



COLNEY HEATH PARISH COUNCIL

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COLNEY HEATH PARISH COUNCIL FREEDOM OF INFORMATION ACT (2000) POLICY

Based on NALC Legal Topic Note 37, Freedom of Information July 2009

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1 INTRODUCTION

- a The Freedom of Information Act 2000 ('the Act') was passed on 30 November 2000. The Act is enforced by the Information Commissioner who also has responsibility for data protection issues. From 01 January 2005 when the Freedom of Information (FOI) Act 2000 came fully into force there was a legal right for any person or group to ask any public authority for access to information held by that authority.
- b Section 1 of the Act give a general right of access to all types of 'recorded' information held by 'public authorities' (and those providing services for them). It also sets out exemptions from that right and places a number of obligations on public authorities. Public authorities have two main responsibilities under the Act. They have to produce a 'publication scheme' and they have to deal with individual requests for information.
- c The Act gives a right to access information held by public authorities including:
 - Government Departments;
 - Local Authorities;
 - NHS bodies (such as hospitals, as well as doctors, dentists, pharmacists and opticians);
 - Schools, colleges and universities
 - Police
 - The House of Commons and the House of Lords

2 THE DIFFERENCE BETWEEN FOI AND DPA

- a Personal information remains the subject of the Data Protection Act 1998 (DPA). A request by an individual for information about themselves is exempt from the Freedom of Information Act (FOI) and will be handled as a 'subject access request' under the Data Protection Act. In certain circumstances, such a request may involve the release of associated third party information.

3 PURPOSE

- a FOI is about the right of access.
- b This policy outlines the standards, responsibilities and liabilities of staff (both Council employees and partners working for the Council), members, and the Council in relation to the Freedom of Information (FOI) Act (2000).
- c The Council's stated approach to providing information is one of openness and transparency.



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4 OBJECTIVES

- a This policy highlights the following objectives outlined in the FOI Act and the Lord Chancellor's Guidance on FOI:
 - i. To ensure that information is either published or made available (subject to certain exemptions) to members of the public within 20 working days of receiving a request.
 - ii. To maintain effective search and retrieval mechanisms to enable successful compliance.
 - iii. To maintain effective and efficient records systems for both information and for recording the processing and decisions around FOI.

5 REQUESTING INFORMATION

- a Citizens can obtain information from a public authority via an approved publication scheme. If the information is not included in the publication scheme, citizens can make a separate request in writing (including email and fax) from 01 January 2005 when the General Right of Access comes into force. More information about publication schemes and the General Right of Access can be found in Annex A.
- b Requests for information must be made in writing (including e-mail and fax). The request must state the name and address of the person applying for the information and the required information.
- c Information means information recorded in any form.

6 TIMESCALE

- a The Council will generally have 20 working days in which to respond to a request.

7 DUTY TO PROVIDE ASSISTANCE

- a The Council is required to provide advice and assistance to people who have made or who are thinking of making a request. This will help requesters to understand their rights under the Act and identify the information they want. The Council will fulfil its responsibilities under other legislation such as the Equality Act 2010 (as amended) in responding to any particular requests from different sectors of the community.

8 CHARGES



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- a The Council may charge a fee for responding to requests. The Council will inform the requester in writing.

9 RESPONSE

- a The Council will try to provide the information in the form requested unless it is unreasonable to do so.
- b If any of the information requested is exempt, the requester must be advised in writing which of the exemptions has been relied on to withhold the information.

10 APPEALS

- a If a requester is unhappy with a decision or the way their request is handled, s/he has the right of appeal, first to the Council, and ultimately to the Information Commissioner. The requester must be informed of these rights. The Council's policy is to use the existing complaints procedure to handle any written expression of dissatisfaction even if that does not specifically ask for a review.
- b If an appeal is submitted to the Information Commissioner he will consider the case and inform both the applicant and the Council of the decision in a Decision Notice. Where appropriate, the Decision Notice will instruct the Council as to what steps it needs to take to comply with the Act. This may include the release of information. Both the applicant and the public authority may appeal against a decision notice to the Information Tribunal.
- c The Commissioner can also issue a public authority with an Enforcement Notice stating what steps it should take to comply with the Act. The Council may appeal to the Information Tribunal against such a notice otherwise it must comply with the Enforcement Notice. Failure to do so may lead to court proceedings.

11 ADDITIONAL INFORMATION

- a The Parish Clerk is ultimately responsible for ensuring the Council complies with the FOI Act.
- b Wilfully concealing, damaging or destroying information in order to avoid answering an enquiry is an offence and is subject to fines of up to £5000 in a Magistrates' Court or an unlimited amount in the High Court.
- c The Council needs to keep records of all the enquiries received, how they were dealt with, any decisions and reasons for them; and of any



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complaints or appeals. Appropriate records management arrangements support good record keeping and efficient, effective access to information.

