



DARTFORD BOROUGH COUNCIL

Freedom of Information Act 2000

Application of Exemptions

1. Dartford Borough Council's Policy on Access to Information

- to make information available to all those who need or request it, wherever possible in the form that is most convenient for them;
- to publicise information already made available by maximising the use of the Council's Publication Scheme;
- to make access to the Publication Scheme (and information referred to in it) as easily as possible, particularly through the Council's website <http://www.dartford.gov.uk/>
- to presume that information is available unless the Council can demonstrate a legitimate reason for withholding it;
- to restrict the scope of information withheld from the public, by interpreting exemptions restrictively, and separating exempt from non-exempt material.

2. Exemptions

Whilst the Freedom of Information Act 2000 (FOI) creates a right of access to information held by **Dartford Borough Council**, it also sets out a number of exemptions where that right of access does not apply or is qualified.

2.1 Public Interest Test (PI)

In the majority of cases where an exemption applies to some or all of the information requested, the Council will have to consider whether it must override the exemption because it is in the public interest to release the information.

This public interest test involves considering the circumstances of each particular case and the exemption that covers the information. The balance will lie in favour of disclosure, in that information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it.

2.2 Absolute Exemptions (AE)

However, there are also some exemptions where, if the exemption applies, it is not necessary to go on to consider disclosure in the public interest. These are called the "Absolute Exemptions".

3. Application of Exemptions

The following exemptions are listed in order of relevance to **Dartford Borough Council**, with the more relevant ones being listed first.

Those exemptions ending with **PI** indicate that the Public Interest Test must be applied before deciding whether disclosure can take place.



Those exemptions ending with **AE** indicate that an Absolute Exemption applies and it is not necessary to consider the Public Interest in disclosure.

Those ending with **ND**, indicate a Non Disclosure. Although an exemption does not apply, disclosure by the Council is not necessary for the stated reasons.

No.	The Exemption	Public Interest Test or Absolute Exemption
1	Information intended for future publication need not be disclosed. This applies where publication was planned at the time the request was made and where it is reasonable that the information is not disclosed until the intended date of publication.	PI
2	Information accessible to the requestor by other means. This applies where the information requested has already been made available for example via the Council's Publication Scheme or is already available by virtue of other legislation. The information requested, must for this exemption to apply, be reasonably accessible to the requestor.	AE
3	Investigations and proceedings conducted by public authorities This exemption may apply to information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising from them.	PI
4	Law Enforcement Information not covered by section 3 above, and which may prejudice an investigation and conduct, including prevention of crime, assessment and collection of taxes, regulatory enforcement, health & safety, and any civil proceedings.	PI
5	Court Records This exemption covers information that is only held as part of the document for a court or tribunal case or a statutory enquiry.	AE
6	<p>Audit Functions This exemption applies to information held by the Council relating to audit or examining the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is exempt if its disclosure is likely to prejudice these functions. It does not cover Internal Audit.</p> <p>The Audit Commission Act 1998 states that no information obtained by an auditor shall be disclosed unless the Council has –</p> <ul style="list-style-type: none"> (a) the consent of the body or person to whom the information relates; (b) for the purposes of any functions of an auditor under this Act; (c) for the purposes of any criminal proceedings. <p>A person who discloses information in other circumstances is guilty of an offence and liable to prosecution.</p>	PI
7	<p>Personal Information If an individual makes a request for their own personal data, then this is dealt with under the Data Protection Act 1998 and that Act's subject access provisions will be applied.</p> <p>If a 3rd party requests personal information i.e. not their own personal data, then disclosure is decided in accordance with the Data Protection Act 1998 and the 8 principles of data</p>	AE PI



