



FOI, EIR and DPA Information Request Policy

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Sponsor Approval		Name	Date
Chief Legal Officer			

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- Is disproportionate. 16

- Is burdensome, or the gathering of the data is likely to cause unjustified disruption. 16

- Has been received from a requester with a personal grudge against the council or a member or employee of the council, and there are reasonable grounds for believing the request may have been motivated by that grudge. 16

- Is persistent for information which has already been provided, or where it has

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- Is likely to harm the public interest if the information is provided..... 16

5.2. In cases where the issue is not clear-cut, the Council will consider whether the request is likely to cause a disproportionate level of disruption, irritation or distress. It will judge the evidence of the impact on the Council and weigh this against any evidence about the purpose and value of the request..... 16

5.3. The requester will be told that the Council cannot provide the information (unless it has already given the same individual a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one)..... 16

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6.1. If non-personal information is requested from the Council that relates to a third party, for example a supplier or a partner organisation, the request will be considered with reference to exemptions available under FOI/EIR law, many of which are subject to a public interest test, to judge whether disclosure would be in the public interest. 17

6.2. The Council will endeavour to consult with third parties affected by disclosure of information as long as timescales permit, but the final decision will rest with the Council..... 17

6.3. If the request contains personal data relating to an individual other than the requester, this information will be redacted. 17

6.4. The legislative deadlines for each type of request are set out below: . 17

6.4.1 The Council has 20 working days to respond to a Freedom of Information (FOI) request. Under the FOI Act, the Council may have a reasonable extension of time to consider the public interest test in relation to a specific exemption. The ICO deems that period to be no longer than 40 working days in total. 17

6.4.2 Under the legislation, Environmental Information Regulations (EIR) requests must be responded to as soon as possible and no later than 20 working days after the date of receipt of the request. The deadline may be extended in exceptional circumstances to 40 working days. Under the Regulations the Council must reasonably believe that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so. 17

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7.1. The requester can respond to the Council to clarify the content of the response, query any ambiguity or seek any related explanation. 17

7.2. The clarification and review stages are not part of the council’s complaints procedure. 18

Review..... 18

7.3. Any written expression of dissatisfaction from the requester, which does not simply seek to clarify the answers provided, will be dealt with as a request for a review of the request..... 18

7.4. Requesters are entitled to a review upon request. These internal reviews will be conducted by an officer who was independent from the original request. 18

7.5. The internal review process provides a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions about where the public interest lies in respect of exempt information. It enables a fresh decision to be taken on a reconsideration of all the factors relevant to the original request, the applicable exemptions and the

public interest test. 18

7.6. The review procedure deadlines for FOI requests are set out in the ICO’s good practice guidance (section 45). The ICO’s guidance states that a review should take no longer than 20 working days in most cases, or 40 in exceptional circumstances. 18

7.7. For an EIR request, the Council has 40 working days to conduct the review. 18

7.9 Requesters wishing to complain to the Information Commissioner about a request can apply at any time. However, when the requester reaches the end of the Review process, he or she is considered to have exhausted the Council’s internal complaints mechanism for FOI, EIR and Data Protection, and the ICO has a duty to accept his or her complaint. Please see here for information 18

