

Freedom of Information Act Policy

1.0 Introduction

The Freedom of Information Act 2000 (FOIA) provides an over-arching right of access to all information held by a local authority, over and above existing statutes relating to specific service areas where authorities hold a large range of information.

Individuals already have the right of access to information under the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 (DPA). Welwyn Hatfield Borough Council's (WHBC) Data Protection policy maintains the confidentiality of personal data held or processed either electronically or manually to increase access given to individuals to information relating to them. The FOIA extends that right to allow access to all types of recorded information held by public authorities. The FOIA allows access to information regardless of when that information was created or how long it has been held. It also sets out exemptions from that right and places a number of obligations on public authorities.

WHBC maintains a Publication Scheme and complies with requests for information unless an exemption applies.

Other relevant policies that should be read in conjunction with this policy are:

- The Council's ICT Strategy
- Data Protection Policy
- Information & Records Management Policy

2.0 Purpose

The aim of this policy is to:

- Provide a framework that ensures that the Council complies with the FOIA.
- Promote transparency of decision making by the Council.
- Improve and enhance the democratic process.
- Build public trust and confidence.

This policy is available to all internal and external stakeholders and is on the Council's website at www.welhat.gov.uk

3.0 Scope

Records can be defined as "information that is written or stored on computer so that it can be used in the future". Records covered by this policy include all records (irrespective of the medium on or in which the information is carried) which belong to or are in the custody of the Council or any of its officers and members. This policy will apply to all WHBC officers, members, contractors, partners, consultants and service providers who have access to the Council's

records. Failure of a contractor/partner/consultant/service provider to comply could lead to legal action and the cancellation of a contract.

4.0 Objectives

WHBC will ensure that:

- There is someone with specific responsibility for Freedom of Information (FOI) in the organisation.
- Everyone involved in managing and handling FOI requests will be appropriately trained and supervised.
- Anyone who makes enquiries about FOI requests will be told what they need to do to have their request dealt with.
- All requests will be dealt with promptly and courteously.
- Procedures for handling FOI requests will be regularly assessed and evaluated and changes will be made if deemed necessary.

5.0 Policy Statement

WHBC will endeavour to increase the access given to individuals to information to promote openness and transparency of decision making.

6.0 Publication Scheme

As required by the FOIA, WHBC has adopted and maintains a publication scheme as a guide to information it holds which is routinely available. Any individual who requests it will be informed whether the Council holds the information and, subject to exemptions, be supplied with it. The Publication Scheme which is available on the Council's website at www.welhat.gov.uk will be reviewed on a regular basis and at least annually.

7.0 Datasets

The Protection of Freedoms Act 2012 amended certain sections of the FOIA. The amendment affects the way in which datasets must be made available. In accordance with the amendment WHBC will ensure:

- Datasets will be available in reusable format as far as reasonably practicable.
- If the dataset copyright is owned by the Council, it will provide the information under licence.
- Datasets that have been requested will be published as part of the Publication Scheme.

8.0 Codes Of Practice

The Act has created two codes of practice:

- Access code (Section 45) – This deals with how to handle requests for information including the level of advice and assistance expected, the transfer of requests between authorities and consulting with third parties who may be affected with the release of information.
- Records Management (Section 46) – Public authorities must have good records management procedures in place to comply with its obligations under the Act.

9.0 Information Held

WHBC is a local public authority and we provide a range of government services to local people and businesses within the borough. We collect information for specified, explicit and legitimate purposes so that we can offer our services to the residents of our borough, support our employees and comply with our statutory and legal obligations and we do not retain data for longer than necessary. This is in accordance with our Document Retention Policy.

10.0 Provision of advice and assistance

All WHBC officers and members will provide advice and assistance in response to FOI requests in so far as they reasonably can. Advice and assistance includes publishing procedures to enable applicants to understand how the Council deals with requests and their rights of access under the FOIA.

11.0 Requests for information

Any request for recorded information held by WHBC in any format will be treated as a request under the Act unless another statutory access right applies (e.g. GDPR and DPA)). Requests will be accepted from any individual or organisation. Applicants are not required to mention the Act when requesting information.

All requests must be submitted in writing and must state the name and address of the person applying for the information. Correspondence, including E mails and or Facsimiles, that provide all the necessary details to process an application will be accepted as valid requests. The Council will provide an on-line form for requests to be submitted. Applicants do not have to explain the purpose of their request although it may be necessary to obtain further information in order to fully process their request.

All officers and members of the Council will follow the agreed procedures and these will be monitored by the Freedom of Information Officer.

12.0 Provision of Information

Where information is not subject to any exemptions, WHBC will:

- Wherever possible provide information to any individual who requests it in the format specified by the applicant. The Council may decide that it is unreasonable to supply information in the format requested by the applicant as a result of practical or cost implications. Where this is the case, the applicant will be told of the reason for this decision. The Council will still supply the information by any other reasonable means.
- Comply with requests for access to information as quickly as possible and not later than 20 working days following the date of receipt of the request. (or payment of fee if applicable) Working day means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is deemed a Bank Holiday.

Due to the Public Interest Test (Section 14.0 refers), it may not be possible to deal with requests within 20 working days. In these circumstances the Council will give a realistic estimate of when a decision will be made as to whether the information will be provided. If it becomes apparent that the decision will not be made within the estimated time given, the Council will inform the applicant of any delay as soon as possible. The reasons for the delay will be explained. The Freedom of Information Officer will monitor all instances where estimates are exceeded.

