

# Freedom of Information Policy & Guidance

September 2023

## Summary Sheet

### Document Information

<b>Protective marking</b> (Official /Official-Sensitive-Personal/Official-Sensitive-Commercial/Official-Sensitive-Confidential)	Official
<b>Ref</b>	IG Policy 1.1
<b>Document purpose</b>	Policy and guidance on handling Freedom of Information requests
<b>Document status</b> (Draft / Active)	Active
<b>Partners</b> (If applicable)	N/A
<b>Date document came into force</b>	2005
<b>Date of next review</b>	July 2025
<b>Owner</b> (Service Area)	Sefton Council – Information Governance
<b>Location of original</b> (Owner job title / contact details)	Data Protection Officer – as above.
<b>Authorised by</b> (Committee/Cabinet)	Information Management Group October 2023 Audit & Governance Committee (tbc)

### Document History

Version	Date	Author	Amendments / Comments
1.0	2005	Richard Roscoe	Initial Draft
2.0	June 2015	Ben Heal	Document updated
3.0	September 2023	Catherine Larkin	Document updated – reference to UK GDPR, changes to internal policy, use of iCasework and revised ICO guidance

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# 1 Background and Policy

## 1.1 Background

The Freedom of Information Act 2000 (FOIA) came into force on 1<sup>st</sup> January 2005. By granting a general right of access to records held by public Authorities it encouraged an attitude of openness within those Authorities. It enables the public to scrutinise their decisions and working practices. The key features of the Act are:

- Every Council employee has a duty to provide advice and assistance to requesters requesting information.
- The public has a general right of access to all recorded information held by the Council and some Independent Contractors. Subject to exemptions set out in the Act a requester has the right to know whether a record exists, and the right to a copy of that record supplied in a format of their choice.
- Every Council must adopt and maintain a Publication Scheme, listing what the types of records it chooses to publish, how to obtain them, and whether there is a charge involved.
- The Information Commissioner's Office oversees regulation and compliance with the Act.

## 1.2 Scope of this policy

This policy relates to all recorded information held by the Council in any format.

## 1.3 Policy statement

This Council supports the principle that openness should be the norm in public life. The Council respects the right to access information and seeks to ensure that the exemptions outlined in the Freedom of Information Act are applied appropriately and consistently.

This Council will continue to respect the individual's right to privacy and will take steps to ensure that personal information continues to be protected and is accessed only under the terms of the UK GDPR and Data Protection Act 2018.

This Council will handle requests for Environmental Information under the terms of the Environmental Information Regulations 2004.

This Council will ensure that all departments, employees and contractual staff are made aware of their responsibilities and are provided with the resources, guidelines and expert advice necessary to maintain compliance with the Act in their area.

The Council recognises that effective Information Management is essential in cost-effectively handling requests for information and for the long-term stability and security of the Council. The Information Management and Governance Executive is accountable for the Council's arrangements for information management, control,

compliance, and prevention of legal failure, which are a set of critical business activities fundamental to good public service and the Council's overall vision.

## 2 What Sefton staff need to know

### 2.1 The public right of access to records

In particular the requester has the right to:

- Be informed in writing whether the Council holds the information requested, this is the duty to confirm or deny, and
- If the Council holds that information, have it communicated to them, where possible in a format of their choice.

The Act requires that requests are responded to within 20 working days.

**The Act does not require authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.**

### 2.2 Advice and Assistance

Under section 16 of the Act every employee has a duty to provide advice and assistance to requesters and would-be requesters. They must also:

- Inform the requester of the progress of their request
- Explain the basis for any charges or fees levied or exemptions applied
- Suggest routes through which the requester may wish to access information, including directing them to other public authorities
- Identify independent sources of help for requesters
- Direct requesters to the complaints procedure and the Office of the Information Commissioner if they are dissatisfied with the outcome or handling of their request. All letter templates in the iCasework system contain this information.

### 2.3 Publication Scheme

As well as responding to requests for information, public authorities must publish information proactively. The Freedom of Information Act requires every public authority to have a publication scheme and to publish information covered by the scheme.

Each Service Area is responsible for ensuring that their items in the Publication Scheme are kept up to date. It is available on the Sefton Council website, at the link below:

[Freedom of Information \(sefton.gov.uk\)](https://sefton.gov.uk)

## **2.4 Records Management**

This Council recognises that the key to efficient and cost-effective handling of its obligations under the FOIA is effective records management. To this end it has implemented a Records Management Policy and Retention and Disposal Guidelines. Each department is responsible for ensuring that any documents that have exceeded their retention date will be disposed of securely.