7.10 The Information Commissioner’s Office (ICO) can be contacted at: 18

Information Commissioner's Office, 18

Wycliffe House, 18

Water Lane, 18

Wilmslow, 18

Cheshire, 18

SK9 5AF 18

Telephone: 0303 123 1113 18

www.ico.gov.uk 18

Introduction

- 1.1. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 place obligations on public authorities to publish and provide information on request. In addition, every person has a statutory right to request any recorded information held by the Council, regardless of when, or by whom it was created or the form in which it is held.
- 1.2. This policy covers the Information Requests from several pieces of legislation including the Freedom of Information Act 2000 (FOI), the Environmental Information Regulations 2004 (EIR), the Local Government Transparency Code 2015, the Data Protection Act 2018 (DPA) and the General Data Protection Regulations 2016 (GDPR). The Council is committed to being open and transparent in the conduct of its operations and to complying fully with the legislation. To this end the Council will:
 - Publish as much information about its activities as it practicable and subject to the provisions of legislation, will make all other information available on request;
 - Establish records management practices to be able to more easily determine whether requested information is held and where is held makes its retrieval as straightforward as possible;
 - Deal with all request for information in accordance with the legislative framework;
 - Have regard to the guidance published by the Information Commissioner's Office (ICO)
 - Publish its Publication Scheme including information from the Transparency Code on the Council's Website;
 - Log all requests for the purposes of monitoring compliance;
 - Make available details of the FOIA/EIR/DPA review procedure to applicants in connection with all decisions taken under the FOIA, DPA or EIR. Details of how you can request a review are on the Council's website.
 - Handle reviews in accordance with the relevant legislation
- 1.3. This policy applies to all written records held as recorded information by the Council (including paper, electronic, hand-written notes, audio-visual and copies and backups), which are created, collected, processed, used, stored and/or disposed of by the Council's employees, partners and agents in the course of the Council's business activities.

Principal Information Access Legislation

Freedom of Information Act 2000 (FOI)

- 2.1. The FOI Act is a general right of access to unpublished information. Once in receipt of a request made in writing, the Council has a duty to confirm or deny whether information is held, and supply the information, normally within 20 working days, as long as an exemption does not apply.
- 2.2. The FOI Act also imposes a duty for the Council to proactively publish certain categories of information. The Publication Scheme can be found on the Council's website, but the information listed can be located in a variety of places as outlined in the Scheme, for example via the Council's website, library, or reception of main public buildings

Local Government Transparency Code 2015.

- 2.3. The Local Government Transparency Code 2015 sets out key principles for local authorities to create greater transparency through the publication of public data. It outlines the minimum requirements for local authorities to publish open data for re-use and in a timely way.
- 2.4. The Code sets out that a Council must publish spending and procurement information, the Council's organisation information, land asset and parking information. This information can be found on our website at: <https://epsom-ewell.gov.uk/council/about-council/transparency>

Environmental Information Regulations 2004 (EIR)

- 2.5. Information that is classed as 'environmental information' must be dealt with under EIR, rather than FOI. The definition of environmental information is very broad ranging, and can include information on the state of the environment e.g. flooding; on measures that affect the environment such as policies and legislation; and on the state of human health and safety, the food chain, cultural/built structures, air pollution etc.
- 2.6. Requests can be made verbally as well as in writing; email etc in some circumstances exceptions may apply where the public interest is against disclosure of information; and whilst the timescale is usually 20 working days, it can be extended in certain circumstances. (see 2.20)

Data protection law (DPA)

- 2.7. The Council holds a great deal of information that contains personal data, and FOI does not make this information available to the public.
- 2.8. The Council takes its legal duty to protect personal information of individuals very seriously, and any request for information that contains personal data will be carefully considered with reference to data protection law. This includes the Data Protection Act 2018 Act (DPA), the General Data Protection Regulation 2016 (GDPR), as well as the common law duty of confidentiality and the Human Rights Act 1998.
- 2.9. An individual has a right to make requests about their own personal data. These are called Individual Rights Requests.. An organisation may make a request for personal data of a third party individual. When doing so, they must include the legislative basis for making their request under the Data Protection Act These requests may relate to any of the following individual rights.
- 2.9.1 the right to be informed
 - 2.9.2 the right of access to the personal data held by an organisation, also known as a subject access request (**SAR**). These requests are the ones most often received by the Council;
 - 2.9.3 the right to have personal data corrected
 - 2.9.5 the right to have personal data deleted
 - 2.9.5 the right to limit how prganiations use persoanl data
 - 2.9.6 the right to object to how personal data is being used
 - 2.9.7 the right to object to decisions beinf processed automatically
- 2.10. To submit an Individual or third party Data Request please see the [website](#).

