

APPENDIX B THE FREEDOM OF INFORMATION ACT 2000 – POLICY AND PUBLICATION SCHEME AMENDMENT

WEST BERKSHIRE DISTRICT COUNCIL

FREEDOM OF INFORMATION POLICY (VERSION 2.0 2005-05-19)

West Berkshire District Council supports the objectives of the Freedom of Information Act 2000 and other legislation and guidance relating to access to, and the provision of, information on the authority and its operations. This Policy aims to assist staff with meeting their statutory and other obligations which cover the issue of Freedom of Information, and is a guide to the public on the Council's obligations under the Act. This Freedom of Information Policy should be read in conjunction with the Data Protection Policy.

This Policy will be held by the Data Protection Officer and a copy kept in Legal Services. It will take effect from 19 May 2005, and will be updated and reviewed every two years.

1.0 What is Freedom of Information?

- 1.1 The Freedom of Information Act 2000 gives the public a statutory right to see information held by the public sector. It is intended to improve the ways in which a local authority informs the public about what it does and to encourage more effective management of records.
- 1.2 The Act provides rights of access which makes the majority of the information an authority holds readily available. The Act will make the public sector more accountable and open in the work it carries out, and make its processes and business more transparent to the public.

2.0 Rights of Access

- 2.1 Under the Act, any member of the public (including individuals, organisations or businesses) has the right to ask, in writing (by letter or email) to see or receive information held by the Council. This can include information which the Council has produced, and information which is held on behalf of another organisation. Applicants do not have to state the purpose of their request.

3.0 Timescale and Public Interest

- 3.1 The Council will make information available reactively (by responding to any request made in writing within **20 working days**) unless there is an operational or "public interest" reason for not doing so, or there is an absolute exemption under the Act.
- 3.2 The Council will make information available proactively by including as wide a selection of information as is possible on the Publication Scheme, and including on the list of publications clear information on

where the publications can be obtained, or website links direct to the publications.

- 3.3 Requests can be answered by providing information, or directing enquirers to where the information can be found.
- 3.4 The public interest test will apply to qualified exemptions under the Act. The test is whether on balance it is in the public interest to disclose the information. A senior manager (3rd tier or above) will make this decision and there will be a written record of the reasons on file with the Data Protection Officer (see Appendix 2).

4.0 Information which is absolutely or partially exempt

- 4.1 The Council will not classify information as exempt unless there are clear reasons under the Act for doing so. Where documents contain exempt information, the rest of the document will be available under the Act unless other exemptions apply.
- 4.2 Where qualified exemptions to access apply, the Council will inform the applicant, in writing and within 20 working days, of such an exemption. The Council will apply the public interest test and inform the applicant in writing and as soon as possible, whether the information can be made available in its entirety or in a summarised or edited format.
- 4.3 The Council is unable to make information available where an absolute exemption applies, and will notify the applicant to this effect within twenty working days.
- 4.4 Details on exemptions are set out in Appendix 1.

5.0 Fees and Charges

- 5.1 Where information is provided in hard copy format there may be a charge. For information on the website, access will normally be free of charge, although printing information at public access points (such as libraries) may also incur a print charge. The council will produce annually a fees schedule which will be separately published.
- 5.2 There may be additional charges made under the Freedom of Information or Data Protection Regulations for work undertaken to obtain and provide the information requested, where information is not included in the publication scheme and where it exceeds statutory thresholds.
- 5.3 The Council will endeavour to make clear to all applicants when a fee or other charge will be incurred. Applicants will have three months to pay a fee or charge before the application is considered to have expired.

- 5.4 Where charges or fees apply, the Council will also endeavour to suggest alternative ways of obtaining the information at a lower cost or at no charge.

6.0 Accessibility

- 6.1 The Council undertakes to make information available in other formats if requested where this will increase access, and will provide advice and assistance to any applicant to enable them to access the information they require, insofar as the cost of doing so is defined as reasonable under the Act.

7.0 Rights of review and appeal

- 7.1 If access to information is refused because of an exemption, the applicant has a right to appeal for a review of the decision.
- 7.2 This will initially be dealt with by the internal complaints procedure of the Council, and will be carried out by a senior officer of the Council who has not previously been involved with the request.
- 7.3 If the appeal is not resolved, the applicant will have the right to appeal to the Information Commissioner for an independent review. The Council also has the right to appeal to the Information Commissioner in regard to a complaint or an appeal from an applicant.

