
1. INTRODUCTION


1.2 The legislation applies to all public authorities and obliges them to advise requesters whether information falling within the scope of a request is held, and, if it is held, to communicate that information to the requester in a format of their choice.

1.3 The council receives a significant number of formal requests each year and has a statutory duty to respond correctly under this legislation. This policy provides a framework for access to information that ensures the council meets its obligations under FOIA and EIR.

2. PURPOSE

2.1 The purpose of this policy is to assist everyone to understand Cheshire East Council's approach to meeting its statutory duties under FOIA and EIR. In line with the Government's Transparency Agenda, there is a presumption in favour of the disclosure of information. However, this is balanced with a need to ensure the confidentiality of some information relating to such areas as personal data, commercial interests, legal processes, and other instances where disclosure would not be in the public interest. In certain circumstances, requests for information may be refused.

3. SCOPE

3.1 This policy applies to all requests for information under FOIA or EIR and, therefore, to all information held by or on behalf of the Council.

3.2 The information can be recorded on paper, disc or microfiche and - as most common now - electronically. Information which is known, but not recorded, is not ‘held information’ in FOIA terms. If information has been destroyed before a request is received, then it is no longer held. Information should not be created in order to provide a response.

4. RESPONSIBILITIES
4.1 This policy applies to all Council employees, contractors, agency workers, consultants, interim and temporary staff. It also applies to employees of Cheshire East Council’s Alternative Service Delivery Vehicles.

4.2 It applies to information held by Councillors when acting on behalf of the Council. However, information held by Councillors in their roles as Ward Councillors is outside the scope of FOIA and EIR.

4.3 This policy applies to ‘Everyone’ as listed in points 4.1 and 4.2 above. Everyone needs to be aware of the provisions of FOIA/EIR and of their own obligations with regard to the use and disclosure of Council information.

5. POLICY STATEMENTS AND PRINCIPLES

5.1 It is recognised that the information held by Cheshire East Council is an important asset. Council information must be treated as a council asset and not as being personally owned by the individual officer/s that create or use it.

5.2 The Council recognises the need to be transparent and it takes a positive view of its FOIA/EIR duties; consequently, there is a presumption in favour of disclosure when a request is received. Information should be disclosed unless there is a valid reason (and an appropriate exemption under FOIA and EIR) for refusing the request.

5.3 Reasons for Refusal:

1. The information is not held.

2. The request is “vexatious”. Considering the context and history of the issue – is the request likely to cause unjustified distress, disruption or irritation without any proper or justified cause?

3. The request is a repeated request. Is the request identical or substantially similar to previous requests? An authority isn’t obliged to comply unless a reasonable timescale between requests has elapsed.

4. The costs of complying with the request are over the ‘Appropriate Limit’ – this means that it will take over 18 hours to determine, locate, retrieve and extract the information before it is provided to the requester.

5. An exemption under FOIA/EIR applies. If this is the case, a Refusal Notice must be issued by the Compliance and Customer Relations Team. This will give the reason(s) for refusal, consider the public interest test¹ and offer an internal review (appeal) should the requester be unhappy with the Council’s initial response. In certain cases, the refusal of information must be agreed by the Member Portfolio Holder of the service refusing the request in addition to the Head of Service.

¹ Some exemptions are ‘qualified’ rather than ‘absolute’. Qualified Exemptions require the Council to consider and explain whether the public interest is best served by releasing the information or by withholding it, Absolute Exemptions do not.
The FOIA Exemptions are as follows:

