

Isle of Wight Council

**ACCESS TO  
INFORMATION  
POLICY**

**FEBRUARY 2025**

## 1. Document Information

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### **3. Introduction**

- 3.1. The Isle of Wight Council (“the council”) is committed to promoting open and transparent governance. This policy facilitates the efficient, effective and strategic use of the council’s information to deliver its corporate objectives. This policy will be reviewed periodically, to ensure it reflects any changes to existing legislation and incorporates any new legislation.
- 3.2. The council’s Data Protection Officer will take the lead role and be responsible for the provision of advice, guidance and training regarding Freedom of Information, Data Protection and the Environmental Information Regulations. This will be achieved with the support of the council’s Corporate Information Unit, within Legal Services.
- 3.3. All Officers will have responsibility for ensuring that requests for information are dealt with in accordance with this policy.
- 3.4. Heads of Service will be responsible for ensuring operational compliance with this policy within their own departments, and provide support to their DIGs. They will be responsible for decision making with regard to refusing requests for information, with guidance from the Corporate Information Unit, where applicable.
- 3.5. Departmental Information Guardians (DIGs) will be responsible for the co-ordination of information requests in accordance with the council’s policies and procedures, in the service areas. On-going training and advice will be provided to DIGs to support them in their role and ensure compliance.
- 3.6. The council’s compliance with these access rights will be audited internally and subject to scrutiny by the Information Commissioner on complaint.
- 3.7. The council will not seek to differentiate between the different access regimes when dealing with access requests, unless necessary, for example where the request is for personal information, or where exemptions are to be considered.
- 3.8. The purpose of this policy is to ensure that the provisions of the Freedom of Information Act 2000 (“the FOI Act”) and the Environmental Information Regulations 2004 (“EIRs”) are adhered to as well as any guidance issued under Section 45 of the Freedom of Information Act 2000. The council further seeks to ensure compliance with both the Human Rights Act 1998 (“HRA”) and data protection legislation including the UK General Data Protection Regulation (“GDPR”), and the Data Protection Act 2018

("DPA") which protect the privacy of personal information held by the council.

- 3.9. Detailed advice and guidance for staff is available on the Council's intranet site at <http://wightnet.iow.gov.uk/info/?ref=quicklink>. Detailed advice and guidance for members of the public is available on the Council's website at [www.iow.gov.uk](http://www.iow.gov.uk)

## 4. Access Regimes

4.1. Access to information is principally governed by four main legislative provisions:

4.1.1. **The UK General Data Protection Regulation (“GDPR”)** relates to personal information held by the council and the right you have to access your own personal information. Requests must be in writing and be accompanied by suitable identification. The council has 1 calendar month to deal with the request, although an extension of an additional 2 months may be applied to particularly large and/or complex requests. This excludes health and educational records, which have different arrangements - See section 10 for further details.

4.1.2. **Environmental Information Regulations 2004 (“EIRs”)** enable access to environmental information held by the council. Requests can be made verbally or in writing. The council has 20 working days to deal with the request and provide any relevant information subject to limited exceptions. A definition of what constitutes environmental information is contained in Appendix B.

4.1.3. **The Freedom of Information Act 2000** allows the right of access to any information held that does not fall under the access regimes above. Requests must be made in writing. The council has 20 working days to deal with the request and provide any relevant information subject to limited exemptions.

4.1.4. **Part VA of the Local Government Act 1972 (as amended).** This legislation gives the public a right of access, subject to certain exemptions, to meetings and documents of the council, committees or subcommittees. The Isle of Wight Council holds most meetings in the evening to make them more accessible to members of the public and proactively publishes agendas and minutes of meetings, and associated information, on the council's website.

4.2. All of the above provide rights of access to information held with limited exceptions. Whilst the spirit of both the FOI Act and EIRs are the same, there are some minor differences in their application. See Appendix B – Environmental Information Regulations 2004 for further details. Due to the similarity between them, this policy will mainly refer to the FOI Act.

## **5. An Official Request for Information**

- 5.1. All the above access regimes provide a right to access recorded information, not specifically documents. The information may be contained in reports, policies, letters, emails, statistical information etc, together with other information that has not been requested. The information may be extracted from relevant documents and provided in a different format, in accordance with the appropriate legislation.
- 5.2. The generic term of Request for Information (“RFI”) is used for formal requests for all information held by the council, irrespective of which access regime is appropriate. The council will not categorise requests, unless an exemption is considered relevant, as the exemptions differ. Requests for personal information are dealt with specifically under Section 10 of this policy.
- 5.3. The council proactively publishes a large amount of information on its website at [www.iow.gov.uk](http://www.iow.gov.uk) as required by the FOI Act to have a publication scheme. In most cases the information is available free of charge. Where charges apply to the provision of information, this will be detailed on the relevant section of the website.
- 5.4. Anyone is entitled to request information from public bodies, regardless of their age, nationality, location, motive or history. Any information held by the Council is eligible for release. However, a limited number of exemptions may be applied to protect some information that truly warrants such protection.
- 5.5. Requests should be made in writing (including e-mails), state clearly what information is required and state the name of the applicant and an address for correspondence. The applicant may apply online using the council’s online application form. Whilst requests for ‘environmental information’ may be made verbally, under the EIRs, applicants will be encouraged to submit written requests to avoid any misunderstanding of the request. Where the requestor is unable to make the request in writing assistance will be provided to ensure that the details of the request are recorded accurately.
- 5.6. The Council uses a network of Departmental Information Guardians, situated in each service area, to process formal requests. This network is supported by the Corporate Information Unit who provide advice and assistance on dealing with requests in accordance with the appropriate access regime. Contact details can be found on the Council’s intranet site.

- 5.7. Requests should be forwarded to the relevant DIG, who will record the details on CRM. Contact details for all DIGs are available on the Council's intranet site. The council must respond promptly to all requests, and not later than 20 working days after receiving the request. It is essential that such requests are logged and monitored to ensure compliance with this timescale. The DIG will co-ordinate the request.
- 5.8. The reply to the request should confirm or deny whether or not the council holds the information, unless such confirmation or denial would, in itself, disclose exempted information. If an exemption does not apply, the council will provide the information that has been requested. If an exemption does apply, the council will explain why the information cannot be provided, quoting a statutory exemption and the reasoning behind it.
- 5.9. A request for information may only be refused if an exemption under the relevant legislation applies. In some cases, only some of the information will benefit from an exemption, in such cases the exempt information will be redacted (removed/blacked out) from that provided. The reply will state which exemption the council relies on and the reasoning behind it, and will provide details to the requester of the Internal Complaints and Review Process. Any application for a review of a council's decision, or any complaint relating to the way a request has been handled, should be directed to the Corporate Information Unit, County Hall, High Street, Newport, Isle of Wight, PO30 1UD; [information@iow.gov.uk](mailto:information@iow.gov.uk). If, after an internal review/complaint, the applicant is still dissatisfied, they have the right to seek a review by the Information Commissioner, [www.ico.org.uk](http://www.ico.org.uk).
- 5.10. These access regimes provide rights to access information held by the council but they do not automatically allow for the re-use of the information. The Re-Use of Public Sector Information Regulations 2015 is intended to encourage the re-use of public sector information. Requests for re-use should be made in writing and specify what information they want to re-use and for what purpose. The council, in making its decision as to whether to permit the re-use of information, will do so in accordance with guidance adopted at Appendix I of this policy. Whilst the council will seek to ensure that information may be re-used, wherever possible, whether under licence or not, nothing within these Regulations compels the council to allow re-use.
- 5.11. The council provides a wide range of information routinely, and will continue to do so, with only certain requests being treated formally under the relevant legislation. Please refer to Appendix A (What is a request for information?), for clarification as to which requests will trigger an official request for information (RFI).



