

Freedom of Information Policy



King Henry VIII 3-19 School Ysgol 3-19 Brenin Harri'r VIII

We believe in the limitless capacity for everyone to achieve great things.

Effective from: September 2023

Approved by Governors: September 2023

Next Review Due: September 2025

1. Introduction

Purpose of Policy

The primary purpose of this Policy is to set out the methods which Monmouthshire County Council will adopt to ensure it complies at all times with its duties under the Freedom of Information Act 2000 (FoI) and the Environmental Information Regulations 2005 (EIR)

The contents of this document are not to be construed as detailed guidance notes or training material. These will be available elsewhere.

Brief introduction to the Freedom of information Act 2000 & the Environmental Information Regulations 2005

The Freedom of Information Act came into force at the beginning of 2005. It deals with access to information, while parallel regulations deal with access to environmental information.

The Act provides individuals or organisations with the right to request information held by a public authority. They can do this by letter, email or tweet.

We will tell the applicant if we hold the information, and will normally supply it within 20 working days, in the format requested. Note that "format" refers in this case to paper or electronic provision, rather than as a particular type of electronic file.

The Act contains some exemptions which mean that there are circumstances in which we are not obliged to disclose all or part of the information requested. Some of the exemptions are subject to a Public Interest Test, which means that the exemption can only be used if the public interest in withholding the information is stronger than the public interest in releasing it.

The Act also limits the time the Council needs to spend on extracting the information for a request to 18 hours.

The Environmental Information Regulations apply to information which is deemed to be environmental. A definition is provided by the Information Commissioner's Office in the guidance documentation publicly available on its website.

Requests under the EIR will also normally receive a response within twenty working days.

The circumstances in which we are not obliged to disclose the requested information are laid out in the Regulations as Exceptions. Some exceptions are also subject to a Public Interest Test.

Under either regime, information should always be released unless the Act or Regulation contains a valid reason not to.

An applicant who is unhappy with our refusal to disclose information under either regime may contact the Council's Chief Executive Officer to request a review. If they remain dissatisfied they may complain to the Information Commissioner's Office. The Information Commissioner's Office may investigate the case and either uphold the Council's use of an exemption or decide that the information must be disclosed.

Monmouthshire County Council is fully committed to compliance with the Freedom of Information Act 2000 and the Environmental Information Regulations 2005 and will make every effort to meet its obligations.

Further information concerning the Act and regulations may be found at:

http://www.ico.gov.uk/what_we_cover.aspx

The Information Commissioner's head office may be contacted via:

https://www.ico.gov.uk/Global/contact_us.aspx

Postal and telephone enquiries may be made to:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

Tel: 0303 123 1113

Fax: 01625 524 510

Scope

This policy applies to all recorded information held by the Council.

The policy covers all requests for information except normal 'business-as-usual' requests. A 'business-as-usual' request is a request for information or services that a service area would expect to receive in its normal day to day operation and which will be fully complied with within the timescales for normal correspondence. Requests from data subjects for their own personal data will be processed in accordance with the Data Protection Act 1998.

We will make information available pro-actively through our website and publication scheme.

We have adopted the new model publication scheme produced by the Information Commissioner's Office and have used it as the foundation of our own scheme. The publication scheme includes a guide to information, which shows the types of information that we make available.

We will provide access to environmental information through the Environmental Information Regulations 2004 (EIR). These regulations set out an access regime that is broadly similar to the FOI Act. There are some small, but significant, differences with the EIR, especially in terms of exceptions from the right of access and charging for information provided. For detailed information concerning EIR see:

http://www.ico.gov.uk/what_we_cover/environmental_information_regulation.aspx

It is the Council's responsibility to recognise that a request for information is covered by the Freedom of Information Act or the Environmental Information Regulations, and to respond accordingly. It is not necessary for a request to specifically mention either the Act or the Regulations.

Personal data

Requests for an individual's own personal data cannot be processed under the provisions of the FOI or EIR. Such requests will be processed using the Data Protection Act 1998. When a request for such information is received, the requestor should be advised how to make a request under that Act in accordance with the Council's Data Protection Policy.

Personal data may be requested using the application form.