## **2.5 Roles and Responsibilities**

It is essential that all Sefton Staff are aware of their responsibilities under the Act.

### **2.5.1 Corporate versus Departmental responsibilities**

It is the responsibility of Executive Directors and Assistant Directors to ensure that their departments adapt their working practices where necessary to comply with the Act.

### **2.5.2 Chief Executive**

The Chief Executive will:

- Champion good information management at the top level,
- Provide support and approval for the Freedom of Information policy and any related initiatives across the Council.
- Ensure that Sefton Council complies with the Act.

### **2.5.3 Information Management Executive Group**

This group are responsible for steering the Council's information management strategy.

### **2.5.4 Sefton Employees**

Individual employees will be responsible for ensuring that:

- They provide advice and assistance to requesters and would-be requesters.
- They handle all requests in compliance with the Council's policy.
- Any non-compliance is reported immediately to their manager.

Individual employees should be aware that they may be personally held legally liable for if they themselves knowingly alter or destroy records in any way to prevent disclosure in contravention of the Act. (Section 77 of the FOIA).

### **2.5.5 Information Asset Owners**

Information Asset Owners (IAOs) provide first line advice on information management in their department. These are not necessarily information

management experts. Their role is to provide staff with basic advice and to assess each case for risks, and to refer them to their management.

### **2.5.6 Advice on exemptions**

Advice on the application of exemptions and the general practicalities of handling information requests, can be obtained from the Council's Information Management and Governance Lead, Information Governance Assistant and Corporate Legal Services. If you rely on an exemption to withhold information you must seek approval of your draft response prior to sending. The iCasework system is configured in such a way so that users can request approval of their draft response from the core group of approvers.

### **2.5.7 Requests from organisations, researchers and media outlets**

Any request received from an organisation, whatdotheyknow.com, a University, a person conducting research or any form of media outlet must be approved by the Communications team prior to disclosure. Whilst any response made under the FOIA is a disclosure into the public domain and to be considered a disclosure to the world at large, it is more common to see responses made to requests from those referenced above, to be published. If you are unsure about whether or not your response requires approval, check with the Communications team first.

The iCasework system is configured in such a way so that users can request approval of their draft response from the Communications team.

### **2.5.8 Complaints and Internal reviews**

If a requester is dissatisfied with the way in which their request has been handled or they are unhappy with the Council's reliance on an exemption to withhold information, they may complain and seek an internal review of the original decision. All letter templates in the iCasework system contain information regarding how to request a review and who to contact.

A request for review should be made within 40 working days from the date the Council issued the initial response to a request. All letter templates inform applicants of this. Public authorities are not obliged to accept internal reviews once 40 working days have lapsed.

Requests for internal review should be acknowledged and the applicant informed of the target date for responding. This should normally be within 20 working days of receipt. There is an internal review process integrated in the iCasework system.

Following an internal review, the requester then has the right to seek a decision from the Information Commissioner's Office. Again, all letter templates within the system inform individuals of this right.

## 3 Practical Guidelines for Departments

### 3.1 What is a Freedom of Information Request?

The Act covers any written request for information. Requests cannot be made verbally, unlike EIR requests. It can be addressed to anyone in the Council. For a request to be valid, it must give the name of the requester, an address for correspondence and a description of the information requested. There is no need for the request to refer to the Freedom of Information Act in any way.

You have two duties when responding to requests for information: to let the requester know whether you hold the information, and to provide the information. If you are giving out all the information you hold, this will fulfil both these duties. If you are refusing all or part of the request, you will **normally** still have to confirm whether you hold (further) information.

In some circumstances, you can refuse to confirm or deny whether you hold any information. For example, if a requester asks you about evidence of criminal activity by a named individual, saying whether you hold such information could be unfair to the individual and could prejudice any police investigation. This is known as a 'neither confirm nor deny' (NCND) response. If you are unsure whether or not an NCND response is required, seek advice.

You cannot withhold information unless you have a specific exemption under the Act. Any recorded information held by the Council may fall within the scope of a request. Please remember - there is no exemption for embarrassment.

### 3.2 Good record management makes responding easier

If you do not hold the information requested then you cannot be required to provide it to a requester. You are still obliged to inform the requester that you do not hold the requested information.

Sefton Council has a set of guidelines which tell you how long you are obliged to keep documents in your department. They are called the Guidelines for Retention and Disposal and can be accessed on the Intranet at the following link:

[Records Management \(smbc.loc\)](#)

By identifying information you no longer need, and disposing of it legally and properly you can reduce the volume of information you have to search and collate.