- 5.12. The council will not provide assistance to applicants whose requests are vexatious within the meaning of Section 14 of the FOI Act (see Appendix E – Refusing a Request for Information).
- 5.13. If the council considers that the cost of compliance would exceed the appropriate limit, as set out under regulations made under Section 12(4) of the FOI Act, the council will provide appropriate advice and assistance to the applicant. See Section 6 – Charging Fees for further details. The council may consider what information could be provided within the cost ceiling, with the agreement of the applicant.

## **6. Advice and Assistance**

- 6.1. The council will provide reasonable assistance to the applicant, to help clarify the nature of the information sought. If the request is at all ambiguous, contact will be made to clarify the request at the earliest opportunity. The 20 working day time scale will not start until the appropriate clarification has been received.
- 6.2. The council will not seek to determine the motivation or aims of the applicant for requesting the information, as it recognises this is entirely irrelevant to the decision. However, where additional context has been provided, it may assist with identifying relevant information.
- 6.3. Information should be provided by whatever means is most reasonable, for example, if the requester has made their request by email, and the information is an electronic document in a standard form, then it would be reasonable for the reply to be sent by email and the information attached.
- 6.4. However, requesters have the right to specify their preferred means of communication, in their initial request and public authorities have a duty to give effect to an applicant's preferred format for receiving information, so far as this is reasonably practicable. This may include:
  - 6.4.1. summarising the information,
  - 6.4.2. providing the applicant with a copy (for example by photocopying or printing or attaching an electronic document to an email),
  - 6.4.3. allowing the applicant reasonable opportunity to inspect a record containing the information,
  - 6.4.4. translating information into a different language at the request of the applicant. However, public authorities are not obliged to translate documents if this would not be "reasonably practicable".

## **7. Time Period for Compliance**

- 7.1. The council must inform the applicant, in writing, whether it holds the information requested and, if so, communicate that information to the applicant promptly, and within 20 working days after receipt of the request. Non-working days are identified as being all Saturdays and Sundays and all recognised public bank holidays.
- 7.2. The 20 working day time period starts either the day after the council receives the request, or the day after the authority receives the further information it reasonably requires to identify and locate the information requested.
- 7.3. The date of receipt is the date the council actually receives the request, within office working hours. If the request is by way of email then it is the date the email arrives in the recipient's mailbox.
- 7.4. If an automated 'out of office' message provides instructions on how to redirect the message, then the council will not be considered to have received the request until it is re-sent to the alternative contact given. Similarly, if a request for environmental information is made, and an answer phone message provides an alternative contact point, then the date the clock starts will be when contact is made with the alternative contact point.
- 7.5. If the request relates to information contained within an education record then different time scales may apply.
- 7.6. If the council are considering applying an exemption which requires the consideration of the public interest test, the council may need further time beyond the normal 20 working day limit. In this instance, the council will notify the applicant that the request for information engages the public interest test (see Appendix F – The Public Interest Test) and will provide an estimate of a date by which it expects to reach a decision. These estimates shall be realistic and reasonable in the circumstances of the particular case, taking account of such things as the need to consult third parties. If the estimate given proves to be unrealistic, the council will notify the applicant at the earliest opportunity and apologise for any further delay, giving a new realistic estimate of when the decision will be

## **8. Charging Fees**

### **Compliance Costs**

- 8.1. The council may charge a fee, in accordance with the fees regulations made under Section 9, 12 and 13 of the FOI Act. The fee that may be charged for production of the information requested is shown in Appendix D (Charging fees). If the total cost of the request is less than £450, which equates to 18 hours of officer time, no fee will be charged except for possible communication costs (see below).
- 8.2. In determining whether the cost of compliance exceeds the limit, the council will be guided by the charging regulations that set out what may be taken into account. The costs are limited to those that the council reasonably expects to incur in:
- 8.2.1. determining whether it holds the information requested,
  - 8.2.2. locating the information or documents containing the information,
  - 8.2.3. retrieving such information or documents, and
  - 8.2.4. extracting the information from the document containing it (including editing or redacting information).
- 8.3. In determining the total cost, the council can only consider £25 per hour per person for staff time, regardless of their seniority.
- 8.4. If the cost of the request exceeds the £450 limit ("the appropriate limit"), the council will refuse the request. The council will, as part of its duty to advise and assist, liaise with the applicant to determine if the original request might be amended to reduce the cost of compliance. It is important that time estimates for meeting the request are made as soon as possible.

### **Communication Costs**

- 8.5. Regardless of whether the fee limit is exceeded, the council may charge a fee for the cost of communicating the information. This could also include the cost of putting the information in the applicant's preferred format, reproducing any document containing the information, e.g. photocopying or printing; and postage and other forms of communicating the information.
- 8.6. The council may charge for photocopying in line with the pricing structure shown below:

- 8.6.1. For black and white copies of documents per page (A4 & A3): £0.10
- 8.6.2. For colour prints from digital scans or of original document per page (A4 & A3): £0.30
- 8.7. If other formats are requested, the council will determine a reasonable fee to cover the cost of such format. The council is mindful of its equality duties under the Equality Act in responding to requests. For example, if an applicant is disabled and requires information in another form, for instance in Braille or on audio tape, then consideration shall be given to providing information in the form requested.
- 8.8. For the certification of a copy of a record, or of an extract from a record, in addition to the charge for the copy, there may be a charge for its certification dependent on the number of sheets to be certified.
- 8.9. Please refer to the step-by-step guide in Appendix D as to the process for determining if a fee is to be charged.
- 8.10. These fees however, do not apply to material made available on the council's website; to information which is reasonably accessible to the applicants by other means (Section 21 of the FOI Act); where provision is made by or under any enactment as to the fee that may be charged by the public authority for disclosing the information.
- 8.11. The fees regulations only provide legislative provision to charge for the request and it will be entirely at the council's discretion to waive the fee, especially if the cost of issuing an invoice would be disproportionate to the fee to be collected.

### **Aggregated Costs**

- 8.12. 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 limit would be exceeded in relation to any one of those requests.
- 8.13. The Regulations state that requests can only be aggregated in the following circumstances:
- 8.13.1. two or more requests for information have been made to the same public authority;
- 8.13.2. they must be either from the same person, or from 'different persons who appear to the public authority to be acting in concert or in pursuance of a campaign' (section 12(4)(b) of the FOI Act);

- 8.13.3.the requests must relate to the same or similar information; and
  - 8.13.4.they must have been received by the public authority within a space of 60 consecutive working days.
- 8.14. This provision is intended primarily to prevent individuals or organisations circumventing the appropriate limit by splitting a request into smaller parts.

## **9. Transferring Requests for Information to Another Public Authority**

- 9.1. If the council receives a request for information that it does not hold, but it is aware that the information is held by another public authority, the council will provide as much assistance as possible to the applicant in assisting the transfer of their request to the authority which holds the information. This may be by simply contacting the applicant and directing him to the appropriate public authority who holds the information, or, if details are known, providing the applicant with contact details.
- 9.2. If the council holds any of the information that has been requested, it shall treat that part of the request as an official request for information and process it accordingly. The council shall inform the applicant of the information it does not hold at the earliest opportunity and provide as much assistance as is reasonable to enable the applicant to locate it elsewhere.
- 9.3. The time period for compliance does not start until that part of the request is received by the public authority that holds the relevant information.