	<p>protection, but within the overall framework of FOI.</p> <p>Everyone has the right to respect for his private and family life, his home and his correspondence. Therefore in dealing with requests for disclosure of information, the Human Rights Act 1998 Article 8 'right to respect for private and family life', will also need to be considered. Will disclosure of information impinge on individuals' right for respect for their private and family life?</p>	
8	<p>Information Provided in Confidence This exemption applies where there would be a breach of confidence. The Council should only accept information from 3rd parties in confidence if it is the only way of obtaining the information and the information is needed to carry out any of the Council's functions.</p> <p>The Council must not agree to hold information received from 3rd parties in confidence, which is not confidential in nature. Acceptance of any confidentiality provisions must be for good reason and must be justified to the Information Commissioner, if asked.</p>	AE
9	<p>Legal Professional Privilege This exemption applies where a claim of legal professional privilege could be maintained in legal proceedings e.g. correspondence such as legal advice and assistance between the Council's Legal Services and their client.</p>	PI
10	<p>Commercial Interest This exemption applies to trade secrets and to information which if disclosed would, or would likely, prejudice the commercial interests of any person, including the authority holding it. This exemption is particularly relevant to the Council in the tendering process and the award of contracts negotiated with suppliers.</p> <p>When entering into contracts the Council will refuse to include contractual terms, which purport to restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by FOI. The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature.</p> <p>When entering into contracts with non-public authority contractors/service providers etc, 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. The Council will not accept such clauses unless an exemption is provided for under FOI. In any event, the final decision as to whether the exemption applies, will be a decision solely for the Council.</p> <p>The Council may need to protect from disclosure by the contractor/service provider etc information, which would be exempt from disclosure under FOI, by appropriate contractual terms. Apart from such cases, the Council will not impose terms of secrecy on contractors.</p> <p>Appendix A shows the Council's FOI statement which will be used on all tender and contract documents originating from the Council.</p>	PI
11	<p>Health and Safety This exemption applies to any information the Council might disclose that would or would be likely to endanger the physical, mental health or safety of an individual.</p>	PI
12	<p>Environmental Information If the Council must disclose environmental information in accordance with Environmental Information Regulations, then disclosure does not fall under FOI. The release of environmental information is currently subject to the Environmental Information Regulations 1992 (as amended) (EIRs). These will be</p>	PI



	<p>replaced by revised regulations to be brought into force by 14 February 2005. The effect of the exemption is that release of environmental information must be decided in accordance with these Regulations. It should be noted that the definition of environmental information is broad and will include:</p> <ul style="list-style-type: none"> ➤ state of land (water, air, flora or fauna); ➤ activities affecting the environment (light, noise, other emissions and nuisances); ➤ measures designed to protect the environment such as plans, programmes, cost benefit and other economic analyses which relate to environmental information (e.g. roads, traffic, maintenance, land use planning, development control, buildings and estates). <p>While the terms of the Regulations align closely with FOI, there are a number of differences, the most relevant of which in the context of the s.43 exemption relate to 'the confidentiality of commercial and industrial information'. When the request relates to information on emissions into the environment, refusal of the request would be difficult to justify under the Regulations.</p>	
13	<p>Legal Prohibition This exemption applies where the Council is prohibited in disclosing information by an enactment or the disclosure would constitute a contempt of court e.g. information relating to investigations and proceedings conducted by the Council. This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings.</p>	AE
14	<p>Incomplete Request When a requestor who has received assistance and prompting from the Council does not give enough of a description of the information that they seek to allow that information to be identified.</p>	ND
15	<p>Non-payment of Fees When a requestor, who has received a Fees Notice, does not pay the fee within 3 months.</p>	ND
16	<p>Cost of locating Information. When the reasonable cost of locating and collating the requested information exceeds the 'appropriate amount'. The 'appropriate amount' is £450.00 and the Council may charge for copying, printing, posting and other disbursements. FOI also allows the aggregation of multiple requests from the same person, or different person appearing to act in concert.</p>	ND
17	<p>Repeated or Vexatious Requests If a requestor makes repeated requests or vexatious requests, then the Council may refuse disclosure if information has already been supplied to the requestor.</p>	ND
18	<p>Defence Information likely to be damaging to national defence or armed forces.</p>	PI
19	<p>Security Matters Information relating to security and signed by an MP is proof of exemption.</p>	AE
20	<p>National Security Information relating to and needed to safeguard national security and signed by an MP is proof of exemption.</p>	PI
21	<p>International Relations Information referring to international relations and likely to prejudice the UK's international relations.</p>	PI
22	<p>Relations within the UK. Any information likely to prejudice the relations between the national UK administrations.</p>	PI
23	<p>The Economy. Information likely to damage the interests of the UK economy.</p>	PI
24	<p>Formulation of Government Policy Relates to information held by a government department on the formulation of government policy.</p>	PI
25	<p>Prejudice to the effective conduct of public affairs Requires a minister of the crown authority to authorise this exemption. Absolute exemption for information held by either House; public interest test applies for other information.</p>	PI AE
26	<p>Communications with her Majesty This relates to communications with her Majesty,</p>	PI