Relationship with other policies

The Freedom of Information Act is part of the same family of legislation as the Data Protection Act 1998. Our Data Protection Policy explains how we will comply with our obligations under that Act in relation to the processing of personal data. Guidelines issued by the Information Commissioner's Office and found at www.ico.gov.uk will reflect the interaction between the FOI Act and the Data Protection Act in relation to disclosure of personal data.

Policy statement

This policy outlines the Council's approach to responding to requests for information made under the FOI Act and the Environmental Information Regulations 2004.

It provides a framework to ensure that we operate and adhere to the requirements of the Freedom of Information Act 2000 and meet the standards set out in the Lord Chancellor's Codes of Practice on satisfying public authorities' obligations under this Act.

This policy aims to ensure access to information in order to promote greater openness and to build public trust. Access to information about decisions we take can help local people to influence local service provision. This will be balanced against the need to ensure the confidentiality of certain information, in areas such as personal information and commercially sensitive information.

The Council is committed to:

- complying with both the law and good practice
- respecting individuals' rights
- being open and honest with individuals
- providing training and support for staff who handle requests for information under the FOI Act and the Environmental Information Regulations 2004 so that they can act confidently and consistently

Key risks

The Council's main risks with regard to data fall into two key areas.

Information about individuals getting into the wrong hands, through poor security or inappropriate disclosure of information:

- Accidental loss of data
- Deliberate theft of data
- Lack of vigilance by staff or lack of training

Individuals being harmed through data being inaccurate or insufficient:

- Vulnerable people put at risk
- Inappropriate action taken by the Council

The Council seeks to minimise these risks through the use of appropriate physical and electronic data security, policies, procedures, training and guidance.

Care should always be taken in responding to requests to ensure that personal data is not inappropriately released.

2. Responsibilities

Overall responsibilities

Overall responsibility for the conduct of Information Governance (which includes FOI, EIR and Data Protection matters) rests with the Deputy Chief Executive.

Chief Officers

Within their areas of responsibility Chief Officers are responsible for:

- Ensuring that officers with responsibilities for handling FOI requests are adequately trained and supported in their work in terms of capacity and resources.
- Ensuring that all staff comply with the agreed policy and procedures for FOI, including compliance with timescales.
- Managing the storage and disposal of information in accordance with Retention and Disposal guidelines.

Section Managers and Heads of Service

Section Managers and Heads of Services are responsible for:

- Promptly identifying all requests made to their service area which are covered by this policy and making arrangements to respond accordingly
- Ensuring that staff under their control are able to identify such requests and notify the relevant FOI coordinator
- Notifying the relevant FOI coordinator when they receive requests
- Seeking and following guidance from the relevant FOI coordinator
- Passing all information for responses to the relevant FOI coordinator in a timely manner

Each team or department where information is handled is responsible for drawing up local operational procedures which are consistent with this policy and corporate practice (including induction and training) to ensure that good practice is established and followed in relation to the needs of FOI and EIR.

Nominated Officers – FOI Co-ordinators

Within their areas of responsibility these officers are specifically responsible for:

- Managing and endeavouring to ensure that all FOI/EIR requests are processed promptly and receive a full response within the statutory period of 20 working days from receipt.
- Ensuring that exemptions (FOI) and exceptions (EIR) are properly applied, including Public Interest Tests

- Liaising with requestors as necessary to give advice and assistance, and to achieve clarification when requests are unclear
- Ensuring that effective arrangements, processes and audit trails are in place to enable requests to be recorded /logged and handled consistently.
- Retaining copies of original requests and council responses which will be available to appropriate officers, subject to Retention and Disposal guidelines.
- Ensuring that electronic and manual systems used to record requests for information are kept fully up-to-date for requests within their directorate.

Their responsibilities also include:

- Provision of advice and guidance to officers on the FOI policy and procedures
- Enabling and promoting training in FOI/EIR issues for section managers and any other identified staff
- Identifying and communicating any FOI/EIR issues to senior officers ☒ Monitoring compliance with policy and procedures.
- Maintenance of FOI policy and procedures to ensure they remain effective and consistent. Use of a common FOI performance framework to monitor and report quality and deadline compliance.
- Preparation of a single joint annual (as a minimum) report to the Senior Leadership Team
- Liaison with staff of the Information Commissioner's Office as required

Other staff and volunteers

All staff and volunteers are required to read, understand and accept policies and procedures that relate to the FOI and EIR information they may handle in the course of their work. In this document, the term 'staff' includes both paid staff and volunteers.

