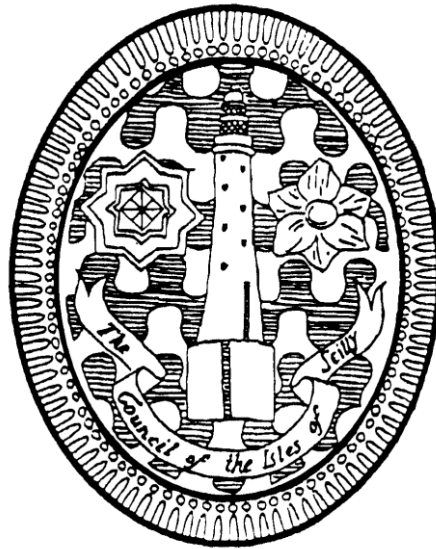


Freedom of Information Act 2000



Access to Information Policy

of the

Council of the Isles of Scilly

Town Hall
St Mary's
Isles of Scilly
TR21 0LW

INTRODUCTION

This policy supports the legislative framework for responding to requests for information under the statutory access regimes of the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA), the Environmental Information Regulations 2004 (EIR) and other legislation that provides a right of access (Appendix A).

As a result of the changes from 1 January 2005 there will be a presumption in favour of disclosure to promote a transparent, open and accountable Local Government. Although the Council have traditionally been open about the way it operates and endeavours to supply information wherever possible there will now be a requirement to ensure that this level of openness is maintained and enhanced.

PURPOSE

The purpose of this policy is to ensure that the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulation 2004 are adhered to. Both regimes are to be in force on 1 January 2005. The Council further seeks to ensure compliance with the Data Protection Act 1998, which provides for the protection of personal information held by the Council, and other access regimes. The policy should not be read in isolation and regard should be had to the Lord Chancellors Code of Practice under Section 45 on the practice to be followed in Handling Requests for Information. The Council further recognises that although it is not legally binding, failure to comply with the code may lead to the failure to comply with the Act.

AIMS

The aims of the policy are to ensure access to information held by the Council in order to promote greater openness, provide increased transparency of decision making and to build public trust and confidence. These aims will be balanced against the need to ensure the confidentiality of some information relating to such areas as personal privacy, commercial sensitivity and where disclosure would not be in the public interest.

KEY REQUIREMENTS AND COMMITMENT TO ACCESS TO INFORMATION

The Isles of Scilly Council is committed to openness about their operations and will favour disclosure of information where possible. The policy sets out the general principles that will be adopted by the Council in response to requests for information under any statutory access regime.

ROLES AND RESPONSIBILITIES

It is the role of the Council to endorse this policy. Overall responsibility for Access to Information and amendments to this Policy will be with the Administration Officer as the Council's Data Protection Officer and Freedom of Information Officer who will take the lead role and be responsible for the provision of advice, guidance and training regarding Freedom of Information and Data Protection Information Regulations. This will be achieved with the support of the Council's Legal Services.

Heads of Departments will be responsible for ensuring operational compliance with this policy within their own departments and for decision making with regard to refusing requests for information where applicable.

All Officers will have responsibility for ensuring that requests for information are dealt with in accordance with this policy.

In respect of complaints received in connection with access to information the Chief Executive and/or the Head of Legal and Democratic Services will adopt the role of arbiter.

ACCESS REGIMES

Access to information is principally governed by two main legislative provisions under the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004 (EIR). They both provide rights of access to information publicly held with limited exception, however any request for information held is technically an FOI request in the first instance.

Section 39 of the FOI Act then exempts environmental information from being dealt with under the Act and provides that it should be dealt with under EIR (see Appendix B). If it is determined that 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 Data Protection Act 1998. Whilst the spirit of these pieces of legislation are the same there are some minor differences in their application which are highlighted within this policy.

The generic term of Request for Information ("RFI") is used to cover access provisions under

FOI and EIR.

The Freedom of Information Act received Royal Assent on the 30 November 2000. The right of access that this Act affords the public will come into force on the 1 January 2005. The Council has already produced a Publication Scheme in accordance with the Act and this dictates the information that is currently available to the public, its location and whether there is a charge.

The Freedom of Information Act allows anyone to request information from the Council after the 1 January 2005 regardless of their age, nationality, location, motive or history. Any information held by the Council is eligible for release. However, a limited number of exemptions (see Refusal of Request) may be applied to protect some information that truly warrants such protection. The Act requires that all requests must be in writing (to include emails); to state clearly what information is required; and state the name of the applicant and an address for correspondence. The EIR slightly differ in that an official request may be made, and thus trigger the Council obligation of reply, by way of verbal request. It is therefore essential that such requests are logged and monitored.

