

**Haringey Council's
Freedom of Information (FOI) and
Environmental Information Regulations (EIR) Procedure**

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The Corporate Feedback Team (CFT) are responsible for FOI /EIR.

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1. Timescales

Public authorities have 20 working days from the date of receipt to reply to a request.

If we need to seek clarification from the requestor about what exactly they are asking for, the received date will be the date we received the necessary clarification. The status of the request will be 'clarification requested' until clarification is received. We can also "stop the clock" where we have issued a fees notice.

The clock does not stop if the request (or response) needs to be translated or if we need to seek information from third parties.

The timescale can be extended by a 'reasonable' period if we are satisfied that an exemption is applicable, but we need to consider the public interest test in relation to the exemption.

Under the Environmental Information Regulations, (EIR) the deadline of 20 days for a response can be extended to 40 days if it is considered that the request is both complex and voluminous.

Any extension needs to be agreed by the Corporate Feedback Team.

2. Receiving a Request

Haringey Council has a responsibility to ensure that customers are aware that they can make a request under the Freedom of Information (FOI) and Environmental Information Regulations (EIR) and to advise them how to make a request.

Strictly, FOI requests have to be in writing. If someone makes a request verbally (i.e. in person or over the phone), the Council will put the request in writing for the requestor. The Council will then send it to them to obtain confirmation that we have properly recorded their request. EIR requests do not need to be in writing. The Council will adopt the same approach to verbal EIR requests as described above. It is important for all parties that we have clearly understood the request.

3. When should a request be considered an FOI or EIR request?

A request for information does not need to specifically mention FOI or EIR. A request for information which is a 'business as usual' request should not be logged as an FOI/EIR request unless the requestor specifically mentions FOI/EIR. When considering where the line should be drawn between a business as usual request and an FOI/EIR request, it may be helpful to consider how long it would take to locate and provide the information. As a general rule, if the information is not readily available or listed in Haringey Council's [Publication Scheme](#) then it should be dealt with as an FOI /EIR request.

Requests which are not for recorded information, but instead ask questions, such as "please explain your policy on x" or "please explain your decision to do y" are not requests for recorded information and should be treated as routine correspondence.

A request for information does not need to specifically mention FOI or EIR to fall within the requirements of the FOI regulations. As a guide, the following should be considered:

- FOI or EIR – requests for recorded information held by the Council e.g. how many accidents have been caused by defective footpaths;

- Business as usual – requests for information received from individuals/ organisations where there is a current/ongoing professional, business, or contractual relationship which is required to support the service; and
- Routine correspondence – requests for information on Council policy, individual decisions etc, but not requests for recorded information.

When any request is received which may fall under FOI/EIR regulations, please review Haringey’s [Publication Scheme](#) for information which should already be in the public domain and can be referred to in any response.

4. What’s the difference between FOI and EIR?

Requests relating to environmental information are excluded from the Freedom of Information Act and dealt with under the Environmental Information Regulations. The definition of “environmental information” is very broad and includes information relating to planning, development control, planning enforcement, waste, fly tipping and recycling, drains and sewers, traffic and car parks, external aspects of buildings e.g. disabled ramps, noise nuisance, food safety, emissions, landfill, contaminated land, and wildlife.

The Council does not treat EIR requests differently from FOI requests except in two specific circumstances:

- Where an EIR request is complex and voluminous, we may extend the response deadline by 20 days.
- Where we want to rely on an exemption to withhold any of the information requested (there are different exemptions for EIR requests).

If either of these apply, or if you need to clarify whether the request falls under FOI or EIR regulations, you must refer the matter to the Corporate Feedback Team for guidance.

5. Do you need clarification?

If the request is not clear, e.g. the period the request covers, or there is not enough detail provided to identify the information required, contact the customer as soon as possible. We must provide assistance to the customer such as:

- Providing an outline of the different kinds of information which might meet the terms of the request
- Provide a general response to the request setting out options for further information which could be provided to the requester

A request is not valid under FOI/EIR until it is clear and understood. Once clarification is received from the requestor, the received date will be changed to the date on which the clarification is received and the timescales for responding outlined in Section 1 will apply. If no clarification is received after 3 months, the request can be closed.

