



SECTION 2

ENQUIRIES AND ACCESS

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SECTION 2

ENQUIRIES AND ACCESS

2.1 The new rights of access

The FOI Act provides greater access to information held by the Council in two ways:

- by requiring the Council to adopt and maintain a Publication Scheme; and
- by giving individuals the right of access, on request, to information held by the Council.

There are two aspects to this general right of access:

- the right to be told whether or not the Council holds the information; and
- if that is the case, to have the information communicated to them.

These rights of access are legally enforceable. The FOI Act is fully retrospective and these rights therefore apply to all information, no matter how recent or how old.

Anyone whose request for information is refused or ignored has the right to ask the Council to review that decision. Penalties can be applied to the Council and individual Officers who withhold information from the public domain without good reason.

But the new rights of access to information are also subject to some substantial and procedural limitations. These substantial limitations are known as 'exemptions' and are referred to in section 6 of this Manual. If information is properly exempt, there is no right of access to it under the FOI Act.

WHAT YOU NEED TO KNOW

- Any request for information which is held by the Council could be an FOI request – including information in archives. However, note the 'Day to Day Business' guidance at Annex B.
- FOI is about access to information: not necessarily access to complete records.
- Enquiries may come from anyone, anywhere in the world.
- The general rule to be followed, is to handle a request for information as you would expect it to be handled if it was you that submitted it. All deadlines should be met. The applicant is to be informed of any issues there might be while handling the request.
- You should keep good records of FOI requests handling.



2.2 What is a request?

Any request for recorded information is a request to which the FOI Act procedures potentially apply.

2.3 Examples of situations in which requests may arise

FOI requests may be received by anyone or any Department in the Council and requests do not have to be marked 'Freedom of Information Act'.

2.4 Examples of situations where a request for recorded information may arise

- in the course of ongoing correspondence with a member of the public;
- Councillor matters;
- casework; and
- litigation.

2.5 What makes it a valid FOI request?

Requests for information may be in any form and as indicated above, need not have to mention the FOI Act. The only restrictions are that FOI requests:

- must be in writing;
- must give the applicant's name and a return address;
- must describe the information that is requested.

Each of these terms is explained in more detail below (but see Annex C).

(a) In writing

As well as hard-copy, written correspondence, this term includes requests that are transmitted electronically (for example, in emails) - provided that they are legible and can be used for subsequent reference (that is to say, they are lasting in nature). Text messages are not regarded as written communication.

Where a person is unable to frame their request in writing, the s.45 Code of Practice requires you to provide appropriate advice and assistance to enable the applicant to make an FOI request. This may include advising the person that someone else may be able to help them or make the request on their behalf. In exceptional circumstances, providing appropriate assistance may include offering to take a note of the information that is being requested and subsequently sending the note to the applicant for confirmation (sections 2.6 and 2.7 of this Manual refers).

(b) Return address

There is no obligation to comply with a FOI request if it does not give a return address. If a request is received by email and although no postal address is given, the email address of the sender is included, then this should be treated as the return address.



(c) Describes the information that is requested

A number of requests under the FOI Act may be very broad requests for information and they may not describe the information that is sought with sufficient precision to enable you to identify and locate the information.

An FOI request must describe the information sought. If the request is too broad or general in nature (e.g. seeks all information on a topic over many years), or is ambiguous or does not describe the information with sufficient precision for you to be clear about what the applicant wants, you have a duty, as far as is reasonable to do so, to provide advice and assistance to the applicant in order to focus the request.

More information on advice and assistance can be found in sections 2.6 and 2.7 of this Manual, but the breadth of a request is not in itself an automatic reason to refuse it (although cost considerations might well be relevant here).

If you inform the applicant that further information is required to enable you to identify the information sought, then you are not obliged to comply with the request until the further precision is received. Section 4 of this Manual provides detailed guidance on 'unclear' requests.

(d) Who can make a request?

Anyone can make a request for information under the FOI Act which makes no distinction between requests from people who are citizens of, or who are currently in the UK, Europe or any country in the world. All requests must be treated the same, irrespective of the country of origin.