- Section 21: information reasonably accessible to the applicant by other means
- Sections 22 and 22A: Information intended for future publication and research information
- Section 23: security bodies
- Section 24: safeguarding national security
- How Section 23 and 24 interact
- Section 26: defence
- Section 27: international relations
- Section 28: relations within the UK
- Section 29: the economy
- Section 30: Investigations and proceedings
- Section 31: law enforcement
- Section 32 – Court, inquiry or arbitration records
- Section 33: public audit
- Section 34: parliamentary privilege
- Section 35: government policy
- Section 36: effective conduct of public affairs
- Section 36: record of the qualified person’s opinion
- Section 37: communications with Her Majesty and the awarding of honours
- Section 38: health and safety
- Section 39: environmental information
- Section 40: personal information
- Section 40: access to information held in complaint files
- Section 40: information exempt from the subject access right
- Section 40: neither confirm nor deny in relation to personal data
- Section 40: personal data of both the requester and others
- Section 40: requests for personal data about public authority employees
- Section 41: information provided in confidence
- Section 42: legal professional privilege
- Section 43: commercial interest
- Section 44: prohibitions on disclosure

The EIRs Exceptions are as follows:

- Regulation 12(4)(a) Information not held – please see ‘Holding information’ below
- Regulation 12(4)(b): Manifestly unreasonable requests
- Regulation 12(4)(c): Requests formulated in too general a manner
- Regulation 12(4)(d): Material in the course of completion, unfinished documents and incomplete data
- Regulation 12(4)(e): Internal communications
- Regulation 12(5)(a): International relations, defence, national security or public safety
- Regulation 12(5)(b): The course of justice and inquiries exception
- Regulation 12(5)(c): Intellectual property rights
- Regulation 12(5)(d): Confidentiality of proceedings
- Regulation 12(5)(e): Confidentiality of commercial or industrial information
- Regulation 12(5)(f): Interests of the person who provided the information to the public authority
• Regulation 12(5)(g): Protection of the environment
• Regulation 12(9): Information on emissions
• Regulation 13: personal information

5.4 Requests for recorded information must be dealt with under FOIA and/or EIR except when they are ‘business as usual’ requests, e.g. a request asking for the name and contact details of a specific officer, which would routinely be disclosed.

5.5 Requests for information must be immediately forwarded to the Compliance and Customer Relations Team at foi@cheshireeast.gov.uk

5.7 Requests must be responded to promptly, and no later than 20 working days after receipt. Cheshire East Council aims for a 100% compliance rate. The Information Commissioner expects a minimum 90% compliance rate. If this is not achieved, the Information Commissioner can put the Council into special measures and undertake close monitoring of the handling of requests.

5.8 Anyone asked to provide information in order to respond to a FOIA or EIR request must cooperate fully and promptly with their FOI Coordinator and the Compliance and Customer Relations Team. They must confirm whether the information requested is held and provide the information requested promptly and within the relevant timescales (or discuss whether an extension to the timescale is possible). Where an exemption may apply, officers are also required to identify why this may apply and supply arguments to substantiate this so that a thorough public interest test can be undertaken by the Compliance and Customer Relations Team. All information should be supplied to the Compliance and Customer Relations Team who will then decide whether an exemption will apply. Services should not apply exemptions and filter the responses themselves.

5.9 Information must not be deleted following receipt of a request as this is a criminal offence.

5.10 The Council acknowledges that, where exemptions are ‘qualified’, and thus subject to the public interest test, this test should be applied by the Council alone (not, for instance, by a contractor). The Council’s decision on where the public interest lies will be final; though the opinion of any relevant third parties should be taken into account.

5.11 Council officers should be proactive in offering advice and assistance to requesters at all times. For example, this could be by helping them in framing or wording their requests or telling them how to access information not held by the Council but by other organisations.

5.12 Appendices A, B and C provide guidance on the handling of FOI/EIR requests.
6. Review

This Policy will be reviewed as appropriate to take into account changes in legislation and to ensure that the policy remains timely and relevant.

Helen Sweeney
Freedom of Information Officer
October 2017
GUIDANCE FOR FOI AND EIR COORDINATORS

- Request logged and acknowledged by the Compliance & Customer Relations (C&CR) Team.

- The Request is passed through to the Coordinator by C&CR Team. If the request is straightforward, and the information is being released in full, it should be issued directly to the requester by the service holding the information (being copied to the Compliance and Customer Relations Team for closure on the data base when required). If the request is from the press, a politician, protest group or via the “What Do They Know” website, it will be issued by the C&CR Team.

