

Information Request Handling Procedures Under the Freedom of Information Act 2000 & Environmental Information Regulations 2004.

1. About This Procedure

- 1.1. This document explains the procedure to be followed by Harborough District Council [HDC] in dealing with the legislative requirements imposed upon it under the Freedom of Information Act 2000 [FoIA 2000].
- 1.2. HDC is legally obliged to comply with all aspects of the FoIA 2000. This document defines the procedure adopted by HDC in relation to the request process. This procedure focuses on identifying those requests for information that must be dealt with under Freedom of Information (FOI) and the path that an FOI request will take, from receipt to a decision on disclosure. The procedure also covers the appeals process, HDC's policy on the transfer of requests to other agencies and the general referral of requests.
- 1.3. The document should be read in conjunction with the guidance document relating to exemptions and exceptions.

2. Procedure

2.1. Defining an FOI Request

- 2.1.1 Under s8 of the FOIA, all written requests for information that are legible, clearly define the information being sought and supply a name and address for correspondence are FOI requests.
- 2.1.2 However, since this definition would cover virtually all written requests for information received by HDC, the Information Commissioner has accepted that public authorities may apply the concept of 'Business as Usual' [**BAU**]. This has arisen in response to concerns that requests can be delayed within the FOI process which is not in the interests of customer service or the spirit of the legislation.

- 2.1.3 As such, only those pieces of correspondence that meet the following criteria must be forwarded to the Information Officer to be dealt with under the Freedom of Information Act:
- a) If the request for information mentions Freedom of Information or the Freedom of Information Act or if it is addressed to the Information Officer; or
 - b) If there is a desire **not** to disclose the information; or
 - c) If the information cannot be supplied within a specified reasonable period by the receiving service area. The reasonable period has been determined as 5 working days. ***(Please note that this 5 working day period will form part of the overall statutory response period of 20 working days.)***
- 2.1.4 If any or all of the above apply, then the request for information **must** be forwarded immediately to the Information Officer.
- 2.1.5 Where HDC officers are advising members of the public, **no member of the staff should respond to an FOI request (as defined above) and/or provide information under the FoIA 2000. You must forward the request to the Information Officer.**

2.2 Receipt of Request

- 2.2.1 Under the FoIA 2000, HDC will accept requests for information from any individual anywhere in the world. Whilst all requests mentioning Freedom of Information will be forwarded to the Information Officer, there is a duty on each and every member of staff to assist applicants in respect of FOI applications. This may include transcribing requests for information on behalf of the requestor and sending them to the FOI Team. In this case, the name and address of the requestor must be obtained, the request must be legible and the information being sought must be clearly identified.

*Please note that where requestor requires assistance and advice on making requests for information, those individuals seeking access to **their personal data** should be directed to the Information Officer for advice regarding access to information under the Data Protection Act 1998.*

- 2.2.2 When a written request is received by e-mail, letter, internal referral or fax, a decision will be taken to determine whether the request falls under Freedom of Information Act, Environmental Information Regulations, Data Protection Act or whether it should be dealt with as BAU request (Please see definition in 2.1).
- 2.2.3 Requests that have been identified as FOI, EIR or DPA requests as per section 3.1 must be forwarded to the Information Officer.
- 2.2.4 Requests for information that do not mention the Freedom of Information Act and is not determined to be a BAU by the receiving department, that department must forward the request to the Information Officer who will interpret the request and process it in accordance with the mandated legislative guidelines.
- 2.2.5 If a request for information is received in a language other than English, HDC may consider translating the request and consider it under the legislation. However, HDC is not obliged under the legislation to translate our response into the originating language.

