procedure has been exhausted.

A complaint may be made about the Council's failure to release information in accordance with its publication scheme, about requests that have not been properly handled, or where there is dissatisfaction with the outcome of a request. If, following a complaint, the decision is made to release information; the information will be made available at the earliest opportunity following notification of intended disclosure.

Contact Details

Freedom of Information

The Council's Performance and Information Officer handles requests for information covered by the Freedom of Information Act 2000. For further information or for any queries please contact:

The Performance and Information Security Officer
Town Hall
Wharncliffe Road, Ilkeston
Derbyshire
DE7 5RP
E-mail: foi@erewash.gov.uk
0115 907 2244 ext. 3579

Further Information on FOI can also be found on the following websites, or the Information Commissioners Office:

Department for Constitutional Affairs: www.dca.gov.uk

Information Commissioner's Office: www.ico.gov.uk
Tel: 0303 123 1113 or 01625 54 57 45
Email: casework@ico.gsi.gov.uk
Website: www.ico.gov.uk