**Caution: Never delete documents that you are legally obliged to retain.**



### 3.2.1 Updating the Publication Scheme

It is important to regularly update your section of the Council's Publication Scheme and consider what information you can proactively make public on the Council's website. In accordance with guidance issued by the Information Commissioner's Office:

*'The Act is designed to increase transparency. Members of the public should be able to routinely access information that is in the public interest and is safe to disclose. Also, without the publication scheme, members of the public may not know what information you have available.*

*The publication scheme covers information you have already decided you can give out. People should be able to access this information directly on the web, or receive it promptly and automatically whenever they ask'.*

### 3.3 Requests for access to individual's own personal information are not covered by the Act

The FOIA does not give people access to their own personal information. Any such requests must be handled under UK data protection legislation (UK GDPR and Data Protection Act 2018) and must not be handled as FOI requests. Guidance on subject access requests can be found on the Intranet at the following link:

[Subject Access Requests \(smbc.loc\)](#)

### 3.4 Requests for Environmental Information are not covered by the Act

Requests for environmental information must be handled under the Environmental Information Regulations 2004. The requirements are very similar to FOIA but requests under EIR can also be made verbally. Guidance on handling EIR requests can be found on the Intranet at the following link:

[Environmental Information requests \(smbc.loc\)](#)

#### 3.4.1 How can we track FOI requests?

The Council has a corporate system for the handling of all FOI requests it receives. The system is called 'iCasework'. Requests for an account need to be submitted to the ICT Client team. A short training course providing an overview of the system is available on the 'MeLearning' portal.

### **3.4.2 What if my department doesn't have enough resources?**

Lack of resources does not excuse a department from its obligations and if you suspect that you may fail to comply with a request within 20 working days this must be raised with your manager immediately.

### **3.4.3 What is a 'working day'?**

A working day means Monday to Friday, excluding Bank Holidays.

### **3.4.4 When does the 20-working day clock start?**

In accordance with guidance from the ICO, we count the working day after the request was received by the Council as the first of the 20 working days. In the case of emails containing requests, this is the working day following the day the email was delivered to your mailbox. This includes e-mails received outside of working hours e.g. 8.30 pm in the evening. Such a request would be logged as being received the following morning. Requests received on a Saturday or Sunday should be logged as being received on the next available working day. Bank Holidays are not 'working days' so requests received on Bank Holidays should also be logged as received on the next available working day.

However, the 4 days of unpaid leave during the Council's period of cost saving measures during December each year, are still working days for the purposes of the FOIA.

If you are the designated response handler for Freedom of Information requests in your team, you must ensure that when going on leave, your 'Out of Office' message advises individuals who they should contact in your absence if they have sent an FOI request. You can also delegate access within the iCasework system.

### **3.4.5 Can I stop the clock to clarify the FOI request?**

Yes, if you need more information to identify and locate the information requested, the clock can be stopped until clarification has been received from the requester.

### **3.4.6 Can we charge for information?**

Guidance from the ICO confirms that yes, a charge can be made in certain cases. See below:

'The Act does not allow you to charge a flat fee but you can recover your communication costs, such as for photocopying, printing and postage. You cannot normally charge for any other costs, such as for staff time spent searching for information, unless other relevant legislation authorises this.  
how much.

If you wish to charge a fee, you should send the requester a fees notice. You do not have to send the information until you have received the fee. The time limit for complying with the request excludes the time spent waiting for the fee to be paid. In other words, you should issue the fees notice within the standard time for compliance. Once you have received the fee, you should send out the information within the time remaining'. Source – [Guide to freedom of information | ICO](#)

If the cost of complying with the request would exceed the cost limit referred to in the legislation, you can offer to supply the information and recover your full costs (including staff time), rather than refusing the request. The cost limit for Local Authorities is £450 (calculated on the basis of 18 hours of work at £25 per hour).

### 3.4.7 Can I delay a response?

Public authorities may exceed the 20-working day deadline if information falls within the scope of a qualified exemption and additional time is required to consider the public interest test. This is set out in Section 10(3) of the Act and is normally described as a public interest test extension.

An extension is permitted “*until such time as is reasonable in the circumstances*”, taking account, for example, of where the information is especially complex or voluminous, or where a public authority needs to consult third parties.

In general, it is best practice for an extension **to be for no more than a further 20 working days** although this will depend on the circumstances of the case, including the complexity and volume of the material, and in some circumstances a longer extension may be appropriate.

Where you decide a public interest test extension is required, you should issue a refusal notice within 20 working days, stating which exemption(s) you are relying on, and why. The notice must explain that more time is required to consider the public interest test and provide a likely estimate of the date on which they will receive their response.