2.3 Review of Request

- 2.3.1 Where the request for information received is an FOI request, it is checked for validity.
- 2.3.2 If the request is valid and meets the criteria laid out in s8 of the FOIA 2000, it is recorded on the FOI logging system by the Information Officer.
- 2.3.3 Where a request contains more than one question and involves more than one piece of information access legislation, it will be split into subject areas and each subject area will be registered as a separate but linked request, the requestor informed accordingly.
- 2.3.4 If it is unclear as to what information the applicant is seeking, the applicant will be contacted for clarification by the Information Officer. The 20 working day response period stops at this point until a response is received from the requestor. Where the applicant does not clarify their request within 60 working days, the request will be closed off.

2.4 Processing Valid Requests

- 2.4.1 Once the validity of a request has been confirmed, it will be entered on to the FOI logging system. A unique FOI number will be allocated to the request at this stage. This FOI number will be quoted on all subsequent correspondence.
- 2.4.2 An acknowledgement letter/email will be sent stating when the request was received, the details of the information being requested in addition to the expected response date.
- 2.4.3 If a follow-up request is received to the original request where new or additional information is requested, this will be treated as a new request and given a separate FOI number.
- 2.4.5 Environmental Information Regulations 2004 (EIR) requests will be processed in exactly the same way as FOI requests. The only exception is that EIR requests may be made verbally. If an officer receives a request for information verbally, record all possible details, including contact details and forward to the Information Officer for determination. If the request can be processed within the reasonable period above [Part 2.1.3(c)] the request will be dealt with as a BAU request.

2.5 Performance

- 2.5.1 HDC is legally obliged to deal with all FOI requests within 20 working days of receipt, unless the request is subject to the application of a qualified exemption.
- 2.5.2 Where the request is complex and the information may be subject to the application of a qualified exemption, HDC may extend the time limit of the request (as allowed under the terms of the legislation) for consideration of the qualified exemption(s) (Up to a further 20 working days).
- 2.5.3 A 'working day' is defined as any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a Bank Holiday in any part of the United Kingdom s10(6)(b).
- 2.5.4 The day **after** a request is received is the day on which the 20 working days time limit becomes effective. If further clarification is required from the requestor, the timing clock will be suspended and the 20

working days time limit resumes from the point it stopped, when further information is received by HDC.

- 2.5.5 In the interest of customer service, HDC will provide the information requested as soon as possible whilst adhering to the terms of the legislation.

2.6 Fees and Charging

- 2.6.1 It is HDC's policy that requests exceeding the £450 fees limit will be declined under s12 of the Act on the basis of cost. (£450 is calculated on a staff cost of £25 per hour up to 18 hours) (*Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (Fees Regulations)*). This limit only applies to FoIA requests, there being no such limit under EIRs.

- 2.6.3 Under the FoIA 2000, the following will be taken into account by HDC when determining whether the request is likely to exceed the statutory cost limit:

- a) Determining if the information is held;
- b) Locating the information;
- c) Retrieving the information; and
- d) Extracting the information to be disclosed from the other information.

This includes the physical process of redaction but not the time spent identifying the information that needs redacting. This is identified as decision-making time, a part of the decision-making process, and cannot be included in the time estimation.

- 2.6.4 HDC may charge for disbursements (to the full cost incurred) including photocopying or printing of material, postage, producing material in an alternative format, such as putting it onto CD-Rom etc.

- a) Photocopying or printing material – 10p per sheet; (As per *Markinson v Information Commissioner Tribunal*)

- b) Postage – At cost;
 - c) Producing material in an alternative format, such as putting it onto CD-Rom or into Braille etc – At cost; (Except where mandated otherwise by alternative legislation) and
 - d) Translating information into a different language at the request of the applicant (not Welsh).
- 2.6.5 HDC policy is not to charge for disbursements where the costs of collection would exceed the charge.
- 2.6.6 HDC disbursements will not be charged where there is a requirement in law to provide the information in a particular format (i.e. Braille or Welsh). Where the applicant requests the response in a language other than English or Welsh, a charge may be incurred for translation.