Requests from overseas may be in a foreign language. If you receive a request in a foreign language and the Council regularly makes printed material available in this language, it is best practice to use the translation service to translate the request into English and deal with the request. If the Council does not generally provide written material in the language used in the request, you should reply to the request, asking that the applicant re-frame their request in English.

Any requests received in the Welsh language should be translated into English if necessary and processed as normal. You should also consider whether it is appropriate to translate the response back into Welsh in the interests of good customer service. The translation of text to, and from Welsh is not chargeable under the costs regime, since it fulfils a pre-existing statutory obligation.

2.6 Duty to provide advice and assistance

The FOI Act sets out a duty to provide advice and assistance to applicants:

's16(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.'



You must ensure that the whole FOI requests process is easy to understand and that members of the public know what their rights are and what the procedure is for making an FOI request. The s.45 Code of Practice [Annex A] sets out in detail exactly how your Department can meet this requirement and provides detailed guidance on the provision of advice and assistance to applicants and gives examples of where the duty may arise and how you might comply with it. The Code should be consulted as and when necessary. Complying with the s.45 Code means that you are by definition, providing advice and assistance. Check how far your Department provides advice and assistance to potential applicants by looking over this checklist taken from the s.45 Code.

s45 Code of Practice		
para.	Do you provide advice and assistance to potential enquiries?	Met?
4	Public authorities should publish their procedures for dealing with requests for information.	✓
5	The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance.	✓
5	A telephone number should also be provided, where possible that of a named individual who can provide assistance.	✓
5	These procedures should be referred to in the authority's publication scheme.	✓
4	These procedures may include what the public authority's usual procedure will be where it does not hold the information requested.	✓
4	It may also alert potential applicants to the fact that the public authority may need to consult other public authorities and/or third parties to reach a decision on whether the requested information can be released, and therefore alert potential applicants that they may wish to be notified before any transfer of request or consultation is made.	✓
6	Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it and they will need to draw these to the attention of potential applicants who appear unaware of them.	✓

2.7 Your duty to provide advice and assistance - what does this mean in practice?

You are under a duty to provide advice and assistance, so far as it would be reasonable to expect the Council to do so, to a person who has made or who proposes to make a FOI request. This is especially important where the applicant may be a person with a disability. You should seek to accurately determine what the applicant is looking for. You should discuss the request and see if it can be met in a non-FOI way, i.e. disclose the information without the applicant having to avail of his/her rights under the FOI Act.

The provision of advice and assistance does not normally affect the 20 working days deadline (section 2.10.1 of this Manual refers). However, if you are providing advice and assistance because you need further information in order to identify the information requested, you are not obliged to comply with the request until you receive this.



If you have to request more information from the applicant as to the precise nature of the information he/she is requesting, then you should consider the most appropriate way of obtaining the clarification. It may be quicker to e-mail or, as a matter of good customer service, telephone the applicant.

It is important that you keep a detailed record of any letters, e-mails and telephone conversations you may have with the applicant in the course of providing advice and assistance. This should form part of any records management system your Department uses when dealing with FOI requests.

2.8 Unfit documents

'Unfit' documents are those which are deemed too fragile to be accessed without some serious conservation work. Under the FOI Act, the fact that the document is 'unfit' is not a valid reason for refusing access to the information. It will be important to put in place strategies for dealing with requests for information in fragile records. Here are some suggestions for you to consider:

- The Archivist may be able to allow the record to be seen but under close supervision and with the use of preservation equipment such as gloves, archival weights, and foam blocks and so on.
- If the Archivist is unsure, they should consult a conservator (where possible) for advice.
- If possible, you may be able to allow the record to be seen in the presence of a conservator.
- If the record is so fragile that it cannot be used at all, try to let the reader at least see the state of the record so that they can understand the reason why access is not possible. The reader should be shown the actual document as proof that it is unusable.
- Provide the information in a transcription or summary.
- Prioritise the document for conservation.
- Make a copy or a photograph of the information.

Remember that the FOI Act relates to information as opposed to the record itself.

The Council cannot include the cost of conservation work in the cost of 'providing the information' because this is considered to be a core function of the organisation of the Council. The main point here, is to ensure that you can demonstrate willingness to be as helpful as possible to the /applicant and to provide the information where you possibly can, as long as the document is not damaged by doing so.

