

## How requests for information will be dealt with

If your request is very straightforward it may be dealt with at first point of contact. Otherwise it will be passed to the relevant service manager for him / her to deal with.

You will receive an acknowledgement unless your request can be dealt with straight away in which case you will receive a full response.

We are required to respond to your request within 20 working days of receiving it. Our aim is to respond as quickly as possible within that timescale. It is essential that your request is clear. If necessary we will contact you for clarification.

Only written requests are Freedom of Information requests. However, if your request is verbal, and the information can be provided easily, we will provide it. We may simply answer your question or send you the information with a compliments slip. This will give you a contact point should you need any further assistance. Alternatively, we may send the information electronically if this is more convenient for you.

If your request is in writing we will normally respond formally in writing, but other formats may be available.

If we are unable to give you any of the information you requested, we will explain our decision. This may be because:

(a) The information is not held by the Council but by someone else - where we can, we will tell you where you might be able to obtain it.

(b) The information is not held by the Council. For example, some information may only be held for a certain length of time.

(c) The information is exempt under the Freedom of Information Act 2000. In this case we will explain which exemption applies and why.

(d) The cost of providing the information exceeds a statutory limit.

### **Exempt information**

We may not be able to provide you with information if it is exempt under the Freedom of Information Act 2000.

There are two types of exemption - **absolute** and **non-absolute**.

### **Absolute exemptions**

Are quite clear. We are not permitted to provide the information if it falls into these categories.

## **Non-absolute exemptions**

Are subject to a public interest test. This means that we will have to judge whether the public interest involved in releasing the information outweighs the public interest in withholding it. Where permitted we will confirm that the information exists, even when we are not in a position to disclose it.

A simplified list of the exemptions is shown below. For a full description refer to the Act itself, or the summary list provided. (Freedom of Information Act 2000 - Summary of Exemptions).

## **Absolute exemptions**

- Information an applicant can access by other means (for example, information published in the Council's Publication Scheme, or information which, by law, we are required to make available or communicate)
- Information about, or supplied by, the security services
- Court records
- Documents protected by parliamentary privilege
- Prejudice to the conduct of public affairs
- Personal information where the request is made by the individual concerned (information will be disclosed through the Data Protection Act)
- Information given in confidence
- Any disclosure prohibited by law, or that would be in contempt of Court

## **Non-absolute (Public Interest test applies)**

- Personal information where the request is made by a third party (Data Protection principles will be applied)
- Information intended for future publication, for example an annual report
- The need to safeguard National Security
- Defence, our armed forces and those of our allies
- International relations
- Relations between the UK government, Wales, Scotland and Northern Ireland
- The economy, where disclosure would harm the interests of any part of the UK economy
- Information connected with investigations and proceedings relating to law enforcement and criminal offences
- Law enforcement, for example prevention of crime, collection of taxes
- Audit functions carried out by public authorities responsible for auditing other public authorities
- The creation of Government policy
- Prejudice to the conduct of public affairs (all authorities except the Houses of Parliament)
- Communications with Her Majesty and other members of the Royal Family

- Health and Safety, where disclosure would endanger the safety of any individual
- Environmental information not covered by the Environmental Information Regulations (see the section later)
- Legal Professional Privilege, for example legal advice provided to a client by a lawyer
- Commercially sensitive information.

## **Summary of Exemptions**

### **Absolute Exemptions**

This means that any requests for this type of information will be refused under the Freedom of Information Act 2000.

### **Information accessible to the applicant by other means - Section 21**

For example, information which the authority is required by law to make public, or publishes in the context of its approved Publication Scheme.

### **Court Records – Section 32**

Information that is only held as part of the documentation for a court or tribunal case, or a statutory inquiry.

### **Personal information about the person making the request - Section 40**

Exempted under FOI, but the request will be dealt with in accordance with the Data Protection Act 1998.

### **Information provided in confidence - Section 41**

Where disclosure would constitute a breach of confidence which would lead to legal action being taken against the public authority.

### **Legal Prohibitions on Disclosure - Section 44**

Where disclosure of information is prohibited by any other law or regulation, or is incompatible with any European Community obligation, or if it would be a contempt of court.

### **Information supplied by, or relating to, bodies dealing with security matters - Section 23**

This only applies to information supplied by or relating to one of the security bodies listed in the section. For example, the various security services and related tribunals.

### **Parliamentary Privilege - Section 34**

Where disclosure would infringe the privileges of either House of Parliament.

### **Exemptions subject to a Public Interest Test**

This means that a judgement has to be made by the Council as to whether the public interest involved in releasing the information outweighs the public interest in withholding it.

### **Information intended for future publication - Section 22**

Where publication was planned at the time the request was made. For example, an annual report, or the results of an investigation.

Note - applicants will be advised when the information will be published and how it can be obtained.

### **Investigations and proceedings conducted by public authorities - Section 30**

Information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising out of them.

### **Law enforcement - Section 31**

Information not covered by Section 30 above, and which is likely to prejudice a wider range of investigative activities.