2.7 Aggregating Costs

- 2.7.1 As provided for by the Act, where two or more requests for information are made to HDC, by one person or by different persons who appear to the authority to be acting in concert or in pursuance of a campaign, HDC will aggregate these requests for the purposes of calculating fees.
- 2.7.2 These requests must relate to the same or a similar-related subject. Decisions about aggregating requests will be taken on a case-by-case basis.
- 2.7.3 For requests to be aggregated, HDC must receive any requests subsequent to the first within 60 working days following the date of receipt of the first of the requests.
- 2.7.4 HDC will then implement the following charging procedure:
- a) Costs will be aggregated in full
 - b) If the aggregated cost exceeds the statutory £450 limit, the request(s) may be rejected under s12 of the FOIA.

2.8 Internal Retrieval of Information

- 2.8.1 Upon receipt of a valid request for information, the Information Officer will identify the appropriate service area(s) likely to hold the information and forward the request in its unabridged, unedited form to the Head of Service responsible, informing them of the correct legislative regime to follow and the due date.
- 2.8.2 It is the responsibility of the service area to locate the information and provide the response to the Information Officer.
- 2.8.3 Once the information has been located and retrieved (if held), it is the responsibility of the service area to assess the information as to its suitability for disclosure. If an exemption is to be claimed, the service area must specify which exemption to apply and justify that reasoning. (Refer to guidance document on exemptions and exceptions, and seek advice from the Information Officer and or Legal Services.)
- 2.8.4 Requested information will be forwarded to the Information Officer who will assess the information prior to disclosure or assess any claimed exemptions/exceptions to ensure that they are valid. Where necessary the Information officer will arrange for a convening of the public interest test panel to discuss the request.
- 2.8.5 Once the assessment of the information is complete the Information Officer will communicate the outcome including a copy of the requested information to the requestor. Where an exemption has been successfully claimed, the decision to withhold the information and the justification for doing so will be communicated to the requestor. *(Include information as to methods of appeal.)*

2.9 Transfer Of Requests

- 2.9.1 Where HDC receives a request for information which is not within its remit to answer, HDC will transfer the requests to the relevant external body, informing the requestor that it has done so in line with legislative provisions.

2.10 Responding To Requests For Information

- 2.10.1 Requested information will be released in permanent hard copy form or in another form acceptable to the applicant subject to the

application of appropriate exemptions contained within the FoIA 2000.

2.10.2 Where an applicant states their preferred method of communication of the information, HDC will comply with the preference as far as it is reasonably practicable to do so. In determining whether it is 'reasonably practicable', an assessment of costs incurred will be made.

2.10.3 Where no preference is specified by the applicant for the method of communication, the information will be communicated by any means reasonable in the circumstances.

2.10.4 Where the cost of providing the information is excessive under the FOI charging regime, HDC will inform the applicant, in writing, that the information requested will exceed the statutory cost limit.

2.10.5 Where appropriate, HDC may:

- i) Suggest that the applicant refines the request for information or narrows down the parameters of the request.
- ii) Provide a summary or index of the information if it is already in existence.

2.11 Releasing Information or Refusing Disclosure

2.11.1 Initially, HDC will apply s1(1)(a) of the FoIA 2000 and inform the applicant whether the information requested is held **unless** by doing so, it would inadvertently reveal exempt information.

2.11.2 Where HDC is confirming information is held and disclosing this information in full, the applicant will be advised of this in writing.

2.11.3 Where HDC is confirming information is held and disclosing this information in part, the applicant will be advised, in writing, of the exemptions that have been applied, the justifications for doing so and details of complaint rights (both internal and to the Information Commissioner's Office [ICO]).

2.11.4 HDC will undertake to list exemptions and cite all exemptions that apply to the information that has been declined or redacted.

