



# Freedom of Information Act Policy

Freedom of Information (FOI) Act 2000 and Environmental Information Regulations (EIR) 2004 Policy

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Assurance Service

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## **Freedom of Information Act**

### Freedom of Information Act 2000 (FOIA) & Environmental Information Regulations 2004 (EIR) Policy

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## 1. Introduction

This policy supports the legislative framework for responding to requests for information and adopting and maintaining a Publication Scheme, as required by the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR").

The aims of this policy are to ensure access to information in order to promote greater openness, provide increased transparency of decision making and to build public trust and confidence.

### Purpose

To ensure that Cornwall Council ("the Council") adheres to the provisions of the FOIA and EIR by applying appropriate measures of compliance in the two main parts of the legislation:

- The requirement for the authority to develop and maintain a Publication Scheme (FOIA) and;
- The requirement for the authority to respond to any requests for information under FOIA & EIR.

The Council's group of companies (including Cormac, Cornwall Housing, Cornwall Development Company (CDC) and Cornwall Airport Newquay) will each have their own dedicated policy in relation to Freedom of Information, but which will mirror the main Council Policy. The Council will log and monitor requests which relate to these companies, as well as providing advice and guidance to help to ensure that statutory obligations are being adhered to. Although the Council will maintain an oversight role, each individual company is responsible in their own right in terms of compliance and in any dealings with the Information Commissioner's Office (ICO).

### Scope

This policy applies to:

- All employees, including those working from home or from other locations and elected Members;
- Other workers (including casual and agency workers, secondees and contractors) employed by the Council or the Council's group of companies, or
- Those who hold information on behalf of the Council such as commissioned services and wholly owned subsidiaries of the council.

### Policy Statement

Cornwall Council is committed to being open and transparent in providing access to information to the public. However, there could be occasions where information may need to be withheld and this includes for example, commercially sensitive information and/or where data protection principles apply. Where exemptions apply, the conditions laid down by legislation and the FOIA or EIR Regulations will be followed when considering the need to withhold any information.

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## 2. Roles and Responsibilities

Overall responsibility for the Council's compliance with FOIA and EIR legislation lies with the Chief Executive, with Melanie O'Sullivan Service Director – Assurance Service and Monitoring Officer, responsible for the Policy.

The Council's Service Director - Assurance will exercise the Authority's function as "qualified person" under Section 36 of the FOIA.

The Information Governance Team will:

- maintain this policy and associated procedures and supporting documentation in relation to FOIA and EIR;
- maintain the Council's Publication Scheme;
- monitor and report on the processing of FOI and EIR requests within the directorates;
- monitor compliance with this policy and report to senior managers on whether the objectives are met, and;
- arrange for appropriate learning, development and training to be carried out.

It will be the responsibility of each Strategic Director/Service Director (or delegated officer) to:

- ensure their service or directorate's compliance with the FOIA and EIR;
- arrange for FOI related activities to be carried out;
- ensure that all staff attend induction training that is provided by the Information Governance Team and any further agreed training programmes for FOIA/EIR that may be put in place and that training is monitored;
- identify and record information asset owners (see glossary) who keep data which should be published on the Council's Publication Scheme;

It will be the responsibility of each information asset owner to:

- inform their Service Director (or delegated officer) and the Corporate Information Governance Team, of existing information which should be published on the Council's Publication Scheme;
- collate information in response to a request within the timelines required by the FOIA and EIR and;
- ensure that they receive training on FOIA and EIR where mandatory, and where possible, to undertake any additional training provided by the Information Governance Team to ensure that they have all the necessary skills and knowledge to undertake their duties in relation to FOI.
- ensure that dataset owners are made aware of the standards and legislation applicable to their datasets.

it is everyone's responsibility to:

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- ensure any specific responsibilities for FOIA and EIR are recorded in their role profile.

### **3. Dealing with Freedom of Information (FOI) and Environmental Information Regulation (EIR) Requests**

We are committed to dealing with requests within statutory guidelines; no more than 20 working days and more speedily where possible. This may be extended in specific circumstances, including when the Public Interest Test (see glossary) is engaged (FOI) or where the case is particularly large or complex (EIR).

Exemptions under FOI, or exceptions under EIR may be applied as appropriate, whilst maintaining a commitment to openness, transparency, scrutiny and the public interest. This is adhered to through the application of the Public Interest Test where required.

Any repeated requests or requests that place an unnecessarily large burden on the authority may be refused as vexatious or manifestly unreasonable, taking into account prescribed legislation and guidance.

A request in writing for information that the Council holds will be considered a FOI or EIR request unless the information is already in the public domain. The Council reserves the right to refuse requests where the cost of supply of the information would exceed the statutory maximum, the 'appropriate limit', currently 18 hours of officer time under FOI & which can also be used as a guide under the "manifestly unreasonable" exemption under EIR.

Requests received by the Council that relate to the Council's group of companies will be logged and monitored by the Council. However, the onus of dealing with and responding to these requests will rest with the relevant company.