Keep a written record of any conversations you may have with the requestor.

6. Is it a Repeat Request?

We are not obliged to comply with a request that is identical or substantially similar to a previous request from the same person. If a new request for the same information is received from a different person, they should be sent a copy of the previous response, with

all personal details redacted. If a reasonable interval has passed between responding to the previous request and the making of the current request, or the information has changed in some way, then we will have to respond to the repeat request. For advice on what amounts to a reasonable time between requests, please refer the case to CFT.

If it is decided that the request is a repeat request, the CFT will assist in producing a Refusal Notice for the responding service to send to the requester and Haringey Council will not then have to correspond any further on the repeat request. The case will be closed.

7. Is it a Vexatious Request?

If a request appears to be vexatious, the Council is not under any duty to respond to it. It is the request which is vexatious, not the requestor. Each request must be determined on a case-by-case basis. Refer to CFT for advice and assistance and provide the reasons why you believe the request to be vexatious. The following questions will be considered when deciding whether a request is vexatious:

- how much work complying with the applicant's requests creates;
- the applicant's tone, manner and motive when communicating with the authority and whether the request appears obsessive;
- any harassment or distress (of and to staff); and
- whether there is any value or serious purpose in the request

If it is decided that the request should be refused on the grounds that it is vexatious, a Refusal Notice must be issued. CFT will advise on the appropriate wording.

8. Is the request asking for personal information about any person?

If the response will include personal information it should be immediately referred to CFT for advice. If the request is for personal information about the person making the enquiry, this will be dealt with as a Subject Access Request under Data Protection Act 1998 (DPA) and is therefore exempt under FOI. CFT will then forward the request to the Data Protection Team. Haringey's policy for dealing with FOI requests involving personal data is attached at Appendix 1.

Where requests include personal information about staff, the individual(s) concerned must be advised of the FOI request and given an opportunity to comment on the draft response. The AD for Human Resources or equivalent must authorise the response prior to its release.

9. Is the request for information held by Haringey Council?

Haringey Council maintains records to support its business objectives and to fulfil legal requirements. The Council is not obliged to keep records solely on the basis that information has been requested previously under FOI regulations. If we do not maintain the records requested, this should be advised to the requester when responding, using the standard template.

If the information requested is not held by Haringey Council, but is held by another public authority, we will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:

- contacting the applicant and informing them that the information requested may be held by another public authority;

- suggesting that they re-apply to the authority which we believe may hold the information; and
- providing him or her with contact details for that authority

10. Is there a third party involved?

If the request is for information that is about a third party or obtained from a third-party source, the third party should be informed of the request and given the opportunity to discuss applying any exemptions. Any objections they make to disclosing the information will be considered but are not absolute; if our judgement is that there is no appropriate exemption, we will release the information. The third party should be advised of the intention to release the information.

It may also be helpful to obtain further explanatory information from the third party which can be provided to the requestor to accompany the information being provided, if this would be helpful.

Under EIR there is no requirement to consult third parties however it is sensible to do so, so that they are forewarned that information they provided to us is being released.

11. Is the request from the Media?

If the request from the Media it should be dealt with in accordance with these procedures. The CFT team must bring the request to the attention of the Communications Team so that they can prepare for any potential subsequent media attention. They may wish to review the response before it is sent and alert senior officers.

12. Is the request from a Councillor?

Unless Members specifically refer to the Freedom of Information Act or EIR when making a request for information, their information requests will be dealt with as Member Enquiries and responded to within 10 working days.

If the responding officer has any concerns about giving the Member the information requested, e.g. it involves personal or sensitive information, this must be discussed with their Head of Service and referred to CFT immediately if there are any remaining concerns. CFT will consider whether the Member is entitled to the information under the Freedom of Information Act/EIR and will also liaise if necessary with Legal Services to consider whether they have any other entitlement to the information. If the decision is to provide the information, CFT will ask the relevant responding officer to provide the information to the Member.

If the decision is not to provide the information, CFT will advise the service on how to draft a letter to be sent to the Member refusing the information and setting out how they can take the matter further.

13. Logging the request

CFT receive emails addressed to the FOI mailbox. Cases will be logged on the Council's database and allocated to the appropriate service for a response.

