



**BARNSLEY**  
Metropolitan Borough Council

## Freedom of Information Policy

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## Document Control

<b>Organisation</b>	Barnsley Metropolitan Borough Council
<b>Title</b>	Freedom of Information Policy
<b>Author</b>	ICT Manager
<b>Owner</b>	Senior Information Risk Owner
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<b>Applicable to</b>	All Barnsley MBC employees, contractors, all elected members, or anyone working on Council premises or on behalf of the Council
<b>Information/ Action</b>	For information and appropriate action to comply with this policy
<b>Review Date</b>	Policy to be reviewed 1 year from approval or when changes are made to legislation or best practice guidance
<b>Review Responsibility</b>	Information Governance Board

## Revision History

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August 2018	0.1	ICT Manager	Revised Policy
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## Document Distribution

This document will be distributed to the following for review and feedback:

Name
Information Governance Board
Senior Management Team
Trade Unions

## Policy Governance

The following table identifies who is Accountable, Responsible, Informed or Consulted with regards to this policy. The following definitions apply:

**Responsible** – The person(s) responsible for developing and introducing the policy

**Accountable** – The person who has ultimate accountability and authority for the policy

**Consulted** – The person(s) or groups to be consulted prior to final policy implementation or amendment

**Informed** – The person(s) or groups to be informed after procedure implementation or amendment.

<b>Responsible</b>	Information Governance Board
<b>Accountable</b>	Senior Information Risk Owner
<b>Consulted</b>	Information Governance Board, Trade Unions, Senior Management Team
<b>Informed</b>	All Barnsley MBC employees, contractors, all elected members, or anyone working on Council premises or on behalf of the Council

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## **1 Introduction**

The Freedom of Information (FOI) Act 2000 ('the Act') gives a right of access to information. Any person who makes a request to a public authority for information is entitled to be informed in writing by a public authority whether it holds information meeting the description set out in the request; and to have information the public authority holds relating to the request communicated to them. These rights apply unless an exemption applies, or the request can be refused under sections 12 or 14, as set out in the legislation (Appendix B).

A request to a public authority for recorded information will be treated as a request under the Act, other than information given out as part of routine business, for example, standard responses to general enquiries; a request for environmental information; or the requester's own personal data.

The Act complements or supports the following legislation:

- General Data Protection Regulation (which came into force on 25<sup>th</sup> May 2018) that gives individuals access to personal information held about them by the Council;
- Environmental Information Regulations 2004 that gives access to information about the environment held by the Government and Public Authorities;
- Protection of Freedoms Act 2012 requires public authorities to provide information and if available datasets in a re-usable format so far as reasonably practicable; and
- Local Government Act 1972 that contains the main access to information rules in relation to all meetings of the Council and the formally established committees and sub-committees of the Council.

In complying with its duty, the Council will take account of the Revised Code of Practice published on 4<sup>th</sup> July 2018. The Code of Practice provides guidance to public authorities on the discharge of their functions and responsibilities under Part I (Access to information held by public authorities) of the Act, issued under section 45. The Council will abide by the terms of Code of Practice whenever this is possible or appropriate.

## **2 Policy Statement**

The Council will comply with all the relevant provisions of the Act.

The Council will provide advice and assistance to help people make requests under the Act. The Council aims to respond to all requests promptly and within the statutory response period of 20 working days following receipt of a valid request.

In cases where information is covered by an exemption or other legislation, consideration is given as to whether or not it is in the public interest to disclose regardless of the exemption.

The Council is committed to conducting its affairs in a transparent manner and enabling public access to its information whenever this is appropriate. Generally, the Council will act in as open and transparent a manner as possible whilst ensuring the integrity of its information and protecting the privacy of its customers.

### **3 Roles, Responsibilities and Scope**

This policy informs recipients of Council services, internal and external parties of the processes the Council has established for complying with the Act.

This policy operationally applies to all employees of the Council including agency staff, contractors, all elected members, or anyone working on Council premises or on behalf of the Council. A summary of the specific roles and responsibilities is detailed in Appendix A.

This policy does not relate to data held by schools, as they are data controllers in their own right and responsible for their own compliance.

### **4 Managing Requests for Information**

Section 8 of the Act sets out the criteria for what constitutes a valid request. It requires that a request for information must be made in writing. This can either be in hard copy or electronically. It requires that a request for information must state the name of the applicant and an address for correspondence. Applicants must provide their real name and not use a pseudonym. Both email and postal addresses are acceptable and that a request for information must also adequately describe the information sought.

A request for information must be made in writing and can be submitted to the Customer Feedback and Improvement Team in the following ways:

- download, complete and return our [Freedom of Information request form](#)
- emailing [informationrequests@barnsley.gov.uk](mailto:informationrequests@barnsley.gov.uk)
- submitting the request by post - the address can be found on the request form

#### **4.1 Fees and Cost Limit**

[Section 12 of the Act](#) allows the Council to refuse to deal with any requests where they estimate that responding to the request would exceed the “appropriate limit”, or ‘cost limit’.