### **4. Adopting and Maintaining a Publication Scheme**

The Council has adopted a Publication Scheme and is committed to updating and maintaining it to keep it current and relevant, taking into account new and evolving legislation. The Publication Scheme contains documents, policies, plans and guidance used by the Council. The

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material contained within the publication scheme is available on the internet. Where charges are applied these will be identified in the information contained within the Scheme.

Services should routinely publish all their publicly available documents as part of the Scheme, which also helps with the Council's aim of being open and transparent with its information and data.

## 5. Charging

We are committed to ensuring that information will be accessible to applicants, irrespective of ability to pay. Rather than routinely charge fees whenever the cost limit is exceeded, it is our policy to offer advice and assistance to applicants to ensure that the applicant has the option of submitting a new modified request, capable of being dealt with free of charge.

### **Charging below the appropriate limit (FOIA)**

- The Council (or the Council's group of companies) will charge applicants a fee in accordance with the fees regulations made under Section 9, 12 and 13 of the FOIA.
- The "appropriate limit" for FOI requests is 18 hours (or £450). No charges to produce the request will be made for FOI requests taking under 18 hours (although disbursements may still apply).
- For EIR requests, the "appropriate limit will be considered as one of the potential determining factors when considering whether an EIR request is "manifestly unreasonable". The Council will ensure that charges for responses will be based on the costs of retrieval and production of the information and in any case will calculate and advise the applicant of any fee before the request is met. The Council will take care to ensure that estimated fees are as accurate as possible to prevent over or under charging.
- If the actual cost of answering the request turns out to be greater than the estimated amount charged, the additional cost will be borne by the Council.
- If the actual cost of answering the request turns out to be lower than the estimated amount charged, the Council will refund the excess amount where this amount is greater than £5.
- The Council will not charge VAT on requests for information, unless that information is available from another non-public authority source. VAT will be charged for information which is provided in accordance with the Council's Publication Scheme.

### **Charging below the appropriate limit (EIR)**

Guidance from the Information Commissioner's Office (ICO) and evolving case law has clarified instances when environmental information can be charged for, even where a request is not "manifestly unreasonable"

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under the EIRs. This is subject to a separate Cornwall Council Policy – "[EIR Fees and Charges Policy](#)". The supply of certain environmental information is chargeable as part of an EIR response.

### **Charging above the appropriate limit**

**FOIA** – If it is calculated that in order to comply with a request, the appropriate limit would be exceeded, the Council will provide help and assistance to bring the request under the appropriate limit, in order to respond. If it is not possible to narrow down the request, the Council may charge the actual cost of complying with the request or issue a refusal notice under Section 12 of the FOIA. The Council will use its discretion on a case by case basis. The "appropriate limit" for FOI requests is 18 hours (or £450). No charges to produce the request will be made for FOI requests taking under 18 hours (although disbursements may still apply).

**EIR** – EIR does not have a specific fees regulation in relation to time spent answering a request, so an appropriate limit does not apply when considering requests. However, under regulation 12(4)(b) (the request is manifestly unreasonable) – the time frame in the associated legislation may be considered as a factor in determining that the request may be classed as manifestly unreasonable. Regulation 12(4)(c), (the request is too general), may also be considered and applied. Where it is considered that these exceptions apply, help and assistance will be provided as far as reasonably possible, in order to comply with the request.

As highlighted earlier, even where a request under the EIR regulations is not classed as manifestly unreasonable, a charge may apply for certain types of environmental information.

## **6. Complaints relating to FOI & EIR requests**

The Council has an established procedure and guidance for handling complaints in relation to information provided under FOI or EIR legislation. These are dealt with under the Internal Review procedure. A request for an Internal Review must be made by the requestor within 40 working days of receiving a response. The Council has 40 working days to deal with the request, but will endeavour to provide a response earlier than this wherever possible and within 20 working days in most cases. Where a requestor is still unhappy following an Internal Review, they have the right to refer the matter to the Information Commissioner's Office (ICO).

## **7. Review**

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The Information Governance Team will record requests and any complaints in respect of the FOIA and EIR and will monitor the timeliness and quality of responses. The resulting information will be regularly monitored and reported to senior managers, along with any recommendations for changes to policy and/or procedures.

The Publication Scheme will be reviewed every three years, taking into account guidance issued by the Information Commissioner. In addition, the Publication Scheme will also be reviewed at the time of new legislation taking effect to ensure that any relevant changes are taken into account.

## 8. Glossary of Terms

**Information Asset Owner** - a person within the Council who establishes standards for a set of data. The standards cover the structure of elements of the data, the retention period, the indexing, the access, the security measures etc.

**Data Custodian** - a person (not necessarily in the Council) who adds, amends, disposes, archives, or allows access to data, according to the standards set by the Information Asset Owner.

**Public Interest Test (PIT)** – where a FOI exemption is termed as qualified or for any EIR exception, the public interest test must be considered. This is where the reasons, factors and public interest for both withholding and releasing the information should be documented and reviewed, with a decision then being made on whether the public interest determines that the information should be withheld or released.

## 9. Key Contact

Information Governance Team  
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Further information in relation to the Act and guidance can be found on the Council's Freedom of Information pages using the following link:-  
<http://www.cornwall.gov.uk/default.aspx?page=229>

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