CFT will send an acknowledgement to the requestor, giving the response due date. Acknowledgement of requests should be sent within 2 working days.

Where FOI requests are sent to other email inboxes or directly to officers, the request should be referred upon receipt to the FOI mailbox. The calculation of the timescale starts from the day the request is received by the Council.

14. Flagging high risk/sensitive requests

Every request will be reviewed to identify whether it involves sensitive or high-risk information. CFT will flag sensitive or high-risk cases so that both they and the responding service area understand that the case raises issues that may be sensitive or raise reputational issues for the council.

However, CFT will not necessarily be aware that an FOI/EIR request involves high risk or sensitive information. If a sensitive/high risk request is received and has not already been flagged as sensitive, responding services must alert CFT so that the team can apply the procedures set out below.

In these cases additional authority is required before the response can be sent to the requester, as follows:

- All 'flagged' cases **must** be authorised (by email) by the relevant Assistant Director (AD) prior to the response being sent to the FOI team for clearance;
- Where requests include personal information about staff, the individual(s) concerned must be advised of the FOI request; and the AD for Human Resources or equivalent must also authorise the responses prior to their release;
- Where requests involve any media organisation or party associated with the media, the AD Communications must also authorise the response prior to it being sent out;

Responding services must therefore ensure enough time is built into the process to ensure these additional checks are done before the response date. Once the response is authorised by the AD and CFT (and Comms and HR where needed), the responding service will send it to the requester.

The Feedback Manager is responsible for ensuring that the CFT check that all relevant authorisations have been obtained prior to the response being sent out; and that the data subject has been contacted where the response contains personal information about them.

15. Will the request exceed the costs limit?

Different rules apply in respect of EIR and FOI.

For EIR, in general, a reasonable charge may be made, to include the disbursement costs in transferring the information to the applicant and the staff time taken to locate the information. The reasonable charges must form part of the charging schedule which is published and can be found [here](#).

Requests which cost a disproportionate amount can be refused on the grounds that they are manifestly unreasonable. If you think this applies to any request, you must refer the matter to CFT for advice before any response is sent to the requester.

For FOI, a charge can be applied if it will take more than 18 hours to gather the information, and the total cost to respond will be more than £450 (calculated at a standard charge of

£25 per hour irrespective of the grade of officer involved). The following template needs to be completed in each case:

Task	Estimated number of Hours	Hours multiplied by £25
Determining whether the information is held		
Locating the information		
Retrieving the information		
Extracting the information from other documents		
Total		

Communication fees cannot be taken into account when calculating whether the costs of retrieving or locating the information would be over the £450 costs limit.

The customer should then be informed that their request will incur a fee and given the option to either modify their request or, if appropriate, to accept the information in a different format. We also have the option to refuse to process the request further.

Refer to CFT for advice on issuing a Fees Notice.

If we offer the requestor the option to pay, the time clock for responses stops once the customer has been notified of the charge and remains stopped until the fee has been received.

If the customer agrees to pay the charge, an invoice must be raised and sent out to the customer. Once payment has been received from the customer, the clock can be re-started, and the information can be released.

The case remains open (clock stopped) for a maximum of 3 months. If the customer does not contact us in that period then the case can be closed.

In any case where a Fees Notices is being issued, our duty to advise and assist would be important if we choose to do this as we would need to provide guidance as to how the requestor can re-phrase their query to obtain information without incurring the charge.

Any fees notice issued needs to be cleared by CFT before being sent out.

16. Is aggregation appropriate?

In certain situations the costs of answering more than one request can be added together, or aggregated, for the purposes of estimating whether the appropriate costs limit (£450) would be exceeded in relation to any of those requests. We can aggregate when:

- a. two or more requests for information have been made to the same authority;
- b. the requests must be either from the same person, or from different persons who appear to be acting in concert or in pursuance of a campaign
- c. the requests must relate to the same or similar information; and

- d. the requests must have been received by the public authority within a space of 60 consecutive working days.

Refer to CFT for advice and approval to aggregate requests.

17. Charging for communicating the information

We can charge for distributing the information if this will cost more than £10. This includes the costs of photocopying documents and postage. Appendix 2 shows the distribution costs we can charge. If the distribution cost is less than £10 the fees will be waived.

