

Freedom of Information Policy

Basildon District Council

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Introduction

This document sets out Basildon District Council's policy regarding Freedom of Information. The Environmental Information Regulations and the Data Protection Act 1998 form the background to this document. The Freedom of Information Act 2000 also affects the Council's use of non-personal information.

The Freedom of Information Act 2000 created significant new rights of access to recorded information held by public authorities in England and Wales. Under the Act there are two general rights in relation to information. One, the right to be told whether or not the information requested is held, and two, the right to be given that information within 20 working days.

Where exemptions apply (except where the exemption is absolute), the duty to inform the applicant whether the information is held and to communicate that information remains unless the public interest in maintaining that exemption outweighs the public interest in disclosure.

There is also a duty on all public authorities to adopt and maintain a publication scheme that details the classes of information it will regularly publish. The publication scheme must be approved by the Information Commissioner, who has wide powers to enforce the rights contained in the Act. The Council's Publication Scheme can be found on the Council's website at the following: <http://www.basildon.gov.uk/index.aspx?articleid=2569>

Making Requests for Information

The public have a right of access to any recorded information, however it is held.

The Council will provide advice and assistance to those who propose to make requests for information, or to any individuals who have made requests for information within the Act. The Council will publish its procedures for dealing with requests for information, which should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance.

A request for information under the terms of the Act must be made in writing (which includes a request transmitted by electronic means which is received in legible form and is capable of being used for subsequent reference). Where an applicant is unable to frame their request in writing, the Council will ensure that appropriate assistance is given by offering to take a note of the application over the phone (which can be sent to the applicant for confirmation, which when verified by the applicant would constitute a written request). The Council will provide assistance to an applicant to enable him/her to describe more clearly information requested if his/her description is insufficient for the Council to identify and locate such information. If, following the provision of such assistance, the applicant has failed to describe the information requested in a way that would enable the Council to identify and locate it, then the Council is not expected to seek further clarification. The Council should also explain to the applicant why it could not take the request any further.

The Council will not seek information from an applicant that he or she cannot reasonably be expected to possess, such as a file reference number, or a description of a particular record, unless this information is made available by the Council for the use of applicants.

The Council will not provide assistance to applicants whose requests are vexatious (jokes or requests that waste the council's time).

Requests for Information where the Public Interest must be considered

Where the Council needs to consider the public interest test in respect of an application for exempt information, it will give an estimate of the date by which it expects to reach such a decision. This estimate will be reasonable in the circumstances of the particular case, taking account, where necessary, of the need to consult third parties. The Council's Customer Service Manager - Communications in consultation with Legal Services will deal with public interest test requests.

Fees

The Council has a fee charging policy which will be introduced during 2009.

Transferring requests for information

When the Council receives a request for information which it does not hold but which it believes is held by another Authority, then it will consider whether it can consult that Authority with a view to finding out whether it does actually hold the information and if so, whether it should transfer the request to it. The Council will be under a duty to take into account before transferring the request whether the applicant would object or whether a transfer is possible. All transfers of requests must take place "promptly". The time for complying with transferred requests is measured from the day that the receiving authority receives the request.

When a request for information has been transferred to another Authority with the agreement of the receiving Authority, then Basildon Council has no further responsibility for handling the request.

The Council should also consider the most helpful way of assisting the applicant with his or her request. In most cases this may be to inform the applicant that another Authority holds the information and to provide him or her with contact details for that Authority.

In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party such as the right to have certain information treated in confidence or rights under Article 8 of the European Convention on Human Rights (the right to respect for private and family life), or the Data Protection Act 1998. Where the consent of the third party would enable a disclosure to be made the Council will consult that party prior to reaching a decision. Where the interests of the third party who may be affected by a disclosure do not give rise to legal rights, consultations may still be appropriate.

Public Sector Contracts

When entering into contracts the Council will refuse to include contractual terms that purport to restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act. The Council will not agree to hold information in confidence, which is not in fact confidential in nature. Any such decisions should be taken on a case-by-case basis.

When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

Information in confidence from Third Parties

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

Exemptions

Two types of exemptions apply to information requested under the Freedom of Information Act 2000. These are:

Absolute Exemptions

If the information requested is subject to an absolute exemption, the Council is not required to either supply the requested information or state whether this information is held or not .