8.0 Publication Scheme

- 8.1 The Council is required by the Freedom of Information Act to produce a Publication Scheme which lists the classes of information which are readily and regularly made available.
- 8.2 The Council undertakes to update this on a regular basis and to review the scheme at least every two years.
- 8.3 The Publication Scheme is available for reference on the Council website and intranet, and a hard copy can be provided on receipt of a written request to the Data Protection Officer (see Appendix 2).

9.0 Records Management

- 9.1 The Council recognises that compliance with the Act requires effective processes for records management, and will undertake to provide a written records retention policy by the implementation of the Act in January 2005.

10.0 Guidance and Training

- 10.1 The Council will provide both basic awareness training in the meaning of the Act for all staff, and specialist training in the processing of requests for staff who deal regularly with requests for information.
- 10.2 Training will also be made available for appropriate staff on applying the public interest test to exemptions.

10.3 Guidance in a printed format will be provided for all staff on handling requests and related areas.

11.0 Compliance with the FoIA 2000

11.1 The Council recognises the importance of raising awareness of the rights of the public under the Freedom of Information Act and of ensuring that both the public and staff are aware of this Policy.

11.2 It is the responsibility of Managers and Head Teachers to ensure compliance with this Policy.

11.3 A copy of the list of the Freedom of Information and Data Protection Representatives for each Service Area will be held in Information and Communication and in Legal.

11.4 Front line staff, such as reception staff will be trained and made aware of this Policy and of WBDC publications available.

11.5 All Councillors shall be provided with guidance on the Implications of the FoI 2000 for Councillors.

11.6 Guidance on requesting information will be made available to the public on the WBC website, at Council receptions and at libraries.

12.0 Elected Members

12.1 Councillors must ensure that Freedom of Information legislation and policy are complied with whatever role they may exercise. If the Member is in any doubt, they should contact the Data Protection Officer for clarification (see Appendix 2).

12.2 Where Councillors sit as the Council's representative on an outside body, the Councillor's duties will vary depending on the nature of the role taken but in the case of a Trustee or Director, they will owe a duty to the organisation on which they sit. In addition, since May 2002 Councillors have been subject to the Code of Conduct for Members, which includes duties in relation to information acquired or received in confidence.

12.3 Where the Councillor is required to act as WBDC's representative on other public sector bodies, joint boards, working parties etc, their status will be the same as if they were an employee of the Council. However, councillors must not use their position as a representative to secure information or services for individual constituents. Conversely, councillors must not pass on any exempt information acquired as a Member to any outside body.

12.4 When Councillors are required to act as WBDC's appointed representative on Local Government National Bodies, the Councillor's responsibility will be towards the body, which made the appointment and not WBDC in the first instance.

12.5 If members of a specific political party, Councillors will also be subject to any Freedom of Information conditions established by the organisation concerned.

13.0 Information provided to Elected Members under the Act

13.1 The Council may not require Elected Members to state the purposes, political or otherwise, for which information is requested under the Act, but is required to make the information available within 20 working days as it would do for any request, or to advise the Elected Member whether information is exempt or a public interest test will apply.

14.0 Information provided by Elected Members under the Act

14.1 Members, in accordance with this policy, may be asked to provide information under the Freedom of Information Act. The timescales within this Policy are set by Statute and the Member must either provide the information requested; or confirm they do not hold such information; or quote the relevant exemption; or direct the enquirer to the source for such information.

14.2 Additionally, Members must ensure that where disclosing any information, that such information is accurate and up to date.

15.0 Failure to comply with Legislation and Policy

15.1 WBDC expects all employees to comply fully with this Policy, the Freedom of Information principles and the Council's Employee Handbook. Disciplinary action may be taken against any Council employee who knowingly breaches any instructions contained in, or arising from, this Freedom of Information Policy.

15.2 Individual employees are affected in the same way as the Council as a whole. Anyone contravening the Act could be held personally liable and face court proceedings for certain offences which may result in a fine.