Any employee may at any time receive a request pertaining to either FOI or the Environmental Information Regulations. It is the responsibility of any employee receiving such a request to:

- Promptly identify it as such a request
- Pass it to the relevant FOI coordinator for recording and acknowledgment.
- Seek and follow advice from the relevant FOI coordinator and their own section manager
- Refer any queries from the requestor to the relevant FOI coordinator

Staff and volunteers must have received a level of training appropriate to the nature of information handled and the context of their work before they handle FOI and EIR requests

Communications Team (Handling of Press and Media enquiries)

The FOI Act treats written enquiries received from press and media sources in the same manner as those received from any other person or body and draws no distinctions between them even where requestors employ pseudonyms.

It is recognised that the Council's Communications team may sometimes need to respond far more quickly than the 20 working day requirement set out in the Act. Nothing in this policy will constrain this requirement. However their responses are still subject to the provisions of the Act (such as the exemptions and public interest tests).

In responding to press and media enquiries the Communications team will be mindful of information and statements made in relation to previous and ongoing FoI and EIR Act requests and any complaints handled under the Council's procedures.

To facilitate this, the Communications team have easy access to nominated FoI Co ordinators and read-only access to the Council's Requests Register.

Authorisation for disclosure

For FoI

The Council is obliged to provide the information requested unless there are good reasons not to do so. There are over 20 reasons recognised by the Act, including:

- The information will cost too much to collect
- It is available elsewhere
- It is about a living person
- The information was collected for the purpose of investigations or proceedings which the Council is entitled to conduct, such as enforcement.

For EIR

Reasons recognised include:

- The request is manifestly unreasonable
- Releasing the information would cause harm to, for instance, the environment, commercial interests or national security

For both

When responding to some requests the council may choose to make use of the exemptions/exceptions specified under the Act. It may also make use of the provisions which enable selected text in a document provided to be redacted.

The Council may also have to decide whether the public interest in not releasing the information is stronger than the public interest in releasing it.

To ensure compliance with the legislation and policy, all responses to requests must be sent or approved by the relevant FoI coordinator.

Decisions on the use of exemption/exceptions rest with Coordinators, but Coordinators will consult with Chief or other senior officers when there is doubt as to whether an exemption should be used, and when assistance is required in assessing the balance of the public interest.

Enforcement

Conduct which breaches either FoI or EIR legislation or associated guidelines may be subject to investigation under other Council policies such as, for example, the Disciplinary Policy or the Code of Conduct, and the sanctions therein.

Breaches of either FoI or EIR legislation may render the Council and individual officers liable to prosecution and legal consequences.

Monitoring and Review

Compliance with this policy and related procedures will be monitored through:

- reports to the Information Governance Group presented at least annually
- a review of this policy and associated procedures undertaken by the Information Governance Group and every three years commencing April 2015.

3. Confidentiality

Scope

Confidentiality applies to a wide range of information held by the Council. Appropriate handling of information forms a part of the standards expected of officers and Members and is reflected in both Codes of Conduct.

Confidentiality is also a common law concept. Wrongly revealing confidential information relating to a citizen, client, colleague or any other living individual would be a breach of the Data Protection Act 1998, but revealing confidential information about a contract, another organisation or the Council itself is also a breach of confidentiality and may be punishable in law or by disciplinary proceedings.

However, information which could be considered confidential remains subject to the Freedom of Information Act 2000 and may sometimes need to be released under that Act. It is important that all such requests are considered by FoI Co-ordinators to ensure that exemptions are applied correctly.

Understanding of confidentiality

Access to confidential information will normally be on a “need to know” basis related to the roles of officers and members.

Confidentiality underpins the work of some parts of the Council, such as Social Services, and is a part of the professional training for relevant officers. Social Services practices include advising the client how information will be used and shared.

