

Gwynedd Council

Freedom of Information Act and Environmental Information Regulations Policy

1 Policy Statement

Gwynedd Council supports the objectives of the Freedom of Information Act 2000 (the Act) and the Environmental Information Regulations 2004 (the Regulations) and is committed to full compliance by

- Ensuring that as much information as possible is made available to the public through the Publication Scheme;
- Ensuring that it responds in a timely manner to requests for information and provides advice and assistance to applicants and
- In cases where information is covered by an exemption under the Act, to consider carefully whether or not the information should be released.

The purpose of the Policy is to assist staff to fulfill their obligations under the Act and to provide guidance to the public regarding the Council's responsibilities under the Act and Regulations.

2 Scope of Policy

This policy is relevant to any information recorded and held by the Council or information held by somebody else on behalf of the Council. For the Regulations, it also includes information held by the Council on somebody else's behalf.

3. The Publication Scheme

Each public authority is required to produce a Publication Scheme which specifies what information is available to the public, the format of the publication and whether the information is free of charge or on payment of a fee.

The Council will:

- Ensure that as much information as possible is made available through the Publication Scheme

4. Specific Requests for Information

The Council will

- Establish a procedure for dealing with requests.

- Respond to each written request for information within 20 working days (unless an exemption applies and it needs more time to consider the request).
- Inform the applicant, providing a full explanation, as to why a request has been refused.
- Ensure that the interests of any third parties affected by a decision to disclose will be taken into account.
- Provide advice and assistance to the applicant and transfer requests to other relevant organisations when the Council does not hold the requested information.

4.1 Exemptions

Freedom of Information Act 2000

There are 23 exemptions under the Act (see Appendix 1 for those which apply to local government).

The Council may decide that the requested information is exempt under the Act and will therefore refuse to disclose that information.

Where part of a document contains exempt information, the Council will consider whether the rest of the document can be made available to the applicant.

Absolute exemptions

The Council will not confirm or deny that the information is held and will not disclose the information.

It will notify the applicant within 20 working days, giving full reasons for its decision.

Qualified exemptions

If the Council decides that one of these exemptions applies, it will have to apply the public interest test.

The Council will inform the applicant within 20 working days that an exemption applies and when a decision will be taken.

Environmental Information Regulations 2004

The majority of the exceptions under the Regulations are subject to a public interest test.

The Council will respond in accordance with the procedure for the Freedom of Information Act.

See Appendix 2 for the exceptions.

Responsibilities

Relevant Service Managers are responsible for deciding to refuse requests in consultation with the Senior Statutory Data Protection Officer and, if necessary, by seeking legal advice in specific cases.

4.2 Repeated and vexatious requests

The Council reserves the right to refuse repeated and vexatious requests.

4.3 Information about third parties

(i) Commercial/confidential information

When dealing with the above requests, the Council will consult with relevant third parties before reaching a decision.

(ii) Information about Councillors

The Council cannot disclose information produced by or in the possession of individual councillors unless they are part of the Council's records or is information generated in their role as Cabinet members. If the information forms part of a record held by the Council, then any request for their disclosure will be processed in accordance with this Policy.

(iii) Information about staff

We will not disclose personal details which would adversely affect the privacy of an individual in their personal life, in contravention of the first principle of data protection legislation (General Data Protection Regulation and the Data Protection Act 2018) which states that information shall be processed fairly.

When deciding whether or not to disclose information about staff, we shall consider the following factors:

- whether the information is sensitive
- consequences of disclosure;

- the reasonable expectations of the member of staff; and
- whether there is a legitimate interest in disclosing the information

4.4 Translation

Since the Act refers to information 'held' at the time of the request, there is no requirement to translate any documents in response to a request.

However, in accordance with the Council's language policy, and to comply with the spirit of the Act, the Council is committed to translating the requested information. It will inform applicants that it will not necessarily be able to provide the translation within 20 working days and will be able to charge applicants in accordance with conditions set out in the fees policy (Appendix 3).

4.5 Fees

Unless otherwise stated, the information contained in the Publication Scheme is free of charge.

See the separate policy in Appendix 3.

5. Training

Written guidelines on handling requests will be made available to staff.

6. Responsibilities

The Senior Statutory Data Protection Officer is responsible for drawing up guidance on freedom of information and advising staff on how to deal with requests for information.

Staff members within the support service are responsible for co-ordinating requests across the Council. There is a separate dedicated officer within the Children's and Adult services. This means recording requests on the tracking system, gathering information within the service and sending the reply to the applicant.