15.3 If any of the principles of the Freedom of Information Act 2000 are breached, a recommendation or decision may be made by the Information Commissioner or the Information Tribunal to enforce access to information held by the Council.

15.4 (Similarly, the Information Commissioner or Information Tribunal may decide to uphold a decision of the Council following a decision not to disclose information held.)

16.0 Other rights of the individual

16.1 This policy shall not affect or in any way compromise an individual's rights under the Human Rights Act 1998.

17.0 Relationship between Data Protection and Freedom of Information

17.1 The individual also has rights under the Data Protection Act 1998. At present an individual's right to privacy outweighs another individual's

right to information under the Freedom of Information Act 2000 (i.e if personal data is contained in a document that document cannot usually be released to a third party). However, public interest exemptions under the Freedom of Information Act 2000 may apply.

- 17.2 If an individual applies for information about themselves there is an absolute exemption under the Freedom of Information Act and the request should be dealt with under Data Protection.

Appendix 1: Absolute and Qualified Exemptions

There are 23 exemptions, not all of them applicable to local authorities. Exemptions apply to information if:

Absolute exemptions:

- it is reasonably accessible to the applicant by other means even if this involves payment; (Sect. 21)
- it is information supplied by, or relating to bodies dealing with security matters; (Sect. 23)
- it constitutes court records; (Sect. 32)
- it is required for the purpose of avoiding an infringement of the privileges of either House of Parliament; (Sect. 34)
- disclosure would prejudice the effective conduct of public affairs; (Sect. 36)
- it is personal data the disclosure of which would contravene the Data Protection Act; (Sect. 40)
- it was provided in confidence; (Sect. 41)
- its disclosure is prohibited by any enactment, is incompatible with a Community obligation, or would constitute contempt of court; (Sect 44)

Non-absolute exemptions:

- it is intended for publication at a later date and can reasonably be withheld until publication; (Sect. 22)
- it is required for the purpose of safeguarding national security; (Sect. 24)
- its disclosure would prejudice the defence of the realm; (Sect. 26)
- its disclosure would prejudice international relations; (Sect. 27)
- its disclosure would prejudice relations between the administration of the UK and any other such administration; (Sect. 28)
- its disclosure would prejudice the economic interests or financial interest of the UK, or any administration in the UK; (Sect. 29)
- it is information held for criminal investigations or proceedings; (Sect. 30)
- it is information which has been used or was obtained to investigate, detect or prevent crime or other areas of law enforcement; (Sect. 31)
- it is some form of information held by a public authority for audit functions; (Sect. 33)
- it is data which relates to the formulation of government policy, ministerial communications, provision of advice by any of the Law Officers, or the operation of any Ministerial private office; (Sect. 35)
- disclosure would prejudice the effective conduct of public affairs (excluding matters covered under the absolute exemption for this area); (Sect. 36)
- it is data which relates to communications with members of the Royal Family or Household, or the conferring of Crown honours or dignities; (Sect. 37)
- disclosure would endanger an individual's physical or mental health or safety; (Sect. 38)
- it is environmental information covered by the Environmental Information Regulations; (Sect. 39)

- it is personal data (concerning a third party) the disclosure of which would contravene the Data Protection Act; (Sect. 40). The duty to confirm or deny does not apply to this information.
- it is subject to legal professional privilege; (Sect. 42)
- disclosure would be prejudicial to commercial interests; (Sect. 43)

Information protected by absolute exemptions is not made available to applicants, and the authority is not obliged to confirm or deny that such information is held. For qualified exemptions the Council must confirm or deny that such information exists, even if a public interest test exempts such information, unless the statement of confirmation/denial would itself disclose exempt information.

The legislation also makes provision for vexatious or repeated requests, to which the Authority is not obliged to respond.

Appendix 2: Sources of further information

West Berkshire Council:

The Data Protection Officer
Information & Communication
Council Offices
Market Street
Newbury
Berkshire RG14 5LD
Telephone: 01635 519974 (ext 2974)
Fax: 01635 519392

Information Commissioner:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Data Protection Help Line

Telephone: 01625 545 745
Email: mail@ico.gsi.gov.uk
Fax: 01625 524 510