Departmental catalogues should include the following statement:

'Availability Condition: This document is very fragile and cannot be produced to you in the normal way. Please contact [Archivist] for further information.'

2.9 Information Commissioner's Awareness Guidance

Awareness Guidance No.23 refers.



2.10 Receiving the FOI Request

Request received into the Department or by the FOIO: clock starts if valid request

Key Points

- FOI requests must be dealt with promptly and no later than 20 working days unless an extension of time has been agreed with the applicant. The clock starts ticking on the first working day when the FOI request is received into the Council.
- The date the FOI request is received should therefore be recorded.

2.10.1 The Ticking Clock

The deadline for replying to an FOI request depends upon which legislation the access request falls under. This will be explained in section 3 of this Manual. The key point is to ensure that when enquiries arrive (whichever legislation they fall under), that the date that they have been received is recorded on the FOI Monitoring System maintained by the FOIO (contact the FOIO on receipt of an FOI request). FOI requests must be dealt with within 20 working days unless an extension of time has been agreed with the applicant, and the clock starts ticking on the first working day that the request is 'received' into the Council.

The clock starts ticking only if the request is a valid FOI request. Further explanation of how to identify a valid FOI request is given in section 3.4 of this Manual. At this stage, you might not know whether the request is an FOI request or not.

2.10.2 Aim to reply as soon as you can

The FOI Act requires that:

s.10(1) a public authority must [provide the information] promptly and in any event not later than the twentieth working day following the date of receipt.

In other words, you shouldn't wait until the last minute if you can send out the information any earlier.

2.10.3 Extension of the 20 working day time limit

Agreeing an extension of time with the applicant may be appropriate where you need to consult with third parties, consider whether exemptions apply, when dealing with complex requests etc. Make sure you record the agreement in writing.



2.10.4 Internal response deadlines

The Council has a corporate deadline of 10 working days to respond to (although not necessarily fully answer) correspondence with specific provision being made to a 5 working day deadline for correspondence from Councillors. For the avoidance of doubt, correspondence from the MP falls within the 10 working days criteria.

Treat FOI requests as separate from the Council's corporate deadlines and apply corporate deadlines only to non-FOI requests.

2.10.5 What is a 'working day'

The FOI Act defines the 'working day' in s.10(6) as being any day other than a Saturday, a Sunday or a public holiday. In other words, the FOI Act says the working day is Monday – Friday. This applies even if your Department's working week is Tuesday - Saturday, or whether your Department is only open for a couple of days a week. Whatever your Department's particular situation, you will still have to follow the FOI Act's definition. So, it follows that if correspondence arrives into the office on a Saturday, it only counts as being 'received' on a Monday morning because Saturday isn't a working day under the FOI Act. Any temporary closures to the public are still counted as working days.

The FOI Act does not define what hours from Monday - Friday are considered to be working hours. However, the Council is using 8.45 am - 5.15 pm Monday to Thursday and 8.45 am - 4.45 pm Friday as its working hours. Any FOI requests received after 5.15 p.m. on Monday, e.g. by email, would count as being legally 'received' at 8.45am on Tuesday morning. Similarly, Saturday does not count as a working day, and therefore an FOI request which arrives after 4.45pm on a Friday, will count as being legally 'received' on the following Monday.

Even if your Department is completely closed on Mondays with no staff in the building, if post comes into the Department, it counts as being 'received' on Monday, and the clock starts ticking. Day one of the 20 working days is the day the request is received into the Council – whether someone is there to open it or not.

If there is no way of telling which day the correspondence was received, then you could assume it arrived on the earliest possible day, or at least the middle day (in this case, Friday or Monday), just to be on the safe side to ensure that the 20 working days is met as far as possible.

2.10.6 Date stamp the post

Since the clock starts ticking on the first working day when the request is received by the Council, it is important to obtain evidence of this by ensuring that all post is date stamped (or some other similar way of recording the information) when it comes into the Council. However, remember that if the date on emails or faxes is a Saturday or Sunday, legally, the clock will start ticking on the following Monday. In other words, the date on the email itself is usually the date it was sent, rather than the date it was 'received' under the FOI Act.



