

## South Willesborough and Newtown Community Council

### Freedom of Information Act 2000 Policy and Procedure for handling Requests for Information.

This Policy is written in light of the guidance from the Information Commissioners Office and the steps taken within it to support Freedom of Access Information Requests and Environmental Information Regulations need to refer to this policy and procedure advice.

The Freedom of Information Act 2000 **now referred to FOIA** provides public access to information held by public authorities and does this in two ways:

Public Authorities are obliged to publish certain information about their activities – our transparency code adopted May 2021 covers this,

Members of the Public are entitled to requests information from public authorities.

The Environmental Information Regulations 2004 (**now referred to as EIR**) provide access to environmental information held by Public Authorities. The Regulations do this in two ways

- 1) Public authorities must make environmental information available proactively \*
- 2) Members of the public are entitled to request environmental information from Public Authorities. This request does not have to be in writing. It does include all elements of information held in Environmental information including Air, Water, Soil, land and so forth.

South Willesborough and Newtown Community Council is the Public Authority for the purposes of the Act and the Regulations in this policy.

THE FOIA and EIR cover all recorded information held by the Council. They are not limited to official documents and cover also drafts, emails, notes, recording of telephone conversations and video recordings. Nor are they limited to information created by the Council so the legislation also cover letters received from the public although the Council reserve the right to allow that there may be reason not to release them.

The FOIA and EIR do not cover information that is in someone's head. If a member of the public asks for information the only information the Council must provide is already in recorded form. It does not have to create new information or find the answer to questions from someone who may happen to know it.

Nor is the Council required to create information if it is not recorded in any way to meet a request.

The FOIA covers information held by the Council, not just held in its offices therefore members are required to ensure they share all recorded information if asked to ensure requests can be met.

The EIR requires that all information is shared whether the it is held as the Councils own produced information or any other body.

There are exemptions on information that can be shared and the guidelines and exemptions within the FOIA, EIR and UK GDPR regulation will always be followed.

The Council will always review the necessity and compliance of releasing information about staff before releasing it.

The FOIA and EIR do not give people access to their own personal data. This needs to made as a Data Subject Access Request.

## **CHARGING**

The Council may make reasonable charge for provision of information in line with guidelines from the ICO, these include the costs of transferring the information to the application not limited to but also including photocopying, printing and postage.

When calculating the cost to respond to a request the Clerk will include staff time. However, only in rare instances do the guidelines permit this cost to be passed onto the Applicant, therefore this part of the calculated charge would only be applied in line with ICO guidelines.

The presence of copyright, including third party copyright does not prevent the disclosure and communication of information in response to FOIA and EIR requests nor does publishing information on a publication scheme.

The Council will make its charging policy clear and in advance.

The Council will adjust the cost if it is finally found to be below the charge advised but will not pass on the costs if it is found to be above the charge advised.

If the charge is not paid within 3 months of issuing the notice of fees the request will no longer need to be met.

## **Procedures**

The Council shall provide proper advice and help to any member of the public seeking information. Including releasing any information they may have recorded to assist with the request.

A request for information under the Freedom of Information Act 2000 must be made in writing and a request under the Environmental Information Regulations 2004 need not be in writing.

2. The Clerk shall decide whether requested information is freely accessible, whether it is available in the requested form, whether a Refusal Notice needs to be served in respect of all or part of the requested information. The clerk may seek advice from the Chair or externally if needed. The Clerk will refer to the ICO procedures when making these decisions.

3. The Clerk shall acknowledge a request in writing within three working days of receipt of the request and provide a) a date by which it is anticipated the information will be provided which shall be within 20 working days in normal circumstances, b) a notice of fees, c) if the request is an FOIA request or EIR request or a Data Subject Access Request or a breach of GDPR.

4. If the Clerk considers an application is not made in a real name such as a pseudonym or online character name the public authority can make the applicant aware it does not intend to respond to the request until further information is received from the applicant. This does not apply to EIR requests.

If there is not enough clarity to describe the information being requested the Clerk will ask for more details to enable them to identify the information sought. The 20 working days' response period will start from when the request is fully understood and a satisfactory reply has been received. The Clerk will make this timing clear in correspondence and if no satisfactory response is received within 2 months the request will be considered closed.

5 If it is not reasonably possible to provide the information within 20 working days of receipt of the request, the reasons for the delay and a target date shall be provided which must not exceed 40 working days.

6. If a Refusal Notice is issued in respect of all or part of the requested information it shall state that the Council is relying upon an exemption and why it applies. Details of the Internal Review procedure shall be enclosed with the Notice and the right of appeal to the Information Commissioner.

7. If a Refusal Notice is issued in respect of all or part of the requested information for any of the following reasons;

a. The cost of complying with the request will exceed £450

b. The Council is unable to identify the information despite every reasonable attempt to do so

c. The Council considers the request to be vexatious (i.e. to cause harm or annoyance rather than to obtain information)

d. The information has already been provided or is freely accessible without reference to the Council

e The information breach Council guidelines on managing staff or member information.

f The request repeats a previous request from the same person.

g a disclosure would be likely to prejudice a criminal investigation or prejudice someone's commercial interest.

h There is also an exemption for personal data if releasing it would be contrary to the UK General Data Protection Regulation (the UK GDPR or the Data Protection Act 2018 (the DPA2018)).

I There is an absolute exemption clear within the FOI Act or the EIR or the ICO guidelines. then details of the right of appeal to the Information Commissioner shall be provided.

8 If the requested information cannot be found within the Council records then the applicant shall be advised, accordingly, as soon as the search is completed. Details of the Internal Review procedure shall be provided and of the right of appeal to the Information Commissioner.

9. The Council shall maintain a record of FOIA requests and EIR requests.

10. A Freedom of Information Request Form is available either from the website or the Clerk by email [clerk@swancc.org.uk](mailto:clerk@swancc.org.uk) or writing Suite 10 Invicta Business Centre, Monument Way, Orbital Park Ashford KENT TN24 0HP.

**Author - Sarah Evans, September 2021**

**Adopted by Council – October 2021**

**Review May 2023**

**NB This document supersedes the Freedom of Information Policy adopted by Council in May 2019**

