

## **Freedom of Information Policy**

Aims to ensure a consistent approach to information requests within the Council

Version 1.0

# *“Allerdale – a great place to live, work and visit”*



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**Introduction**

Since January 2005, the Freedom of Information Act (FoIA) has given every citizen the right to request information from public sector organisations, including Central Government, local authorities, the National Health Service, Schools, the Police and the Fire Service. The public can use this, and other legislation, to request information from Allerdale Borough Council.

By managing the information that we hold we are able to:

* Work efficiently and effectively;
* Be held accountable for the decisions we make;
* Comply with laws and regulations that govern our work and protect the public’s rights;
* Dispose of records that are no longer needed;
* Meet Allerdale Borough Council’s business needs, those of the public and those of employees of the Council;
* Protect private information that should not be made public.

In turn this should help the people of Allerdale Borough Council to:

* Understand better how the council works and why certain decisions are made;
* Make educated decisions on public issues;
* Exercise their right to information.

The Freedom of Information policies apply to all Council staff and members.

**1.0 Our Publication Scheme**

The Council already makes a great deal of information available, by publishing it on our website or allowing people to inspect it.

Our Publication Scheme provides a guide to the current information we routinely publish, or intend to publish. It aims to help the public understand what information is already available, how to find/access it and whether or not a charge applies.

Please see publication scheme [(http://www.allerdale.gov.uk/council-and-democracy/data-protection-and-freedom-of/freedom-of-information-act-200/publication-scheme.aspx)]((http:/www.allerdale.gov.uk/council-and-democracy/data-protection-and-freedom-of/freedom-of-information-act-200/publication-scheme.aspx))

2.0 Responsibilities

2.1 Employees and Members

* Staff should be aware of the FoIA and the Council’s legal responsibility to adhere to it.  For the purposes of Environmental Information Regulations (EIR) and FoIA, information is held Allerdale Borough Council (& therefore subject to EIR/FoIA requests) if it is held by another person **on behalf of the authority**.  This includes Councillors who hold information relating to local authority business in their private email accounts etc. (e.g. recorded information about formal council meetings and informal meetings with council staff or external bodies **on council business**).
* Conversely, information in private email accounts/personal drives/written notes etc. that do not relate to the business of the public authority will not be subject to EIR/FoIA.  This would include when they are **acting on their own behalf** (e.g. **when acting on complaints made by local residents** & on behalf of their political party).
* Staff/Members must provide the requested information to the Information Governance and Data Protection Officer in electronic form (if possible) and by   
  the date shown. If it is not possible to provide the information within this time, or they do not hold it, they must let the IGDPO know as soon as possible;
* Staff/Members should provide the information ready for response/publication by answering each question specifically. Their response is being released into the public domain, not just to an internal audience;
* Responses should be written so anyone can understand them. Abbreviations must not be used;
* Officers only need to respond to the specific questions asked, therefore staff should only provide background information where it is needed to understand the answer
* We have a duty to advise and assist, so if the information is not held by us staff must say who might hold it instead. If it’s already available online they should provide a link;
* If it is a complicated request officers must quantify how long it will take to answer, e.g. “*We have 400 records to manually check, taking approx. 5 minutes per record*”. If we estimate that it would take significantly more than 18 hours to locate, retrieve and extract the information the Council is not obliged to respond;
* If it’s likely to take longer than 18 hours officers should state if, and how, the request can be simplified to bring it within the time limit;
* When dealing with FOIs we are person and motive blind, meaning we have to treat all requests in the same way
* There are exemptions/exceptions to both the FoIA & Environmental Information Regulations (EIR). If officers feel the information requested might be exempt from disclosure for any reason, they must discuss it with the Information Governance and Data Proteciton Officer asap.

**2.2 Service Area Contacts**

* Act as a reference point for questions on FoIA requests within their area;
* Coordinate requests within their area;
* Ensure that ALL completed requests for information are returned to the foi inbox ([foi@allerdale.gov.uk](mailto:foi@allerdale.gov.uk)) within the requested time period.

