



"Stronger together"

GRANTHAM TOWN COUNCIL

FREEDOM OF INFORMATION POLICY AND GUIDANCE

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GUIDANCE FOR DEALING WITH REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT 2000 & ENVIRONMENTAL INFORMATION REGULATIONS 2004

1. INTRODUCTION

- 1.1. This document sets out guidance for Grantham Town Council officers for dealing with requests for information under the Freedom of Information Act 2000 ("the FOIA") and The Environmental Information Regulations 2004 ("EIR") collectively referred to in this policy as ("the Acts"). This guidance is in line with South Kesteven Council's Data Protection Policy and as and when required guidance will be sought from the principal Council.
- 1.2. The Acts give general rights of access to recorded information held by public authorities, they set out exemptions in the case of FOIA and exceptions in the case of EIR, from that right of access and they place several obligations on public authorities including Grantham Town Council.
- 1.3. There is an additional duty to adopt and maintain a publication scheme that details the classes of information that the Council will regularly publish. The publication scheme is regulated by the Information Commissioner who has wide powers to enforce the rights contained in the Act. The full publication scheme can be found on South Kesteven District Council's website. All information available through the publication scheme is exempt from the FOIA. Heads of service are responsible for ensuring that the Publication Scheme is up to date.

2. PURPOSE

- 2.1. The purpose of this guidance is to ensure compliance with the provisions of the Acts and other access to information legislation (see annex A and paragraph 4 below).
- 2.2. This guidance cannot be read in isolation and in producing this guidance regard has been given to the Lord Chancellor's Code of Practice under section 45 of the FOIA which provides guidance on the practice to be followed in handling requests for information and Section 46 of FOIA on records management that assist the Town Council in complying with the duties imposed on public authorities by the FOIA. <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>
- 2.3. This guidance sets out the general principles that will be adopted by the Town Council in response to requests for information under the statutory access regimes.

3. AIMS

- 3.1. The aim of the guidance is to ensure compliance with the Acts and other access to information legislation and guidance, equality of access to information held by the Town Council, to promote greater openness, provide increased transparency and consistency in decision making and to build public trust and confidence.
- 3.2. These aims will be balanced against the need to ensure the confidentiality of some information relating to such areas as personal information, privacy, confidentiality, and commercial sensitivity where disclosure would not be in the public interest.

4. ACCESS TO INFORMATION LEGISLATION

- 4.1. A list of statutory access regimes is found at **Annex 'A'**.
- 4.2. The FOIA, the Data Protection Act 1998 ("the DPA") and the EIR provide rights of access to information with limited exemptions and exceptions. In effect, the three pieces of legislation work together, the EIR enabling access to environmental information, the DPA enabling access to personal information of which the applicant is the subject and the FOIA enabling access to all other information.
- 4.3. Any written request for information is technically an FOIA request in the first instance. However, if part or all the information requested relates to environmental issues it cannot be dealt with under the FOIA regime and must be considered under the EIR. Environmental information is any information in written, visual, verbal, audio, electronic or any other material form on – the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape, and natural sites including wetlands, coastal and marine areas, biological diversity, and its components, including genetically modified organisms, and the interaction among these elements. If there is any doubt as to whether the request relates to environmental information Officers should seek guidance from the Clerk to the Town Council who will seek guidance from the SKDC Legal and Democratic Service team if required.
- 4.4 If part or all of the information requested is personal information, where the applicant is the subject of that information, access to that information will be dealt with under the DPA.

