Dear Sir/Madam,

The Cabinet Member for Central Services (Councillor R.A. Taylor) is to consider the following report and make a decision on Tuesday, 29th January, 2013 at 6.00 p.m. in Interview Room D, Town Hall, Nuneaton.

Yours faithfully,

ALAN FRANKS
Managing Director

A G E N D A

PART 1
PUBLIC BUSINESS

1. EVACUATION PROCEDURE

A fire drill is not expected, so if the alarm sounds please evacuate the building quickly and calmly. Please use the stairs and do not use the lifts. Once out of the building, please gather outside the Yorkshire Bank on the opposite side of the road.
Exit by the door by which you entered the room or by the fire exits which are clearly indicated by the standard green fire exit signs.

If you need any assistance in evacuating the building, please make yourself known to a member of staff.

Please also make sure all your mobile phones are turned off or set to silent.

2. **PUBLIC CONSULTATION** - Members of the public will be given the opportunity to speak on specific agenda items if notice has been received.

3. **DECLARATIONS OF INTEREST** - To receive declarations of Disclosable Pecuniary and Other Interests, in accordance with the Members’ Code of Conduct.

Note: Following the adoption of the new Code of Conduct, Members are reminded that they should declare the existence and nature of their personal interests at the commencement of the relevant item (or as soon as the interest becomes apparent). If that interest is a Disclosable Pecuniary or a Deemed Disclosable Pecuniary Interest, the Member must withdraw from the room.

Where a Member has a Disclosable Pecuniary Interest but has received a dispensation from Standards Committee, that Member may vote and/or speak on the matter (as the case may be) and must disclose the existence of the dispensation and any restrictions placed on it at the time the interest is declared.

Where a Member has a Deemed Disclosable Interest as defined in the Code of Conduct, the Member may address the meeting as a member of the public as set out in the Code.

Note: Council Procedure Rules require Members with Disclosable Pecuniary Interests to withdraw from the meeting unless a dispensation allows them to remain to vote and/or speak on the business giving rise to the interest.

Where a Member has a Deemed Disclosable Interest, the Council’s Code of Conduct permits public speaking on the item, after which the Member is required by Council Procedure Rules to withdraw from the meeting.

4. **ACCESS TO INFORMATION - POLICY REVIEWS** - Report of the Director - Assets and Street Services attached. *(Page 2).*
**INDIVIDUAL CABINET MEMBER DECISION**

**Report Summary Sheet**

<table>
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<tbody>
<tr>
<td>Subject:</td>
<td>Access to Information - Policy Reviews</td>
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<tr>
<td>Portfolio:</td>
<td>Central Services - (Councillor R.A. Taylor)</td>
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<td>From:</td>
<td>Director - Governance and Recreation</td>
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<tr>
<td>Recommendations:</td>
<td>That the policies be approved.</td>
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<tr>
<td>Reasons:</td>
<td>The Polices set out the legal requirements and Council’s procedures for complying with requests for information under the legislation.</td>
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| Options:         | Not to approve the policies.  
                     To amend the policies prior to approval.                                                                                      |

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<td>Forward plan:</td>
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<td><strong>Corporate priorities:</strong></td>
<td>Aim 4 Priority 1.</td>
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| **Relevant statutes or policy:** | Freedom of Information Act 2000  
Data Protection Act 1998  
Environmental Information Regulations 2004 |
| **Equal Opportunity Implications:** | No specific equal opportunities implications. |
| **Human Resources Implications:** | No specific human resource implications. |
| **Financial Implications:** | No specific financial implications. |
| **Health Inequalities Implications:** | None. |
| **s.17 – Crime and Disorder Implications:** | None. |
| **Risk Management Implications:** | None. |
| **Environmental Implications:** | None. |
| **Legal Implications:** | Failure to comply with legislation may result in claims being made against the Council. |
| **Contact Details:** | Philip Richardson – Director Governance & Recreation. Telephone 024 76376233 |
NUNEATON AND BEDWORTH BOROUGH COUNCIL

Report to: Individual Cabinet Member Decision - 29th January, 2013

From: Director - Governance & Recreation

Subject: Access to Information - Policy Reviews

Portfolio: Central Services (Councillor R.A. Taylor)

1. Purpose of Report

1.1 To approve the Council Policies on:

- Freedom of Information Act 2000
- Data Protection Act 1998
- Environmental Information Regulations 2004

2. Background

2.1 Members will be aware that the Council has in place policies setting out rights and obligations in respect of information under the above legislation. The policies attached at Appendices A to C were reviewed by Economic and Corporate Overview and Scrutiny Panel on 5th November and are now recommended to Cabinet for approval. In each case there have been no changes in legislation and as such, the substance of the policies remain unchanged. Updates have been made to reflect changes in structure and operational responsibility for compliance.


3.1 The Act came into force in 2005 and provides the right, subject to certain exemptions to obtain copies of all information held by the Council.