- d Any request for information should be considered in the first instance as a request under the FOI Act. All members and officers need to be aware of their responsibilities under FOI.



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ANNEX A - DEFINITIONS

1 PUBLICATION SCHEMES

A publication scheme is a guide to the types of information that the authority routinely publishes, the format in which the information is available in and how much it will cost if there are any charges. The Council's publication scheme is available via the website. The information is presented in the form of classes (categories) of information.

Using a publication scheme

A person can contact the authority in any way, such as telephone, email, fax or in writing and ask to see their publication scheme. They can then make a request for any of the information included within the scheme.

2 GENERAL RIGHT OF ACCESS

Anyone has a right to ask public authorities for any information they hold. Some of the records requested may contain exempt information which does not have to be provided when responding to a request.

Retrospective

The Act allows for access to information held by public authorities regardless of when that information was created or how long it has been held by the public authority.

Codes of Practice

Two codes of practice have been created under the Act which help public authorities in meeting their new responsibilities.

The first code produced under section 45 of the Act is sometimes referred to the Access Code. It deals with how to handle requests for information including:

- the level of advice and assistance an Authority is expected to provide,
- transferring requests from one public authority to another,
- consulting with third parties who may be affected by the release of information

It also deals with complaints procedures and how the Act impacts on public sector contracts.

The second code is made under section 46 of the Act and deals with records management. If a public authority does not have good records management procedures in place it may well find it difficult to comply with its obligations under the Act.



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ANNEX B – EXEMPTIONS

There are 23 exemptions from the general rights of access, and of these eight are in whole or part ‘absolute’ exemptions. However, for other exemptions the ‘public interest’ test applies (see below).

ABSOLUTE EXEMPTIONS

- 1 Information accessible to the requestor by other means (section 21). For example, information already in the public domain and readily available in paper form or on the internet.
- 2 Information supplied by or relating to bodies dealing with security matters (section 23).
- 3 Court records (section 32). This includes information in documents served for the purposes of legal proceedings, or held by a person conducting an inquiry or arbitration.
- 4 Information is exempt if the exemption is required for the purpose of avoiding an infringement of the privileges of either House of Parliament (section 34).
- 5 Information is exempt if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs. This is an absolute exemption only in so far as it relates to Parliament (section 36)
- 6 Personal information about the person making a request (section 40). This is covered by the Data Protection Act 1998.
- 7 Information provided in confidence (section 41). This applies if releasing the information would amount to an actionable breach of confidence at the time a request is made. The current draft compliance code of practice states that a public authority should only accept information in confidence from third parties if it is ‘necessary’ to obtain that information in connection with any of the authority’s functions. An authority would be open to criticism by the Information Commissioner if it agreed unjustifiably to receive information ‘in confidence’.
- 8 Prohibition on disclosure (section 44). This applies to information the disclosure of which is prohibited by any legislation, or European Community obligation, or if disclosure would be a contempt of court.

Exemptions Subject to the Public Interest Test

The following exemptions are subject to the public interest test. An authority must release the information requested unless “*in all circumstances of the case, the public*



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interest in maintaining the exemption outweighs the public interest in disclosing the information”

- 9 Information intended for future publication (section 22).
- 10 Information held for the purpose of safeguarding national security (section 24)
- 11 Information whose disclosure would, or would be likely to, prejudice the defence of the realm (section 26)
- 12 Information whose disclosure would, or would be likely to, prejudice relations between the UK and any other state, international organisation or court or UK interests abroad (section 27).
- 13 Information whose disclosure would, or would be likely to prejudice relations between any administration in the UK and any other such administration (section 28).
- 14 Information whose disclosure would, or would be likely to, prejudice the economic or financial interests of the UK (section 29).
- 15 Information held at any time by an authority in connection with a criminal investigation (section 30).
- 16 Information whose disclosure would, or would be likely to, prejudice the prevention or detection of crime, the apprehension of offenders, or the administration of justice, information relating to civil proceedings (section 31).
- 17 Audit information (section 33). This relates to information held by any public authority which has functions in relation to the audit of the accounts of other public authorities.
- 18 Information is exempt if it is held by a government department of the National Assembly of Wales and relates to the formulation of policy, ministerial communications, or the operation of any Ministerial private office (section 35).
- 19 Information is exempt if it relates to communications with Her Majesty or with other members of the Royal Family or the Royal Household (section 37).
- 20 Information is exempt if it is likely to endanger the health and safety of an individual (section 38).
- 21 Information is exempt if the authority is obliged to release the information under the Environment Information Regulations and Aarhus Convention (section 39).
- 22 Information in respect of which a claim for legal professional privilege could be maintained is exempt (section 42).
- 23 Information is exempt if it constitutes a trade secret (section 43).