On receipt of a request for information (RFI) the Council must respond as soon as possible and not later than 20 working days after receiving the request.

The reply to the request should confirm or deny whether the Council holds the information (unless an exemption to the duty to confirm or deny can be applied) and either provide the information that has been requested or explain why it has not been provided, quoting a statutory exemption and the reasoning behind it.

If the applicant fails to provide enough information for the Council to reasonably locate the data, the Council can request that further details are provided. The Council is under a duty to advise and assist the requestor and therefore the Council will strive to provide as much assistance as possible to enable the information to be provided. If information requested is contained within the Council's Publication Scheme, the Scheme itself will dictate whether and how much the Authority will charge for providing the information. If the information requested is not contained within the Publication Scheme, the Authority may charge a fee as laid down in regulations. If the fee is not paid, the Council can refuse to supply the information.

A request for information may only be refused if an exemption under the Act applies. The reply to the request will state which exemption the Local Authority relies on and the reasoning behind it and will provide details to the requestor of the Internal Appeal Process. If after reviewing the case, the Council still refuses the request, the requestor has the right to seek a review by the Information Commissioner. Any application for a review of a Council decision to refuse disclosure should be directed to:-

The Chief Executive
Council of the Isles of Scilly
Town Hall
St Marys
Isles of Scilly
TR210LW

Requests for personal data made by the subject themselves will be dealt with under the Subject Access Regime of the Data Protection Act.

ADVICE AND ASSISTANCE

The Local Authority has a duty to provide advice and assistance to applicants under Section 16 of the FOI Act and under the provisions of the EIR. This duty is to provide advice and assistance "so far as it would be reasonable to expect the Authority to do so". The Council's procedure for dealing with requests for information can be found by contacting the Council's Freedom of Information Officer. These procedures outline the Council's processes for dealing with requests for information including the transfer of requests to another authority, consultation with third parties and access under Data Protection.

Any queries regarding this policy or access to information within the Council should be directed to:-

Sue Pritchard
Administration Officer
Council of the Isles of Scilly
Town Hall
St Marys
Isles of Scilly
TR210LW
E-mail: spritchard@scilly.gov.uk
Tel no: 01720 424008

Fax no: 01720 424017

AN OFFICIAL REQUEST FOR INFORMATION

The Council of the Isles of Scilly provides a wide range of information routinely and will continue to do so with only certain requests being treated formally under FOI, EIR or Data Protection.

Please refer to Appendix C for clarification as to which requests will trigger an official request for information. The FOI Act requires that a request for information must be made in writing, this may include a request transmitted by electronic means, providing it is received in an eligible form and is capable of being used for subsequent reference. However the EIR allow a request for information to be made verbally. If a person is unable to articulate their request in writing the Council will provide advice to assist formulating their request. In addition:

1. A requestor may wish to consult another person or agency such as the Law Centre/Citizens' Advice Bureau who may be able to assist them with their application or make the application on their behalf.
2. The requestor could approach the Data Protection Officer at the address given who may provide appropriate assistance.
3. In exceptional circumstances the Council may offer to take a note of the application over the telephone and send a note to the applicant for confirmation which once verified by the applicant and returned, would constitute a written request for information.
4. The requestor may apply online using the Council's online application form or by requesting an application form to be sent to them. This may assist the applicant in framing their request.

The Council fully supports the principles of FOI and will seek to comply with its terms to the fullest extent. However, if the information sought is not described in a way which would enable the Council to identify and locate it, or the request is ambiguous, the Council will seek clarification and the 20 day request period put on hold. The Council will provide reasonable assistance to help the requestor in clarifying the nature of the information sought and contact will be made to clarify the request at the earliest opportunity. The Council will not seek to determine the motivation or aims of the applicant for requesting the information as it recognises this is irrelevant to the decision.

The Council will attempt to be as flexible as possible with the advice and assistance provided but if, following the provision of any assistance in clarifying the information sought the applicant still fails to describe the information requested in a way which would enable the Authority to identify and locate it, the Council will consider that they have complied fully with the Act and until such time as the applicant is able to provide further information the request will cease.

The Council will not provide assistance to applicants whose requests are vexatious within the meaning of Section 14 of the Act.

If the Local Authority considers that the cost to comply would exceed the appropriate limit, as set out under regulations made under Section 12(4) of the Act (See Charging Fees), the Authority will not be bound to continue processing the request. However, the Council may consider on a discretionary basis what information could be provided within the cost ceiling with the agreement of the requestor.