5. REQUESTS FOR INFORMATION

- 5.1 All FOIA and EIR requests must be logged and monitored on the central database maintained by the Clerk to Grantham Town Council.
- 5.2 On receipt of any request for information the Clerk to Grantham Town Council will, within 10 working days, either provide the information or acknowledge receipt of the request. If the information requested cannot be provided within 10 working days, a reply must be sent no later than 20 working days after receiving the request. In the case of EIR we can extend the 20-day deadline to 40 days if the request is lengthy or complex. All requests must be passed to the Clerk so they can be logged, and a co-ordinated response is sent and ensures response deadlines are met. Copies of the response must also be sent to the Clerk to Grantham Town Council.
- 5.3 The reply to the request should either:
 - 5.3.1. provide the information that has been requested, or
 - 5.3.2. Confirm or deny whether the Town Council holds the information.
- 5.4 Where the information requested is held by another public authority the Town Council will assist a person making a request so that they can access the information from the other authority.
- 5.5 If the information is held by Grantham Town Council but is not provided, the reply should explain why not, quoting a statutory exemption or exception and the reasoning for applying it (see paragraph 10 and 11) If confirming or denying will itself provide information which is exempt, then Grantham Town Council do not have to confirm or deny that it holds information.

- 5.6 When responding to any request for information the Grantham Town Council will notify the applicant of the right to complain if they are not satisfied with the response. In the first instance an appropriate officer of the Grantham Town Council will conduct an internal review in accordance with Paragraph 12. The applicant will be informed of their right to complain to the information commissioner if the applicant is not satisfied with an internal review.

6. FEES AND CHARGES

- 6.1. The Grantham Town Council ability to charge fees for responding to requests for information is limited by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
- 6.2. Where a request would cost us less than £450 or would take us less than 2.5 days, (18 hours @ £25 per hour-the appropriate limit laid down by government) to satisfy, we are not permitted to charge except for the cost of supplying the information. In calculating whether the appropriate limit has been met we are entitled to take into consideration the time involved in:
- 6.2.1 determining whether we hold the information requested.
 - 6.2.2 locating the information or documents containing the information.
 - 6.2.3 retrieving such information or documents; and
 - 6.2.4 extracting the information from the document containing it, including any necessary editing.

7. REQUESTS FOR PERSONAL INFORMATION UNDER THE DPA.

- 7.1. Grantham Town Council reserves the right to charge for these requests and will let you know if we intend to do so. The maximum we can charge is £10, and this includes any photocopying we need to do.

8. REQUESTS FOR INFORMATION UNDER THE EIR.

- 8.1 Under the EIR the Grantham Town Council can charge a reasonable amount for making environmental information available.
- 8.2 If the Grantham Town Council feels the request is particularly large or complex, we may refuse to comply with that request. In those circumstances the Grantham Town Council should tell the requester that they are refusing and provide further guidance which may help the requester reduce the size of their request.

9. OPPORTUNITY TO INSPECT

- 9.1. If there is a large amount of information in connection with a request, or if the Town Council feels the requester would benefit from viewing this on site, where Town Council staff will be able to provide advice, we will offer the requester the chance to make an appointment to view the information.

10. EXEMPTIONS (FOIA) & EXCEPTIONS (EIR) AND THE PUBLIC INTEREST

- 10.1 The Town Council recognises the presumption of disclosure within the Acts. Whilst the Acts provide for the right of access to information held, they also afford several exemptions in the case of FOIA and exceptions in the case of EIR (see **Annex B**),

from this right to permit public authorities to withhold some or all of the information requested where a justifiable reason exists.

10.2 The exemptions fall into two categories:

10.2.1 Absolute exemptions where the Grantham Town Council may withhold the information without considering any public interest arguments.

10.2.2 Qualified exemptions where an exemption applies to the information, but the Town Council must consider whether the public interest in maintaining the exemption is greater than that in confirming or denying the existence of the information requested and providing the information to the applicant.

10.3 In respect of the absolute exemptions, the Town Council do not have to confirm or deny that it holds the information if to do so would provide exempt information.

10.4 In respect of qualified exemptions, the Town Council exemption's panel (see paragraph 11) will decide if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.3 The EIR sets out various exceptions allowing public authorities to refuse to disclose environmental information. However, all the exceptions in the EIR are subject to a public interest test.