4.1 The Data Protection Act 1998 regulates the use of data held about individuals and provides rights of access to that data. It also sets out principles which must be adhered to in terms of security of data, use of data and accuracy.
4.2 The Council has the Corporate Data Protection Policy and each unit then holds a departmental policy dealing with the purposes for which they hold personal data, and the security and systems they have in place. Each unit will be asked to update its departmental policy in due course.

5. Environmental Information Regulations 2004

5.1 These specifically relate to information about environmental issues which include for example information relating to emissions, contamination and any plans, policies and measures taken to protect the environment. The Regulations require the publication by the Council of environmental information and gives the public rights of access to environmental information, subject to certain exemptions.

6. Recommendation

6.1 It be recommended that the Policies attached at appendices A - C be approved.
NUNEATON AND BEDWORTH BOROUGH COUNCIL

FREEDOM OF INFORMATION ACT 2000
POLICY

NOVEMBER 2012
Report Control Information

Title: Freedom of Information Act Policy

Date: 2012

Version: 1.0

Reference: X520.57

Author: Wendy Davies-White

Director: Philip Richardson – Governance and Recreation

Managing Director: Alan Franks

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Section 1  Introduction

1.1 Background

The Freedom of Information Act Policy is a statement of what Nuneaton and Bedworth Borough Council (referred to as the Council) will to do to ensure compliance with the Act.

The Freedom of Information Act 2000 has brought greater openness in the public sector. It enables members of the public to question the decisions of public authorities more closely and to ensure that the services we provide are efficiently and properly delivered.

The main features of the Act are:

1. A general right of access from 1st January 2005 to recorded information held by public authorities, subject to certain conditions and exemptions;
   - in cases where information is exempted from disclosure, except where an absolute exemption applies, the act creates a duty on public authorities to inform the applicant whether they hold the information requested, and communicate the information to him or her, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure.

2. A duty on every public authority to adopt and maintain a Publication Scheme;

3. The office of Information Commissioner with wide powers to enforce the rights created by the Act and to promote good practice, and a new Information Tribunal;

4. A duty on the Lord Chancellor to promulgate Codes of Practice for guidance on specific issues.

1.2 Scope

The Freedom of Information Act Policy applies to all Council employees and Elected Members.

The Policy provides a framework within which the Council will ensure compliance with the requirements of the Act.

The Policy underpins any operational procedures and activities connected with the implementation of the Act.

1.3 General Principles

The Policy supports the principle that openness and not secrecy should be the norm in public life. The Council wants to create a climate of openness and dialogue with
all stakeholders and improved access to information about the Council will facilitate the development of such an environment.

The Council believes that individuals also have a right to privacy and confidentiality. This Policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 1998 and is dealt with in other Council policies.

The Council believes that public authorities should be allowed to discharge their functions effectively. This means that the Council will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure.

The Council believes that employees should have access to expert knowledge to assist and support them in understanding the implications of the Act. The Policy sets out a framework to provide this knowledge. Employees and Elected Members requiring specific advice should contact the Director – Governance & Recreation.

The Council believes that common standards are required to ensure that the organisation is compliant with the Act. The Policy outlines the areas in which common standards will be established through other Council policies and procedures.
Section 2  Policy Detail

2.1 Statement

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.

2.2 Utilising Our Publication Scheme

The Council has adopted a Publication Scheme.

The Council’s Publication Scheme is an evolving document, detailing the information that the Council publishes at this point as well as what it intends to publish in the future. It details the format in which the information is available and whether or not a charge is to be made for the provision of that information. The Publication Scheme is available through our website. It will be subject to regular review in terms of content.

2.3 General Right of Access

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.

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 the 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.

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 describe the information requested. Requests received electronically are also acceptable under the Act.

The Council has established systems and procedures to process applications arising from the introduction of general rights of access on 1st January 2005.

2.4 Conditions and Exemptions
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.

The Council will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

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 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 Appendix 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.

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.

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 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 of information that exceeds this limit.

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 subsequent identical or subsequently 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.

### 2.5 Charges and Fees

The Council will generally not 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 Council will follow the national Fees Regulations for general rights of access under the Act. These 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.
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.

2.6 Time Constraints: Compliance with Requests

The Council has established 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 employees and Elected Members will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this, 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.

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.

2.7 Information Dissemination

When an applicant, on making their request for information, expresses a preference for communication in a particular manner, be it in the form of a copy or summary or the applicant may ask to inspect the record, the Council shall so far as reasonably practicable give effect to that preference, in accordance with section 11 of the Act.

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.

The Council has established systems and procedures to monitor the provision of information arising from requests under the Act.

2.8 Refusal of Requests

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

(a) using section 2 of the Act applies an exemption under Part II of the Act, as illustrated in Appendix A,

(b) 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,
(c) under section 12 of the Act estimates that the cost of compliance with the request for information exceeds the appropriate limit,

(d) can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

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. 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 of the right conferred by section 50 of the Act.