	members of the royal household regarding honours.	
27	Parliamentary Privilege Signed by Speaker for the House is needed as proof that exemption is justified.	AE

9. Relevant Legislation

Other Acts of Parliament with provisions regarding the disclosure of information are listed below, although this list is not exhaustive:

- **Enterprise Act 2002**
- **The Audit Commission Act 1998**
- **Data Protection Act 1998**
- **Human Rights Act 1998**
- **Environmental Information Regulations 1992 (as amended)**
- **Public Works Contracts Regulations 1991 (SI 1991/2680)**
- **Public Services Contract Regulations 1993 (SI 1993/3228)**
- **Public Supply Contract Regulations (SI 1995/201):**

10. Copyright

Dartford Borough Council staff **MUST** be aware that information which may be requested under FOI, may be subject to copyright protection. If a requestor wishes to use any such information in a way that would infringe copyright, for example by making multiple copies, or issuing copies to the public, he/she would require a licence from the copyright holder. Disclosure without this licence will lead to the Council being prosecuted.

OPSI have issued guidance on the subject in relation to Crown Copyright, which is available on OPSI's website at <http://www.opsi.gov.uk/>

11. Conclusion

These guidelines provide an overview of the exemptions that may be applied under the Freedom of Information Act 2000. It also contains examples of other disclosure provisions and advice on copyright legislation. If you have any queries regarding these guidelines, or have identified any other relevant legislation that could be included in these guidelines, please contact:

The Freedom of Information Officer
Freedom of Information Unit
Dartford Borough Council
Civic Centre
Home Gardens
Dartford
Kent DA1 1DR
Tel 01322 343634
Email:foi@dartford.gov.uk
Website: <http://www.dartford.gov.uk/>



Appendix A

Freedom of Information Act 2000 Statement:

The Freedom of Information Act 2000 (FOI) makes provision for the disclosure of information held by public authorities or by persons providing services for them. FOI provides that anyone can ask Dartford Borough Council for any information and, unless an exemption applies, the information must be supplied. FOI is fully retrospective.

Therefore, subject to the foregoing, information relating to your tender and/or contract may be disclosed upon request to members of the public or interested parties.

1. Information contained in your tender and/or contract documents will be treated as commercially sensitive up to 6 months following the tender submission date.
2. After the 6 months have expired, the Council will consider the disclosure of any information contained in the tender documents (successful and unsuccessful tenderers) and/or contract, including price quotes.

If any information contained in your tender documents and/or contract is commercially sensitive or is a trade secret, the **onus is on you the tenderer** to ensure that this information is clearly identified to Dartford Borough Council. Any tender document and/or contract **MUST** have any commercially sensitive information and/or trade secret clearly marked and identified as such, with reasons.

*I consider the following information contained in the tender documents to be
commercially sensitive/trade secret [delete as appropriate] and my reason(s) are: