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Ratified: Full Council meeting 18th July 2023

THE COMPLAINTS PROCESS

Overview

Sheringham Town Council (STC) aims to deliver high quality services where the people of Sheringham and other service users are at the heart of everything it does. We welcome their feedback and aim to deal with concerns in a fair and consistent way. STC wants to listen to their views and values their contributions. We learn from good practice as well as any mistakes and build upon past experiences to improve the future.

This Policy applies to all of the services Sheringham Town Council provides.

Our Policy

A member of the Community of Sheringham and other service-users have a right to:

- Make a complaint
- Be listened to
- Have their complaint investigated and resolved as quickly as possible
- Have their concerns taken seriously

We aim to:

- Be accessible and uncomplicated
- Promote satisfaction with our services
- Identify areas where services can be improved
- Learn from good practice
- Learn from mistakes
- Implement improvements in processes and procedures

STC promotes the right of the people of Sheringham and other service-users to raise a concern or make a complaint if they consider something has been done incorrectly or addressed poorly. The Council also promotes their right to comment on a Policy or Council decision which may affect them and express a compliment if things have gone well for them.

Formal complaints will be investigated objectively, fairly and thoroughly in a positive manner with the aim of resolving the complaint. Feedback is reviewed regularly to inform the future work of the council.

What is a complaint, comment or compliment?

Complaint:
A complaint is an expression of dissatisfaction or disquiet with the quality of a service or with a failure to provide a previously agreed service, or with the attitude or behaviour of a member of staff or councillor. It may also be triggered by an allegation of administrative fault such as not following procedures or standing orders, inadequate service, no service, delay or making a mistake

Comment:
A comment is a general statement about policies, practices or a service as a whole, which have an impact on everyone and not just one individual. A comment can be positive or negative in nature. Comments may question policies and practices, make suggestions for new services or for improving existing services.

Compliment:
An expression of praise. It is a positive statement about a service provided by or on behalf of the Council, or about the helpfulness, attitude or approach of a member of staff.

When the Complaints Procedure is Not Appropriate

Other bodies have responsibility for certain types of complaint and these are summarised below:

Nature of complaint	Refer to
Alleged financial irregularity	Local electors have a statutory right to object to a Council's audit of accounts. (16 Audit Commission Act 1998)
Alleged criminal activity	The Norfolk Constabulary
Member's conduct alleged to breach the Code of Conduct adopted by the Council	North Norfolk District Council – the Monitoring Officer is responsible for handling complaints that refer to a member's failure to comply with Sheringham Town Council's Code of Conduct

Whistleblowing is the reporting of suspected wrongdoing or dangers in relation to the activities of STC by those in the workplace of STC. This includes bribery, fraud or other criminal activity, miscarriages of justice, health and safety risks, damage to the environment. and any breach of legal or professional obligations. Those in the workplace of STC includes employees, councillors, volunteers and contractors.

If you wish to make STC aware of a complaint in this context then you should view the STC Whistleblowing Policy and Procedure.

Complaints involving the conduct of an Employee

When a complaint is made against a local council, member(s) of the council or staff are likely to be mentioned or complained about. However, a complaint against Sheringham Town Council should be treated as a complaint against the body corporate of the Council, not as a complaint against individual employees or member(s) of the Council.

A complaint against the Council that involves a complaint about the conduct of an employee must therefore be handled in accordance with this Complaints Procedure. If, following the outcome of the complaint the Council, decides that there may be a need to take disciplinary action, this should be in accordance with its internal disciplinary procedure.

Complaints that an employee may have about a colleague will be dealt with in accordance with the Council's Grievance Procedure.

Complaints that an employee may have about a Member will be referred to the Town Clerk or, if the Town Clerk is implicated, to the Mayor. It should first be attempted to resolve the complaint informally. If the complaint cannot be resolved informally then the employee will need to make a formal complaint to the Monitoring Officer at North Norfolk District Council

Time Limit for making a Complaint

Our aim is to put things right if they go wrong as quickly as possible, so it is important to recognise there is a one year time limit (from the date of the incident giving cause for the complaint) for making a complaint. However, the time limit may be extended if it is still possible to consider the complaint effectively and efficiently or if there are other circumstances which may enable resolution of the complaint.