2. 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:

(a) state that fact,

(b) specify the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

3. Where the Council is relying on a claim:

(a) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) of the Act as an absolute exemption is relevant to the request, or

(b) that the information is exempt only by virtue of a qualified exemption, a provision not specified in section 2(3), and at the time when the notice above is given to the applicant has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2 of the Act – the application of an exemption – the notice will indicate that no decision as to the application of an exemption has been reached and contain an estimate of the date by which the Council expects that a decision will have been reached.

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.

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 under 2.8.2 above or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:
(a) 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

(b) that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The statement should not involve the disclosure of information which would itself be exempt information.

If the Council is relying on a claim that section 12 (cost of compliance) or 14 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.

The Council will keep a record of all notices issued to refuse requests for information.

2.9 Duty to Provide Advice and Assistance

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.

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.

2.10 Transferring Requests for Information

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 in receipt of a request 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).

Upon receiving the initial request for information, the Council will 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.

If the Council believes that some or all of the information requested is held by another public authority, the Council will, in order to assist the applicant, transfer the request to the other authority. If necessary, consultation will take place with the other authority to ascertain whether it does hold the information prior to transferring the request to it. The Council will inform the applicant that it has transferred the request.
Where there are reasonable grounds to believe that an applicant is likely to object to the transfer, the applicant will be contacted with a view to suggesting that he or she makes a new request to the other authority.

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 does not hold the requested information or is unable to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

2.11 Consultation with Third Parties

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.

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 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.

2.12 Public Sector Contracts

When entering into contracts the Council will not generally include contractual terms which 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.

Every request for information held in respect of a contract will be considered in accordance with the provisions of the Act however generally, any information held by the Council in respect of a contract, prior to the award of that contract will be considered to be exempt from disclosure. Additionally, the Council considers that for a period of six months following the award of a contract, information held in respect of that contract remains commercially sensitive and will not generally be disclosed.

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 which 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 generally impose terms of secrecy on contractors.

2.13 Accepting Information in Confidence from Third Parties

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 authority's functions and it would not otherwise be provided.

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.

2.14 Complaints

The Council has implemented 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.

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.

2.15 Records Management


The policy and associated guidelines address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Council.

2.16 Data Protection Act

Where information constitutes "personal data" within the meaning of the Data Protection Act, the Council will have regard to section 40 of the Freedom of Information Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Freedom of Information Act and the Data Protection Act in such cases.

The Council will undertake consultation where:

(a) the views of the third party may assist the authority to determine whether an exemption under the Act applies to the information requested; or
(b) the views of the third party may assist the authority to determine where the public interest lies under section 2 of the Act.

The Council may consider that consultation is not appropriate or practicable for example where the cost of consulting with third parties would be disproportionate. In such cases, the Council will consider what is 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:

(a) the public authority does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;

(b) the views of the third party can have no effect on the decision of the authority, for example, where there is other legislation preventing or requiring the disclosure of this information;

(c) no exemption applies and so under the Act's provisions, the information must be provided.

Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organization which 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 organization. If there is no representative organization, the Council may consider that it would be sufficient to consult a representative sample of the third parties in question.

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.
Section 3  Defining Responsibilities

3.1 Employees and Elected Members

All employees and Elected Members are obliged to adhere to this policy. A failure to adhere to this Policy and its associated procedures may result in disciplinary action or in the case of elected members, action pursuant to the Members Code of Conduct. Managers at all levels are responsible for ensuring that the employees for whom they are responsible are aware of and adhere to this Policy. They are also responsible for ensuring employees are updated in regard to any changes in this Policy.

3.2 Corporate Oversight

Management Team will oversee the operation of this Policy on behalf of the Managing Director.

3.3 Training

The Council will work to ensure that training on the Act is available to employees and Elected Members who require it.

3.4 Key Reference Documents

- Data Protection Act 1998
- Freedom of Information Act 2000
Appendix A Exemptions

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.

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.

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

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

Appendix B  Glossary of Terms

**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.

**Applicant** - the individual(s), group or organisation requesting access to information under the Act.

**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.

**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.

**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.
HANDLING REQUESTS UNDER THE FOI ACT 2000 – KEY PROCESSES

1 Initial receipt of requests
- validate and record
- satisfy ‘easy’ requests
- direct to advice and assistance
- distribute to FOI resource

2 Advice and assistance
- clarify request
- advise, help, submit
- direct elsewhere

3 Receipt by FOI resource
- log in FOI recording system
- validate/to advice and assistance
- to DP Act or EIR process
- allocate responsibility for handling
- decide process and plan

4 Easy/fast track
(releasable, easily satisfied, limited volume)
- collect and send information
- update recording system

5 Complex A - preliminaries
- vexatious or repeated
- dialogue with applicant to clarify
- fees estimated and charged
- issues: timescales; environmental information
- plan to handle

6 Complex B – collect and consult
- collect: incl. From multiple sources
- consultations: internal, external

7 Complex C - review exemptions
- Which exemptions apply?

8 Public interest test process
- disclose within 20 days
- if not advise applicant
- decision on release

9 Refusal process
- senior review?
- refuse with reasons
- details of complaints process
- record

10 Release process
- apply any charges
- release
- consider for publication scheme
- record

Release Information

Absolute Exemptions

None

Subject to public Interest test

No

Yes

Individual Cabinet Member Decision - Central Services - 29th January, 2013
Data Protection Policy