### 3.4.8 When can I refuse to release information (exemptions)?

A request may be refused if any of the following conditions apply:

- The information requested is exempt under the Act (see exemptions below).
- A fees notice or charges has not been paid within 3 months.
- The cost of compliance exceeds £450 (based on 18 hours of work at £25 per hour).
- The request can be demonstrated to be vexatious or repeated.

The requester must be informed in writing of the decision to withhold within 20

working days of the request and will be told the following:

- The exemption(s) that apply.
- The justification for the use of the exemption(s).
- Details of the complaints procedure (internal review process) if they are not satisfied with the outcome.

If the exemption is absolute, then the Council may be exempt from the duty to confirm or deny the existence of the record. In these circumstances, the requester will be informed within 20 working days of the following:

- The fact that the Council is exempt from the duty to confirm or deny.
- Which exemption was applied?
- Why the exemption was applied.

The following is a brief outline of the exemptions most likely to be available to the Council. See section 2.5.6 regarding obtaining advice on the application of exemptions.

### 3.4.9 What are the ‘absolute’ exemptions?

An absolute exemption means that the Council is allowed to withhold this information without having to consider the Public Interest. In some cases the Council does not have even to confirm or deny holding this information. The main ones used by a Local Authority are:

<p>Information is reasonably accessible to applicant by other means (section 21)</p>	<p>This exemption applies if the information requested is already accessible to the requester. You could apply this if you know that the requester already has the information, or if it is already in the public domain e.g. on a publicly accessible website.</p> <p>You must take into account any information the requester gives you about their circumstances. For example, the requester does not have access to the internet at home or may find it difficult to go to their local library. Therefore, information available only on the internet would not be reasonably accessible to them.</p>
<p>Court records, etc. (section 32)</p>	<p>This exemption applies to court records held by any authority (though courts themselves are not covered by the Act).</p> <p>To claim this exemption, you must hold the information only because it was originally in a document created or used as part of legal proceedings, including an inquiry, inquest or arbitration.</p> <p>The type of document is relevant, as well as the content and purpose of the information they hold.</p>

<p>Personal information (section 40)</p>	<p><b>Section 40(1) – personal information of the requester</b>  This exemption confirms that you should treat any request made by an individual for their own personal data as a subject access request under the UK GDPR.</p> <p><b>Section 40(2) – data protection</b>  This exemption covers the personal data of third parties (anyone other than the requester) where complying with the request would breach any of the principles in the UK GDPR. If you wish to rely on this exemption, you need to refer to the UK GDPR as the data protection principles are not set out in the Freedom of Information Act.</p> <p>This exemption can only apply to information about people who are living; <b>you cannot use it to protect information about people who have died.</b></p>
<p>Information provided in confidence (section 41)</p>	<p>This exemption applies if the following two conditions are satisfied:</p> <ul style="list-style-type: none"> <li>- you received the information from someone else; and</li> <li>- complying with the request would be a breach of confidence that is actionable</li> </ul>
<p>Prohibitions on disclosure (section 44)</p>	<p>You can apply this exemption if complying with a request for information:  is not permitted by law or would constitute contempt of court.</p>

### 3.4.10 The Public Interest Test and the 'Qualified' Exemptions.

The rest of the exemptions are known as qualified exemptions. This means that before deciding whether to withhold information under an exemption, you must consider the public interest arguments. This balancing exercise is usually called the public interest test (PIT). The Act requires you to disclose information unless there is good reason not to, so the exemption can only be maintained (upheld) if the public interest in doing so outweighs the public interest in disclosure.

Information intended for future publication (section 22)	This exemption applies if, when you receive a request for information, you are preparing the material and definitely intend for it to be published; and it is reasonable not to disclose it until then. You do not need to have identified a publication date. This exemption does not necessarily apply to all draft materials or background research. It will only apply to the material you intend to be published. You do not have to confirm whether you hold the information requested if doing so would reveal the content of the information.
The economy (section 29)	The economic interests exemption protects information that would damage the economy of the UK as a whole or a regional or local economy. By referring to the "economic interests of the UK or any part of it", the exemption seeks to protect communal interests rather than those of the individual. It is concerned with information that would damage the economy of the UK as a whole or a regional or local economy. Section 29(2) removes the duty to confirm or deny information about the economy if doing so would, or would be likely to, damage economic or financial interests.
Investigations and proceedings conducted by public authorities (section 30)	The section 30 exemption applies to a specific category of information that a public authority currently holds or has ever held for the purposes of criminal investigations. It also applies to information obtained in certain other types of investigations, if it relates to obtaining information from confidential sources.