**2.3 Information Governance and Data Protection Officer**

* Has overall responsibility for compliance and monitoring of requests for Allerdale Borough Council;
* Key reference point for questions about FoIA/EIR exemptions/exceptions and legislation;
* Responsibility for ensuring all staff are aware of the Act/Regulations and are trained to know how to handle any request for information that they might receive;
* Monitors performance against agreed targets;
* Compiles statistics and analyses information and requests to assist with decision making;

**3.0 Charges**

Information requests that would cost less than £450 to complete should be given to the applicant for free. Requests that would cost more than £450 can be refused under Section 12 of the FOIA. In calculating whether answering a request would exceed the appropriate limit of £450, it is possible to take into consideration the following activities:

* Determining whether the information is held
* Locating the information, or the document that contains it
* Retrieving the information, or the document that contains it
* Extracting the information (including editing)

When figuring the cost of a request, staff time should be calculated at £25 per hour. It is not allowable to take into account the costs of considering whether information is exempt under the Act, or in redacting information. Before answering any request an assessment should be made of whether or not the request would be over the appropriate limit. If, on looking at a request, it is estimated that it would cost more then £450 to fulfil, then the request can be refused. Alternatively, the Council can charge for the full cost of answering the request. We do have an obligation to advise and assist the enquirer to try to fulfil their request within the cost limit. This could mean advising them on how they can narrow what they are after.

The legislation does allow charging for disbursements such as postage, printing and photocopying for larger requests. However, if the cost of communicating the information is low, these charges should be waived.

Allerdale Borough Council endeavours to make as much information as possible available to the public free of charge. Any document that is easily obtainable should be given to the Applicant for free. In the Publication Scheme, all documents that do levy a charge are labelled with the cost of the information. If a fee does apply, then the 20 day period to fulfil the request does not start until payment is received. If no payment is received within 3 months then the Council is no longer under an obligation to comply with the request.

The Council will try to find alternative ways of releasing the information if it is too costly in paper format. Releasing information should be done electronically in the first instance if at all possible and the requestor is able to receive electronic communications. Documents should be sent in PDF format where possible as this is a worldwide standard. However, we realize that this may not be the best format for some applicants and will therefore try to release any information in the format that is best for the person who requested the information. Where possible information and reports should be made available on our website.

4.0 Recognising and dealing with requests

There are three types of requests that could come into any service area. These are requests under FoIA, Environmental Information Regulations (EIR) and Data Protection legislation (DPA/GDPR).

If staff receive a request they should refer the enquiry to the Information Governance and Data Protection Officer.

4.1 Data Protection legislation and Freedom of Information

Access to personal information is exempt under the FoIA.

If the request involves personal information about the person making the request disclosure of the information should be considered under prevailing Data Protection legislation (Individuals’ Right to Access)

If complying with an FOI request would reveal the personal information of individuals to a third party, then we can refuse to disclose this information under Section 40 of the FoIA. There are provisions for disclosure in certain circumstances, such as in order to prevent crime.

There is a separate CCTV policy for dealing with requests to see CCTV images. Any such request must be forwarded to the Information Governance and Data Protection Officer.

**4.2 Exemptions Guidance**

Although the Act requires that public authorities release as much requested information as possible, there is some material that is exempt from being released to the public. While there are 23 exemptions to what information must be released, not all apply to Allerdale Borough Council.

**4.2.1 Types of Exemption**

There are two types of exemptions, absolute and qualified:

Absolute **exemptions**: If this type of exemption applies, we do not have to disclose the requested information and do not have to carry out a Public Interest Test. In many cases, we also do not have to confirm or deny whether we hold the information if to do so would be tantamount to disclosure. Absolute exemptions include:

* Information available to the applicant by other means
* Personal information
* Information provided in confidence
* Information prohibited from disclosure
* Information relating to court records
* Information supplied by or relating to bodies dealing with security services
* Parliamentary Privilege
* Prejudice to the effective conduct of public affairs, relating to the House of Commons or House of Lords