## **10. Consultation with Third Parties**

- 10.1. The council recognises that the disclosure of information may affect the legal rights of a third party. The council recognises the importance of data protection legislation and the Human Rights Act and this policy is written in accordance with their terms. The council further recognises that some information may have been provided by a third party, and may be considered commercially sensitive, or information provided in confidence.
- 10.2. If the information relates or refers to a third party, the council will seek to consult with that third party, at the earliest opportunity, unless such a consultation is not practical.
- 10.3. The consultation may assist the authority to determine whether an exemption applies to the information requested, or the views of the third party may assist the council to determine where the public interest lies (under Section 2 of the FOI Act).
- 10.4. A refusal to consent to disclosure by a third party will not, on its own, mean that information cannot be disclosed.
- 10.5. If the cost of consultation with the third party is disproportionate, the council may consider it not appropriate to undertake that consultation. The council will further not undertake consultation if it does not intend to disclose the information for some other legitimate ground under the terms of the FOI Act/EIRs, or if the views of the third party could have no effect on the decision of the authority.
- 10.6. The council will only accept information from third parties in confidence, if that information would not otherwise be provided to the council to assist the delivery of the council's functions. Again, the council will not agree to hold information received from third parties in confidence if it is not confidential in nature.



## **11. Contracts**

- 11.1. The council will refuse to include contractual terms which purport to restrict the disclosure of information held by the council in relation to the contract, beyond the restrictions permitted by the FOI Act. Unless an exemption applies in relation to any particular part of the contract, the council will be obliged to disclose that information in a response for a request regardless of the terms of any contract.
- 11.2. The council will further reject confidentiality clauses as to the terms, the value, and performance of the contract, unless this is justified and in accordance with the FOI Act. Where, exceptionally, it is necessary to include non-disclosure provisions in the contract, the council will seek, at the earliest opportunity, to agree with the contractor a schedule of the contract that clearly identifies the information which should not be disclosed. However, even if such schedule is drafted, the restrictions on disclosure may be overridden by the obligations under the FOI Act. Further, whilst an exemption may apply whilst the contract is relatively new, a lapse of time may negate the applicability of the exemption, should a request be received at a later date.
- 11.3. Upon receipt of a request the council will contact the relevant third parties to seek their views as to the release of the information. If the council is satisfied that some of the content of the contract is commercially sensitive, then the appropriate information will be removed (redacted) and the relevant exemption applied. However, whilst the council will take any comments into account, it is the council's final decision whether to withhold information.
- 11.4. The council will not hold information in confidence, which is not, in fact, confidential in nature. Information is confidential in nature if the disclosure of such information would result in an actionable breach of confidence.
- 11.5. If a non-public body is contracted with the council to provide a service that is a function of the council, then they may be deemed to be part of the council for the purposes of the FOI Act/EIRs and will be bound by the terms like any other public authority.

## 12. Personal Information

- 12.1. The Council is data controller for the personal information that it processes as part of its day-to-day business. This information is managed in accordance with data protection legislation, including the General Data Protection Regulation and Data Protection Act 2018.
- 12.2. Legislation states that anyone who processes personal information must comply with seven key principles:
- 12.2.1. Lawfulness, fairness and transparency
  - 12.2.2. Purpose limitation
  - 12.2.3. Data minimisation
  - 12.2.4. Accuracy
  - 12.2.5. Storage limitation
  - 12.2.6. Integrity and confidentiality (security)
  - 12.2.7. Accountability
- 12.3. Individuals have the right to know what information is held about them, and these principles provide a framework to ensure that personal information is handled properly.
- 12.4. Legislation provides that an individual ('data subject') is entitled to be properly informed by a data controller (organisation) whether their personal data is being processed by, or on behalf of, the council. They have a right to request the following:
- 12.4.1. confirmation that the authority is processing their personal data;
  - 12.4.2. a copy of their personal data; and
  - 12.4.3. other supplementary information, such as the categories of personal data; the recipients or categories of recipients their data is disclosed to; the right to lodge a complaint etc. Full details are available on the Information Commissioners website at [www.ico.org.uk](http://www.ico.org.uk).
- 12.5. The right of access, commonly referred to as subject access, gives individuals the right to obtain a copy of their personal data. An individual is only entitled to their own personal data, and not to information relating to other people, without their consent.
- 12.6. The council will require sufficient information to satisfy itself as to the identity of the person making the request and also to locate the information which the person is seeking.
- 12.7. All requests should be made in writing and addressed to either the specific department the applicant wishes to exercise its right within, or to

the Corporate Information Unit, by email (there is a form available on our website that may assist) to [information@iow.gov.uk](mailto:information@iow.gov.uk) or by post:

Corporate Information Unit  
Legal Services  
Isle of Wight Council  
County Hall  
High Street  
Newport  
Isle of Wight  
PO30 1UD

- 12.8. Where the request is manifestly unfounded or excessive we may charge a “reasonable fee” for the administrative costs of complying with the request.
- 12.9. We may also charge a reasonable fee if an individual requests further copies of their data following a request.
- 12.10. We are required to respond to any request within 1 calendar month starting the day after the request is received; identification had been confirmed; or sufficient information to respond to the request has been received. An extension of up to 2 months may be applied where the request is complex, or we have received a number of requests from the same data subject.
- 12.11. A subject access request can be made by
- 12.11.1. the data subject,
  - 12.11.2. a person authorised by the data subject to make such a request in writing. The council will need to be satisfied that the applicant is authorised by the data subject to make the request on their behalf, and will require a written letter of authority,
  - 12.11.3. a person who holds a Court Order for disclosure of personal information of a specific individual,
  - 12.11.4. a person who is appointed by the Court of Protection to manage the financial affairs of the subject; or an (enduring/lasting power of) attorney for the data subject, and the data subject is unable to make a request themselves, and the information requested relates to, or is necessary for, the management of the financial affairs and/or property of the data subject.

- 12.11.5. a person who is an attorney under a Lasting power of attorney.
- 12.12. Please note, a copy of any of the documents referred to above will need to be supplied with the original request, before the application is processed.
- 12.13. The Council may refuse to comply with a subject access request if it is manifestly unfounded or excessive, taking into account whether the request is repetitive in nature.
- 12.14. Personal information is defined as:
- 12.14.1. “‘Personal data’ means any information relating to an identified or identifiable natural person (‘data subject’).”
- 12.14.2. “An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.”
- 12.15. In determining whether the information relates to a living individual, the council will take into account if the information affects a person’s privacy, whether it relates to personal or family life, his/her business or professional capacity. The council will not consider information to be personal information unless the information has the data subject as its focus, rather than some other person with whom he may have been involved. Additionally, the information must be biographical in a significant sense, that goes beyond the recording of the individual’s involvement in a matter, or an event which has no personal connotations.
- 12.16. For example, the mere mention of a person’s name, where the name is not associated with any other personal information, will not be considered personal data. Similarly, incidental mention in the minutes of a council meeting of an individual’s attendance at that meeting, in an official capacity, is unlikely to be personal data.
- 12.17. Data protection legislation does not provide access to information relating to a person who is deceased. Please see Appendix J of this policy for guidance on how to access these records.

## Exemptions

- 12.18. There are a number of exemptions to the rights of individuals to access information about themselves, including:
- 12.18.1. Crime, law and public protection, inc. Legal professional privilege
  - 12.18.2. Health, social work, education and child abuse
  - 12.18.3. Regulation, parliament and the judiciary
  - 12.18.4. Journalism, research, and archiving
  - 12.18.5. Public inspection
  - 12.18.6. Finance, management and negotiations
  - 12.18.7. References and exams
  - 12.18.8. Adoption records and reports
- 12.19. The above exemptions shall be applied by the council in a proportionate and fair manner on a case-by-case basis. In the event that an exemption is applied, the applicant will be notified of such a decision, together with the reasons the council believe such an exemption applies. The applicant does have a right of appeal, in the event information is not disclosed.
- 12.20. The council will not be obliged to comply with a subsequent identical or similar request, unless a reasonable interval has elapsed between compliance from the previous request and the making of the current request.
- 12.21. All information that is sent out as a result of a subject access request, will be sent by way of recorded delivery, or another agreed method of communication, and in a suitable manner so as to protect its confidentiality.

### **13. Central Register**

- 13.1. All access requests will be recorded and monitored by the Corporate Information Unit for quality assurance and statistical reasons.
- 13.2. The details provided in a request may be disclosed to Departmental Information Guardians, or any other officer, who will be involved in facilitating the request.

## **14. Refusal of Request**

- 14.1. If the council refuses a request for information on reliance of an exemption, it will notify the applicant which exemption has been claimed, and why that exemption applies. If the reasoning behind the exemption, or the exemption itself, results in the disclosure of information which would itself be exempt, then the council may not provide that reason.
- 14.2. Where only part of the information requested benefits from an exemption, this information will be removed (redacted/backed out) from that provided.
- 14.3. If the council claims that the public interest in maintaining the exemption outweighs the public interest in disclosure, then the council must state this in its decision letter, together with the public interest factors it has considered and formed a material part of the decision.
- 14.4. The council will maintain a central record for monitoring purposes of all 'requests for information' (RFI's) and will proactively audit decisions made to ensure that refusals are justified and reasonable. This collated central record will be held by the Corporate Information Unit.

## 15. Appeals

- 15.1. The council have adopted an internal appeals procedure. The internal appeals process must first be utilized before a referral is made to the Information Commissioner.
- 15.2. An appeal may be made on requests that have not been properly handled, or on requests where the applicant is dissatisfied with the outcome of the consideration of the request.
- 15.3. The council's appeals procedure is shown at Appendix G (Appeals Procedure) and the appeal form can be viewed at [www.iow.gov.uk/information](http://www.iow.gov.uk/information) or obtained from the Corporate Information Unit at the address shown on page 13, where completed forms should be also be sent.
- 15.4. The council will consider any expression of dissatisfaction, in response to their reply to a request, to be an appeal unless the applicant does not wish to proceed.
- 15.5. Any review of a decision made relating to a request for information, will be reviewed by a person who was not party to the original decision.
- 15.6. If, following the review, the original decision is reversed and information is now disclosed, the reasons for the reversal will be notified to the applicant together with the information requested. This will be done at the earliest opportunity.
- 15.7. If the decision to refuse disclosure is upheld, the reasons for the refusal will be notified to the applicant. If, having exhausted the internal appeals procedure, the applicant is still dissatisfied, they shall be made aware of their right to apply to:

The Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
[www.ico.org.uk](http://www.ico.org.uk)  
Tel No: 0303 1231113

- 15.8. Any queries regarding this policy, or access to information within the Isle of Wight Council, should be directed to:

The Corporate Information Unit



Isle of Wight Council  
Legal Services  
County Hall  
High Street  
Newport  
Isle of Wight  
PO30 1UD  
E-mail: [Information@iow.gov.uk](mailto:Information@iow.gov.uk)  
Tel no: 01983 821000

## Appendix A – What is a Request for Information

- 15.1. The Isle of Wight Council routinely provides information as part of its normal council functions on a day-to-day basis. The access regimes under Environmental Information Regulations, Freedom of Information Act and data protection legislation are so broad that they have the potential to encapsulate most of what the Isle of Wight Council does routinely.
- 15.2. This guidance note therefore sets out what the triggers will be for engaging the official process for dealing with requests for information under the above legislation.
- 15.3. The following will not, as a general rule, engage the official process:
- 15.3.1. If the information is reasonably accessible to the public by such means as it is published on the Internet, or available for inspection. This may include information leaflets, published reports or general information on the internet.
  - 15.3.2. Information that is released as part of the council's normal business process. The council routinely provides information as part of their day to day processes, for example job application forms or information relating to case work. The formal access regimes are not intended to replace existing business systems that are functioning adequately.
  - 15.3.3. General correspondence, including the questioning of certain actions.
  - 15.3.4. Requests that do not include a name and address (or an email address) for correspondence.
- 15.4. It is important for all staff to recognise official requests at an early stage. These requests must be directed to the relevant Departmental Information Guardian who will enter the details into the official council's system for managing requests. This is to ensure that the council can comply with the request within the legislative time periods and to enable sufficient monitoring and auditing of the council's compliance.
- 15.5. Examples of when official requests for information should be logged, by notifying the relevant DIG are:
- 15.5.1. Requests that consciously engage any, or all, of the information access regimes. Those requests being, for

example, requests which specifically mention their right of access under FOI, DPA or EIRs.

- 15.5.2. Where the public authority requires further information from the applicant in order to identify and locate the information requested.
- 15.5.3. Requests that will not receive a reply within ten working days from the date of request.
- 15.5.4. Requests which result in information being withheld for any reason under an exemption or exception from the right of access.
- 15.5.5. Requests that are not processed because the public authority estimates the cost of compliance would exceed the appropriate limit.
- 15.5.6. Requests that are not processed because the public authority considers the request to be vexatious or repeated.
- 15.5.7. Requests that may prejudice third parties and/or the Isle of Wight Council, its Members, or its staff.

## Appendix B – Environmental Information Regulations 2004

- 15.1. Where an access request is for environmental information it should be dealt with under the Environmental Information Regulations 2004 (“EIR”).
- 15.2. These regulations share many common elements with the Freedom of Information Act, however, there are a few notable differences:
- 15.2.1. requests can be verbal or in writing,
  - 15.2.2. there is no pause in the 20 day response time whilst charges for the supply of information are being negotiated,
  - 15.2.3. there is no upper limit for charges above which a request can be refused,
  - 15.2.4. there is no fee structure, but charges must not exceed the costs reasonably attributed to the supply of the information,
  - 15.2.5. the response time can be extended in line with the regulations, in the case of complex or voluminous requests,
  - 15.2.6. the public interest test (Appendix F) is applied in each potential case of refusal based on an exemption.

### What is ‘Environmental Information’?

- 15.3. Environmental information is taken to mean information that relates to the state of the elements of the environment such as:
- 15.3.1. Air and atmosphere
  - 15.3.2. Water
  - 15.3.3. Soil
  - 15.3.4. Land
  - 15.3.5. Landscape and natural sites, wetlands and coastal and marine areas
  - 15.3.6. Biological diversity and its components including genetically modified organisms.
- 15.4. The Regulations cover all recorded information concerning:
- 15.4.1. the interaction between the elements in (a) above,
  - 15.4.2. factors such as substances, energy, noise, radiation or waste,
  - 15.4.3. emissions, discharges and other releases into the environment,
  - 15.4.4. environmental measures such as policies, legislation, plans, programmes and agreements,
  - 15.4.5. cost benefit and other economic analyses and assumptions used in environmental decision making,
  - 15.4.6. the state of human health and safety, conditions of human life, cultural sites and built structures, in as much as they are affected by anything above.

- 15.5. Routinely produced environmental information and specialist reports should, wherever possible, be published on the council's website.

## **Appendix C – The Publication (Public Information) Scheme / Catalogue**

- 15.1. The council will endeavour to be as transparent and open as possible. There will be a presumption in favour of public access to all information held, unless there is a statutory or compelling business reason against publication. Section 19 of the Freedom of Information Act 2000 requires every public authority to adopt and maintain a Publication Scheme and proactively make information publicly available.
- 15.2. The more information that is pro-actively made available via the council's website, the better. It will demonstrate the council's willingness to adopt an open approach to its business, and will also help to reduce the number of 'one off' access requests, that would otherwise involve staff in the potentially resource-hungry activities of locating, retrieving, collating, editing, reproducing and dispatching information.
- 15.3. The council considers that the information on its website at [www.iow.gov.uk](http://www.iow.gov.uk) is effectively its Publication Scheme. Individual council departments are responsible for the content that they publish for their own service areas.
- 15.4. When considering the medium of publication of new information, the council are committed to using electronic means in the first instance.

### **General criteria for inclusion:**

- 15.5. The focus should be on information that:
- 15.5.1. is known to be of public interest, and/or
  - 15.5.2. contributes to the principle that the council's activities and decision-making processes should be seen to be open and transparent, e.g. internal policies and procedures, codes of practice, strategies, plans, minutes of key meetings, etc.

### **What type of information may be suitable?**

- 15.6. Committee agendas, reports and minutes that are already routinely made publicly available.
- 15.7. Records that contain background information in respect of decision-making processes and which would be in the public interest.
- 15.8. Strategies, service plans, business plans, policy documents, codes of practice, procedural documents, consultation documents and other information that would fall into this category.

- 15.9. Any documentation that explains how the council assesses whether or not an individual is eligible for service provision, e.g. assessment criteria, eligibility criteria information.
- 15.10. Information that the council already knows is regularly requested.

### **What type of information may not be suitable?**

- 15.11. Whilst it is clearly desirable to make as much information pro-actively available as possible it is also essential that the catalogue is properly managed and maintained. There is little value in information that has been superseded, is out of date, obsolete or simply no longer relevant. Departments need to be mindful of the potential resource requirements of managing large quantities of published information and ensure that they have made arrangements to maintain it in good order. In view of this it is worth thinking initially about excluding information that
- 15.11.1. has a very short shelf life and/or will require frequent updating.
  - 15.11.2. may be of interest to the public, but which is not in the public interest. These two things are not the same.
  - 15.11.3. is largely exempt, and will require major editing/redacting (editing or revising a piece of writing) to make it suitable for inclusion.

### **Some tips about publishing information**

- 15.12. It may be possible to anticipate requests, particularly where there are major local issues that are likely to attract public attention. In these cases, it would be sensible to include background papers, and information in the catalogue, from the outset.
- 15.13. Consider whether or not information that is sensitive, or exempt, can be included within appendices, so that the main body of the report can be included in the catalogue. Considering the structure of reports in this way, will make access requests easier to respond to in the long run. Remember, a whole report is not exempt if just a few paragraphs contain sensitive material.
- 15.14. When information is produced, or generated, consider whether it is appropriate for publication, and, if it is, follow the procedures to make sure this happens.
- 15.15. It shall be a departmental responsibility to up-date their respective parts of the website.

## Appendix D – Charging Fees

- 15.1. Guidance on the application of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
- 15.2. The following two pages summarise the main steps public authorities need to go through when considering whether to charge for a Freedom of Information (FOI) request.

### **Step 1: Do you know if the information is exempt for the purposes of the FOI Act?**

- 15.3. If information is exempt from FOI, then FOI fees will not apply. For example, if the information has to be made available under the terms of another Act, or is available through the authority's publication scheme, it is automatically exempt from FOI. If information has to be provided under the terms of another Act, fees should be charged in line with the provisions in that Act.
- 15.4. Information that is made available through the publication scheme should be clearly marked as to whether charges will apply as part of the scheme.
- 15.5. FOI fees will not apply in either case. The authority would need to contact the applicant to inform him or her that the information is exempt in the usual way.

### **Step 2A: Do you wish to calculate whether the cost of the request would exceed the appropriate limit?**

- 15.6. In many cases, it will be immediately obvious that the request would cost less than the appropriate limit, so there will be no point in calculating whether the appropriate limit is exceeded.

### **Step 2B: Are you likely to wish to aggregate two or more requests for the purpose of calculating whether the appropriate limit has been met?**

- 15.7. Aggregation, where the cost of answering requests is added together, is not likely to happen often. It can only take place when an authority receives two or more requests from the same person, or different people acting together or as part of a campaign. The requests must be on the same or a similar subject, and be made within 60 working days of each other. If these conditions are met, the cost of the requests can be added together when calculating whether the appropriate limit has been met.
- 15.8. If the answer to either of these questions is yes, proceed to step 3.



15.9. If the answer to both questions is no, proceed to step 4.

**Step 3: Calculate the appropriate limit.**

15.10. The appropriate limit is £450 for public authorities, with staff costs calculated at a rate of £25 per hour. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. They cannot take account of the costs involved with considering whether information is exempt under the Act.

15.11. If the request would cost less than the appropriate limit, go to step 4.

15.12. If the request would cost more than the appropriate limit, go to step 5.

**Step 4: Requests costing less than the appropriate limit.**

15.13. If a request would cost less than the appropriate limit, the authority can only charge for the cost of informing the applicant whether the information is held, and communicating the information to the applicant (e.g. photocopying, printing and postage costs).

15.14. Now go to step 6.

**Step 5: Requests exceeding the appropriate limit.**

15.15. If a request would cost more than the appropriate limit, the authority can turn the request down; answer and charge a fee; or answer and waive the fee. If it decides to charge a fee, and does not have other powers to do so, it can charge on the basis of the costs outlined in step 3 (i.e. those costs used to determine whether the appropriate limit was met), as well as the cost of informing the applicant whether the information is held and communicating the information to the applicant.

15.16. Now go to step 6.

**Step 6: For all requests, authorities should have regard to the following two points:**

15.17. The duty to provide advice and assistance to applicants. If the authority is planning to turn down a request for cost reasons, or charge a high fee, it should contact the applicant, in advance, to discuss whether they would prefer the scope of the request to be modified, so that, for example, it would cost less than the appropriate limit.

- 15.18. Whilst the Act and Fees Regulations set out fees that can be charged, there is nothing to stop authorities charging a lesser, or no, fee.

## **1. Appendix E – Refusing a Request for Information**

- 1.1. Whilst the Freedom of Information Act provides for the right of access to information held, it also affords a number of exemptions from this right, in order to permit public authorities to withhold some, or all, of the information requested, where a justifiable reason exists. Requests for information that are deemed to be vexatious or repeated can also be refused.
- 1.2. The exemptions fall into two categories:
- 1.3. Absolute Exemptions. Where a public authority may withhold the information without considering any public interest arguments.
- 1.4. Qualified Exemptions. Although an exemption may apply to the information, it will, nevertheless, have to be disclosed, unless it can be demonstrated that the public interest in withholding the information, is greater than the public interest in releasing it.

### **Absolute Exemptions**

- 1.5. The absolute exemptions that are most likely to apply to the council are:
- 1.6. Information accessible by another means, (Section 21)
- 1.7. This applies to information that is reasonably accessible to an applicant through another source, even if it is available only on payment. This type of information could be:
  - 1.7.1. information accessible through the council's web-site
  - 1.7.2. books, leaflets etc. published by the council
  - 1.7.3. information available under existing legislation, e.g. planning applications.
- 1.8. The applicant should be directed to where the information can be found, and given the necessary assistance to enable them to access the information.

### **Information in court records (Section 32)**

- 1.9. This includes information in documents served for the purposes of legal proceedings, filed with a court, or held by a person conducting an inquiry, or arbitration.

### **Personal information relating to the subject (Section 40)**

- 1.10. This exemption is only absolute in respect of requests by applicants to access their personal information. Such requests will continue to be dealt with under data protection legislation.

### **Information provided in confidence (Section 41)**

- 1.11. This exemption only applies to information provided in confidence to the authority by external persons or agencies, including other public authorities, and where disclosure would result in an actionable breach of confidence. This means that the council would need to apply the common law test for breach of confidence, which includes an inherent public interest test. Legal advice must be sought before applying this exemption.
- 1.12. The Code of Practice under Section 45 of the Act states that a public authority should only accept information in confidence from third parties, if it is necessary to obtain that information in connection with any of the authority's functions.

### **Information that is prohibited from disclosure by law (Section 44)**

- 1.13. This applies to information, the disclosure of which, is prohibited by any legislation, or European Community obligation, or if disclosure would be a contempt of court.

### **Qualified Exemptions**

- 1.14. The qualified exemptions most likely to apply to the council are:
- 1.15. Information intended for future publication (Section 22)
- 1.16. This applies where the council plans to publish information in the future, and it is reasonable, at the time the request is made, not to disclose it until then. It may also apply to information relating to research projects, or surveys, where it would be inappropriate to release the information until the project has been completed. In other cases, for example information which is currently in a draft form, there must be an intention to publish and the applicant must be informed when such publication is planned.
- 1.17. Prejudicial to the economic or financial interests of any administration in the UK (Section 29)
- 1.18. This exemption applies to information that, if disclosed, would be likely to prejudice the economic interests of the council. This may be in connection with, for example, a planned development under negotiation

with third parties where there are particularly sensitive issues involved, but which promises to bring economic growth and/or significant benefits to the local community.

1.19. Investigations/proceedings conducted by public authorities (Section 30)

1.20. This exemption covers information relevant to criminal investigations and proceedings, and information obtained from confidential sources for criminal or civil proceedings.

### **Law enforcement (Section 31)**

1.21. This exemption applies to information, the disclosure of which would be likely to prejudice:

1.22. the prevention and detection of crime;

1.23. the apprehension and prosecution of offenders;

1.24. the administration of justice;

1.25. the collection of any tax or duty (e.g. Council Tax).

### **Prejudice to the effective conduct of public affairs (Section 36)**

1.26. This exemption can only be agreed by a 'qualified person'. In the case of local authorities, this is the Monitoring Officer, which in the Isle of Wight Council is the Director of Legal and Democratic Services, with the Chief Executive as deputy if the MO is unavailable.

### **Health & Safety (Section 38)**

1.27. This exemption applies to information which would, or would be likely to, endanger the physical or mental, health or safety of any individual.

### **Environmental Information (Section 39)**

1.28. This exemption allows for the disclosure of environmental information under the Environmental Information Regulations (EIR), see Appendix B

### **Personal information relating to a third party (Section 40)**

1.29. Broadly speaking, requests for information about someone else will be dealt with under FOI, but disclosure should not be made if it would breach any of the principles under data protection legislation, or if the third party has not been made aware of the disclosure.

### **Legal professional privilege (Section 42)**

- 1.30. This applies where a claim to legal professional privilege could be maintained in legal proceedings. This exemption qualifies the rights of access under the Act by reference to a particular rule of litigation. According to that rule, legal professional privilege ("LPP") protects confidential communications between lawyer and client and certain other material created for the purpose of the litigation, by way of an exception to the general rules of disclosure applicable to civil and criminal litigation. If material is subject to LPP a party does not have to disclose it during the course of legal proceedings. The identification of LPP material is a question of law. Legal advice must be sought before applying this exemption.

### **Commercial interest (Section 43)**

- 1.31. This exemption applies to trade secrets, and to information, the disclosure of which, would, or would be likely to, prejudice the commercial interests of any person, including the authority. This is the exemption which would be relevant to most commercially sensitive information held by local authorities. However, it would need to be demonstrated how disclosure would affect the commercial interest, and is further subject to a public interest test.
- 1.32. A full list of the exemptions under the FOI Act are available from the Information Commissioner's website at [www.ico.gov.uk](http://www.ico.gov.uk)

### **Vexatious and Repeated Requests**

#### **Vexatious Requests**

- 1.33. In determining whether a request should be refused, because it is considered vexatious, account must be taken of
- 1.34. whether it would impose a significant burden on the authority, in terms of expense or distraction;
- 1.35. the history of requests submitted by the applicant;
- 1.36. whether there is any serious purpose or value to the request;
- 1.37. if there is a strong likelihood that such requests are being made to intentionally cause harassment, divert resources and to disrupt the proper workings of the council;
- 1.38. it can otherwise fairly be characterised as obsessive or manifestly unreasonable.
- 1.39. The term vexatious must be applied to the activities of the applicant based on substantiated evidence and not to the applicant themselves.

## Repeated Requests

- 1.40. In determining whether a request should be refused because it is considered to be repeated, account should be taken of
- 1.41. the time that has elapsed since the previous request;
- 1.42. whether the request is identical or substantially similar to the previous request, and
- 1.43. whether the information has changed, or new information has been generated. In this case it would be reasonable just to provide the new information.

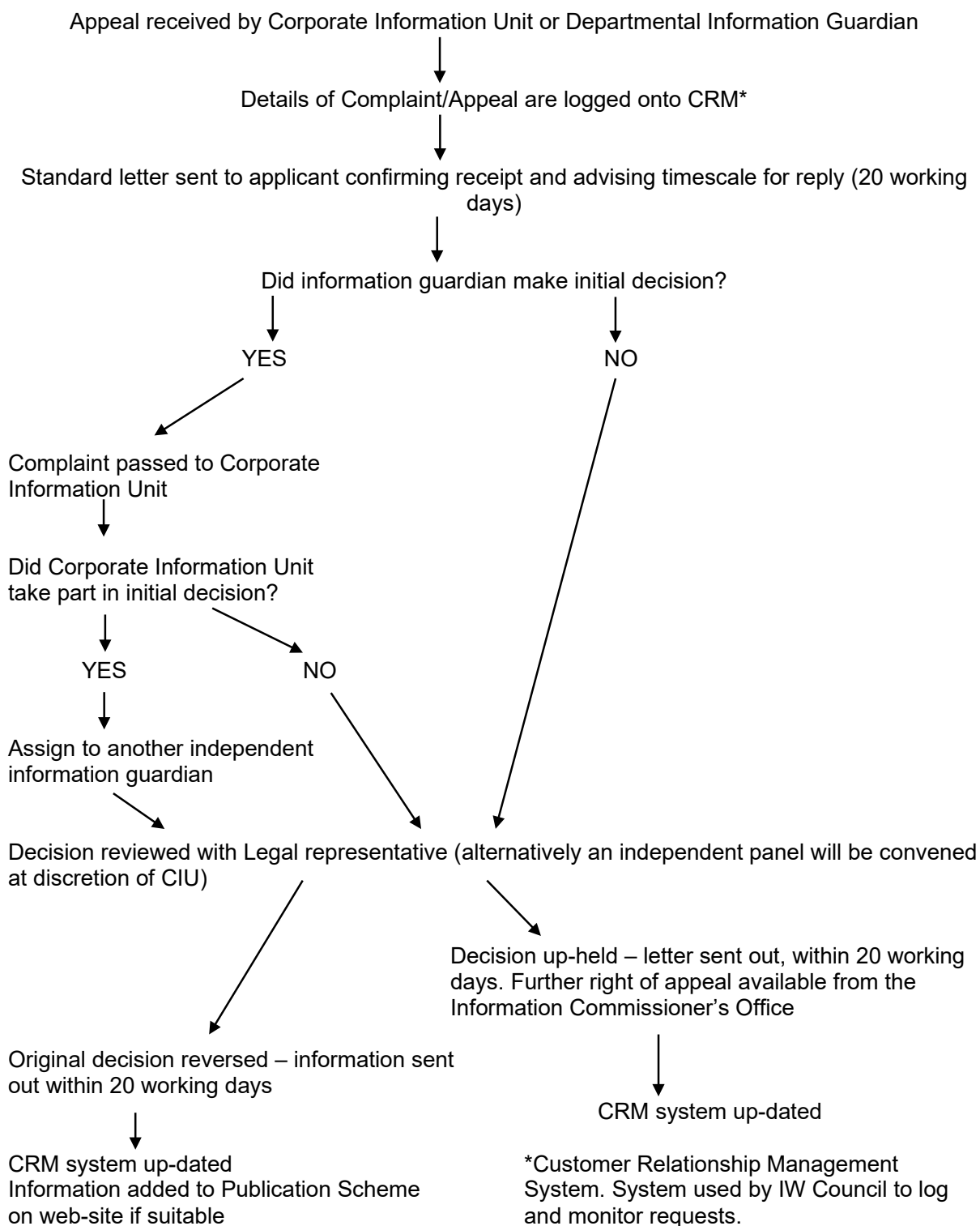
## **1. Appendix F – The Public Interest Test**

- 1.1. Where the council wishes to apply one of the qualified exemptions to prevent disclosure of the information requested, it will have to consider the public interest in maintaining the exemption.
- 1.2. The public interest test requires that information should be withheld under exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 1.3. Generally, the public interest is not necessarily what the public are interested in, i.e. matters that the public may be curious about, interested in, or amused by, but more about information that could benefit the wider community if it were to be made available.
- 1.4. Disclosure should be considered to be in the public interest where it would
- 1.5. further the understanding of, and participation in, public debate,
- 1.6. promote accountability and transparency by public authorities for decisions taken by them,
- 1.7. promote accountability and transparency in the spending of public money,
- 1.8. allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions,
- 1.9. inform the public of any danger to public health and safety,
- 1.10. contribute to the administration of justice, enforcement of the law.
- 1.11. Factors such as embarrassment are not to be taken into account when determining the public interest.



## 1. Appendix G – Appeals Procedure

### 1.1. FOR REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS



## **1. Appendix H – Subject Access Request**

- 1.1. This section explains your Rights, as a user of Council Services to see personal information we keep and, how you can access it.

### **Why is personal Information held by the Council?**

- 1.2. So that we can provide you with the services you require. If you have provided your personal information to the council to receive a service, these details will be held by the service for that purpose. You will be provided with a copy of a privacy notice explaining this at the first point of contact with the council.

### **How is information kept & who is responsible?**

- 1.3. Your personal information is kept secure on our computer systems and files; the responsibility to keep your information secure is maintained by the department that are providing/provided a service to you. This includes retention and destruction of the information and your details will only be held in accordance with the requirements of the General Data Protection Regulation and relevant council policies.
- 1.4. The authority's employees have a duty of care, which includes respecting your right to confidentiality and ensuring that information is only used and given to others for the purpose of the service being provided.

### **Who is the information shared with?**

- 1.5. Information you provide may also be shared with other agencies involved in the provision of services to you and between departments of the authority, where you have agreed to this at the time of providing us with your information or where we are legally permitted to do so. The information will only be the minimum necessary to enable us to provide services to you. Please note the council will only share information with other agencies such as the police, where there is a justified reason to do so, for example, for the prevention or detection of crime.
- 1.6. People authorised by the Isle of Wight Council can see information in your records, as can others if you have given written permission for your records to be shared.

### **Do I have the right to see all my personal information?**

- 1.7. You have the right to request access to personal information that the council holds about you, where the information relates to you, and has

you as the focus. However, where records contain data about another person, even if it is a member of your own family, you will not be able to see this information unless that person has given their permission.

### **How can I access my personal information?**

- 1.8. Requests should be made in writing and provide as much information as possible i.e. Full name, date of birth, current and previous address/es, council department/s you would like information from. There is a form available on our website that may assist. All requests should be sent to the Corporate Information Unit.
- 1.9. Identification is also required, such as a driving license, utility bill or some other documentation to provide us evidence of who you are and your current address. Once we have received all the relevant information from you, we have 1 calendar month to respond to your request. For large and/or complex requests this time limit may be extended by an additional 2 months.
- 1.10. For further information on how the council manages personal information please see the Data Protection Policy available at [www.iow.gov.uk](http://www.iow.gov.uk).
- 1.11. Further information on data protection legislation can be obtained from The Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF [www.ico.gov.uk](http://www.ico.gov.uk)

## **1. Appendix I – Guidance on Re-Use of Public Sector Information**

1.1. Re-use of Public Sector Information Regulations 2015 (RPSI) were originally introduced on 1 July 2005 and provide any person or organisation with the right to request the re-use of information held by a Public Authority (for example, to copy it and sell it on). An updated set of regulations was introduced on 18 July 2015.

1.2. The Council allow the re-use of council information in accordance with the terms and conditions of the Open Government Licence.

The aim of the Regulations, which carry out a directive of the European Parliament, is to make re-using public sector information easier. The main themes of the Regulations are improving transparency, fairness and consistency. Re-use means using public sector information, for a purpose other than the initial public task (link to website) it was produced for. The RPSI are about permitting this re-use of information and how the information is made available.

1.3. The Regulations complement the rights of access to information available under the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004 (EIR). The Council is a public body that is required to comply with the RPSI.

1.4. The Council will comply with all the relevant provisions of the RPSI. In general, any information that is accessible, either because it has been published or because it has been released under FOI legislation or other access legislation, will be made available for re-use.

1.5. The Council retains copyright to all information we disclose.

1.6. The Council is committed to conducting its affairs in a transparent manner and enabling public access to its information whenever this is appropriate. Generally, the Council will act in as open and transparent a manner as possible whilst ensuring the integrity of its information and protecting the privacy of its customers.

1.7. These regulations apply to all information (regardless of format) produced, held or disseminated by the Council which relate to the delivery of services and provision of a statutory function.

1.8. These are defined by the Council's Public Task. These regulations should not be confused with the FOI or EIR which only provide public access to information and not the right to reuse it.

### **Managing Requests for Re-use of Information**

- 1.9. Requestors do not need to ask permission to re-use any published information for which the Council holds the copyright, but they must acknowledge the copyright and source of the information, agree and comply with the terms of the Open Government License ([link](#))
- 1.10. (OGL). This arrangement is already used as part of the Council's Open Data arrangements and allows the re-use of public sector information without charge for any purpose, commercial or otherwise, with minimal conditions. Where information is not released under the OGL, requestors will need to request permission for re-use under the RPSI regulations.
- 1.11. All requests should be directed to the Corporate Information Unit, by email to [information@iow.gov.uk](mailto:information@iow.gov.uk), or by post to:
- 1.12. Legal Services, County Hall, High Street, Newport, IW PO30 1UD
- 1.13. When the Council receives a request to re-use information, we must respond within 20 working days. This time limit can be extended if the information is extensive or the request raises complex issues, but we must inform you of this within the 20-day period. In most cases information will be available to re-use free of charge. If the information is available electronically and you are happy to receive it by email there will be no charge. There may be a charge if you require paper copies of documents.