If the Council calculates that responding to a request will take it over the cost limit it is not obliged to respond to it. The cost limit is calculated at a flat rate of £25 per hour which is £450 (18 hours). The Act allows the Council to refuse to deal with any requests where they estimate that responding to the request would exceed the “appropriate limit”, or ‘cost limit’ as it is more commonly known.

The Council can only include certain activities when estimating whether responding to a request would breach the cost limit. These are establishing whether information is held; locating and retrieving information and extracting relevant information from the document containing it. The Fees Regulations anticipate that most requests will not attract a fee although the Council will be able to charge for disbursements (such as the cost of postage and photocopying).

## **4.2 Refusing Requests**

A refusal of a request for information will only be made when it is necessary to do so. Upon refusal of a request for information, the applicant will be informed of the reasons for the decision within twenty working days, and at the same time, will be informed of the procedures for making a complaint. The duty to confirm or deny whether information is or is not held does not arise if; an exemption applies under section 2 of the Act; a fees notice has been issued and the fee has not been paid; an estimate demonstrates that the cost of compliance will exceed the appropriate limit or it can be demonstrated that the request is repeated or vexatious.

### **4.2.1 Exemptions**

The Council will consistently encourage the release of recorded information to the public. Sometimes it is not appropriate or practicable for recorded information held by the Council to be disclosed and there are 23 exemptions (See Appendix B) under the Act which may be applied to withhold information from disclosure. There are two types of Exemption: Absolute and Qualified.

Absolute exemptions are not subject to a Public Interest Test, however qualified exemptions are subject to a Public Interest Test prior to their reliance to determine whether to disclose the requested information or to withhold it based upon the greater public good.

### **4.2.2 Vexatious Requests**

Should an applicant make a 'vexatious' or 'repeated' request for identical or substantially similar information, the Council will inform the applicant in writing that they will not fulfil the request. When responding in this manner the Council will offer assistance to the individual, by indicating why they consider the request is vexatious or repeated. The Council will also indicate what recourse the applicant has if they are unhappy with this position.

### **4.2.3 Relationship with the General Data Protection Regulations**

This policy does not cover Subject Access Requests (SAR) (requests for access to information about a living individual which could identify them). These requests are exempt from the Act under section 40 and will be processed in accordance with the General Data Protection Act Regulations.

## **5 Publication Scheme**

The [Council's Publication Scheme](#) is available on the Council's website. The Council is committed to being open and honest and the publication scheme is designed to increase transparency and allow members of the public to routinely access information relating to the functions of the Council without making an FOI request.

### **5.1 Compliance Statistics**

The Council will publish details on a quarterly basis of their performance on handling requests for information under the Act. The information will include: the number of requests received; the timeliness of the response e.g. whether the statutory deadline was met; the number of requests where the information was granted; the number of requests where the information was withheld and the number of internal reviews.

### **5.2 Senior Executive Pay & Benefits**

The Council will also ensure publication schemes contain data to deliver sufficient transparency regarding the pay and benefits of senior executives and their equivalents. The Council will publish information that covers the following four areas:

Pay, expenses, benefits in kind and hospitality – information will be published in line with the Local Government Association's "Local Transparency Guidance – Publishing Organisation Information".

## **6 Disclosure Log**

In addition to proactively updating its publication scheme, the Council will maintain an [online disclosure log](#) that identifies the main types of requests received and the responses given. Before making an individual request, the disclosure log should be accessed to find out if the Council have already responded to a request on the matter enquiring about. The log provides details about the nature of each request, the date and the reference number.

## **7 Datasets and re-use**

A dataset is a collection of factual information in electronic form (e.g. statistics or figures) that has not been materially altered since it was recorded. To be a dataset, the 'raw data' must not have been the product of analysis or interpretation.

The Protection of Freedoms Act amends the Act meaning datasets which are published in response to individual requests or through the Publication Scheme, must be made available for re-use at the point of release under the Open Government Licence, and where reasonably practicable, they will be published in a reusable format. See the Council's Reuse of Public Sector Information Policy for details of when information released under the Act can be freely reused and when there could be restrictions, the need to ask permission or the need to pay a fee.

## **8 Contracts**

Where contractors deliver services on behalf of the Council the contract will make clear that contractors will need to fully assist the Council with their obligations under the Act in line with the guidance set out in the Code of Practice issued under section 45 of the Act. The contract will include details of how non-compliance with these obligations will be dealt with.

## **9 Consultation with Third Parties**

There will be circumstances when the Council will be required to consult with third parties about information held in scope of a request in order to consider whether information is suitable for disclosure.