If the requester is to be charged, we must write to the requester explaining what the fees are and informing him or her how to make payment (a template is available). The case remains open (clock stopped) for a maximum of 3 months. If the customer does not contact us in that period then the case can be closed.

18. Are there concerns about releasing the information / Does an exemption apply?

There is a legal duty to release the information requested unless it falls under the exemptions contained within the FOI Act or EIR. Most of the exemptions involve a 'public interest' test, which means that as well as showing that releasing the information will cause harm (for example, to commercial interests), the Council also has to show that it is not in the public interest to release the information.

A list of the possible FOI Exemptions is attached at Appendix 3, and for EIR Exceptions, Appendix 4. Information about applying the public interest test can be found at Appendix 5.

Any cases where the responding service thinks that the information requested should not be released **MUST** be referred to CFT who will advise on whether an exemption can be applied. Officers need to provide CFT with the requested information, or a description of it, along with the reasons why they think the information should not be released. CFT will make a decision within 5 working days.

In cases involving the numbers of people affected by something, if the number of individuals is below 5 we will not always provide a precise number. This is because of the possibility that the individuals involved could be identifiable. Refer to CFT for advice.

If it is necessary, CFT will consult with Legal Services. Any costs incurred in reviewing the decision whether to release the information will be charged to the responding service.

If CFT decides that an exemption can be applied to the request in its entirety, a Refusal Notice will be issued to the customer by the service. The refusal notice must be authorised by CFT before it is sent out. The Refusal Notice must state the reasons for the exemption and quote the relevant section and subsection of the FOI Act.

If an exemption can be applied to only some of the information requested, CFT will advise on issuing a refusal notice for that part of the request.

Any Refusal Notice issued will advise the requestor of their right to approach the Information Commissioner if they are unhappy with the response they have received.

If an exemption does not apply, the service must send out the requested information in accordance with these procedures.

19. Clearing the response

The manager of the responding service must authorise the FOI/EIR response before it is sent.

As stated in section 14 of these procedures, additional authorisation is required for sensitive/high risk cases, those involving personal information or where the service is withholding the information requested.

Responses that include information about any member of staff must not be sent out until the relevant officer(s) have been notified that the information is being sent out.

20. Supply the Information

The response must be sent to the requester within 20 working days, or preferably, as soon as possible. The information requested should be sent using the response template provided by CFT.

If the response is not sent by the 20th day, the responding service must send a holding letter giving reasons for the delay and an expected date for the full response (using the agreed holding letter template).

21. Late responses

A weekly report of outstanding and overdue cases is issued to all service areas to enable managers to review compliance with required deadlines.

22. Complaints

If a requester considers that their FOI/EIR request has not been dealt with satisfactorily, or they are not happy with the information provided, or that an exemption has been applied or misapplied, they can make a formal complaint or request an Internal Review.

Any such complaint or request for Internal Reviews MUST be immediately referred to CFT. A copy of the procedure for dealing with FOI/EIR complaints via Internal Review is attached at Appendix 6.

Requesters have 2 months from the date of the response in which to request an Internal Review of their FOI response. We will not conduct internal reviews of FOI requests that fall outside this timescale unless there is an exceptional reason.

If the customer is not satisfied with the Council's response to their complaint/Internal Review they can approach the Information Commissioner.

23. Translation and Braille Process

Customers who submit their FOI/EIR requests in a language other than English should not be penalised for doing so. As such, the 20 working days response time starts when the request is received by the Council, and not the date it is received in English. Similarly, if the response needs to be translated, it should still be sent out within 20 working days.

Once the request is received it should immediately be sent to the translation unit for translation (translationandinterpreting@haringey.gov.uk). It should be marked on the

request form that the request relates to Freedom of Information/EIR. Once the translation is received, the normal process should be followed. Once a response is ready to be sent out, it should be sent to the translation unit for translation.

24. Review

This Procedure will be reviewed bi-annually by the council's Corporate Feedback Team.

Next Review date: September 2022

APPENDIX 1: FOI/EIR REQUESTS INVOLVING PERSONAL DATA

This document provides guidance on dealing with Freedom of Information (FOI) and EIR requests that are seeking personal information. It has been drafted with reference to guidance from the Information Commissioner's Office (ICO) and advice from Haringey Council's Legal Officers.