Title: Data Protection Policy
Date: 2012
Version: 1.0
Reference: X540.2
Author: Wendy Davies-White
Director: Philip Richardson – Director Governance and Recreation
Managing Director Alan Franks

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Nuneaton and Bedworth Borough Council

Data Protection Policy

1 Introduction

Nuneaton and Bedworth Borough Council (“the Council”) is committed to full compliance with the Data Protection Act 1998 (“the Act”) which came into force on 1st March 2000. The Council will therefore follow procedures designed to provide that all elected members, employees, contractors, consultants, partners, or other servants or agents of the Council (collectively referred to as “the data users”) who have access to any personal data held by or on behalf of the Council, are fully aware of and abide by their duties and responsibilities under the Act.

In order to operate efficiently, the Council, as Data Controller, has to collect and use information about people with whom it works. The definition of personal data is set out in APPENDIX A. The personal data is held in a variety of formats, electronic and manual. The Council is as far as practicable open about the type and extent of personal data that it holds and as a responsible body is committed to ensuring that information is handled and dealt with properly and that it maintains the best possible security and confidentiality of personal data.

It will take all necessary steps to ensure that personal data held by the Council about its employees, customers, suppliers and other individuals (collectively referred to as “the data subjects”) is processed in accordance with the Data Protection Act 1998 (“The Act”) and Principles. The definition of processing, and The Principles are set out in APPENDIX A of this Policy.

2 Co-ordination of Data Protection Issues

Each Service Unit will identify an officer (the data protection officer) with responsibility for co-ordinating all data protection issues for that Unit, and liaising with the Director – Governance & Recreation to ensure that the Council’s Notification to the Information Commissioner (the Commissioner) is kept up-to-date, for the receipt of subject access requests and the co-ordination of and compliance with the requirements of the Act when such requests are received.

3 Duties of Data Protection Officer

The officer shall ensure that:

(a) All purposes for which personal data is obtained or processed is notified to the Commissioner as required by the Act.

(b) No personal data is obtained, held or processed, for any purpose, without that purpose being notified to the Commissioner as required by the Act.
(c) All data is processed fairly and lawfully, unless such processing is exempt under section 29 of the Act (crime and taxation). In particular, form and document design will be kept under review, to ensure compliance with the data protection principles under the Act.

(d) All processing of personal data is subjected to a risk assessment, taking into account:

(i) the likelihood of a breach of the data protection system;

(ii) the potential impact on the data subject, elected members or employees and

(iii) the level of controls in place with regard to the data, together with the setting and testing of clear controls to minimise breaches of the Act.

(e) No disclosure of data is undertaken by any data user which breaches any of the provisions of the Act, as interpreted by the Council, the Commissioner or the courts for the time being.

4 Training

The Council will take measures to ensure that data users and elected members are fully trained in and aware of this policy and their duties and responsibilities under the Act.

5 Breach of the Act

The attention of all employees and elected members will be drawn to the requirements of the Act and procedures laid down by The Council to ensure compliance. It is the duty of employees to comply with the procedures and to co-operate with this Policy. The Council regards any unlawful breach of any provision of the Act by any employee of the Council as being a disciplinary matter. Any employee(s) who breach this policy will be dealt with under the disciplinary procedure which may result in dismissal for gross misconduct. Breach of the policy by an elected member will be dealt with pursuant to the Members Code of Conduct.

6 Service – Related Policies

Each Service Unit of the Council will compile and maintain a combined Data Protection Policy and Code of Practice, which will be subordinate to this policy and will be advertised and available for public inspection. Such policies and codes of practice shall incorporate procedures for the weeding, deleting and destruction of personal data to ensure compliance with the third, fourth, fifth and seventh data protection principles under the Act.

Each Manager will have immediate responsibility for data protection matters in his/her service unit.
7 Audit and Review of Data Protection System

The Council will undertake a rolling audit and review of all data protection systems and controls to ensure compliance with the Act, this policy and individual service data protection policies and codes of practice, including data security.

8 Duties of Contractors and Partners

All contractors, consultants, partners, or other servants or agents of the Council must:

(a) Ensure that they and all of their employees who have access to personal data held or processed for or on behalf of the Council are aware of this policy and are fully trained in and are aware of their duties and responsibilities under the Act. Any breach of any provision of the Act will be deemed as being a breach of any contract between the Council and that individual, company, partner or firm.

(b) Promptly, pass any subject access requests relating to the Council’s business to the appropriate Data Protection Officer and provide that person with any information needed by them to comply with the subject access request.

(c) Allow data protection audits by the Council of data held on its behalf.

(d) Indemnify the Council against any prosecutions, claims, proceedings, actions or payments of compensation or damages, without limitation.

The Council will monitor ongoing compliance with the Act by third party processors of data.