## **Refusing Requests**

- 1.14. A refusal of a request for re-use will only be made when it is necessary to do so. Upon refusal of a request for re-use, the applicant will be informed of the reasons for the decision within twenty working days, and at the same time, will be informed of the procedures for making a complaint.
- 1.15. RPSI does not apply to information that would be exempt from disclosure under information access legislation, i.e. the General Data Protection Regulations (GDPR) the FOI, EIR and the INSPIRE regulations.
- 1.16. RPSI does not apply to recorded information you hold if someone else holds the intellectual property rights (e.g. copyright or database right). We can only permit re-use if we hold the intellectual property rights in the information.
- 1.17. Copyright protects material such as literary works, artistic works, software and databases, and stops others from using such material without permission. It prevents people from:

- 1.17.1. copying it
- 1.17.2. distributing copies of it, whether free of charge or for sale
- 1.17.3. renting or lending copies of it
- 1.17.4. performing, showing or playing it in public
- 1.17.5. making an adaptation of it
- 1.17.6. putting it on the internet

## **Datasets and re-use**

- 1.18. In 2012, the government amended the Freedom of Information Act 2000 (FOIA) to create a 'right to data' comprising new duties for certain public authorities to make datasets available and provide for citizens' rights to re-use them. These provisions were inserted the FOI by the Protection of Freedoms Act 2012.
- 1.19. The RPSI amend the FOI regarding release of datasets or portions of datasets for re-use. These changes mean that where a document is covered by the RPSI, then it is the RPSI and not FOI which will govern the re-use of such dataset information and their entry on a publication scheme. A dataset is a collection of factual information in electronic form (e.g. statistics or figures) that has not been materially altered since it was recorded. To be a dataset, the 'raw data' must not have been the product of analysis or interpretation.
- 1.20. The new rights to re-use under the RPSI have been consolidated with the FOI provisions where a dataset is within the scope of the RPSI. For datasets or public authorities out of scope of the RPSI, there is no change. The access and means of communication requirements of FOI remain the same.

## **Complaints and Internal Review**

### **Complaints Procedure**

- 1.21. The Council has an internal complaints procedure. Any person who is unhappy with the way in which the Council has handled their request for information may use this procedure. Correspondence should be clearly marked 'Complaint' and addressed to:
- 1.22. Corporate Information Unit, Legal Services, County Hall, Newport, Isle of Wight PO30 1UD, or by email to [information@IOW.gov.uk](mailto:information@IOW.gov.uk).
- 1.23. The Council will maintain a record of all complaints and their outcomes.

### **Internal Review**

- 1.24. If the requestor is unhappy with the response, the Council should be asked to conduct an internal review. A request for an internal review should be made to the Council within 40 working days from the date the Council has issued an initial response to a request and this should be made clear in that response to the applicant. The Council is not obliged to accept internal reviews after this date. Internal review requests should be made in writing.
- 1.25. Requests for internal review will be acknowledged and the applicant informed of the target date for responding. This should normally be within 20 working days of receipt.
- 1.26. Re-use complaints will be dealt with through the Council's freedom of information review procedures, and a response issued within 20 working days. This timescale may vary depending on the complexity of the matter. Complainants will be informed.

### **Information Commissioner's Office**

- 1.27. If you are not content with the outcome, requestors have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:-

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Website: [www.ico.org.uk](http://www.ico.org.uk)  
Tel: 0303 1231113

## 1. Appendix J – Deceased Person’s Information

- 1.1. Information about deceased individuals is not covered by any right of access under the United Kingdom General Data Protection Regulations (UK GDPR) or the Data Protection Act (DPA) 2018, as personal data only relates to living individuals.
- 1.2. Unless another statutory basis for accessing information about a deceased person can be provided, the Council can only consider such requests under the Freedom of Information Act 2000 ('FOIA').
- 1.3. FOIA gives any individual the right to request information from the Council, without specifying their intended purpose or intention. Under FOIA, the Council are not generally able to take the identity or motive of the requester into account when considering a request. This could make information about deceased individuals very vulnerable, as potentially it could be released to anyone who asks for it.
- 1.4. The Council does not wish to breach the confidence of anyone who may or may not have been in the care of, or interacting with, the Council whilst they were alive by giving out information about them to anyone. The Council's default position will usually be to refuse such requests, unless the requester can provide evidence that releasing information would not result in a breach of confidentiality.

### Evidence required to request information about a deceased person

- 1.5. The Council will only search for and release any information held about deceased individuals in limited circumstances. In order to protect the Council from any future breach of confidentiality claim from the deceased's estate, we require evidence of the relationship between the requester and the deceased.
- 1.6. Further information about why we take this approach can be found in the Information Commissioner's Office (ICO) guidance note entitled 'Information about the deceased', that can be found on their website at <https://ico.org.uk/media/for-organisations/documents/1202/information-about-the-deceased-foi-eir.pdf>.
- 1.7. If you are requesting information about a deceased person, you will need to submit evidence showing that:
  - 1.7.1. You are the deceased person's 'personal representative' (also known as the executor or administrator of their estate); or
  - 1.7.2. You held a Health & Welfare Lasting Power of Attorney for the deceased person when they were alive (if you are requesting care-related information); or



- 1.7.3. You held a Financial Affairs Lasting Power of Attorney for the deceased person when they were alive (if you are requesting financial-related information); or
  - 1.7.4. You held a Personal Welfare Deputyship for the deceased person when they were alive (providing the request does not go against any decision made by an attorney acting under a Lasting Power of Attorney); or
  - 1.7.5. You can provide proof that you have a claim on the estate of the individual.
- 1.8. If any of the above cannot be provided, please provide any other evidence that:
- 1.8.1. the information requested is already known to be in the public domain, or
  - 1.8.2. supports the assumption that the deceased individual would have given their consent to the release of their personal information to you if they were still alive.

### **Multiple executor consent**

- 1.9. If you are named as joint executor on the deceased person's will, the Council will need to be satisfied that the other executor(s) are happy for you to request this information. Please therefore provide a signed written statement from the other executor(s) giving you permission to receive the requested information. This must include their printed name and contact details. The Council will contact the executor(s) to verify that they have given informed consent. If they are unable to give consent, please provide the reasons for this.
- 1.10. If none of the above evidence can be provided, it is very likely that information related to deceased parties would be lawfully withheld from disclosure to under section 41 FOIA, on the grounds that it would breach the confidentiality of the deceased parties to release the information.

### **Third Party Information in a Deceased Person's Records**

- 1.11. Please note it is highly likely that records for the deceased party will include information relating to living third party individuals. In accordance with section 40(2) FOIA, it is highly likely this information will need to be redacted from these records, as the Council would be in breach of the Data Protection Act if we disclosed these to you. As the deceased representative it is highly likely your information will be included in the records. We assume you would not want this information to be redacted.
- 1.12. As this is your personal information, this information will need to be processed as a Subject Access Request ('SAR') under the Data Protection Act 2018. We therefore also request you include written

consent that you are happy for your own personal information to remain unredacted from the documentation we hold, together with personal identification as usually required when making a Subject Access Request.

### **Access to Health Records Act 1990 ('AHRA')**

- 1.13. In general terms, subject to exceptions set out in the legislation, AHRA gives a right of access to health records of a deceased individual to the personal representative (rather than any surviving family members or next of kin). It is for an applicant to prove that they have the right of access as a personal representative. If an applicant does have access rights under AHRA, this should be applied instead of FOIA (as information under FOIA would be exempt from disclosure under section 21 as the information is reasonably accessible by other means).