Similarly, schools advise new students and their parents of information use and sharing arrangements.

It may be necessary in some circumstances to release information which would be considered confidential. This will normally be to satisfy a legal requirement, such as a Freedom of Information Act request where the information is not covered by an exemption, or a request for information under the exemption at Section 29 of the Data Protection Act 1998 which deals with matters of crime and taxation.

Such information should only be released after consultation with the relevant FoI Co-ordinator, the Council’s Data Protection Officer, the Customer Relations Manager (for Social Services cases) or another suitably empowered senior officer.

General

The Council is developing policies and guidance for information storage as part of its Information Governance project. This will include material concerning accuracy, updating, storage, retention and archiving. Later revisions of this policy will identify greater detail once this has been established.

Retention periods

Retention periods for all types of documents are defined by the Retention Schedule, based on legislation and good practice. The Council is working towards compliance with the Retention Schedule.

4. Freedom of Information Requests

Responsibility

All officers are responsible for ensuring that any FoI/EIR request passed to them concerning information they hold is processed within 20 working days as specified in the Act and the Regulations.

Any officer who receives a request must immediately advise their local FoI Coordinator who will provide any necessary guidance and advice.

Any employee may at any time receive a request pertaining to either FoI or the Environmental Information Regulations. It is the responsibility of any employee receiving such a request to:

- Promptly identify it as such a request
- Pass it to the relevant FoI coordinator for logging
- Seek and follow the advice of the relevant FoI coordinator and their own section manager
- Refer any queries from the requestor to the relevant FoI coordinator

Purpose for making a request

The FoI Act states that requests must be made in a permanent form (meaning letter, E mail or tweet). The person making the request is permitted to use a pseudonym.

Written requests should be addressed to

The Performance Monitoring Officer
Monmouthshire County Council
PO Box 133
Croesyceiliog Cwmbran
NP44 9BX

e-mail: foi@monmouthshire.gov.uk

Twitter is also recognised as a valid medium for making a request. When a tweeted request is identified by the Communications Team, it will be passed to a Coordinator for processing as any other request would be. The reply will follow normal FoI rules but will be posted via a link in the Council's Twitter blogpage, addressed via a # (hashtag) to the requestor. There is no difference in the process or the final response except for the medium used.

Personal or telephone requests are not covered by the Act.

Note, however, that requests under the EIR may be made verbally.

Fees

Most requests are likely to be free of charge. However, for FoI only, if the request is likely to take more than 18 hours to process, the Council may use its discretion under Section 12 of the FOI Act to decline to provide the information or make a charge for provision of the information.

If charges are likely to be made the person requesting the information must be advised before work commences so that options may be discussed.

The Council may also charge a reasonable amount for the cost of copying and printing, postage or translating the information. The same charges and conditions will apply to requests for environmental information.

Provision of information

Information will normally be provided in permanent form, i.e. by hard or electronic copy, according to how the information is held and the wishes of the requestor. A requestor may also be granted supervised access to certain documents if this can be done without revealing any information which would be subject to an exemption, such as another person's personal data.

Care must always be taken to ensure that the personal data of any third party is not disclosed. When redaction of exempt information destroys the sense of a document, a summary may be provided in its place.

Refusal Notices

If the information is not held, we are obliged to say so.

If the information is held but is not being released, the Council must issue a Refusal Notice to comply with the Act.

The Refusal Notice must state:

- That the information is held
- The exemption which is engaged
- Details of the public interest test if relevant
- The mechanism for requesting an internal review
- The mechanism for appealing to the ICO

Internal Review and Appeal

An Internal Review may be requested by contacting the Council's Chief Executive using the details in the Refusal Notice.

The Chief Executive will arrange for a review to be conducted by a competent officer, generally either one of the FoI Coordinators or the Council's Monitoring Officer. The Chief Executive will satisfy himself that the Review has been conducted fairly and properly, and will issue a formal response to the requestor, which will include details of the mechanism for making a further appeal to the ICO.

The Chief Executive may choose to delegate any part of his role in the Internal Review process to a suitably competent officer.

An Internal Review should be completed within 20 working days of being requested.