

Dudley Metropolitan Borough Council

FREEDOM OF INFORMATION ACT POLICY

Policy Statement

1. The Council will use all appropriate and necessary means to ensure that it complies with the Freedom of Information Act 2000 and associated Codes of Practice issued by the Lord Chancellor's Department pursuant to sections 45(5) and 46(6) of the Act.

Publication Scheme

2. The Council's Publication Scheme will be a 'living' document, detailing the information that the Council publishes at that point in time and intends to publish in the future. It will detail the format in which the information is available and whether or not a charge will be made for the provision of that information. The Publication Scheme will be available in hard copy on request and through our website. It will be subject to regular review in terms of content and will be formally reviewed by the Information Commissioner.
3. Applications for information listed in the Publication Scheme may be received verbally or in writing. The Council will establish systems and procedures to process applications arising from the Publication Scheme.

General Rights of Access

4. Section 1 of the Act gives a general right of access from 1st January 2005 to recorded information held by the Council, subject to certain conditions and exemptions contained in the Act. Simply, any person making a request for information to the Council is entitled:
 - To be informed in writing whether the Council holds the information of the description specified in the request; and
 - If the Council holds the information to have that information communicated to them.
5. This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if the Council holds the information it must provide it, subject to certain conditions and exemptions. The Council will ensure that procedures and systems are in place to facilitate access by the public to recorded information from this date.

6. In accordance with section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describes the information requested. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.
7. The Council will establish systems and procedures to process applications arising from the introduction of general rights of access on 1st January 2005.

Conditions and Exemptions

8. The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where the Council:
 - Reasonably requires further information in order to identify and locate the information requested; and
 - Has informed the applicant of that requirement.
9. The Council will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.
10. Under section 2 of the Act the Council does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all circumstances in all of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Council holds the information. The Part II exemptions are listed in Annex A of this Policy. The Council will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.
11. The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.
12. The duty to comply with a request for information does not arise if the Council estimates that the cost of compliance with the request would exceed the appropriate limit that will be established in national Fees Regulations. The Council will work with applicants to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the communication that exceeds this limit.
13. The Council is not obliged to comply with a request for information if the request is vexatious. Where the Council has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequently identical or similar request from that person

unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Council will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

Charge and Fees

14. The Council will not generally charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM. The Publication Scheme and the procedures that support this Policy will provide further guidance on charging.
15. The Council will follow, when they are published, the national Fees Regulations for general rights of access under the Act. These will set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied.
16. In all cases where the Council chooses to charge for information published through the Publication Scheme or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them.

Time limits for compliance with requests.

17. The Council will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act. All staff will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.
18. If the information requested by the applicant incurs a charge or a fee and the applicant has paid this in accordance with section 9(2), the working days in the period from when the applicant received the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt.
19. If the Council chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of this decision.

Means by which information will be conveyed.

20. When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- The provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant;
- The provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- The provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant;

the Council shall, in so far as is reasonably practicable, give effect to that preference in accordance with section 11 of the Act.

21. In determining whether it is reasonably practicable to communicate information by a particular means, the Council will consider all the circumstances, including the cost of doing so. If the Council determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the Council will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.
22. The Council will establish systems and procedures to monitor the provision of information arising from requests under the Act.

Refusal of requests.

23. As indicated above, the duty to confirm or deny does not arise if the Council:

- Using section 2 of the Act applies an exemption under Part II of the Act as illustrated in Annex A;
- Has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant;
- Under section 12 of the Act estimates that the cost of compliance with the request for information exceeds the appropriate limit;
- Can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

24. If the Council chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) of the Act the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Council under the Act and the rights of appeal to the Information Commissioner conferred by section 50 of the Act.

a. If the Council is, to any extent, relying on a claim that:

- Any provision of Part II (relating to the duty to confirm or deny) is relevant to the request; or
- On a claim that information is exempt information;

A notice will be issued within twenty working days under s17 of the Act. The notice will:

- State that fact;
- Specify the exemption in question; and
- State (if that would not otherwise be apparent) why the exemption applies;
- Give details of the Council's complaint procedure(s) and how to appeal to the Information Commissioner.

25. Where the Council is considering applying an exemption and has not yet reached a decision as to the application of an exemption the notice will indicate that no decision as to the application of an exemption has been reached. It will contain an estimate of the date by which the Council expects that a decision will have been reached.
26. As indicated by the Lord Chancellor's Code of Practice issued under section 45 of the Act, such estimates should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Council. If the Council finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The Council will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.
27. If applying a qualified exemption under subsection (1)(b) or (2)(b) of section 2 of the Act, the Council will, either in the notice issued or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:
 - That, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Council holds the information; or
 - That, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
28. The statement should not involve the disclosure of information, which would itself be exempt information.
29. If the Council is relying on a claim that section 12 (cost exceeds appropriate limit) or 14 (vexatious or repeated request) of the Act apply, the notice will state that fact. If the Council is relying on a claim that the request is vexatious or repeated under section 14 of the Act, and a notice under section 17 has already been issued to the applicant stating this fact, a further notice is not required.
30. The Council will keep a record of all notices issued to refuse requests for information.