9 Requests for Access to Personal Data

(a) The Council will ensure as far as practicable that the rights of individuals as set out in the Act are maintained and upheld. Under s 7(1) of the Act individuals have a right of access to personal data held about them by the Council, subject to limited exemptions.

This is called the “Right of subject access”. Upon making a request in writing and upon paying the fee to the Council an individual is entitled to be told by the Council whether it or someone else on its behalf is processing that individual’s personal data, if so, to be given a description of:- i) the personal data, ii) the purposes for which they are being processed, and iii) those to whom they are or may be disclosed. Individuals are entitled to receive a copy of the personal data held about them. Subject Access Requests must be complied with within 40 days of receipt and specifically request personal data. Other requests for information from the Council should be dealt with in accordance with the Freedom of Information Act 2000, in respect of which the Council has separate policies and procedures.

(b) To ensure full compliance with the requirements of the Act protocols and procedures will be set and annually tested to ensure the authority’s ability to respond to individual access requests promptly and, in any event, within the timescales laid down in law.
Any orders or requests for disclosure of personal data, which are deemed to fall under one of the categories of exemptions under sections 27 to 37 of the Act, or under any other statutory power shall be passed promptly to the data protection officer within the relevant Service Unit, who will be responsible for and take reasonable steps to ensure that the request does fall within the relevant exemption and comply with the request in a manner deemed by that person to be appropriate.

10 Security of Data

All data users will ensure that appropriate security measures are undertaken to safeguard personal data, commensurate with the nature of the data concerned.

The unlawful disclosure of information is a criminal offence under the Act.

11 Notification

The Information Commissioner maintains a public register of data controllers. The Council is registered with the Information Commissioner. The Data Protection Act 1998 requires every data controller who is processing personal data to notify and renew their notification on an annual basis. Failure to do so is a criminal offence.

The annual renewal is undertaken by the Director – Governance & Recreation. Data Protection Officers within every service unit will be responsible for liaising with the Director – Governance & Recreation to ensure that the notification is up to date for their Service Unit.

Any changes to the Register must be notified to the Information Commissioner within 28 days. Any changes to processing carried out within a service unit must be brought to the attention of the Director – Governance & Recreation immediately.

12 Queries

Any questions regarding this Policy or Data Protection is general should, in the first instance be directed to the relevant Data Protection Officer for the Service Unit. The Principal or Senior Solicitors should be contacted for further assistance.

Further advice and guidance can be obtained from the Information Commissioner’s website [http://www.ico.gov.uk](http://www.ico.gov.uk)

This Policy will be reviewed every three years

This Policy was adopted by minute of 2012
Appendix A

Definition of Personal Data

Personal data is defined as data relating to a living individual who can be identified from
- The data
- That data and other information which is in the possession of or is likely to come into the possession of the data controller and includes an expression of opinion about the individual and any indication of the intentions of the data controller, or any other person in respect of the individual.

Definition of Processing

In this policy document, the term “processing” means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including-

(a) organisation, adaptation or alteration of the information or data,
(b) retrieval, consultation or use of the information or data,
(c) disclosure of the information or data by transmission, dissemination or otherwise making available,
(d) or alignment, combination, blocking, erasure or destruction of the information or data and “processed” shall be construed accordingly.

Data Protection Act 1998 Principles

First Principle

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
- at least one of the conditions in Schedule 2 is met, and
- in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
- as set out in Appendix B.

Therefore those responsible for processing personal data must make reasonable efforts to ensure that data subjects are informed of the identity of the data controller, the purpose(s) of the processing, any disclosures to third parties that are envisaged and an indication of the period for which the data will be kept.
Second Principle

**Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.**

Personal data shall be obtained for specific and lawful purposes and not processed in a manner incompatible with those purposes. Data obtained for specified purposes must not be used for a purpose that differs from those.

Third Principle

**Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.**

Personal data shall be adequate, relevant and not excessive in relation to the purpose for which it is held. Information, which is not strictly necessary for the purpose for which it is obtained, should not be collected. If data are given or obtained which is excessive for the purpose, they should be immediately deleted or destroyed.

Fourth Principle

**Personal data shall be accurate and, where necessary, kept up to date.**

Personal data shall be accurate and, where necessary, kept up to date. Data, which are kept for a long time, must be reviewed and updated as necessary. No data should be kept unless it is reasonable to assume that they are accurate. It is the responsibility of individuals to ensure that data held by the Authority are accurate and up-to-date. Completion of an appropriate registration or application form etc will be taken as an indication that the data contained therein is accurate. Individuals should notify the Authority of any changes in circumstance to enable personal records to be updated accordingly. It is the responsibility of the Authority to ensure that any notification regarding change of circumstances is noted and acted upon.

Fifth Principle

**Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.**

Personal data shall be kept only for as long as necessary. See the Council’s Retention Policy.