2.12 The Decision-Making Process

- 2.12.1 All valid FOI requests for information will be entered onto the FOI logging system and be given a unique FOI number.
- 2.12.2 The Information Officer will co-ordinate, manage and track each request.
- 2.12.3 The FOI logging system contains a record of all requests for information for monitoring purposes. This will include a record of requests where information has been disclosed, withheld or partially withheld.
- 2.12.4 The decision to release, withhold or redact information may be quality assured by the Corporate Administration Manager and or Head of Legal Services in the case of complex disclosures.
- 2.12.5 Where representatives from a service area are stating the requested information is 'not held' and there is doubt as to the accuracy of this statement, the request will be referred, via the Head of Change Services to the Chief Executive Officer.

2.13 Vexatious and Repeated Requests

Vexatious Requests (s14)

- 2.13.1 Where a request is refused on the grounds that it is vexatious, a notice will be issued within 20 working days of receipt of the request.
- 2.13.2 HDC is not obliged to state the reasons why a notice has been issued. HDC will send out a standard letter stating that the request has been declined on the grounds that it is vexatious. The requestor will be notified of the internal procedures for dealing with a complaint. Details of the rights of appeal to the Information Commissioner will also be enclosed.
- 2.13.3 Where a notice has previously been issued to inform the requestor that the request has been classified as vexatious, HDC will neither acknowledge nor answer subsequent requests that are made on the same or similar subject.
- 2.13.4 Where a request for the information that has already been labelled 'vexatious' is received, HDC will issue a notice within 20 working days

to the requestor explaining the subject of the request has already been made vexatious. If there is evidence to suggest that the subsequent request(s) are from the same person or persons acting in concert, HDC will ignore these subsequent request(s).

2.13.5 Where a request is suspected of being vexatious, the Information Officer will consult with the Corporate Administration Manager and or Head of Legal Services before any further action is taken.

2.13.6 HDC will assess whether a request is vexatious based on the type of information requested and not on the identity of the requestor.

2.14 Repeated Requests

2.14.1 Where a repeated request is received that is identical or substantially similar to a previous request from the same person, HDC will consider this as a repeated request. Where this is the case, HDC is not obliged to respond until such a time as a 'reasonable interval' has lapsed between compliance with the previous request and the making of the current request. ***(The Act is silent as to what constitutes a reasonable interval though other public bodies accept 60 working days to be the norm.)*** HDC does not need to give a reason for refusing to process the repeated request.

2.14.2 Where a request is refused because it is considered repeated, a notice will be issued within 20 working days. The requestor will be given information regarding the authority's appeal process and further details of how to appeal to the Information Commissioner.

2.14.3 Where a notice has previously been issued to the requestor that the request is repeated, HDC will not issue a further notice.

2.14.4 Where a request for the information that has already been labelled 'repeated' is received, HDC will issue a notice within 20 working days to the requestor explaining the subject of the request has already been made and is thus repeated. If there is evidence to suggest that the subsequent request(s) are from the same person or persons acting in concert, HDC will ignore these subsequent request(s).

2.15 The Internal Review Procedure

2.15.1 Initially, any complaint will be received by the Management Board Support Team. The Information Officer will be informed that a

complaint has been received. The Management Board Support Team will send an acknowledgement receipt of the request for an internal review to the complainant. The Information Officer will be responsible for collating all relevant documentation and papers supporting the original request and relating to the complaint.

2.15.2 Where the decision to withhold has been taken by the service area responsible for collating the information, the Chief Executive Officer in cooperation with a member of the relevant service area the Legal Officer, the Information Officer and or Corporate Administration Manager will review the request from an independent standpoint and make a decision on the as to whether to overturn the original decision or not.

2.15.3 The outcome of the internal review procedure will be communicated to the complainant by the Information Officer.

2.15.4 Where the applicant is not completely satisfied with the results of the internal review process, HDC will provide details of the external appeal process involving the Information Commissioner's Office.

2.16 Third Party Consultation and Referral

2.16.1 This section should be read in conjunction with the s45 Code of Practice contained within the FOIA.

2.16.2 Where one authority receives a request for information, the release of which will impact on the rights or interests of another authority, It is HDC's practice to consult the other affected authorities before any disclosures are made.