Qualified exemptions: If the public interest in releasing the information outweighs the public interest in maintaining the exclusion, then the information should be made available. If it does not, then the information should not be disclosed. We have to be clear and precise when weighing up our arguments, and give reasons for and against disclosure. When deciding whether or not to release certain information, it is important to use common sense. Please contact the Information Governance and Data Protection Officer if you have any questions. Qualified exemptions include:

* Information intended for future publication
* Environmental Information
* Health and Safety
* Commercial Interests
* Investigations and proceedings conducted by public authorities
* Information relating to law enforcement
* Legal Professional Privilege
* Prejudice to the effective conduct of public affairs
* Audit functions
* National Security
* International Relations
* Defence
* The Economy
* Relations within the UK
* Formulation of government policy
* Communications with Her Majesty and honours

**It is also important to note…**

It is illegal to destroy information that has been requested in order to avoid disclosing it. If the information is due to be destroyed before the 20 working day limit has expired, then it is good practice to halt destruction. The ICO recommends information due for destruction should be kept for six months after a reply is made to the requester.

Information cannot be withheld because it has the potential to cause embarrassment, it could lead to loss of confidence in the authority, or because it could be misinterpreted.

**4.2.2 Exemptions most likely to be used by Allerdale Borough Council**

S21 - Information available to the applicant by other means

*Absolute Exemption*

Information that is accessible to the applicant by other means is exempt from being released. However, if it is easy for us to access, and the information within it is not otherwise exempt, then it would be good practice to give it to the requester anyway.

s22 - Information intended for future publication

*Qualified Exemption*

This is exempt information if the Council or some other person intends to publish it, even if the publication date has not yet been decided. This is to necessitate that any preparations for enquiries from the press or public can be completed before requests about this piece of information come in. However, we need to decide if it is in the public interest to withhold the information before we can decide to refuse the request.

s39 - Environmental Information

*Qualified Exemption*

Information that falls under the Environmental Information Regulations 2004 is exempt only because it should be dealt with and released under that legislation.

s40 - Personal Information

*Absolute Exemption*

Personal data which relates to a living individual other than the applicant. Personal data which relates to the individual who is applying for information is not covered by the FoIA.

s38 - Health and Safety

*Qualified Exemption*

Information is exempt if its disclosure would endanger the health or safety of any individual. The public interest in releasing the information must be considered before access is refused.

s41 - Information provided in confidence

*Absolute exemption*

Material is exempt if it was obtained from another authority or person and the disclosure of that material would be an actionable breach of confidence. There is no need to confirm or deny whether the information is held if that would also constitute an actionable breach of confidence.

s43 - Commercial Interests

*Qualified Exemption*

Information is exempt if it would prejudice the commercial interests of any person or business, including the public authority that holds it, or if it is a trade secret. The duty to confirm or deny does not apply if that would also prejudice the commercial interests of a person or business. This does not apply to historical records. The public interest must be considered before information is withheld.

S60 - Investigations and proceedings conducted by public authorities

*Qualified Exemption*

Information is exempt if it is held in order to carry out an investigation that could lead to someone being charged with an offence. Any information that, if disclosed, would prejudice the detection of crime or collection of taxes is exempt but in all cases the public interest must be taken into consideration before claiming this exemption.

s31 - Information relating to law enforcement

*Qualified Exemption*

Any information relating to prevention and detection of crime, apprehension of offenders, immigration controls and the administration of justice is exempt. The public interest also must be taken into account in this case.

s32 - Relating to court records

*Absolute Exemption*

Information is exempt if it is held in a document filed in a court or by a court for the purposes of legal proceedings or an enquiry or arbitration.

s42 - Legal Professional Privilege

*Qualified Exemption*

Information to which a claim to legal professional privilege could be made is exempt under the FoIA. The duty to confirm or deny whether the information is held does not apply if this would also be a breach of this privilege that could be brought to court. This exemption cannot be used in regards to a historical record. This exemption is subject to a public interest test.

s36 - Prejudice to the effective conduct of public affairs

*Qualified Exemption*

Information is exempt if, in the opinion of a ‘qualified person,’ disclosure would be likely to inhibit free and frank provision of advice, or free and frank exchanging of views for the purposes of deliberation. Or if that qualified person believes that its disclosure would otherwise prejudice the effective conduct of public affairs. Emails and other correspondence can fall into this category. (NB only the Councils Monitoring Officer can respond)

4.3 Contracts and Third Parties

Public sector tendering, contracts and agreements are subject to the FoIA, but the general duty of disclosure is governed by several significant exemptions. These may only be applied if they can be properly validated as being against the public interest.