REQUEST FOR INFORMATION PART OF AN ORGANISED CAMPAIGN

Where the cost of compliance of providing the information to a number of related requests exceeds the cost threshold limit described in the fees regulations, the Council will not be obliged to comply with the request. However, the Council may, on a discretionary basis, be prepared to offer assistance as to what could be disclosed in a more cost effective manner. It will be a matter for the Council to determine whether the various requests are related and part of an organised campaign.

PROMPT REPLIES TO REQUESTS

The Local Authority are required to comply with all requests for information promptly and not later than the end of the 20 working day period. However the Council would not expect every application for information to take 20 working days and will, where possible, provide it at the earliest opportunity from the date of the request. Requests for personal data under the Data Protection Subject Access regime will be dealt with within 40 calendar days.

If the Local Authority are considering applying an exemption which is accompanied by a public interest test under the legislation, the Council may need further time beyond the normal 20 working day limit. In this instance the Council will notify the applicant in writing that the request for information engages the public interest test and will provide an estimate of a date by which it expects to reach a decision. These estimates shall be realistic and reasonable in the circumstances of the particular case, taking account of such things as the need to consult third parties. If the estimate given proves to be unrealistic the Council will notify the applicant at the earliest opportunity and apologise for any further delay giving a new realistic estimate of when the decision will be issued.

CHARGING FEES

The Council may charge applicants a fee in accordance with the fees regulations made under Section 9, 12 and 13 of the Act. The fee that may be charged for production of the information requested is shown in Appendix D in accordance with the Fee Regulation Order 2005.

Under EIR a charge can be made provided that it does not exceed the costs reasonably attributable to the supply of the information. The Council will ensure that charges are based on the costs of retrieval and production of the information and in any case will calculate and advise the applicant of any fee due before the request is met. However these fees regulations do not apply to material made available under the Council's publication scheme; to information which is reasonably accessible to the applicants by other means (Section 21 of the Act); where provision is made by or under any enactment as to the fee that may be charged by the public authority for

disclosing the information. Subject Access requests under the DP Act will continue to be charged at the statutory £10 limit.

TRANSFERRING REQUESTS FOR INFORMATION TO ANOTHER PUBLIC AUTHORITY

If the Council receives a request for information which it does not hold, but it is aware that it is held by another public authority, the Council will provide as much assistance as possible to the applicant in assisting the transfer of their request to the authority which holds the information. This may be by simply contacting the applicant and directing him to the appropriate public authority who holds the information or, if details are known, providing the applicant with contact details.

If the Council holds any of the information that has been requested it will treat that part of the request as an official request for information and process it accordingly. The Council will inform the applicant of the information it does not hold at the earliest opportunity and provide as much assistance as is reasonable to enable the applicant to locate it elsewhere. If the applicant indicates to the Council that they do not object to the transfer of the request to the other public authority being made by the Council, the Council will, at their discretion, transfer the request to that public authority direct. However the Council will notify the applicant if this is to be done.

All transfer of requests and contact with applicants who have requested information that is held by another public authority will be undertaken as soon as possible so that no undue delay is suffered by the applicant. The time period for compliance with the request in respect of the part of information it does not hold does not start until that request is received by the public authority that does hold it.

CONSULTATION WITH THIRD PARTIES

The Council recognises that the disclosure of information may affect the legal rights of a third party. The Council recognises the importance of the Data Protection Act and the Human Rights Act and this policy is written in accordance with their terms. The Council further recognises that unless an exemption is provided for in the Act it will be obliged to disclose that information in response for a request.

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 Authority to determine whether an exemption under the Act applies to the information requested, or the views of the third party may assist the Authority to determine where the public interest lies under Section 2 of the Act. If the cost of consultation with the third party is disproportionate, consultation may not be undertaken. The Council will not undertake consultation if it does not intend to disclose the information for some other legitimate ground under the terms of the Act or the views that the third party could have no effect to the decision of the Authority, or that no exemption applies.

A refusal to consent to disclosure by a third party will not on its own mean that information cannot be disclosed. The Council will only accept information from third parties in confidence if that information would not otherwise be provided to the Council to assist the delivery of the Council's functions. Again the Local Authority will

not agree to hold information received from third parties in confidence if it is not confidential in nature.