Sixth Principle

**Personal data shall be processed in accordance with the rights of data subjects under this Act.**

This includes:-

- the right to be informed that processing is taking place
• the individuals right to receive a copy of data held about him within 40 days of request
• the right to prevent processing in certain circumstances
• the right to correct, rectify, block or erase information regarded as incorrect
• to request the Commissioner to assess whether any provision of the Act has been contravened

**Seventh Principle**

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

All necessary steps must be taken to ensure that personal data is kept secure at all times against unauthorised or unlawful loss or disclosure and in particular measures will be put in place to ensure that paper files and other records and documents are kept in a secure environment; personal data held on computer is protected by the use of secure passwords.

**Eighth Principle**

Personal data shall not be transferred to a country or territory outside the European Economic Area, unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.
Appendix B

Conditions for Processing - Schedules 2 and 3 of the Data Protection Act 1998

Conditions for Processing Data - Schedule 2

At least one of the following conditions must be met in the case of all processing of personal data (except where a relevant exemption applies):-

- The data subject has given their consent to the processing
- The processing is necessary:-
  a) for the performance of a contract to which the data subject is a party, or
  b) for the taking of steps at the request of the data subject with a view to entering into a contract.
- The processing is necessary to comply with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
- The processing is necessary in order to protect the vital interests of the data subject.
- The processing is necessary:-
  a) for the administration of justice,
  b) for the exercise of any functions conferred by or under any enactment,
  c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
  d) for the exercise of any other functions of a public nature exercised in the public interest.
- The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the data subject. The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

Conditions for Processing Sensitive Data (Schedule 3 of the Act)

Sensitive Data is defined by the Act as personal data consisting of information as to:

- b) the racial or ethnic origin of the data subject
- c) their political opinions
d) their religious beliefs or other beliefs of a similar nature

e) whether they are a member of a trade union

f) their physical or mental health or condition

g) their sexual life

h) the commission or alleged commission by them of any offence or

i) any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings.

At least one of these must be satisfied, in addition to at least one of the conditions for processing in Schedule 2 (which apply to the processing of all personal data), before processing of sensitive personal data can claim to have been lawful in accordance with the first Principle.

- The data subject has given their explicit consent to the processing of the personal data

- The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment. The Secretary of State may by order specify cases where this condition is either excluded altogether or only satisfied upon the satisfaction of further conditions.

- The processing is necessary-

  a) in order to protect the vital interests of the data subject or another person, in a case where:-

     i) consent cannot be given by or on behalf of the data subject; or

     ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or

  b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.

- The processing:-

  a) is carried out in the course of its legitimate activities by any body or association which exists for political, philosophical, religious or trade union purposes and which is not established or conducted for profit,

  b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
c) relates only to individuals who are either members of the body or association or who have regular contact with it in connection with its purposes, and
d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

- The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

- The processing is necessary:
  a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
  b) for the purpose of obtaining legal advice, or
  c) for the purposes of establishing, exercising or defending legal rights.

- The processing is necessary:
  a) for the administration of justice
  b) for the exercise of any functions conferred by or under any enactment, or
  c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

The Secretary of State has by order specified cases where this condition is either excluded altogether or only satisfied upon the satisfaction of further conditions.
NUNEATON AND BEDWORTH BOROUGH COUNCIL

ENVIRONMENTAL INFORMATION REGULATIONS (EIR) 2004
POLICY

NOVEMBER 2012
### Report Control Information

**Title:** Environmental Information Regulations (EIR) 2004 Policy

**Date:**

**Version:** 1.0

**Reference:** X540.2

**Author:** Wendy Davies-White – Principal Solicitor

**Approved:** Philip Richardson – Director – Governance & Recreation

**Director:** Alan Franks

**Cabinet:**

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Individual Cabinet Member Decision - Central Services - 29th January, 2013
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ENVIRONMENTAL INFORMATION REGULATIONS

1. Introduction

Nuneaton and Bedworth Borough Council (“the Council”) is committed to full compliance with the Environmental Information Regulations (EIR) 2004 (“the Regulations”). The Council is as far as practicable open about the type and extent of environmental information that it holds and will take all necessary steps to ensure that it complies with the Regulations and the Code of Practice on the discharge of the obligations of public authorities under the Regulations. This Policy is a statement of what the Council will do to ensure compliance with the Regulations. It is not a statement of how compliance will be achieved. This will be a matter for operational procedures which are being developed as managerial guidelines.

2. The Regulations

The Regulations require Public Authorities which includes Councils to review and organise the service they already provide to the public for supplying environmental information which is defined in Appendix A, so that it can be proactively disseminated.

The Regulations also provide a general right of access to recorded information (including visual, aural etc) held by public authorities, subject to certain exceptions and conditions. Requests do not have to be in writing, and can be made for example over the telephone or during meeting. Exceptions to the disclosure of information are not absolute; all are subject to the Public Interest Test. The exceptions under EIR are not identical to exemptions under FOIA. Unlike FOIA, EIR covers information the Public Authority holds for third parties (e.g. consultants). EIR also applies to information others hold for the Public Authority.