2.16.5 Where HDC is the recipient of the original request, it will make the final decision on the disclosure of the third party information requested.

2.17 Publication Scheme

2.17.1 HDC will follow the statutory requirements laid out by the Information Commissioner's Office and the guidance in respect of the updating and maintenance of the Council's Publication Scheme.

- 2.17.2 Where a decision is taken to release information then the relevant Service Area should consider publishing the information if the information is likely to be of wider interest.
- 2.17.3 All published information should be included in the Council's Publication Scheme. Any information for inclusion in the Publication Scheme should be forwarded to the Council's Information Officer.

3 Roles and Responsibilities

- 3.1 FOI, EIR and DPA requests must be dealt with by the Information Officer, which falls under Change Management Services/ Corporate Administration.
- 3.2 The Information Officer is responsible for the day-to-day implementation and enforcement of the Freedom of Information Act and any other information access legislation.
- 3.3 Each service area will be responsible for providing a response to any requests for information sent to it. This will include decisions as to which, if any, exemptions to apply to information it does not wish to disclose. (A guidance document on exemptions and exceptions accompanies this procedure to aid in this decision making process.) ***Always seek advice and guidance from the Information Officer and or Legal Services Team where unsure.***
- 3.4 The Information Officer is the only person responsible for the disclosure of information to the requestor. Service areas are not to issue information under the Act. *(They can do so where the request has been treated as a BAU request)*

4 Administration

- 4.1 All requests that will be dealt with under the FoIA 2000 or Environmental Information Regulations 2004 will be dealt with within 20 working days, in-keeping with the terms of the legislation. The processing of all FOI/EIR requests must be undertaken by the Information Officer or other designated Officer.
- 4.2 Each request will be overseen by the Information Officer.

- 4.3 Prior to the release of complex disclosures, the Corporate Administration Manager and or Head of Change Management Services may quality assure the response.
- 4.4 All requests will be dealt with in accordance to legislative requirements.

5 Monitoring / Evaluation

- 5.1 This procedure will be monitored and evaluated by the FOI Officer, Corporate Administration Manager and Head of Change Management Services.
- 5.2 This procedure will be subject to periodic review by the Information Officer.

Frequently Asked Questions

1. Q: What is the Freedom of Information Act?

A: The Freedom of Information Act (FOI) came into force on 1st January 2005. The Act gives individuals a general right of access to recorded information that is “held” by public authorities and places a duty on these bodies to be open and accountable to the public.

2. Q: What is an FOI request?

A: An FOI request is any request for information that is held in permanent form, for example a letter, email or fax. All that the applicant needs to do is to provide a name and address with their request (this can include email). The request can originate from any person (legal or private) and from anywhere in the world. The applicant does not have to mention the Act or the reason why they want the information.

3. Q: What does the Act mean by ‘recorded information’?

A: All information that the Council holds in permanent form, such as on computerised systems, in filing cabinets, on PCs, in emails or hand-written notes. It does not cover non-recorded information (e.g. information in your head).

4. Q: What if a request is not clear?

A: It is acceptable to refer a request back to the applicant if the reason in doing so is to provide a better response. In such cases the ‘20 working day clock’ stops whilst the clarification is sought, and starts again when the clarification is received.

5. Q: Can we ask the requester why they want the information?

A: We can, but it is not relevant for the purposes of the Act and the applicant is under no obligation to tell us.

6. Q: Providing information can be expensive. Are we allowed to charge?

A: Yes. In brief HDC can charge the cost of photocopying and postage on FOI requests.

Also – in accordance with FOI Fees Regulations, if it is estimated that the cost of answering a request is going to exceed £450 (calculated at the rate of £25 per person per hour), HDC can choose either to charge the appropriate fee or to refuse to answer the request. Bear in mind however that the charge time for handling FOI requests has been worked out on an assumption that efficient records management is in place. The law does not allow the authority to charge for its own inefficiency.