Routine requests for information

- 2.11. Routine requests are, requests for information such as copies of a document produced by a service area or general enquiries relating to council business such as opening hours or details of service. The Council will not fully engage FOI, EIR or DPA procedures, but will deal with these requests as normal business enquiries and respond as soon as possible (and regardless within the statutory deadlines for FOI, EIR and DPA requests).
- 2.12. **A Valid FOI request**
- Must be in writing. This can include via e-mail, letter, or social media, provided it meets the requirements of section 8 of the FOI Act by providing a requester's name and address for correspondence, and a clear request for information. Note that where a requester is unable to apply in writing – for

example due to disability – an FOI request can be made verbally; the details must be clarified with the requester to enable a written record of the request to be logged. A copy of this written record should be provided to the requester;

- Must state the enquirer's name and correspondence address (email addresses are allowed);
- Must describe the information requested - there must be enough information to be able to identify and locate the information;
- Does not need to mention the words "Freedom of Information"
- Can come from anywhere in the world.

- 2.13. In most cases, the requester will be entitled to be told whether the council holds the information (this is known as "the duty to confirm or deny") and, if so, to have access to it. Access can include providing extracts of a document or a summary of the information sought, or access to the original document. However, the Act recognises the need to preserve confidentiality of sensitive information in some circumstances and sets out a number of exemptions, which can limit the duty to supply information alone, or both the duty to supply information and the duty to confirm or deny
- 2.14. The application can be sent in the form of any written communication, and sent to the Council's dedicated email address of: foidpa@epsom-ewell.gov.uk
- 2.15. If a requester telephones the council and a member of staff writes down a freedom of information request on the basis of that conversation, this also counts as a legitimate freedom of information request. A valid request should contain the above information, (see 2.12) if it does not we can contact the requester and request a fuller application. While this is being done, time does not begin to run.
- 2.16. In the case of a Subject Access Request, proof of identification is also required. Proof of identity will need to be provided to Business Support, as set out in the online form on the website.
- 2.17. Applicants may express a preference for how the information is to be supplied and where reasonably practicable the Council will comply with the stated preference or provide an explanation if this is not possible.
- 2.18. The Council has a duty to advise and assist requesters and it will ensure information is readily available and staff are available to assist with enquiries.
- 2.19. EIR requests do not have to be in writing and can be properly received by the Council when the requester verbally describes the information needed.

The Council must "hold" the information

- 2.20. Information has a wide meaning and includes hard copy (paper files), digital and

electronic information

- 2.21. Holding” information means information relating to the business of the council:
- The council has created, or
 - The council has received from another body or person, or
 - Held by another body on our behalf
- 2.23 “If the Council does not hold the information, A reasonable search will be made before confirming that we do not hold information that the Council might normally be expected to retain and make available.
- 2.24 The Council's Record Retention Policy and Schedules will be used to check each department's own corporate list of file retention. If information has been destroyed or erased in line with this policy and other good record management procedures, it will be deemed that we no longer hold the information, even if the record is still held in backup. Under section 77 of the FOI Act it is a criminal offence to alter, deface, block, erase, destroy or conceal any information held by the Council with the intention of preventing disclosure following a request for the information

Response times for written requests

- 2.25 The response time begins when a request is received by the Council. Day one of the request is the first working day following receipt of the written application into the Council. A request is received when a valid application is delivered to any part of the Council or to any member of staff.
- 2.26 For most information requested there will be no charge. If a request will take more than 18 hours or two and a half working days, the Council can reject the request for information, or issue a fees notice/invoice
- 2.27 Requests that will exceed the appropriate limit can be refused. In these circumstances the Council will discuss whether it is possible to reduce the information requested to bring it below the appropriate limit.
- 2.28 Where two or more requests are received by the Council from the same person or different individuals within 60 days that appear to form part of concerted action or a campaign, the costs of these entire requests can be aggregated. A single estimated sum will be calculated that takes account of all the requests. The requester or all requesters in the group will be informed that such a decision has been made.