The Public Authority must reply promptly to requests and supply information within 20 working days unless an extension is applicable. The only extension to time limits for answering enquiries is from 20 to 40 days where requests are complicated and relate to a large volume of information. All others must be complied with within 20 days. The Public Authority must assist all Applicants in making a request. The Applicant does not have to say why they want the information or quote the legislation when making the request.

Public Authority must have a complaints, review and appeals procedure in respect of EIR requests. Additionally an individual has the right to complain to The Office of the Information Commissioner whose role is to oversee all complaints, with powers to enforce the rights created by the Act and Regulations and to promote good practice.

The Council will not charge for allowing an applicant access to public registers or for an applicant to examine the information requested. In cases where the Council intend to make a charge, the amount will be reasonable and will comply with the Council’s schedule of charges for complying with requests under the Freedom of Information Act 2000.
3. **Proactive Dissemination**

As required by Regulation 4, the Council will proactively disseminate the environmental information prescribed by Regulation 4(4) as set out in APPENDIX B and will make as much information as it can available to the public electronically. The Council will use its publication scheme to ensure that information is easily accessible to members of the public, and will organise the information wherever possible relevant to its functions with a view to the active dissemination of the information to the public.

4. **Duty to provide Advice and Assistance**

The Council will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance under Regulation 9, 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.

5. **Requests for Environmental Information and Exemptions**

The Council will establish systems and procedures to process requests for environmental information made pursuant to Regulation 5 and will ensure that wherever possible the requested information is provided within 20 working days as prescribed by the Regulations, unless exceptionally an extension is needed. The Council will wherever possible make the information available in the form requested.

6. **Transfer of a Request**

If the request relates to information that is held by another public authority the Council will either:

a) transfer the request to the other public authority or

b) supply the applicant with the name and address of that authority and inform the applicant accordingly with the refusal sent under Regulation 14(1)

The Council will where it considers appropriate consult with third parties.

7. **Refusals**

The Council will wherever possible supply information in response to a request. However the Regulations prescribe limited circumstances where a request can be refused. These include circumstances where information cannot be released because the request is too general or the council do not hold the information. In such cases the duty to provide advice and assistance to the applicant will apply.

In other cases where an exemption applies (as set out in APPENDIX C), the Council must also consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing it.
In accordance with Regulation 14, a refusal must be made in writing and be made no later than 20 working days from receipt of the request. It must fully set out the reasons not to disclose the information including any exception relied upon and the matters the Council considered in reaching its decision with respect to public interest. The refusal shall also inform the applicant that he can make representations to the Council, and advise him of his right to appeal to the Information Commissioner.

8. **Offence**

It is an offence to destroy or otherwise dispose of records in order to avoid supplying information in response to a request under the Regulations.

9. **Complaints**

An applicant may make representations to the Council if it appears to him that the Council has failed to comply with a requirement of the regulations. Such representations must be made no later than 40 working days after the date on which the applicant believes the Council has failed to comply.

The Council will implement a procedure for dealing with representations about alleged non-compliance the duties of the Council under the Regulations, including the handling of requests for information.

The procedure will refer applicants to the right under to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Council following attempts at local resolution of their complaint.

The Information Commissioner is responsible for enforcing legislation covering the Environmental Information Regulations.

Failure by the Council to comply with the Regulations will empower the Commissioner to:

- Require the Council to submit all documents relating to a disputed request to him for consideration before overturning or upholding a decision;
- Use the power of entry and inspection if the Council refuses or fails to submit requested information;
- Enforce a decision on the Council through the Courts, although we have the right of appeal;

The attention of all employees and elected members is drawn to the requirements of the Regulations and procedures laid down by The Council to ensure compliance. It is the duty of employees to comply with the procedures and to co-operate with this Policy. The Council regards any unlawful breach of any provision of the Regulations by any employee of the Council as being a disciplinary matter. Any employee(s) who breach this policy will be dealt with under the disciplinary procedure which may result in dismissal for gross misconduct.
10. Co-ordination of Environmental Information Requests

Each Service Unit will identify an officer (the EIR officer) with responsibility for co-coordinating the co-ordination of and compliance with the requirements of the Regulations when such requests are received.

The officer shall ensure that:

(a) All requests are processed within the time prescribed by the Act

(b) Any requests for disclosure of Environmental Information, which is deemed to fall under one of the categories of exemptions of the Regulations, or under any other statutory power does fall within the relevant exemption and that the request is dealt with in a manner deemed by that person to be appropriate.

11. Training

The Council will take measures to ensure that employees are fully trained in and aware of this policy and their duties and responsibilities under the Regulations.

12. Monitoring and Reporting

The Council will undertake a rolling audit and review of all procedures, systems and controls to ensure compliance with the Regulations and this policy and to ensure that any necessary changes are made in the interests of efficiency of the operating systems.

The Council will also ensure that a record of all requests including refusals and partial refusals is maintained and the reasons given for refusals kept under review.

13. Record Keeping


The policy and associated guidelines address issues of active records management – creation, keeping, maintenance and disposal – according to the requirements that the law places upon the Council.