Referral of FOI/EIR requests involving personal data to CFT

Most FOI requests are received directly by CFT who will review all such requests for any reference to personal data and advise the relevant service whether or not to disclose the requested data.

Where the requestor is seeking information about themselves

These requests are dealt with under the subject access provisions of the Data Protection Act for FOI and Regulation 13(5) of the EIRs for EIR requests. Any such requests should be forwarded to the data protection mailbox.

Where the requestor is seeking information about a third party

Requests involving personal data are exempt from the Freedom of Information Act (FOIA) under Section 40 of that Act if the disclosure would breach any of the data protection principles. Requests involving personal data under EIRs must be dealt with under regulation 13 of those regulations. This regulation corresponds to s40 of the FOI and the approach and issues to consider will be the same as those set out above for FOI.

In most cases the relevant principle is the first principle, which requires fairness to the subject of the data. When considering such requests, CFT will apply these questions. In cases where there is doubt, we will err on the side of protecting people's personal information. The ICO's guidance sets out a series of questions to ask to help determine whether such a disclosure would be fair. These are set out below.

- a) Would the disclosure cause unnecessary or unjustified distress or damage to the person who the information is about?
- b) Would the third party expect that his or her information might be disclosed to others?
- c) Is disclosure incompatible with the purposes for which it was obtained?
- d) Had the person been led to believe that his or her information would be kept secret?
- e) Has the third party expressly refused consent to disclosure of the information?
- f) Does the legitimate interest of a member of the public seeking information about a public authority, including personal information, outweigh the rights, freedoms and legitimate interests of the data subject?

Third parties, including council staff, **MUST** be told before information about them is released.

Requests for information about employees

When considering any requests for information about employees, the Council will refer to the ICO guidance "Data Protection Technical Guidance: Freedom of Information Access to Information about public authorities' employees" and "Freedom of Information Act Environmental Information Regulations: When should salaries be disclosed?"

Apart from information about salary and expenses, the Council will not disclose personal information about junior officers. Senior officers should expect a greater level of public scrutiny and therefore some personal information about them may be disclosed. Any

member of the Senior Leadership Team, Directors and Assistant Directors would be regarded as a senior officer. With other officers, a case by case approach will be taken that will take into account the nature of their role and the level of public profile involved. In every case, the relevant officer (who is the subject of the request) must see the proposed response before it is sent out, the relevant AD and the AD Human Resources must also authorise the response. The AD Communications must also be advised.

Expenses

Details of expenses claimed by Haringey Council officers will be disclosed, but will be checked by the relevant officer (who is the subject of the request) for accuracy before release. It may also be appropriate to include context/explanation within your response.

Salaries

When the Council is asked for salary information about officers, it will disclose the pay scale for the relevant post. For example, if the post is graded PO1-3 we will disclose the salary at the bottom and top of that range. We do not regard details of the advertised salary range for a post as personal information about the officer in that post. We will not disclose the exact salary a person receives as we regard that as personal information about the officer.

Pensions

The Council will not provide details of the pensions that officers receive or are likely to receive. The Council can provide details of how pensions are calculated.

CV/qualification information about employees

Broad details of CV and qualification information about senior officers will be disclosed; such as type of degree, where obtained and previous positions held.

Consultants

It is the Council's view that the ICO would regard it as being in the public interest to disclose information about public funds spent on consultants. Requests concerning amounts paid to them and/or details of their qualifications will be dealt with as if the consultants were senior members of staff.

Informing the data subject

In all cases where the Council decides that personal information should be disclosed further to an FOI/EIR request, we will notify the subject of that data. The Council will take into account any objections they might have. The Council will have particular regard to any objections where the officer thinks that unjustified damage or distress may be caused to them. However, it is possible that the Council may decide to disclose the information despite their objections (with regard to ICO guidance and Information Tribunal decisions).