Training

- 4.1. The legislation requires that everyone working in a public authority is sufficiently familiar with the FOI legislation and that they can recognize a request under the legislation and take the appropriate action. Regular training will be delivered to all employees

Vexatious or repeated requests

- 5.1. The FOI Act states that there is no obligation to comply with vexatious or repeated requests. This means a request that is manifestly unreasonable and would require a substantial diversion of resources or otherwise undermine the work of the council. This argument for not complying with a request need not only be used as a last resort, but should be used in cases where the request:
 - Is disproportionate.
 - Is burdensome, or the gathering of the data is likely to cause unjustified disruption.
 - Has been received from a requester with a personal grudge against the council or a member or employee of the council, and there are reasonable grounds for believing the request may have been motivated by that grudge.
 - Is persistent for information which has already been provided, or where it has already been explained that it is not possible to provide the requested information.
 - Is likely to harm the public interest if the information is provided.
- 5.2. In cases where the issue is not clear-cut, the Council will consider whether the request is likely to cause a disproportionate level of disruption, irritation or distress. It will judge the evidence of the impact on the Council and weigh this against any evidence about the purpose and value of the request.
- 5.3. The requester will be told that the Council cannot provide the information (unless it has already given the same individual a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one).
- 5.4. For freedom of information requests, the vexatious and repeated conduct will relate to the requester's making of information requests itself and not on the general conduct or behaviour of the requester
- 5.5. The EIR rules have a similar provision called manifestly unreasonable requests.

Third party information and consultation

- 6.1. If non-personal information is requested from the Council that relates to a third party, for example a supplier or a partner organisation, the request will be considered with reference to exemptions available under FOI/EIR law, many of which are subject to a public interest test, to judge whether disclosure would be in the public interest.
- 6.2. The Council will endeavour to consult with third parties affected by disclosure of information as long as timescales permit, but the final decision will rest with the Council.
- 6.3. If the request contains personal data relating to an individual other than the requester, this information will be redacted.

Response Times

- 6.4. The legislative deadlines for each type of request are set out below:
 - 6.4.1 The Council has 20 working days to respond to a Freedom of Information (FOI) request. Under the FOI Act, the Council may have a reasonable extension of time to consider the public interest test in relation to a specific exemption. The ICO deems that period to be no longer than 40 working days in total.
 - 6.4.2 Under the legislation, Environmental Information Regulations (EIR) requests must be responded to as soon as possible and no later than 20 working days after the date of receipt of the request. The deadline may be extended in exceptional circumstances to 40 working days. Under the Regulations the Council must reasonably believe that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.
 - 6.4.3 A Data Protection Request (DPA) made for third party personal data has no statutory deadline, but the Council will endeavour to respond within 20 working days.
 - 6.4.4 Individual Rights Requests including Subject Access Requests (SAR) and any of the various requests set out in paragraph 2.9. must be responded to within one calendar month.

Clarifications and Review Procedure

- 7.1. The requester can respond to the Council to clarify the content of the response, query any ambiguity or seek any related explanation.

7.2. The clarification and review stages are not part of the council's complaints procedure.

Review

7.3. Any written expression of dissatisfaction from the requester, which does not simply seek to clarify the answers provided, will be dealt with as a request for a review of the request.

7.4. Requesters are entitled to a review upon request. These internal reviews will be conducted by an officer who was independent from the original request.

7.5. The internal review process provides a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions about where the public interest lies in respect of exempt information. It enables a fresh decision to be taken on a reconsideration of all the factors relevant to the original request, the applicable exemptions and the public interest test.

7.6. The review procedure deadlines for FOI requests are set out in the ICO's good practice guidance (section 45). The ICO's guidance states that a review should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.

7.7. For an EIR request, the Council has 40 working days to conduct the review.

7.8. If requested, the Council will review SAR or DPA requests within the same timeframe as an FOI review

7.9. Requesters wishing to complain to the Information Commissioner about a request can apply at any time. However, when the requester reaches the end of the Review process, he or she is considered to have exhausted the Council's internal complaints mechanism for FOI, EIR and Data Protection, and the ICO has a duty to accept his or her complaint. Please see [here](#) for information

7.10. The Information Commissioner's Office (ICO) can be contacted at:

Information Commissioner's Office,

Wycliffe House,

Water Lane,

Wilmslow,

Cheshire,

SK9 5AF

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