Law enforcement (section 31)	<p>When information does not fall under either of these headings, but disclosure could still prejudice law enforcement, section 31 is the relevant exemption.</p> <p>Section 31 only applies to information that does not fall into the categories in section 30. Section 31 applies where complying with the request would prejudice or would be likely to prejudice various law enforcement purposes (listed in the Act) including preventing crime, administering justice, and collecting tax. It also protects certain other regulatory functions, for example those relating to health and safety and charity administration.</p>
Prejudice to effective conduct of public affairs (section 36)	<p>Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised qualified person for the Council (the Chief Executive). If you have not obtained the qualified person's opinion, then you cannot rely on this exemption.</p>
Health and safety (section 38)	<p>You can apply the section 38 exemption if complying with the request would or would be likely to endanger anyone's physical or mental health or safety. In deciding whether you can apply this exemption, you should use the same test as you would for prejudice. This exemption is qualified by the public interest test.</p>
Environmental Information (section 39)	<p>You should deal with any request that falls within the scope of the Environmental Information Regulations 2004 under those Regulations. This exemption confirms that, in practice, you do not also need to consider such requests under the Freedom of Information Act.</p>
Personal Information concerning a third party (section 40(2))	<p>This exemption covers the personal data of third parties (anyone other than the requester) where complying with the request would breach any of the principles in the UK GDPR.</p>
Legal professional privilege (section 42)	<p>This exemption applies whenever complying with a request would reveal information that is subject to 'legal professional privilege' (LPP). LPP protects information shared between a client and their professional legal advisor (solicitor or barrister, including in-house lawyers) for the purposes of obtaining legal advice or for on-going or proposed legal action.</p>



Commercial interests (section 43)	<p>This exemption covers two situations:</p> <ul style="list-style-type: none"> <li>- when information constitutes a trade secret (such as the recipe for a branded product); or</li> <li>- when complying with the request would prejudice or would be likely to prejudice someone's commercial interests. This includes the Council's own commercial interests.</li> </ul>
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### 3.4.11 Preparing and sending the response

All FOIA requests should be logged, acknowledged and responded to using the iCasework case management system.

Requesters have the right to express a preference regarding the means that the requested information is communicated to them, for example, to receive it electronically or as a hard copy letter. Some may attach templates and spreadsheets to their request and ask you to complete them by way of response.

Great care must be taken when providing the requested information in an attachment, particularly in Excel spreadsheets. It is very easy for a data breach to occur as a result of not removing personal data from a workbook. For example, if you use Microsoft Excel to summarise a dataset, via a Pivot table or equivalent, remember to copy and paste 'special' the table, then delete the underlying dataset used to produce the summary. If a format has not been specified, convert the document to PDF format prior to disclosing.

If you are unsure as to what you need to do when preparing data for disclosure, seek advice first from the Council's Information Management and Governance Lead or Information Governance Assistant.

### 3.4.12 Legal Liabilities

Employees may be personally legally liable for their actions if they alter, deface, block, erase, destroy or conceal information, or any part of information, held by the Council with the intention of preventing the disclosure of information, which the applicant would have been entitled to. It is a criminal offence under section 77 of the FOIA.



## 4 Glossary of FOIA Terms

<b>Environmental Information</b>	Information related to the environment. This is governed principally by the Environmental Information Regulations 2004.
<b>Exemption</b>	A legally acceptable reason for refusing to release information. All available exemptions are set out in the Act.
<b>Fees</b>	The money that can be charged by the Council for processing and providing information for a requester.
<b>Information</b>	See record
<b>Information Commissioner's Office (ICO)</b>	The ICO is the UK's independent body set up to uphold information rights.
<b>Personal Information</b>	Information about an identifiable living individual. Access to this is governed principally by the UK GDPR and Data Protection Act.
<b>Publication Scheme</b>	A website and paper-based list of all the records that the Council publishes, how they can be obtained, and whether there is a charge involved.
<b>Recipient</b>	The person to whom the information will be sent
<b>Record</b>	Any item of information recorded and held by the Council in any format. This includes electronic files, paper, text and images.
<b>Request</b>	A written request to a department for information by e-mail, letter or social media.
<b>Request handler</b>	The person responsible for tracking an FOI request and ensuring it is completed on time.
<b>Request Recipient</b>	The person to whom the original request is directed. Email or Written.
<b>Requester</b>	Any person making a written request for information from the Council. Also known as the 'applicant'.