With this in mind, the Council should try to avoid imposing conditions in contracts (or have them imposed on them by prospective contractors) in the interests of secrecy. Partners should be aware of our obligations under the FoIA.

The Council will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Council’s functions and it would not otherwise be provided. The Council will not agree to hold information received from third parties if the information is not actually of a confidential nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

**4.4 Transfer of request guidance**

The Council may not hold information that an Applicant requests. However, we may know who does hold the information. Part of our responsibility relating to the FoIA is to provide advice and assistance to the public. By transferring requests, or letting a requestor know where to find what they have requested, even if we don’t hold it, we are fulfilling this duty and providing good customer service as well.

4.5 Redacting guidance

Redacting is the process of removing parts of a document that are not being disclosed, when the rest of the document is being released. When marking paper documents, this should be done by marking over the information that isn’t to be released with a pen. It has been found however that it is still possible to read blacked out documents that have been photocopied. Therefore, it is necessary to make several copies of copies in order that information that is not being released is kept private. Another method would be to cut a separate piece of paper to the size of the text to be removed and making a photocopy of this. While this is a time-consuming method, it is effective. And it is of utmost importance that when a decision to withhold information has been made, the exempt information is not released.

Electronic redacting is preferable and should be carried out using Adobe Acrobat Pro.

## 5.0 Environmental Information Regulations (EIR)

The Environmental Information Regulations govern the release of information which relates to the environment. The EIRs contain a number of exceptions on disclosure which work in a similar way to the exemptions in the FoIA.

The definition of “Environmental Information” is complex and further advice should be sought from the Information Governance and Data Protection Officer.

Requests made under the EIRs can be made verbally. Where it is unclear what the enquirer is requesting, or the nature of the request, it may be desirable to ask for a written request. However, where the information is covered by the EIRs this cannot be demanded.

All EIR requests must be replied to within 20 working days. The appeals procedure is the same as with the FoIA.

6.0 Performance management and reporting

Part of complying with the FoIA is to respond to requests within the given timeframe. Data is regularly collected on the types of information requested, exemptions applied, the time taken to answer the requests etc and this data is reported to the Senior Management Team. This also helps to identify repeated requests, prompting service areas to add information to the Publication Scheme.

Service area contacts must ensure that any FOI requests received directly by their department are forwarded to the foi inbox without delay. A prompt response is also required to any request for information from the Inforamtion Governance and Data Protection Officer as the 20-day clock begins once the enquiry has been received by the authority.

**7.0 Policies and procedures**

The Council has approved and adopted several relevant Information Governance policies and procedures. The approval of this documentation by the Senior Management Team provides formal evidence of ownership and accountability for information.

Key policies:

* Information Governance Policy
* Information Security Policy
* Records Management Policy
* Data Protection Policy

We have ensured that appropriate physical, technical and organisational measures are in place and that employees comply with the aforementioned policies.

**8.0 Sources of information and guidance**

The Council will review and supplement this policy as more guidance is issued by the Information Commissioners Office or there are legislative changes.

For more information on FoI please contact the Councils Information Governance and Data Protection Officer:

Email – [foi@allerdale.gov.uk](mailto:foi@allerdale.gov.uk)

Phone – 01900 792898

Mail – Allerdale House, Workington, Cumbria, CA14 3YJ

You can also contact the ICO at:

Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF,

Phone: 0303 123 1113

[www.ico.gov.uk](http://www.ico.gov.uk)