Duty to provide advice and assistance.

31. The Council will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Council to do so, to persons who propose to make, or have made, requests for information. This is a duty under section 16 of the Act.
32. The Council will ensure that the systems and procedures that are deployed to meet the section 16 duty also conform to the Code of Practice issued under section 45 of the Act.

Transferring Requests for Information.

33. A request can only be transferred where the Council receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority. If the Council is in receipt of a request and holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Council recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the Act).
34. Upon receiving the initial request for information the Council will always process it in accordance with the Act in respect of such information relating to the request as it holds. The Council will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the Council must be certain as to the extent of the information relating to the request, which it holds itself
35. Council believes that some or all of the information requested is held by another public authority, the Council will consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:
 - Contacting the applicant and informing him or her that the information requested may be held by another public authority;
 - Suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;
 - Providing him or her with contact details for that authority.

36. If the Council considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information. Prior to transferring a request for information to another authority, the Council will consider:
- Whether a transfer is appropriate; and if so
 - Whether the applicant is likely to have any grounds to object to the transfer.
37. If the Council reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but will inform the applicant that it has done so.
38. Where there are reasonable grounds to believe an applicant is likely to object, the Council will only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.
39. All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Council is unable, either to advise the applicant which information it may or may not hold, or may not be able to facilitate the transfer of the request to another authority (or considers it inappropriate to do so), the Council will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

Consultation with Third Parties.

40. The Council recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example: where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 1998 ("the DPA"). Unless an exemption provided for in the Act applies in relation to any particular information, the Council will be obliged to disclose that information in response to a request.
41. Where a disclosure of information cannot be made without the consent of a third party, for example: where information has been obtained from a third party and, in the circumstances, the disclosure of the information without their consent would constitute an actionable breach of confidence (such that the exemption at section 41 of the Act would apply), the Council will consult that third party. This will be with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example: because the third

party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party, which may be affected by a disclosure, do not give rise to legal rights, consultation may still be appropriate.

42. Where information constitutes "personal data" within the meaning of the DPA, the Council will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the DPA in such cases.
43. The Council will undertake consultation where:
- The views of the third party may assist the Council to determine whether an exemption under the Act 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 Act.
44. The Council may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Council will consider the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:
- The Council does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
 - The views of the third party can have no effect on the decision of the Council, for example: where there is other legislation preventing or requiring the disclosure of this information; and
 - No exemption applies and so under the Act's provisions, the information must be provided.
45. Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation that can express views on behalf of those parties, the Council will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Council may consider that it would be sufficient to consult a representative sample of the third parties in question.
46. The fact that the third party has not responded to consultation does not relieve the Council of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for the Council, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not; in itself mean information should be withheld.

Public Sector Contracts.

47. When entering into contracts the Council will refuse to include contractual terms that purport to restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract.
48. When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the Council will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Commissioner. When entering into the above contracts the Council will make it clear that these restrictions apply to sub-contractors also and that the Secretary of State has the powers to designate them as 'public bodies' for the purpose of making them comply with the Act.
49. The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellors Department indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person and the disclosure of the information to the public, otherwise than under the Act, would constitute a breach of confidence actionable by that, or any other person.
50. It is for the Council to disclose information pursuant to the Act, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Act) by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.

Accepting Information in Confidence from Third Parties.

51. The Council will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with the exercise of any of the Council's functions and it would not otherwise be provided.

52. The Council will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

Complaints about the discharge of the duties of the Council under the Act.

53. The Council will implement a procedure for dealing with complaints about the discharge of the duties of the Council under the Act, including the handling of requests for information.
54. The procedure will refer applicants to the right under section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Council following attempts at local resolution of their complaint.

Records Management.

55. The Council will have a separate policy, with supporting systems and procedures, that will ensure compliance with the Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000.
56. The policy and associated procedures will address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Council.

Implementation and Compliance – Responsibilities of all staff

57. All staff are obliged to adhere to this policy. A failure to comply with the requirements of the policy and related procedures (and where such failure could have been avoided), by all managers and employees will reflect in poor performance, which may then lead to disciplinary action. Managers retain the responsibility of ensuring that all employees are made aware of the provisions of this policy, and for keeping their own staff up-to-date on changes as they occur. Managers also retain the responsibility of ensuring that employees are able to comply with the provisions of this policy.

Corporate Oversight.

58. The Corporate Principal Information Security Officer will oversee the implementation of this Policy on behalf of the Director of Finance, ICT & Procurement and the Director of Law & Property who have delegated responsibility for the Freedom of Information Act. The Principal Information Security Officer, will establish systems and procedures that will support the implementation of this Policy to which, as stated above, all staff will be expected to adhere.

Annex A

Exempt Information Under Part II of the Freedom of Information Act 2000

A1.1. There are two types of class exemption:

- (a) absolute, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure.
- (b) qualified by the public interest test, which require the public body to decide whether it is in the balance of public interest to not disclose information.