The Council's post is opened by the Post Room, who date stamp the correspondence and forward it on to the appropriate Department for logging and reply. Remember, the main issue is to get evidence of the working day the request was received by you and remember that the clock starts from the day it was received into the Council, not necessarily the day the correspondence was opened or read.

2.10.7 Covering during staff absences

You need to consider what will happen when a colleague is absent. What happens if an FOI request lands on their desk and stays there until they get back from holiday?

Your Department should have procedures in place to ensure that post is dealt with. Similarly, what if an email request comes into an individual's inbox whilst they are away? Do you use the 'out of office' messaging service and have procedures to allow staff to check their colleague's email if they are absent?

Due to the limited time-scales available for reaching a decision in relation to a FOI request, it is important that the decision - making function be delegated to another Officer within the Department concerned, during periods of absence of the Decision Maker.

2.10.8 Information routinely available (day to day business)

The Council routinely makes information available to members of the public through the Publication Scheme and as part of its day-to-day business processes. It is intended that this practice should continue and that the provisions of the FOI Act need only be invoked for information that is not routinely available and where requests fall within the categories detailed in Annex B. Refer to section 3.1(b) of this Manual for further guidance on routine requests.

2.10.9 Phone calls

It is important to be aware of two issues in relation to phone calls:

1. An access request falling under the EIR does NOT need to be received in a written form, and can be received orally. Section 3 of this Manual explains how to distinguish between the different types of request.
2. FOI enquiries DO need to be in a written form. However, this is not to say that an FOI request received over the phone should be ignored, as you have a duty to provide advice and assistance to potential FOI applicants.

The s.45 Code emphasises that people should be made aware of their rights, as they may not be aware that FOI requests must be in writing.

para.	s45 Code of Practice
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6	Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it and they will need to draw these to the attention of potential applicants who appear unaware of them.
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Staff should be able to explain that if the applicant wishes their request to be dealt with under the FOI legislation, it must be in a written form.

The applicant should be referred to the Council's website <http://www.dartford.gov.uk/dataprotection/> which will include an electronic Application Form [Annex C]. If the applicant is unable to write in, staff should provide advice and assistance and take the relevant details over the phone, by completing the Application Form which may be down - loaded for ease of use.

The s45 of the Code says that 'in exceptional circumstances', you can offer to write down enquiries for the applicant so that they become FOI requests:



para.	s45 Code of Practice
7	<p>Where a person is unable to frame their request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, appropriate assistance might include:</p> <ul style="list-style-type: none"> ▪ advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf; ▪ in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received). <p>This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.</p>

If an FOI request has been written down by staff on behalf of the applicant, it needs to be checked over by the applicant to verify the request.

The FOI clock starts ticking once the request has been ‘approved’ by the applicant (this counts as being ‘received’), and not before. This can be done by reading the request back to them and getting oral approval to the request (and making a note of the fact that verification was sought and given). If the applicant is on the Council’s premises, they could sign the request. In exceptional circumstances, such as with a complex request, you may need to send the written request by post or email to the applicant to approve and they should sign or make their mark on it.

Another way of submitting a written FOI request, would be to refer applicants to the Application Form on the Council’s website <http://www.dartford.gov.uk/foi/>, so that they can complete the details themselves.

2.10.10 FOI requests transferred within the Council

It is in everyone’s interest to ensure that FOI requests are directed to the appropriate Department as soon as possible, to avoid a situation whereby an FOI request comes into the Council and only reaches the relevant Department with 5 working days left on the clock. Ask yourself whether everyone in your Department is aware of the types of information held by your Department and the types of enquiries you can answer.

If the request is received by you late, due to an internal delay, it may be helpful to send an acknowledgement to the applicant. Consider whether you will meet the deadline. If not, this acknowledgement could be used to secure an extension by agreement with the applicant. It is open to you to negotiate an extension, but open to the applicant to refuse, and complain to the Information Commissioner if the deadline is not met. If the deadline is not met – for whatever reason – you may wish to consider waiving any fees to help compensate for failure.



ACTION

- Do you understand how the FOI Act defines a 'working day'?
- Do you know when the FOI clock starts ticking?
- Do you have a system in place for date – stamping the post?
- Do you have procedures to cover for staff absences?
- Are you able to write down FOI enquiries received over the phone?
- Do you know how to provide advice and assistance?