14. Duties of Contractors and Partners

When entering into contracts the Council will not generally include contractual terms which 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 Regulations 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.
Every request for information held in respect of a contract will be considered in accordance with the provisions of the regulations however generally, any information held by the Council in respect of a contract, prior to the award of that contract will be considered to be exempt from disclosure. Additionally, the Council considers that for a period of six months following the award of a contract, information held in respect of that contract remains commercially sensitive and will not generally be disclosed.

It is for the Council to disclose information pursuant to the Regulations, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information which 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 generally impose terms of secrecy on contractors.

All contractors, consultants, partners, or other servants or agents of the Council must:

(a) Ensure that they and all of their employees who have access to environmental information for or on behalf of the Council are aware of this policy and are fully trained in and are aware of their duties and responsibilities under the Regulations. Any breach of any provision of the Regulations may be deemed as being a breach of any contract between the Council and that individual, company, partner or firm.

(b) Promptly, pass any EIR requests relating to the Council’s business to the appropriate EIR Officer and provide that person with any information needed by them to comply with the request.

(c) Allow EIR audits by the Council of data held on its behalf.

(d) Indemnify the Council against any prosecutions, claims, proceedings, actions or payments of compensation or damages, without limitation.

The Council will monitor ongoing compliance with the Act by third parties.

15. Accepting Information from Third Parties

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 authority’s functions and it would not otherwise be provided.

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.
16. Queries

Any questions regarding this Policy in the first instance be directed to the relevant EIR Officer for the Service Unit. The Director – Governance and Recreation or Principal and Senior Solicitors should be contacted for further assistance.

Further advice and guidance can be obtained from the Information Commissioner’s website http://www.informationcommissioner.gov.uk/

This Policy will be reviewed every three years

This Policy was adopted by minute.
Appendix A

Definition of Environmental Information

Environmental Information is any information in written, visual, aural, electronic or any other material form on—

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements,

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a),

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements,

(d) reports on the implementation of environmental legislation,

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c), and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

Air should be taken to include the air within buildings and other natural and manmade structures above or below ground and in air conditioning systems.

Water should be taken to include underground and surface waters (both natural and in manmade structures) sewage and foul water; the latter to include inland waters (i.e. rivers, canals, lakes), estuaries and seas; water table and aquifers.

Soil should be taken to include the in situ upper layer of the mantle rock in which plants grow.

Land and Landscape should be taken to include all land surfaces, buildings, caves and underground strata. Land covered by water is also included.

A natural site should be taken to include areas identified by reason of their flora, fauna, geological or physiographical features (e.g. Sites of Special Scientific Interest) or general environmental quality (e.g. Areas of Outstanding Natural Beauty).
Biological diversity should be taken to include species both living and dead.

Human health and safety and conditions of human life include human response to physical, chemical and biological agents delivered through environmental media of water, air, land, and biodiversity etc.

Built structures should be taken to include structures, roads and other infrastructure created by mankind and includes ancient and historic monuments.

The state should be taken to include physical, chemical, electromagnetic, radiological and biological conditions at any moment in time.

Emissions, discharges and other releases into the environment wherever they occur should be taken to include the direct or indirect release of substances, liquids, gases, radiation, vibrations, light or noise from individual or diffuse sources into or onto air, water or land.

Measures include administrative measures and environmental management programmes such as permit schemes, management contracts, land-use planning regimes and permits, regeneration and transport development plans and proposals.

Effect includes direct and indirect effect.

Economic analyses include financial analyses.
APPENDIX B

Types of information which must be disseminated

Regulation 4 (4) says:

The information under paragraph (1) shall include at least—

(a) the information referred to in Article 7(2) of the Directive; and

(b) facts and analyses of facts which the public authority considers relevant and important in framing major environmental policy proposals.


Dissemination of Environmental Information

The information to be made available and disseminated shall be updated as appropriate and shall include at least:

(a) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;

(b) policies, plans and programmes relating to the environment;

(c) progress reports on the implementation of the items referred to in (a) and (b) when prepared or held in electronic form by public authorities;

(d) the reports on the state of the environment referred to in paragraph 3;

(e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;

(f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found in framework of Article 3;

(g) environmental impact studies and risk assessments concerning the environmental elements referred to in Article 2 (1) (a) or a reference to the place where the information can be requested or found in the framework of Article 3.
APPENDIX C

Exemptions

Exemptions under Regulation 12(4)

- the public authority does not hold the information
- the request is manifestly unreasonable
- the request is formulated in too general a manner
- the request relates to material which is still in the course of completion or to unfinished documents or incomplete data
- the request involves to internal communications within the public authority

Exemptions under Regulation 12(5)

- international relations, defence, national security, or public safety
- the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature
- intellectual property rights
- the confidentiality of the proceedings of that or any public authority where such confidentiality is provided by law
- the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest
- the interests of the person who provided the information where that person
  - was not under, and could not have been put under any legal obligation to supply it to that or any other public authority
  - did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it, and,
  - has not consented to it’s disclosure

- the protection of the environment to which the information relates

Exemptions under Regulation 13

- the request includes personal data