CONTRACTS

The Council will refuse to include contractual terms which purport to restrict the disclosure of information held by the Council in relation to the contract beyond the restrictions permitted by the Act. Unless an exemption under the Act applies in relation to any particular part of the contract, the Council will be obliged to disclose that information in a response for a request regardless of the terms of any contract. The Council will further reject confidentiality clauses as to the terms, the value and performance of the contract unless this is justified and in accordance with the Act. Where exceptionally it is necessary to include non-disclosure provisions in the contract, the Council will seek at the earliest interval to agree with the contractor a schedule of the contract which clearly identifies the information which should not be disclosed. However even if such schedule is drafted the restrictions on disclosure may be overridden by the obligations under the Act. Further whilst an exemption may apply whilst the contract is relatively new, the lapse of time may negate the applicability of the exemption. The Council will not hold information in confidence which is not in fact confidential in nature. Information is confidential in nature if the disclosure of such information would be an actionable breach of confidence. If a non-public body is contracted with the Council to provide a service that is a function of the Council then they may be deemed to be part of the Council for the purposes of the Act and will be bound by the terms of the Act like any other public authority.

REFUSAL OF REQUEST

If the Council relies on an exemption to refuse a request for information the applicant will be notified of the appropriate exemption and why it applies. Please refer to Appendix E for information regarding exemptions. If the reasoning behind the exemption, or the exemption itself, would result in the disclosure of information which would itself be exempt, then the Council may not provide that reason.

If the Council claims that the public interest in maintaining the exemption outweighs the public interests in disclosure, then the Council must state this in its decision letter together with the public interest factors it has considered and formed a material part of the decision. The Local Authority will maintain a central record for monitoring purposes of all information that has been withheld and will proactively audit decisions made routinely to ensure that such refusals are justified and reasonable. This collated central record will be held by the Council's Data Protection Officer.

APPEALS

The Council have adopted an internal appeal procedure. Any person that perceives that the Council is not complying with its statutory duty may use this procedure. The internal appeal process must first be exhausted before a referral is made to the Information Commissioner. An appeal may be made with regards to the Council not following its publication scheme, relating to requests that have not been properly handled, or where the requestor is dissatisfied with the outcome of the consideration of the request, or where the issue is such that it cannot be resolved informally in

discussion with the Officer dealing with the request. The Council will consider any expression of dissatisfaction in response to the Local Authority's reply to their request to be a complaint. If the applicant requests that they do not wish the matter to go through the appeals procedure, then it will be withdrawn. Any review of a decision made relating to a request for information will be reviewed by a person who was not party to the original decision. If the original decision is reversed and information is now disclosed, this will now be done as soon as is practicable and notification of such disclosure, if it is not accompanied by the information requested, will be made at the earliest opportunity. Appeals on decisions made regarding the disclosure of information should be directed to:-

The Chief Executive
Council of the Isles of Scilly
Town Hall
St Marys
Isles of Scilly
TR210LW

If the decision is upheld to refuse disclosure, or having exhausted the internal appeal procedure the requestor is still dissatisfied, they shall be made aware of their right to apply to the Information Commissioner for review at:-

The Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel No: 01625 545700
Fax No: 01625 545510

Appendix A

OTHER LEGISLATION AFFORDING STATUTORY ACCESS RIGHTS

- Local Government Act 1972
 - Local Government (Access To Information) Act 1985
 - The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (these regulations are based on Part II of the Local Government Act 2000)
 - Audit Commission Act
 - Accounts & Audit Regulations 2003
- This is not a definitive list

Appendix B

ENVIRONMENTAL INFORMATION REGULATIONS 2004

Where an access request is for Environmental Information it should be dealt with under the

Environmental Information Regulations 2004 (EIR). The public has had a right of access to environmental information under these regulations since 1992, however the regulations have been revised to take into account the Aarhus Convention and the EU Directive on Public Access to Environmental Information. The new regulations will come fully into effect on 1st January 2005 and are explicitly referred to within the Freedom of Information Act 2000. The new regulations have been written to take account of FOI legislation and as such share many common elements, however a few notable differences exist in that:

- a. requests can be verbal or in writing;
- b. there is no pause in the 20 day response time whilst charges for the supply of information are being negotiated;
- c. there is no upper limit for charges above which a request can be refused;
- d. there is no fee structure but charges must not exceed the costs reasonably attributed to the supply of the information;
- e. the response time can be extended in line with the regulations in the case of complex or voluminous requests; and
- f. the public interest test be applied in each potential case of refusal based on an exemption.