A1.2. With the exception of s21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.

A1.3. The absolute exemptions under the Act are:

- Section 21, Information accessible to applicant by other means
- Section 23, Information supplied by, or relating to, bodies dealing with security matters.
- Section 32, Court Records
- Section 34, Parliamentary Privilege
- Section 36, Prejudice to effective conduct of public affairs (so far as relating to information held by the House of Commons or the House of Lords)
- Section 40, Personal Information (where disclosure may contravene the Data Protection Act 1998)
- Section 41, Information provided in confidence
- Section 44, Prohibitions on disclosure.

A1.4. The exemptions that are qualified by the public interest test are:

- Section 22, Information intended for future publication
- Section 24, National Security
- Section 26, Defence
- Section 27, International Relations

- Section 28, Relations within the United Kingdom
- Section 29, The Economy
- Section 30, Investigations and proceedings conducted by public authorities
- Section 31, Law Enforcement
- Section 33, Audit Functions
- Section 35, Formulation of Government Policy
- Section 36, Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords)
- Section 37, Communications with Her Majesty, etc. and honours
- Section 38, Health and Safety
- Section 39, Environmental Information
- Section 42, Legal Professional Privilege
- Section 43, Commercial Interests.

A1.5. More information on the exemptions can be found on the HMSO website at www.legislation.hmso.gov.uk/acts/en/2000en36.htm

Annex B

Glossary of Terms

- B1.1. *Absolute exemption* - applied to information that does not have to be released to the applicant either through a Publication Scheme or through the general right of access under the Act. Information to which an absolute exemption applies does not require a public authority to take a test of prejudice or the balance of public interest to be in favour of non- disclosure Reference to absolute exemptions can be found in Part I, section 2 and Part II of the Act.
- B1.2. *Applicant* - the individual(s), group or organisation requesting access to information under the Act.
- B1.3. *Duty to confirm or deny* - any person making a request for information to a public authority is entitled to be informed in writing by that authority whether the public authority the information specified in the request or not.
- B1.4. *Fees Notice* - a written notification issued to an applicant stating that a fee is payable and exempts public authorities from being obliged to disclose information until the fee has been paid. The applicant will have three months from the date of notification to pay the fee before his request lapses.
- B1.5. *Fees Regulations* - national regulations that will prohibit a fee with regard to certain types of request, set an upper limit on amounts that may be charged and prescribe the manner in which any fees are to be calculated. The regulations will not apply where provision is made under another Act as to the fee that may be charged for the provision of particular information.
- B1.6. *General right of access* - Section 1 of the Act confers a general right of access to information held by public authorities. An applicant has a right to be told whether the information requested is held by that authority and, if it is held, to have it communicated to them. Provisions limiting an authority's duty under section 1 appear in sections 1(3), 2, 9, 12 and 14 and in Part II of the Act. The grounds in sections 9, 12 and 14 relate to the request itself and the circumstances in which an authority is not obliged to comply with it. The provisions of Part II relate to the nature of the information requested.
- B1.7. *Information Commissioner* - The Information Commissioner enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000 The Commissioner is a United Kingdom (UK) independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one. In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is, anyone who decides how and why personal data, (information about identifiable, living individuals) are processed.

B1.8. *Lord Chancellor's Department (Department of Constitutional Affairs)* - The Lord Chancellor's Department is responsible for the efficient administration of justice in England and Wales. Broadly speaking the Lord Chancellor is responsible for:

- The effective management of the courts;
- The appointment of judges, magistrates and other judicial office holders;
- The administration of legal aid; and
- The oversight of a wide programme of Government civil legislation and reform in such fields as human rights, freedom of information, data protection, data sharing, family law, property law, electoral & referenda law, defamation and legal aid.

B1.9. *Public authority* - The Act is intended to have wide application across the public sector at national, regional, and local level. In view of the large number of bodies and offices intended to fall within the scope of the Act it is not feasible to list each body individually. Public authorities are, therefore, designated in one of the following ways:

- on the face of the Act (in Schedule 1), using generic descriptions where appropriate which specifies the principal authorities in national and local government, together with the principal public authorities relating to the armed forces, national health service, education, the police and other public bodies and offices;
- by order under section 4(1) adding to Schedule 1 any body or the holder of any office that satisfies certain specified conditions;
- by order under section 5 adding any person that satisfies certain conditions and that appears to the Secretary of State to exercise functions of a public nature or is providing under a contract with a public authority any service whose provision is a function of that authority; or
- by reference to the definition of a publicly-owned company in section 6.

B1.10 *Publication Scheme* - A scheme that specifies the classes of information an authority publishes, or intends to publish. It includes the manner of publication and whether the information is available to the public free of charge or on payment.

B1.11 *Qualified exemption* - Information to which a qualified exemption applies requires a public authority to take a test of prejudice or to demonstrate that the balance of public interest is in favour of non-disclosure. Reference to qualified exemptions can be found in Part I, section 2 and Part II of the Act.