If the consent of a third party is required prior to disclosure of information, the Council will, at the earliest opportunity, seek to consult with that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practical.

The consultation may assist the Council in determining whether an exemption under the Act applies to the information requested, or the views of the third party may assist the Council in determining where the public interest lies. A third party's refusal to consent to disclosure of information does not necessarily mean that information will not be disclosed.

Consultation with any affected third parties will not always take place. The Council will not undertake consultation if it does not intend to disclose the information because of another exemption.

## **10 Complaints and Internal Review**

### **10.1 Complaints Procedure**

The Council has an internal complaints procedure. Any person who is unhappy with the way in which the Council has handled their request for information may use this procedure. Correspondence should be clearly marked 'Complaint' and addressed to:

Barnsley MBC  
Customer Feedback and Improvement Team  
PO Box 634  
Barnsley  
S70 9GG  
Email: [informationrequests@barnsley.gov.uk](mailto:informationrequests@barnsley.gov.uk)

### **10.2 Internal Review**

If the requestor is unhappy with the response, the Council should be asked to conduct an internal review. A request for an internal review should be made to the Council within 40 working days from the date the Council has issued an initial response to a request and this

should be made clear in that response to the applicant. The Council is not obliged to accept internal reviews after this date. Internal review requests should be made in writing. Requests for internal review will be acknowledged and the applicant informed of the target date for responding. This should normally be within 20 working days of receipt.

### **10.3 Information Commissioner's Office**

If you are not content with the outcome, requestors have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: -

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Website: [www.ico.org.uk](http://www.ico.org.uk)  
Tel: 01625 545 745

The Council will maintain a record of all complaints and their outcomes.

### **11 Audit, Monitoring and Review**

This policy, standards and procedures will be audited periodically as part of the annual internal audit work plan to ensure compliance.

This policy and all supporting procedures will be reviewed as is deemed appropriate but no less frequently than every 12 months.

Performance reports will be submitted to the Information Governance Board on a bi-monthly basis and to the Senior Management Team on a quarterly basis.

Performance reports and assurance will also be submitted to Audit Committee.

Performance statistics will also be produced in line with the revised Code of Practice requirements outlined in 5.2 above.

### **12 Training and awareness**

All employees will be given awareness, induction and update training on a yearly basis on the requirements of the Act, Regulations and procedures, as appropriate. This includes employees who are non-network users.

### **13 Breach of Policy**

Any deliberate breach of the FOI Act or a breach of this policy will be seen as misconduct and may result in disciplinary action.

## **References**

Freedom of Information Act 2000

Environmental Information Regulations 2004

Protection of Freedoms Act 2012

General Data Protection Regulations

Human Rights Act 1998 (Article8)

Local Government Transparency Code 2014

## **Related documents**

Data Protection Policy

Revised Code of practice issued under S45 of FOI (issued 4<sup>th</sup> July 2018)

Records Management Policy

Information Security and Computer Usage Policy

Council Publication Scheme

Council Disclosure Log

Procedure Manual for Dealing with FOI Requests

Council Complaints Procedure

## **Appendix A**

### **Roles and responsibilities**

#### **Information Governance Board**

The Information Governance Board (IGB) has delegated responsibility, through the SIRO and the Senior Management Team, for the development and delivery of effective information governance throughout the Council. In particular, the IGB will provide the necessary ownership and advocacy required to support, co-ordinate, promote, monitor and assure compliance with the Act.

#### **Senior Information Risk Owner**

The Executive Director, Core Services is the Council's Senior Information Risk Owner (SIRO). The SIRO has delegated authority through the Senior Management Team with specific responsibility for information risk and mitigation, ensuring that any information threats and breaches are identified, assessed and effectively managed.

#### **Service Director Responsibilities**

Service Directors are responsible for checking the accuracy and content of FOI response where deemed necessary. Advising the FOI Team of requests which may be subject to an exemption (or, if they have reason to believe that the disclosure may be used in a contentious or malicious way) and for ensuring that they nominate a senior person within the team, department or directorate to act as a single point of contact for the FOI request.

Ensuring information held within the Business Unit is provided to the Customer Services Feedback and Improvement Team (CFIT) within the timescales outlined in this policy and supporting procedures, including any opinion and supporting detail if there is a concern that the information should not be disclosed. Ensuring written requests for information within the directorate that should be dealt with under the Act are referred promptly to the CFIT Team. Provide assistance to the CFIT with investigations into appeals and complaints.

All managers and supervisors have a responsibility for enabling effective information governance within their respective service areas and teams. In relation to this policy this includes: Managers are required to ensure that the service areas for which they are responsible have in place adequate guidance on freedom of information and effective measures to comply with this policy.