11. EXEMPTIONS PANEL

11.1 Where the officer dealing with the request for information believes an exemption under the FOIA or an exception under the EIR may apply (see **Annex B**) must seek guidance from the SKDC Council's Legal and Democratic Services section. If the guidance provided advises that the exemption or exception does not apply or the public interest does not outweigh the duty to disclose, the request will be returned to the relevant officer with a direction to respond to the applicant.

12. APPEALS

12.1 An applicant who is refused information has the right to request an internal review of the decision. An appropriate officer would need to conduct the review and respond to the applicant promptly and no later than 40 working days after the request for a review is received.

13. ROLES AND RESPONSIBILITIES OF THE TOWN COUNCIL

13.1. **Individual Town Council and Councillors** – have responsibility for:

- Knowing their duties under the Act.
- Responding to requests for information and, if they are unwilling or unable to do so, referring the request to the Chairman of the Council.
- Seeking advice when they are uncertain on how to respond to a request.

14. CONTACTS

Any enquiries about this Guidance or for more details on the Freedom of Information or the Publication Scheme should be directed to:

The Clerk to the Town Council – clerk@granthamtowncouncil.org

Annexes

Annex A

List of access to information legislation

- The Freedom of Information Act 2000
- The Data Protection Act 1998
- Local Government Act 1972
- Local Government (Access to Information) Act 1985
- Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012
- The Environmental Information Regulations 2004
- Audit Commission Act 1998

Annex B

Information about Exemptions under the FOIA.

The Exemptions are as follows: -

Absolute Exemptions

- Sec 21 Information accessible to applicant by other means.
- Sec 23 Information supplied by or relating to bodies dealing with security.
- Sec 32 Court records Sec 34 Parliamentary privilege.
- Sec 41 Information provided in confidence.
- Sec 44 Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.
- Partly Absolute Exemptions.
- Sec 36 Prejudice to effective conduct of public affairs (Applies only to information held by House of Commons or House of Lords otherwise public interest test).
- Sec 40 Personal Information (absolute where the applicant is the subject of the information requested and they already have the right of 'subject accesses under the Data Protection Act 1998. There is also an exemption if the information requested concerns a third party and disclosure by the Council would breach one of the Data Protection Principles)

Qualified Exemptions (Exemptions where the Public Interest Test Applies)

- Sec 22 Information intended for future publication.
- Sec 24 National Security.
- Sec 26 Defence.
- Sec 27 International relations.
- Sec 28 Relations within the United Kingdom (between any administrations in the UK)
- Sec 29 The economy
- Sec 30 Investigations and proceedings conducted by public authorities
- Sec 31 Law enforcement (applies to local authority regulatory functions)
- Sec 33 Audit functions
- Sec 35 Formulation of government policy
- Sec 37 Communications with the monarch and honours
- Sec 38 Health and safety
- Sec 39 Environmental information
- Sec 42 Legal professional privilege
- Sec 43 Commercial interest

Information about Exceptions under the EIR.

The Exceptions are as follows: -

- Reg. 12 (4) (a): the information is not held when the request is received.
- Reg. 12 (4) (b): the request is manifestly unreasonable.
- Reg. 12 (4) (c): the request is formulated in too general a manner.
- Reg. 12 (4) (d): the information is intended for future publication.
- Reg. 12 (4) (e): the request involves the disclosure of internal communications.
- Reg. 12 (5) (a): disclosure would adversely affect international relations, defence, national security, or public safety.

- Reg. 12 (5) (b): disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature.
- Reg. 12 (5) (c): disclosure would adversely affect intellectual property rights.
- Reg. 12 (5) (d): disclosure would adversely affect confidentiality of proceedings.
- Reg. 12 (5) (e) disclosure would adversely affect commercial or industrial confidentiality.
- Reg. 12 (5) (f): disclosure would adversely affect the interests of the person or organisation who provided the information.
- Reg. 12 (5) (g): disclosure would adversely affect environmental protection.
- Reg. 13: personal data