13.0 Transfer of Requests

Where a request for information is received and WHBC does not hold all or any of the requested information, the Council will deal with the areas it is responsible for and advise the applicant that the other information is held by another authority and will provide relevant contact details where possible.

14.0 Fees and Charges

Wherever possible, WHBC will provide information free of charge. Charges may be levied for certain information or publications listed in the Publication Scheme. Where this is the case, the applicable charge will be listed and will be payable prior to the information being supplied.

Fees may be incurred for requests for information that fall outside the Publication Scheme to cover the costs of locating, retrieving and communicating the information to the applicant e.g. photocopying and postage.

A fees notice will be sent to the applicant which must be paid within three months. If the fee is not paid within this time limit, it will be assumed that the applicant no longer wants the information and the request will be cancelled.

The Council will advise the applicant as soon as possible if their request for information exceeds the maximum defined in the FOIA Fee Regulations. In these circumstances, the applicant will be offered the opportunity to either amend their request so that as much of the information that they had originally requested can be provided within the fees limit or pay the full cost over the maximum stipulated where this is practical and manageable. In all cases, the Council will consult with the applicant to provide as much information within a reasonable cost.

15.0 Exempt Information

There are certain circumstances under which WHBC is not obliged to release information. The Council's policy is to release information unless an exemption can be reasonably applied. The Council will endeavour to apply exemptions for request for information fairly, objectively and consistently and will not use exemptions as a means of obstructing access to information.

Exemptions may apply to only some of the information requested by an applicant. In such cases, WHBC will release as much information as it can by "redacting" the information deemed to be exempt. Redaction is the blacking out of information so that it is can not be read. The Council is not obliged to confirm or deny the existence of information or to advise in respect of exemptions, where to do so would in itself disclose exempt information.

A list of the 23 exemptions to the FOIA can be found on the Information Commissioner's website at www.informationcommissioner.gov.uk

There will be occasions where the Council will need to balance the rights of applicants to information against a person's (or persons') right to privacy, third parties rights to confidentiality and what information may or may not be in the public interest.

- Personal Information – Where information requested under the FOIA contains personal details about anyone other than the applicant, the principles of the GDPR and DPA must be applied.
- Information provided in confidence – This exemption applies to information provided in confidence to the Council by external persons or organisations including other public authorities. WHBC will not automatically presume a duty of confidence and may seek the views of third parties with regard to the disclosure of requested information.
- Public Interest Test – Information will only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

16.0 Refusals

Requests for information will not be processed where the information:

- Does not exist in a recorded format.
- Is intended for future publication.
- Is already contained in the Publication Scheme.
- Is already available via an existing charged service i.e. Public Register.
- Is subject to any existing legislation where statutory access rights apply either to the Council or any other public authority.

WHBC will provide written notice to applicants of refusals and/or part refusals of requests for information. The notice will include details of any exemptions that have been applied with an explanation of why the exemption applies. In cases where the public interest test has been applied resulting in non-disclosure, the reasons for refusal will be given and the arguments that have been considered when deciding upon disclosure.

The notice will also give details of the Council's appeals procedure if the applicant wishes to appeal against the decision.

17.0 Vexatious and Repeated Requests

WHBC will not comply with vexatious requests where there is a strong likelihood that such requests are being made to intentionally cause harassment, divert resources and/or disrupt the proper workings of the Council.

The Council will not comply with a request where it has received an identical or similar request from the same individual unless a reasonable interval has elapsed between compliance with the original request and the current request. A written notice stating when a request is deemed vexatious or a repeat will be sent to the applicant.

18.0 Training

All WHBC staff and members will receive appropriate training to ensure that they are fully informed of their obligations under the FOIA and are aware of their personal liabilities. Further specific training will be given to staff with extra responsibilities for administering or monitoring the FOIA. Advice and assistance will also be available from the Freedom of Information Officer and the Corporate Director (Public Protection, Planning & Governance)

19.0 Responsibilities

Overall responsibility for the efficient administration of the Act lies with the Freedom of Information Officer. This is currently Ian Colyer, Principal Governance Officer, Governance Services team.

His duties include:

- Ensuring that WHBC complies with its obligations under the FOIA.
- Identify and monitor responses and procedures and adapt these to meet best practice.
- Offer guidance to staff on FOI issues.
- Co-ordinate and monitor FOI requests.
- Develop and revise the Publication Scheme in conjunction with the appropriate staff.

The Data Protection Officer will deal with issues relating to Data Protection and will liaise with the FOI Officer to ensure that requests for information are handled effectively and in accordance with the relevant procedures and timescales.

All staff and members must comply with this policy and are responsible for ensuring that:

- All information they hold, whether electronically or manually is kept secure.
- All information is retained in accordance with the Retention and Disposal policy.
- Personal information is not disclosed deliberately or accidentally either orally or in writing to any unauthorised third party

20.0 Complaints

In the event of any complaint the Freedom of Information complaint procedure will be applied. This is available on the Council website. All applicants will be informed of the complaint procedure and given a copy of this when a request response is sent.

If the complainant is still unhappy they will be informed of their right to appeal to the Information Commissioner who will decide whether their request has been properly handled.

21.0 Policy Review

This policy will be reviewed at least every three years but will be reviewed sooner if weakness in the policy and/or changes in legislation require it.