- If the request is to be refused wholly or in part, then it needs to be passed back to the C&CR Team in a timely manner in order for the Refusal Notice to be written.

- The coordinator needs to review the request immediately upon receipt to ensure that it has been passed on to the correct service. If it hasn’t, then it must be passed back to the C&CR Team immediately. The FOIA/EIRs process is time sensitive.

- If it is with the correct service, the Co-ordinator should immediately check:
  
a) Do you have full details of any sites/areas being queried? For example, a query about ‘land around Macclesfield’ is not specific enough.

  b) Do you have defined parameters for the information? For example - a timescale within which to check.

  c) Can you understand what exactly is being asked and is this something that can be done within the timescales allowed for FOI? The appropriate limit for responding to FOI requests is a total of 18 hours. This is the cumulative time for all officers. There is no similar limit for EIRs – but the request has to be reasonable and manageable.

  d) Documents marked as a draft or confidential are classed as held information; they are not automatically outside the scope of FOIA. These will need to be considered on a case by case basis.

- If the request has been passed on to the correct service, the coordinator needs to pass it on to the officer(s) holding the information, with a date by which the information needs to be provided to the coordinator. A period of 12 to 15 working days is reasonable, but in all cases, ensure that there remains sufficient time for information assembled to be checked and sent out within the statutory timescale. The coordinator needs to ensure that all officers who may hold information within the scope of a given request are aware of it. He/she should specifically ask the officer concerned if there are any other persons who have been involved who need to be sent the FOI also.
• The coordinator needs to give him/herself enough time to review the information; prepare the response; and have it approved before the due date. 3 to 5 working days should be sufficient time to do this.

• The coordinator will be able to keep track of all the requests allocated to their service by checking on I-Casework. They will receive daily emails showing all live cases.

• The coordinator needs to be aware of the information provided and the information yet to be provided per active request. In all cases he/she will need to send reminders to the holders of the information, sending an initial prompt after 10 working days.

• Once all the information has been received by the coordinator, it should be compiled into a response. This is usually a covering response plus relevant attachments. Occasionally it will just be a letter answering questions. Draft response template as follows:

  Dear xxxxxx

  RE : FOI CASE REFERENCE xxxxxx

  I am responding to your request for information which has been considered under the Freedom of Information Act (2000)/Environmental Information Regulations (2004) (delete as appropriate). Your request is as follows:

  Copy & paste request here.

  Please find attached/below the response to your request. (Delete as appropriate)

  If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review under the Freedom of Information Act, you should write to the Compliance Unit, Cheshire East Council, Westfields, Middlewich Road, Sandbach, Cheshire, CW11 1HZ.

  If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner's Office (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Council. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

• The coordinator then needs to pass the compiled response on to the approving officer, allowing them sufficient time to review the response before the due date. This does not need to be longer than two working days.

• Once a response has been approved it can be issued accordingly. The C&CR Team should be copied into the approved response.
• It should be noted that the timescale for responding to FOI & EIR requests is statutory, and to miss the relevant deadlines is breach of the legislation. Consequently, it is imperative that coordinators ensure that responses are issued on time.

• If a decision is made to withhold any information within the scope of a given request, then a Refusal Notice will be drafted by the C&CR Team. This takes time and the service will need to liaise with the C&CR Team about this as early as possible. The draft Refusal Notice is agreed with the service and then, once finalised, is approved by the Head of Service and Portfolio Holder. This task can be escalated to the Monitoring Officer if decision cannot be reached. The approval process is undertaken by officers from the C&CR Team, as the case will be assigned to a C&CR Officer to write the refusal notice.

• The case is then closed.

• If the person making the request is unhappy with the response for any reason, they can request an Internal Review. This will be undertaken by an officer from the Compliance and Customer Relations Team. The officer will liaise with the officers who considered and processed the initial response. The timescale for this is 20 working days but can be extended to 40 working days if necessary.