#### **Customer Feedback and Improvement Team Manager (CFIT)**

The CFIT Manager / Team are responsible for:

Acting as the first point of contact for all requests and to assess and log requests and allocate to the relevant service to ask them to identify any relevant, recorded information that they hold which would fulfil the request which includes providing local and effective

arrangements to ensure the timely return of relevant information to the CFIT to fulfil requests. Regularly assessing and evaluating procedures; co-ordinating the work of the CFIT, including monitoring compliance with requests;

Ensuring that any disclosure of data will comply with approved policy and procedures and providing the final decision as to whether any exemption, exception or limitation applies to the information requested from the Council;

Maintenance of the Council's publication scheme and publishing details of all requests and the responses to these on the Council's disclosure log; pro-actively identifying data sets that can be published on the Council's external website;

Providing guidance and training in relation to the FOI legislation and internal procedures to managers and staff to ensure they are aware of their role and responsibility in relation to identifying and processing requests;

Reports on compliance with the policy and procedures to the Information Governance Board on a bi-monthly basis, reports to Senior Management Team on a quarterly basis and reports to Audit Committee;

To ensure impartiality, reviews of decisions where the applicant is dissatisfied with how their response has been dealt with are carried out; also acts as the link with the Information Commissioner's Officer in relation to any appeals made by dissatisfied applicants.

## **Employees**

On receipt of an FOI request, which does not need to specify that it is a 'Freedom of Information' request, immediately notify the CFIT Team [informationrequests@barnsley.gov.uk](mailto:informationrequests@barnsley.gov.uk)

Responsible for ensuring that any request for information they receive is dealt with in line with the requirements of the Act and in compliance with this policy and the prevailing procedures;

Employees must recognise that all recorded information may be provided to the public, and that the law requires that there will be full and unconditional disclosure in every case unless one of the statutory exemptions / exceptions applies;

Employees have a legal duty to preserve formal records. Employees must also ensure information is recorded correctly, accurately, adequately named and indexed for easy retrieval or publication. Poor records management practices are not offences in themselves, however they may lead to an inability to comply with requirements of the Act.

Employees will, through appropriate training and responsible management observe all forms of guidance, codes of practice and procedures about the storage, closure, retention and disposal of documents and records;

Employees will be given awareness, induction and update training on the requirements of the Act, Regulations and procedures, as appropriate;

Employees will understand that breaches of this Policy may result in disciplinary action, including dismissal.

### **Third Parties**

Third parties who are users of information supplied by the Council will be required to confirm that they will abide by the requirements of the Act and allow audits by the Council of data held on its behalf (if requested);

Indemnify the Council against any prosecutions, claims, proceedings, actions or payments of compensation or damages, without limitation.

It will abide by any Code of Practice on the discharge of the functions of Public Authorities which is issued by the Ministry of Justice. In addition, the Council will take account of any guidance which is issued by the Information Commissioner to promote good practice.

Any breach of any provision of the Act will be deemed as being a breach of any contract between the Council and that individual, company, partner or firm.

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## Exemptions Clauses

The table below sets out a straightforward reference guide to the exemption clauses that are set out under Part II of the FOI Act. Detailed guidance on the application of these exemptions is set out on the website of the Information Commissioner's Office. \* starred exemptions are absolute; all other exemptions require a public interest test.

### Section No. Description

21 \* Information reasonably accessible to the applicant by other means

22 Information intended for future publication, including that obtained in the course of a programme of research.

23 \* Information supplied by, or relating to, bodies dealing with security matters

24 Information for the purpose of safeguarding national security

26 Information that may prejudice defence of the realm

27 Information that may prejudice international relations

28 Information that may prejudice relations between administrations within the United Kingdom

29 Information that may prejudice the economic or financial interests of the United Kingdom

30 Information held for the purposes of investigations and proceedings conducted by public authorities

31 Information that may prejudice law enforcement

32 \* Information contained in court documents and records

33 Information that may prejudice the exercise of audit functions

34 \* Information that may infringe the privileges of either House of Parliament

35 Information that relates to the formulation or development of Government policy

36 Information that may prejudice the collective responsibility of Ministers, inhibit the free and frank provision of advice or prejudice the effective conduct of public affairs

37\* Information relating to communications with Her Majesty and other members of the Royal Household or the conferring of honours (absolute exemption in relation only to communications with the Sovereign, the heir to the Throne and second in line to the Throne)

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38 Information that may be likely to endanger the safety or the physical or mental health of an individual

39 Information relating to environmental information

40 \* Personal data (absolute exemption in relation only to information that is the personal data of the applicant)

41 \* Information that is obtained from another person or public authority and would constitute a breach of confidence

42 Information that is covered by legal professional privilege

43 Information that constitutes a trade secret or may prejudice commercial interests

44 \* Information that is prohibited from disclosure by any enactment, EU obligation or would constitute contempt of court