APPENDIX 2: TABLE OF DISBURSEMENT CHARGES

Type	Charge
Photocopies:	
A4 Black & White	10p per sheet
A3 Black & White	20p per sheet
A4 Colour	£1.00 per sheet
A3 Colour	£1.50 per sheet
Prints from a PC:	
Black & White	10p per page
Colour	50p per page
Photo quality paper prints	£1.00 per page
Electronic Media:	
CD Rom	£1.00
Floppy Disc (1.44MB)	£1.00
Scanning of A4 Paper Records	£1.40 per image
Scanning of A3 Paper Records	£2.10 per image
Email attachment	No charge
Postage:	
Actual cost of postage or courier	
Officer time (EIR only)	
Per hour	£25.00

APPENDIX 3: FOI EXEMPTIONS

Below we have included those exemptions set out in the FOI Act that are most relevant to our work.

Absolute Exemptions

Absolute exemptions mean the information does not need to be provided; there is no need for any further consideration of the public interest.

S. 21 The information is reasonably accessible by other means

This includes items that are in the Council's publication scheme; or information that a different public authority has an obligation to provide; or information that is available through other legislation (e.g. the Data Protection Act, the Environmental Information Regulations). The information must be readily accessible to the particular applicant for this exemption to be used.

S. 32 Court records

Information *specifically* held or produced as part of legal proceedings including documents served on or by the council and documents held by a court or a person conducting a statutory inquiry or arbitration)

S. 40 Personal information

If a person making the request is seeking information about themselves, and that person has a right to make a subject access request under the Data Protection Act, the information should be refused under FOI and dealt with as a subject access request. If the information requested contains third party personal information, this exemption should be considered and the public interest test will need to be applied. In this case

S. 41 Information provided in confidence

For this exemption to apply, the information must have been obtained from outside the Council and to disclose that information would lead to a breach of confidence actionable in court.

S. 44 Disclosure of information is prohibited by an enactment or would constitute contempt of court

If some other law requires that the information should not be released, that law takes precedence. Further, if the release of information could be contempt of court, the information should not be released.

Qualified Exemptions - protecting classes of information

The following qualified exemptions are subject to the 'public interest' test and are class based. More information about the public interest test can be found at Appendix 5.

Some of the qualified exemptions are subject to the 'Prejudice Test' as well as the public interest test. For these (marked below with a 'P'), it should also be established whether the release of the information would or would be likely to cause the prejudice described in the relevant section of the Act.

To determine if an exemption applies, the following tests should be considered:

1. The information must fall within a specific category of the exemption relied upon (class based test) and

2. Information may be withheld only if in all the circumstances the public interest in maintaining the exemption outweighs the public interest in disclosing the information (public interest test) Where prejudice based exemptions apply, an additional test is whether or not release would result in the prejudice set out in the relevant exemption.

If the above tests are satisfied the information does not need to be released.

S. 22 Information intended for future publication

To qualify for this exemption the information must be:

- Information held by the authority on the date the request is made, with the intent to publish at some point in the future.
- Information held by a third party with the intention to publish at some future date

Drafts are not generally exempt once the final version is published. .

S. 30 Investigations and proceedings by public authorities

Information obtained or recorded during the course of investigations that the Council has a duty to conduct, or the instigating of criminal or civil proceedings by the Council is exempt. Also, any information relating to a confidential source is exempt.

s. 31 Law enforcement (P)

Only exempt if the effect of the release of information would prejudice an investigation or legal proceedings.

s. 33 Audit Functions (P)

Protects the effectiveness of the audit function where disclosure of information would or would be likely to prejudice the authorities auditing of accounts or examining the economy, effectiveness and efficiency in their use of resources. Information is only exempt prior to the final report being prepared if the audit function is a statutory duty to audit another public authority. Internal audits are *not* covered by this exemption.

s. 36 Prejudice to effective conduct of public affairs (P)

This exemption allows for frankness and candour in discussions and focuses on the effect of disclosure. This can only be used with the approval of the s36 officer (who is the Monitoring Officer).

s. 38 Health and Safety (P)

No information should be released if it would endanger (i.e. prejudice) the safety, or physical or mental health of any individual.

s. 39 Environmental Information

Any information related to the Environment should be dealt with under the Environmental Information Regulations 2004.

s. 42 Legal professional privilege

Applies to information that attracts legal professional privilege.

s. 43 Commercial Interests (P in part)

Information may be exempt if it constitutes a trade secret (no prejudice needed for this part) or disclosure may prejudice the commercial interests of any person, including the Council.