Qualified Exemptions

Qualified exemptions will only apply where pressing public interest arguments can be made for withholding the information. In effect, information that falls into a particular qualified exemption category will still have to be disclosed unless it can be argued that the public interest in withholding it is greater than the public interest in releasing it.

Absolute Exemptions

These are the eight 'absolute' exemptions listed in the Act:

1. Information accessible by other means
2. Information supplied by, or relating to, bodies dealing with security matters
3. Court records
4. Parliamentary privilege
5. Prejudice to effective conduct of public affairs
6. Personal information
7. Information provided in confidence
8. Prohibitions on disclosure

Qualified Exemptions

The second general category of exemption covers those that are qualified, where there is a duty to consider the public interest in confirming or denying that the information exists and in disclosing information. The remaining and majority of exemptions are subject to this public interest test and these are as follows:

Information intended for future publication

National security (excluding matters covered by the absolute exemption)

Defence

International Relations

Relations within the UK

The economy

Investigations and proceedings conducted by public authorities

Law enforcement

Audit functions

Formulation of government policy

Prejudice to the effective conduct of public affairs (excluding matters covered under the absolute exemption)

Communications with the Queen

Health and safety (Information is exempt if its disclosure would or would be likely to endanger the physical or mental health of any individual or endanger the safety of any individual)

Environmental information

Legal Professional Privilege

Commercial Interests -Information is exempt if it constitutes a trade secret or would, or would be likely to, prejudice the commercial interests of any person (including Basildon Council) holding it.

Refusals

The Council will notify the applicant within 20 working days when relying on a claim that the duty to confirm or deny does not arise because of an exemption, or on a claim that the information is exempt. When notifying the applicant the exemption in question will be explained.

Where the Council has not yet reached a decision as to whether to disclose in the public interest, despite exemption, it will notify the applicant within the 20-day limit that no decision has yet been reached. The notice will contain an estimate of the date by which the Council expects that such a decision will have been reached.

Complaints procedure

The Council has in place a procedure for dealing with complaints from people who consider that their request has not been properly handled, or who are otherwise dissatisfied with the outcome of their request and the issue cannot be resolved in discussion with the official dealing with the request.

When communicating any decision made in relation to a request under the Act, the Council will provide details of its complaints procedure, including how to make a complaint. Where practicable, a person who was not party to the original decision, should handle complaints procedures. In all cases, the complainant should be informed of the outcome of his or her complaint.

Disputes between Applicants and Basildon Council

A complaint to the Information Commissioner is the only route through which disputes between an applicant and Basildon Council will be resolved, subject to the limited route of judicial review. No private actions are permitted under the Act.

Responsibilities

Overall responsibility for the efficient administration of the Freedom of Information lies with the Council.

Day to day responsibility for administration and compliance with the act is delegated to **Executive Directors** for compliance with the Act's provisions within their respective areas of authority. In some cases, this may involve a joint responsibility (for example where one Directorate carries out work on behalf of another Directorate)

All **Officers** and **Members (Councillors)** have a duty to observe the principles of the Act and procedures referred to in this document.

The Council's Publication Scheme

Every public authority subject to the Freedom of Information Act 2000 is required to adopt and maintain a publication scheme. A publication scheme is a commitment to routinely and proactively provide information to the public. Basildon Council's Publication Scheme has recently been updated in line with new guidance from the Information Commissioners office. The New Model Publication Scheme is available on the council's website at: <http://www.basildon.gov.uk/index.aspx?articleid=2569>

The Information Commissioners Office

The Information Commissioners Office (ICO) is the UK's independent public body set up to promote access to official information and protect personal information. The Ministry of Justice is the sponsoring department within the Government.

The ICO enforces and oversees the Data Protection Act, the Freedom of Information Act, the Environmental Information Regulations and the Privacy and Electronic Communications Regulations. The main functions of the ICO are promoting good practice, giving information and advice and resolving complaints from people who think their rights have been breached. They also use legal sanctions against those who ignore or refuse to accept their obligations.

The address for the website of the Information Commissioner's Office is www.ico.gov.uk

Copyright

Information released cannot be used by a third party for any purpose not permitted by copyright law