Internal reviews are carried out by the Monitoring Officer or a deputy appointed by him.

The Monitoring Officer is the Council's 'qualified person' under section 36 of the Act.

The Information and Security Management Group is responsible for overseeing the implementation of the policy.

7. Monitoring, review and evaluation

The Council will

- Maintain a record of all requests made under the Act.
- Monitor the numbers, response times, complaints, exemptions and appeals.
- Consider whether to add any documents to the Publication Scheme.
- Produce regular monitoring reports.

8. Complaints

If the applicant is dissatisfied with the response to his request for whatever reason, he has a right of appeal for a review of the decision.

The internal review procedure is attached to this policy (Appendix 4)

9. Failure to comply with the Act

a) The powers of the Information Commissioner

The Commissioner may serve

- A decision notice if he is of the opinion that the authority has not responded appropriately to a request for information.
- An information notice requiring the authority to provide information to enable the Commissioner to fulfil his duties under the Act
- An enforcement notice if he considers that the Council has not complied with any of the requirements under the Act.

If the Council refuses to comply with any of these notices, it may lead to contempt of court proceedings which could result in two years imprisonment or a fine imposed on the authority or an officer of the authority.

b) Implications for staff

All members of staff are expected to comply fully with this policy. Disciplinary action in accordance with the Council's disciplinary procedure may be taken in response to a failure to comply.

If the authority or an officer of the authority is found guilty of intentionally destroying or concealing information in order to avoid responding to a request under the Act, they may be liable to a fine of up to £5,000.

10. Relationship with other legislation

Data protection legislation

Individuals also have rights under data protection legislation.

If an individual applies for information about themselves, there is an absolute exemption under the Act (section 40(1)) and the request should be dealt with under the Data Protection procedure.

Information about third parties will not be disclosed if to do so would breach the Data Protection principles.

Freedom of Information Act 2000

Below are exemptions relevant to local government:

Absolute Exemptions

- s21 Information that is otherwise available, namely information that is relatively easy for the public to access another way rather than through the Freedom of Information Act 2000.
- s32 Court records e.g. documents that have been filed or placed in the hands of the court.
- s40 Personal information about the applicant – the request will be dealt with under data protection legislation.
Personal information about a third party – if its disclosure were to contravene the data protection principles
- s41 Information given in confidence by anybody
- s44 Information prohibited from being disclosed e.g. under legislation; its disclosure would mean contempt of court or incompatible with any one of the European Community's commitments

Exemptions where the “public interest test” must be used:

If the authority decides that one or more of the exemptions apply, it must disclose the information unless it decides that the ‘public interest’ requires adherence to the exemption.

- s22 Information intended for future publication i.e. in circumstances where it is reasonable not to disclose the information until the day it is to be published.
- s30 Information regarding investigations and court cases undertaken by a public authority e.g. information regarding criminal investigations and cases and information received from confidential sources for criminal or civil court cases.
- s31 Information relating to law enforcement
- s33 Investigation functions
- s36 Information which would prejudice the effective conduct of public affairs.

- s38 Information where its disclosure would endanger the physical or mental health or safety of any individual.
- s39 Information regarding the environment – coming under the Environmental Information Regulations 2004.
- s42 Information which comes under the professional legal privilege.
- s43 Information regarding commercial interests where the information is a trade secret or where its disclosure would harm or be likely to prejudice the commercial interests of any person.

Below are the exceptions under the Regulations. Each one, with the exception of regulation 13, are subject to a public interest test and if the information relates to emissions, the Council cannot refuse to release information based on confidentiality of proceedings of a public authority, commercial confidentiality, voluntary supply or protection of the environment.

- 5(6) Any other law that would prevent the disclosure of environmental information shall apply

- 12(4)(a) The information is not held
- 12(4)(b) The request is manifestly unreasonable
- 12(4)(c) The request is too general
- 12(4)(d) Material in the course of completion, unfinished documents or incomplete data
- 12(4)(e) Disclosure of internal communication
- 12(5)(a) International relations, defence, national security or public safety
- 12(5)(b) Administration of justice
- 12(5)(c) Intellectual property rights
- 12(5)(d) Confidentiality of the proceedings of a public authority
- 12(5)(e) Commercial confidentiality
- 12(5)(f) Information of which its disclosure would have a detrimental effect on the person who voluntarily provided the information
- 12(5)(g) Protection of the environment

- 13 Personal data

Charging Policy

Freedom of Information Act

In accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, the Council's policy will be as follows:

1. When calculating the cost of complying with a written request, the Council will calculate the time taken by an individual member of staff, charged at a rate of £25 per hour, to do the following:
 - i) Determining whether the Council holds the information
 - ii) Locating the information or document
 - iii) Retrieving the relevant information
 - iv) Extracting the relevant information from a document.