Environmental Information is taken to mean information that relates to:

- a. the state of the elements of the environment such as:
 - Air and atmosphere
 - Water
 - Soil
 - Land
 - Landscape and natural sites, wetlands and coastal and marine areas
 - Biological diversity and its components including genetically modified organisms.
 - b. the interaction between the elements in (a) above;
 - c. factors such as substances, energy, noise, radiation or waste;
 - d. emissions, discharges and other releases into the environment;
 - e. measures such as policies, legislation, plans, programmes and environmental agreements;
 - f. cost benefit and other economic analyses and assumptions used in environmental decision making; and
 - g. the state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are affected by anything above.
- Routinely produced environmental information and specialist reports should wherever possible be included within the Publication Scheme.

Appendix C

WHAT IS A REQUEST FOR INFORMATION?

The Council routinely provides information as part of its normal Council functions on a day to-day basis. The new access regimes under Environmental Information Regulations,

Freedom of Information Act and Data Protection Act are so broad that they have the potential to encapsulate most of what the Council does routinely.

Where possible requests for information will be dealt with in the normal course of business; however it is accepted that some requests will require a more formal approach. This guidance note sets out what the triggers will be for engaging the official process for dealing with requests for information under the above legislation.

The following will not, as a general rule, engage the official processes:

- If the information is reasonably accessible to the public by such means as it being published on the Internet, noted in the publication scheme, or available for inspection. This may include information leaflets, or published reports or general information on the internet;
- Information that is released as part of the Council's normal business process; the Council routinely provides information as part of their day to day processes (for example job application forms or information relating to case work). The new processes are not intended to replace existing business systems that are functioning adequately;
- Correspondence that is not a request for information;
- Requests that do not include a name and address for correspondence (or an email address).

It is important to recognise, at an early stage, when requests for information should be entered into the official Council's system for managing requests. This is to ensure that the Council can comply with the request within the legislative time periods and to enable sufficient monitoring and auditing of the Council's compliance.

Examples of when official requests for information should be logged are:

1. Requests which result in information being withheld for any reason under an exemption or exception from the right of access.
2. Requests that are not processed because the public authority estimates the cost of compliance would exceed the appropriate limit.
3. Requests that are not processed because the public authority considered the request to be vexatious or repeated.
5. Requests for information that relate to information that is contained in a transferred public record which may include where information is held by another public authority either as author or as recipient.
6. Requests where advice or assistance is offered to the applicant to enable them to locate their information.
7. Where the public authority requires further information from the applicant in order to identify and locate the information requested.
8. Requests that consciously engage any or all of the information access regimes. Those requests being, for example, requests which specifically mention their right of access under the Acts.
9. Requests that may prejudice third parties and/or the Council, its Members or its staff.
10. Requests that will not receive a reply within ten working days from the date of request.

Appendix D

CHARGING FEES

In accordance with the Fees Regulation Order - Not yet available.

Appendix E

EXEMPTIONS UNDER FOI

Whilst the Freedom of Information Act provides for the right of access to information held it also affords a number of exemptions from this right in order to permit public authorities to withhold some or all of the information requested where a justifiable reason exists.

The exemptions fall into two categories:

- those that are qualified in that although an exemption may apply to the information it will nevertheless have to be disclosed unless it can be demonstrated that the public interest in withholding the information is greater than the public interest in releasing it; and those that are absolute exemptions where a public authority may withhold the information without considering any public interest arguments.

Absolute Exemptions

The absolute exemptions that are most likely to apply to the Council are:

- Information accessible by another means, i.e. through the Council's Publication Scheme or via existing access regimes (*Section 21*)
- Information in court records (*Section 32*)
- Personal information relating to the subject – this exemption is only absolute in respect of requests by applicants to access their personal information. Such requests will continue to be dealt with under the Data Protection Act 1998 (*Section 40*)
- Information provided in confidence – this exemption only applies to information where disclosure would result in an actionable breach of confidence (*Section 41*)
- Information that is prohibited from disclosure by law (*Section 44*)

Qualified Exemptions

The qualified exemptions most likely to apply to the Council are:

- Information intended for future publication (*Section 22*)
- Prejudicial to the economic or financial interests of any administration in the UK (*Section 29*)
- Investigations/proceedings conducted by public authorities (*Section 30*)
- Law enforcement (*Section 31*)
- Prejudice to the effective conduct of public affairs (*Section 36*)
- Health & Safety (*Section 38*)
- Environmental Information (*Section 39*)
- Personal information relating to a third party (*Section 40*)

Legal professional privilege (*Section 42*)

Commercial interest (*Section 43*)

A full list of the exemptions under the Act are available from the Information Commissioner's website at www.informationcommissioner.gov.uk

The Public Interest Test

The public interest test requires that information should be withheld under exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.