Helen Sweeney
Freedom of Information Officer
October 2017
GUIDANCE FOR OFFICERS WHEN RESPONDING TO AN FOI OR EIR REQUEST

From time to time, responses to requests are late in being issued. This is often as a result of the team/officers not starting to deal with the request until the due date has passed. Consequently, the authority is breaking the law by breaching the statutory deadline set by the legislation.

Requesters may complain to the Information Commissioner’s Office (ICO) about non-compliance with a statutory deadline. A number of such complaints about the Council could lead to being put into special measures by the ICO, which would include a detailed audit of the Council’s processes. The newly appointed ICO has revised the expected compliance rate (of responses issued in time) from 85% to 90%.

Considering Requests

In order to enable the authority to respond to requests within the statutory timescale, officers need to follow the process below.

1. On receipt - review the request immediately.

2. Once reviewed, the officer should confirm back to their departmental coordinator the following:

3. Whether he/she holds the information or not.
   a. If not - advise the coordinator which other officer may hold the documents.
   b. If the information is held - advise the coordinator if the request is reasonable – i.e. can the request be responded to within the appropriate limit of 18 hours.

4. If the request is unreasonable, the officer should inform the coordinator straightaway.

5. The coordinator can then liaise with the Compliance & Customer Relations Team in order to request clarification from the requester.

6. Officers should advise whether the request is too vague, the time scale is too large, the subject area needs narrowing down – i.e. the requester needs to be more specific.

7. Officers should also advise if the request does not appear to be for existing material, but requires the creation of new information.

8. By doing this in a timely manner, the request can be put on hold whilst the requester is asked to resubmit a revised reduced request. This allows time for officers to consider the request and should lead to reduced work on responses.
Housekeeping

- Officers should regularly review their emails, and delete those where there is no business need for them to be kept.

- All relevant communications should be saved onto a case file. All irrelevant or duplicate communications should then be permanently deleted.

- Regular deletion of redundant emails will help in the handling of FOI requests by reducing the amount of information to be considered. Careful data management can also reduce the amount of time required to redact documents prior to disclosure. (Redaction is usually required to remove personal data and thus to comply with the Data Protection Act.)

Helen Sweeney
Freedom of Information Officer
October 2017
GUIDANCE ON THE FOI AND EIR APPROVAL PROCESS

- The Freedom of Information process is motive and applicant blind – this means officers should disregard who is asking and why. Officers should not disclose the identity of the requester further than is necessary.

- Services should utilise their own internal escalation mechanisms to approve FOI responses as appropriate to the request.

- In the majority of cases, the requests are straightforward with no reputational concerns. These should be considered, compiled and disclosed as quickly as possible with approval from the appropriate manager. If the FOIA coordinator has concerns about the management of the disclosure of contentious or reputational responses these should be raised with their manager and the C&CR Team as necessary.

- The responsible service manager should then escalate responses upwards in order to make senior managers aware of a response, if it is felt there could be further enquiries via the Press Office etc. Though the FOIA process is politically neutral, it is also useful to alert the relevant portfolio holder of matters which may later come to their attention. However, the identity of the requester should not be released. This would be for information only and should not delay disclosure.

- Portfolio Holders should only be involved in the approval process where the authority is withholding information under the relevant FOI Exemption or EIRs Exception. Portfolio Holders are consulted on the application of exemptions but as the question is ultimately one of lawfulness, the Monitoring Officer has the right to make a final decision on the matter.

- Once again, the identity of the requester should not be shared. As advised above, the process is politically neutral, motive and applicant blind. Therefore it should not be an issue as to who is asking and why.

- It is important that responses are considered and approved in a timely manner. Most responses are late because the approval process is unduly lengthy and the responses are being approved at too senior a level. This is not the best use of senior management time.

- The C&CR Team can provide training and assistance to ensure services feel comfortable dealing with the majority of FOI Requests relating to their service areas.

Helen Sweeney  
Freedom Of Information Officer  
October 2017