APPENDIX 4: EIR Exceptions.

The EIRs include a presumption in favour of disclosure. There are exceptions to disclosure however. All exceptions are subject to the Public Interest Test.

Regulation:

12 (4) (a) Information not held

When you don't hold the information that has been requested, you need to tell the applicant. Under the Regulations this counts as a refusal of the request. Information is 'held' if, at the time you received the request:

- it is in your possession; and
- you have produced or received it; or
- another person holds it on your behalf

12 (4) (b) Manifestly unreasonable requests

Allows you to refuse requests that are 'manifestly unreasonable'. Requests may be manifestly unreasonable if:

- dealing with a request would create unreasonable costs or an unreasonable diversion of resources; and
- an equivalent request would be found 'vexatious' if it was subject to the Freedom of Information Act.

12 (4) (c) Request is too general AND organisation has provided advice

The exception under regulation 12(4) (c) allows a public authority to refuse requests that are 'formulated in too general a manner'. This means requests that:

- have more than one possible interpretation; or
- are not specific enough to allow you to identify what has been asked for.

You must initially provide advice and assistance to try and clarify the request. But if that is not forthcoming you may refuse it.

12 (4) (d) Drafts/incomplete/unfinished documents/data

The aims of the exception are to:

- protect work you may have in progress by delaying disclosure until a final or completed version can be made available. This allows you to finish ongoing work without interruption and interference from outside; and
- provide some protection from having to spend time and resources explaining or justifying ideas that are not or may never be final.

12 (4) (e) Information is an internal communication

The purpose of this exception is to allow you to discuss the merits of proposals and the implications of decisions internally without outside interference. It allows you to have a space to think in private when reaching decisions, and in this respect it overlaps with the purpose behind the exception for unfinished documents. However, the focus here is on protecting internal decision-making processes rather than protecting unfinished work, and it can apply to completed documents.

12 (5) (a) International relations, defence, national security or public safety

Public safety may be interpreted widely. The exception covers information that, if disclosed, would adversely affect the ability to protect the public, public buildings and industrial sites from accident or acts of sabotage; and where disclosing information would harm the public's health and safety.

12 (5) (b) the course of justice, ability to get a fair trial, ability of a public authority to conduct a criminal or disciplinary inquiry

Under regulation 12(5) (b), you can refuse to disclose information that would adversely affect formal legal proceedings, whether criminal or civil, including enforcement proceedings. The meaning of 'the course of justice' is broad – it covers a range of information, such as court documents and documents covered by legal professional privilege. The meaning of 'an inquiry of a criminal or disciplinary nature' is likely to include information about investigations you conduct about a potential breach of legislation, for example, planning law or environmental law. To apply this exception, the disclosure must adversely affect the inquiry by causing some real harm.

12 (5) (c) Intellectual property rights

Intellectual property rights are granted to those who create and own works that are the result of human intellectual creativity, in areas like industry, science, literature and the arts. Intellectual property rights (IPR) include copyrights, database rights, patents, trademarks and protected designs. These rights do not prevent you disclosing information under the Regulations.

12 (5) (d) Confidentiality of proceedings

You can refuse to disclose information if this would adversely affect the confidentiality of proceedings. 'Proceedings' means the organisation's formal meetings and procedures – it's unlikely to include every meeting or every procedure. The proceedings may be those of the Council or any other public authority and the confidentiality of those proceedings must be provided by law. This includes common law or a specific piece of legislation. If the law does not provide confidentiality of the proceedings, regulation 12(5) (d) will not apply.

12 (5) (e) Commercial confidentiality provided by law

You can refuse to disclose information if this would adversely affect the confidentiality of commercial or industrial information. To apply this exception, you must consider the following:

- Is the information commercial or industrial?
- Is the information subject to confidentiality provided by law?
- Is the confidentiality protecting a legitimate economic interest?
- Would disclosure adversely affect the confidentiality?

12 (5) (f) the interests of a person who provided information where they were not obliged to provide the information

This exception allows you to refuse to disclose information if this would adversely affect the interests of someone who supplied the information, and that person:

- was not under, and could not be put under, any obligation to supply it;
- supplied it expecting that it would not be disclosed to third party; and

- has not agreed to the information being supplied.