2. If the Council decides to comply with a request that will exceed the limit of £450, it is entitled to charge for the following:
 - i) The cost of carrying out the work noted in i)-iv) above
 - ii) The cost of notifying the applicant whether or not it holds the information
 - iii) The cost of communicating the information (postage, printing and photocopying costs).

3. Disbursements

In addition to the fees, the Council is also entitled to charge for the following, regardless of the cost of complying with a request. These are in addition to any fees that may be charged.

- i) the cost of complying with the applicant's request to receive information in a particular format
- ii) the cost of reproducing or copying documents. The Council will charge the following fees for Freedom of Information requests:

Photocopying or Printing	
A4	£0.10
Colour A4	£0.50

A3	£0.20
Colour A3	£1.00
CD	£0.25
Audio Tape	£2.00
Video/DVD	£2.50
Maps	Depending on application

- iii) costs of postage, faxing, etc

However, the Council will not charge anything if the total of the above costs is less than £10.

4. Translation

The Council will charge for translating documents as follows:

1. Where the number of words is in excess of 400
2. Where the request is for a translation into a language other than English or Welsh

The fee will be calculated on the basis of the reasonable costs of the translation, which may include the costs incurred in engaging freelance translators.

5. If the Council estimates that the cost of complying with a request is less than £450, the Council will only charge for postage, printing and photocopying costs and other methods of transmitting the information, in accordance with the Council's specified rates, together with the cost of providing information in a particular format, including translations. The Council is not obliged to comply with requests that would be estimated to cost in excess of £450. In these circumstances, the Council will discuss the matter with the applicant to find out whether he/she is prepared to adjust or modify his/her request, in order to bring down the cost.
6. Where the Council intends to charge for providing the information, the applicant will be issued with a Fees Notice in accordance with section 9 of the Freedom of Information Act 2000. If the specified fee is not received within 3 months of sending the Notice, the request will not be processed.
7. If the Council receives two or more similar requests from one person or different persons in concert or in pursuance of a campaign within any sixty consecutive working day period, it will aggregate the cost of complying with all of them. If the total cost exceeds £450, it will not be obliged to comply with any of them.

Environmental Information Regulations

The Regulations note that a reasonable fee may be charged for environmental information.

Local land charges

The Council will charge the following fees for staff time spent in preparing information in response to a request. This includes time spent finding, retrieving information and putting it into a specific format.

Number of questions

1-2	£25
3-5	£42
>5	£66

A fee may not be charged for allowing applicants to view public registers or to call into offices to see information.

No fee will be charged for maintaining any databases.

Appendix 4

Procedure for dealing with requests for internal reviews under the Freedom of Information Act 2000

The following guidelines set out how to deal with requests for reviews made under the above legislation.

Stage 1: Internal review procedure

If the complainant is not happy with the response to his request made under the Act, he may ask for an internal review. The Monitoring Officer or his deputy will conduct the review, within 20 working days.

Stage 2: External review procedure

If the complainant is not happy with the outcome of the internal review, he has the right to appeal to the Information Commissioner by contacting him at the following address:

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

Operational Procedure

1. The relevant staff receive the request for a review.
2. The member of staff will record this on the tracking system and send the complainant a letter of acknowledgment which will state that the target date for a response is 20 working days. If it is clear that the Council will not be able to respond within the target date, the complainant will be contacted and a reason for the delay will be provided.
3. The person dealing with the matter will conduct an internal review and either:
 - Ask for more time to consider the matter
 - Confirm the original decision not to disclose the information
 - Revise the original decision by agreeing to release part of the information that had been previously withheld
 - Reverse the original decision and disclose all the information that had been withheld

The reviewer will contact the complainant, with a copy to the relevant member of staff.

- 4 a) If the outcome of the review is to confirm the original decision, the complainant should be notified that he has a right of appeal to the Information Commissioner.
 - b) If the outcome is that previously withheld information is to be released, this information should be sent to the complainant as soon as possible.
 - c) If the outcome of the review is that the Council's internal procedures have not been followed by staff, the Council should apologise to the complainant.
5. The member of staff should keep a record on the tracking system of the request for a review, the date of receipt and the completion date. Any relevant documentation should be kept on the file of the original request.