

Babraham Parish Council Freedom of Information Policy

1. INTRODUCTION

The Freedom of Information Act 2000 gives a general right of access, by any individual or corporate body, to all types of recorded information held by public bodies such as local councils and parish meetings.

Individuals also have the right to access information about themselves, which is held on computer, and most paper files under the Data Protection Act 1998. This is known as the "subject access right".

These acts allow access to all the types of information held whether personal or non-personal. This may include information about third parties but account must, of course, be taken of the provisions of the Data Protection Act 1998 before releasing any such personal information.

This policy is a guide on how to handle all requests for information to Babraham Parish Council.

2. GENERAL RIGHT OF ACCESS

2.1 When making a request for information the applicant will not be required to mention the Freedom of Information Act. However, the request must be made in permanent form, for instance in writing or by e-mail and must include basic contact details so that a reply can be sent. A request made by telephone will not be sufficient. It must also include enough detail to enable a council or parish meeting to identify the information requested.

2.2 Information can take several forms. Not only letters, contractual documents etc. but also e-mails, file notes, microfiche and microfilm, CCTV and audio tapes.

2.3 The Act is fully retrospective. This means that all information held by a local council or parish meeting as at 1 January 2005 could be the subject of access requests from that date.

2.4 It will not be necessary to comply with 'vexatious' or 'repeated' requests where a response has recently been sent to an identical or substantially similar request from the same person. However, councils and parish meetings will be under a duty to provide advice and assistance to anyone making a request. For example where a council or parish meeting itself does not hold the information but is aware who does. In such circumstances the applicant should be given details of the other body.

2.5 All members of the council and employees of the council who may receive correspondence from the general public/ outside organizations should be aware of the implications of Freedom of Information so that they can recognize when a request has been received and direct it to the clerk

3 RESPONDING TO REQUESTS

3.1 All information not covered by an exemption (see below) must ordinarily be released to the applicant within 20 working days of receipt of the request. The 20 day period starts on the first working day after the request is received. However, if the request is refused on grounds of cost or exemption the applicant must also be informed of the refusal, within the 20-day period.

3.2 Where possible the information must also be provided to the applicant in the manner in which they have specified.

3.3 Where a request received is unclear or problematical, the council will establish direct contact with the applicant and find out what they really want.

3.4 A charge may be made for dealing with requests. If the time taken to deal with the request is less than 18 hours staff time then the request is free. If the request would be estimated to take longer than 18 hours the council can refuse the request, answer and waive the fee, or answer and charge at £25 per hour up to a limit of £450.

3.5 Requests by the same individual or group received within 60 days and pertaining to the same or similar information can be grouped together for the calculation of fees.

3.6 Any material expenses such as photocopying and postage can be charged at cost regardless of the time spent on the request. There will be a minimum charge of £5 if expenses are incurred.

3.7 The applicant must be issued with a fees notice and pay the costs within 3 months. The council does not have to supply the information if the fees are not paid. If the costs are not paid within 3 months then the request is considered to have lapsed and the applicant must apply once more.

3.8 If it is believed an exemption applies, and it is necessary to consider the balance of the "public interest test" before deciding whether or not to release the information, then 90 days is allowed in which to respond in full. An estimate must be given to the applicant of the date by which a decision will be made within the original 20-day period.

3.9 If it is decided that an exemption applies and that the information is therefore withheld the applicant must be informed of the decision - including the reason for refusal - within 20 days of the decision.

3.10 If an applicant wishes to inspect the information in person it is recognized that, where the clerk's private residence is also the council office, this gives rise to issues of both privacy and security. In these circumstances the council will make alternative arrangements, which are "reasonable" in nature to enable inspection. The following types of arrangements would be satisfactory:

- Arrange by prior appointment for the applicant to attend at the clerk's residence but also ensure someone else is in attendance e.g. the chairman.
- Hire of a room as a "one off" arrangement in a village hall/community centre and invite the applicant to attend by prior appointment.
- Invite the applicant to attend, before the commencement of one of the councils scheduled meetings and take the documents to that meeting.

4 EXEMPTIONS

4.1 There are 23 exemptions where that right is either disapplied or qualified. There are two general categories of exemptions known as "Absolute Exemptions" and "Qualified Exemptions" respectively. Where information falls within the scope of an 'absolute exemption' there is no obligation to communicate it to an applicant. Absolute exemptions include the following types of information: -

- Information reasonably accessible by other means (most commonly this is likely to be information published in accordance with a publication scheme);
- Information from, or relating to, certain security bodies.
- Information contained in court records.
- Personal information about the person making the request (the Data Protection Act applies to such requests and the applicant should be applying under that legislation).
- Information provided in confidence (this applies if releasing the information would amount to an actionable breach of confidence at the time the request is made).
- Prohibitions on disclosure (this applies if the disclosure is prohibited by legislation or if disclosure would be a contempt of court).

4.2 In the case of 'qualified exemptions' however, the council will have to go on to consider whether it must override the exemption because it is in the public interest to release the information. The "public interest test" involves considering the circumstances of each particular case and the exemption that covers the information. The balance will lie in favour of disclosure in that information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it. The following exemptions are examples of qualified exemptions: -

- Information intended for future publication (applies where the council/ parish meeting plans to publish the information in the future, and it is reasonable at the time the request was made not to disclose it until then).
- Investigations and proceedings conducted by public authorities (covers information relevant to criminal investigations and proceedings and information obtained from confidential sources for criminal or civil proceedings).
- Law enforcement (e.g. information which will prejudice the prevention or detection of crime).
- Health and safety (applies to information which would, or would be likely to, endanger the physical, or mental health or safety of any individual); Environmental information.
- Personal Information concerning a third party (broadly requests for personal information about someone else will be dealt with under the Act but the principles of the Data Protection Act 1998 will be used to determine whether it should be disclosed).
- Legal professional privilege (applies where a claim to legal professional privilege could be maintained in legal proceedings).
- Commercial interests (applies to trade secrets and to information, the disclosure of which would, or would be likely to prejudice the commercial interests of any person).
- National security.
- Defence (information likely to prejudice national defence or the armed forces).
- International relations (information likely to prejudice the UK's international relations or interests).
- Relations within the UK (information likely to prejudice relations between the UK administrations, the UK government, the National Assembly for Wales, the Scottish administration, and the executive committee of the Northern Ireland Assembly).
- The economy (information likely to prejudice the economic interests of the UK or part of the UK, or the financial interests of the government or any of the national administrations in the UK).

4.3 The public interest test will require the councils to make a judgment about the public interest. Where the balance between disclosure and withholding the information is seen as equal, the information must be released.

5 REFUSING A REQUEST

5.1 The existence of the exemptions can sometimes lead to a situation where part of a document is disclosed and the rest is withheld.

5.2 Where disclosure is refused it is necessary to specify the exemption relied on and also state why the exemption applies.

5.3 Where disclosure is refused based on vexatious or repeated requests the applicant must be informed of this and the reason why.

5.4 When notifying an applicant that their request has been refused the council should also inform them of the councils own complaints procedure and the right of appeal to the Information Commissioner

5.5 If the council no longer holds the information which is the subject of the request the applicant can be informed of that accordingly.