This exception protects the free flow of information to public authorities and will often apply to information sent to an ombudsman or other regulators for their investigations

12 (5) (g) the protection of the environment itself

The Regulations aim to protect the environment by ensuring greater access to environmental information, but also to protect against disclosure of information that could endanger the environment. For instance, it could provide protection for information about the nesting sites of rare birds, or the locations of vulnerable archaeological sites. You cannot use this exception for environmental information on emissions.

Reg. 13 Personal Data

Under the Regulations, we don't have to make available environmental information that is the requester's personal data – you should deal with any part of any request for this type of information will be dealt with as a 'subject access request' under the Data Protection Act.

APPENDIX 5: The Public Interest Test

Where exemptions under the FOI Act are qualified, and in the case of all EIR exceptions, the council must weigh the public interest in maintaining the exemption or exception against the public interest in disclosure. This is the public interest test.

The public interest means the public good, not what might be of interest to the public and not the private interest of the requester. The council needs to consider the public interest in the circumstances at the time of any request.

There should be no blanket rulings (i.e. 'we don't give out that type of information') since each request has to be considered on its own merits and the public interest test applied to those circumstances.

Arguments in favour of disclosure in the public interest include things like:

- There is a general public interest in transparency
- There is a public interest in the particular issue
- There is a public interest in this kind of information
- Where there is a plausible suspicion of wrong doing it may create a public interest in disclosure
- Where release would provide a full picture, there may be an argument for disclosure

Arguments against disclosure must relate to the specific exemption or exception being used.

Irrelevant factors include:

The motives and/or identify of the requester

Arguments that the information may be misunderstood carry little weight, since the information can be explained when disclosed.

It would be embarrassing to release the information

In considering the relative weight of the arguments for and against disclosure, we need to consider:

- the likelihood and severity of any prejudice,
- how old the information is;
- how far the information will help public understanding of the issue;
- Whether similar information is already in the public domain.

APPENDIX 6: FOI and EIR Internal Review Procedure

1. Individuals who have submitted information access requests may express dissatisfaction with the way in which we have handled their request. For example if:
 - their application was not dealt with within the statutory 20 working days
 - they did not receive all of the information they requested
 - they feel that exemptions have been wrongly applied to the information
 - they feel that a fee has been wrongly charged for the information
2. Such situations are dealt with under the Internal Review procedure.
3. Complaints must be in writing and do not need to specify that they are requesting an Internal Review to be considered as such. They simply need to express dissatisfaction.
4. Any correspondence that expresses dissatisfaction about an FOI/EIR request should be referred to CFT within 1 working day.
5. If the complaint is about other matters as well as the alleged breach of FOI/EIR, the receiving officer will:
 - make sure that the customer's complaint in relation to their FOI/EIR request is referred to CFT within 1 working day. CFT will then make sure that the other matters are dealt with in accordance with the normal complaints procedures.
6. People must request an internal review within 2 months of the response being sent to them.
7. CFT will assess the complaint and allocate it for investigation to an officer within the team who was not involved in dealing with the original request for information.
8. The complaint will be logged onto the complaints database and an acknowledgement sent to the requester. The acknowledgement will provide the customer with the target date for a response to be sent. We aim to respond to complaints within 20 working days, but in exceptional circumstances may require up to 40 days.
9. The investigating officer will co-ordinate the response with an officer in the service more senior than the one responsible for the original FOI/EIR request. They will examine the original decision and consider all the material relevant to the request.
10. The investigating officer will seek the advice of the appropriate officer within Legal Services, where the request deals with particularly technical or individual circumstances, contentious or complex information.
11. The investigating officer will draft a response. If the outcome of the review is that there was fault with the original response, the draft will be sent to the relevant officer(s) in the service for comment and authorisation.
12. The investigating officer will send the response to the requester.
13. If the investigating officer has not upheld the original response, the relevant service officers will release any additional information that it has been agreed should be released.

14. This is a one-stage internal process, and the response letter will state that if the complainant is dissatisfied with the outcome of the complaint, they may seek an independent review of their complaint by writing to the Information Commissioner.