### **Prejudice to the effective conduct of public affairs - Section 36**

Information that may inhibit the ability of the authority to conduct its business effectively should that information be made freely available in the public domain.

### **Health and Safety - Section 38**

Information that would, or would be likely to, endanger the physical, or mental health or safety of an individual.

### **Personal information about a Third Party - Section 40**

The request must be dealt with in accordance with the Data Protection Act 1998 but subject to the public interest test.

### **Communication with Her Majesty etc. and honours - Section 37**

This applies to information that relates to communications with Her Majesty, members of the Royal family or Royal household, or the conferring of

honours. For example, recommendations for individuals to receive an honour in the New Year's Honours List.

### **Environmental Information - Section 39**

Exempted under FOI but the request will be dealt with in accordance with the Environmental Information Regulations. If the information is subject to an exemption under the Environmental Regulations, the public interest test will apply.

### **Legal Professional Privilege - Section 42**

This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings. For example advice provided by a lawyer to his client, or information relating to ongoing legal proceedings.

### **Commercial Interests - Section 43**

This exemption applies to trade secrets, and to information which if disclosed could harm/prejudice the commercial interests of any person, including the authority holding it.

### **Audit - Section 33**

Applies to information held by public authorities which have functions relating to audit (for example, the National Audit Office), or which examine the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is exempt if its disclosure is likely to prejudice those functions.

### **National Security - Section 24**

Information that is not covered by Section 23 under the Absolute Exemption category above, but exemption is needed to safeguard national security. This requires a certificate signed by a Minister of the Crown.

### **Defence - Section 26**

Information likely to prejudice national defence or the activities of our armed forces, or those of our allies.

### **International Relations - Section 27**

Information likely to prejudice the UK's international relations or interests. For example, information obtained in confidence from another State or international court.

## **Relations within the United Kingdom - Section 28**

Information likely to prejudice relations between the UK government, Wales, Scotland or Northern Ireland.

## **The economy - Section 29**

Information likely to prejudice the economic interests of the UK or part of the UK, or the financial interests of the government.

## **Formulation of Government Policy - Section 35**

Information held by a government department or the National Assembly for Wales, relating to the creation of government policy.

## **Public Access to Environmental Information**

The Environmental Information (EI) Regulations 2004 (the Regulations) supersede previous EI regulations and come into force on 1 January 2005 . They give a public right of access to environmental information.

Whilst the Regulations are devoted specifically to environmental information, they have a very close link, and are similar in purpose, to the more general Freedom of Information (FOI) Act 2000. The key differences are:

- (a) the Regulations are European law; the FOI Act is United Kingdom legislation. As such, the Regulations could take precedence over FOI if necessary
- (b) requests for EI do not have to be in writing; FOI requests are meant to be in writing although at Rochford District Council we will take a flexible approach where requests are very straightforward
- (c) whilst EI requests should be dealt with in 20 working days (the same as for FOI requests), up to 40 working days are allowed if the request is complex or the volume of information is high
- (d) all exemptions under the Regulations are subject to a public interest test (see below); in the case of FOI, some of the exemptions are absolute
- (e) there is a specific requirement to progressively make EI available electronically.

## **What is Environmental Information?**

EI includes:

- the state of elements of the environment, e.g. water, air, land, GMO's, wildlife, etc
- the state of human health and safety, food chains, cultural sites and built structures

- substances, energy, noise, radiation or waste that may affect the state of the elements of the environment and interaction between them
- measures, including administrative measures, policies, legislation, plans, programmes and environmental agreement(s), and activities that affect/may affect, or protect, the state of the elements of the environment and their interaction by them
- emission discharges and other releases into the environment
- cost benefit and other economic analysis used in environmental decision-making.

Like FOI, the information requested can be in any recorded format: written, visual, audio, electronic etc.

There are some exemptions, all of which are subject to a public interest test. This means that where EI falls into an exempted category the Council will have to judge whether the public interest involved in releasing the information in question overrides the public interest in withholding it.

The exemptions are where the release of the information would adversely affect any of the following:

- (i) international relations, defence, national security, or public safety
- (ii) the course of justice
- (iii) intellectual property rights (of any party)
- (iv) legal confidentiality of any public authority
- (v) confidentiality of commercial and industrial information necessary to protect a legitimate economic interest (granted by law)
- (vi) the interests of the person who voluntarily, and without legal obligation, supplied the information to the Council
- (vii) the protection of the environment to which the information relates.

The Council may refuse to disclose EI if:

- it does not hold the information (in which case we will try to advise who does or might hold it)
- the request is manifestly unreasonable
- the request is too general (although we will try to assist the person or organisation making the request to be more specific where possible)
- the request relates to material still in the course of completion - unfinished documents or incomplete data (in this case an estimated date for completion will be given)
- the request is for the disclosure of internal communications.

Like FOI, any complaints or appeals about the way that the Council has handled a request for EI will be dealt with through the Council's Corporate Complaints Procedure, with a further right of appeal to the Information Commissioner. FOI and EI are covered by the same Information Commissioner.

Further detail about the Regulations can be found at the [defra website](#).