7. Q: If HDC receives an FOI request but does not want to release the information, what can be done?

A: The Act establishes a general right of access to all of HDC's recorded information so it is highly probable that the authority will not be legally entitled to withhold requested information. Under the Act, information can only be legitimately withheld if an exemption specified within the Act applies (See guidance document.)

8. Q: If we receive an FOI request for information that we do not want to make available, can we opt to destroy it rather than hand a copy over?

A: No. It is a criminal offence to destroy, obscure or erase material in response to a valid request (Section 77 FoIA 2000). Individual staff members may be criminally liable (i.e. at a personal level) if they destroy information (or instruct others to destroy information) following receipt of a valid request.

9. Q: What are our obligations under FOI to make information available in the format of the applicant's choice (e.g. a foreign language, audio, Braille or large-print)?

A: The requirement is to provide information in the format that the applicant expresses, 'as far as reasonably practicable'. However other legislation is relevant here e.g. the Disability Discrimination Act, and needs to be taken into account.

10. Q: Which takes precedence – Copyright or the FOI Act?

A: The Copyright Designs and Patents Act (Section 50) states that information should be released if required by any other Act of Parliament. So, provided no exemptions apply, information should be released.

However, information may be exempt from disclosure under the FOI Act if its disclosure would constitute 'an actionable breach of confidence'. Consultation therefore (with the copyright owner) may be required before disclosure takes

place. It is also good practice to advise an applicant that making additional copies of information that has been disclosed, or selling such copies to another party may be a breach of copyright.

11. Q: Which takes precedence – The Data Protection Act or the FOI Act?

A: There will generally be no conflict between the two Acts. If in doubt always contact the Information Officer and or Legal Services Department. If you receive a Subject Access Request for information in respect of personal data you should immediately pass the request to the Information Officer, which is also responsible for co-ordinating HDC's responses to the Data Protection Act 1998.

12. Q: Where in HDC does legal responsibility for the FOI Act actually rest?

A: Any enforcement notice would be served on the 'public authority' (i.e. in our case HDC) as an entity. However there is an important exception. Individual staff members can be criminally liable at a personal level if they destroy information (or instruct others to destroy information) following the receipt of a valid request.

13. Q: What if we receive a request for information, but just can't find the information?

A: The introduction of the Act has highlighted the clear importance of effective records management. The time limit of 20 working days means that it must be possible to retrieve information easily in order to meet the requirements of the Act. This means that effective filing systems need to be in place to reduce the time required in searching for information.

It also needs to be clearly understood that inefficient filing will not excuse non-compliance with the Act.

14. Q: What is a Publication Scheme?

A: The Act requires a public body to maintain a 'Publication Scheme' that is approved by the Information Commissioner's Office. A publication scheme is essentially a classified index to all information that the public body holds and which is intended to be made 'routinely available' to the public. HDC's has adopted the model publication scheme and is available at: <http://www.harborough.gov.uk/downloads/PubScheme.pdf>

15. Q: What are HDC's obligations regarding the Publication Scheme?

A: The Scheme must be kept up to date and must be accurate. It is the responsibility of each service area to ensure that information listed in the publication scheme is available. The importance of this is that an up to date publication scheme will reduce the need for the public to submit requests for information in relation to data listed within.

16. Q: What should I do when I receive a request for information and do I need to recognise it as an FOI request?

A: How you handle the request depends on the nature of it and your role in HDC. If you routinely give out certain information to the public, continue to give out this information as before. If you receive a request for information which mentions Freedom of Information or is NOT information you already routinely provide in the course of your work, then contact and forward the request to the Information Officer.

17. Q: What is the difference between an FOI request and an EIR request?

A: Although the rules governing these requests are slightly different the method and timescales for dealing with the requests are essentially the same. It is the Council's responsibility to determine the relevant legislation under which a request for information is dealt with.