Data Protection and Confidentiality

To ensure compliance with the Data Protection Act 1988 Sheringham Town Council cannot disclose the identity, contact details or other personal details about the Complainant unless they consent or disclosure is lawful under the 1998 Act; e.g. for the purpose of discharging STC functions or for the performance of contractual obligations.

The Local Government Ombudsman advises that the identity of a Complainant should only be made known to those in the Council who need to consider the complaint.

STC must therefore ensure that:

- Agendas and minutes do not disclose personal, financial, sensitive or confidential information

- Any sub-committee/committee meeting that deals with the complaint must be taken under Sheringham Town Council's Standing Order 3D and exclude the public. This doesn't preclude the Complainant speaking at that meeting or the Clerk or other nominated officer making a representation on behalf of the council at that meeting.

Anonymous Complaints

Anonymous complaints will be referred to the Town Clerk by the Administrator and may or may not be investigated by them according to the type and seriousness of the allegation.

Unreasonable or Vexatious Complaints

Dealing with a complaint is a straightforward process but in a minority of cases, people pursue their complaints in a way that is unreasonable, persistent or excessive and which negatively impacts upon the Council's resources, officer time and its ability to provide services. This can happen either while their complaint is being investigated, or once the Council has finished dealing with the complaint.

We are committed to dealing with all complaints equally and in a timely manner as set out in our Complaints, Comments and Compliments Policy. We will not normally limit the contact which complainants have with Council staff or offices.

We do not expect staff to tolerate unacceptable behaviour by complainants. Unacceptable behaviour includes behaviour, which is abusive, offensive or threatening. We will act to protect staff from such behaviour. If a complainant behaves in a way that is unreasonably persistent or vexatious, we will follow this policy.

Raising legitimate queries or criticisms of a complaints procedure as it progresses, for example if agreed timescales are not met, should not in itself lead to the complaint being regarded as vexatious. Similarly, the fact that a complainant is unhappy with the outcome of a complaint and seeks to challenge it once, or more than once, should not necessarily cause him or her to be labelled unreasonably persistent.

What is an Unreasonably Persistent or Vexatious Complaint?

We define unreasonably persistent and vexatious complaints as those which, because of the frequency or nature of the Complainant's contacts with the Council, hinder our consideration of their or other peoples' complaints or the provision of our wider services to the community. The description "unreasonably persistent" and "vexatious" may apply separately or jointly to a complaint.

An unreasonably persistent and/or vexatious complaint may be one where:

- There are insufficient or no grounds for the complaint and it is made only to vexate (or for reasons that the Complainant does not admit or make obvious)
- The Complainant refuses to co-operate with the complaints investigation process while still wishing their complaint to be resolved.
- The complaint is about issues not within the power of the Council to investigate, change or influence (examples could be a complaint about a private car park, or something that is the responsibility of another organisation) and where the Complainant refuses to accept this
- The Complainant insists on the complaint being dealt with in ways which are incompatible with the complaint's procedure or with good practice.
- It causes distress to Council officers which may include the use of hostile, abusive or offensive language, making threats, harassment and personal insults.
- Making repeated complaints about the same issue, contacting the Council through different routes about the same issue in a persistent manner
- Refusing to accept a decision, repeatedly arguing points with no new evidence.
- Not following agreed complaint procedures or not co-operating with the process (for example, refusing to provide information requested to clarify a complaint).
- Excessive demands on the time and resources of officers with the expectation of an immediate response – for example frequent and lengthy telephone calls, repeated emails on the same subject, letters sent every few days.

- Changing the basis of a complaint as the matter proceeds.
- Persisting in pursuing a complaint where the Council's complaints process has been fully and properly exhausted.
- Making complaints 'repeatedly or as a habit' without justification; complaints made about various unrelated issues to the extent that the Complainant appears to be a 'complainer by nature'.
- Refusing to accept evidence provided in response to a complaint, making repetitive complaints and allegations which ignore the replies that Council Officers have supplied in previous correspondence.
- The Complainant electronically records meetings and conversations without the prior knowledge and consent of the other person involved.
- The complaint is the subject of an excessively "scattergun" approach; for instance, the complaint is not only submitted to the Council, but at the same time to a Member of Parliament, other councils, elected Councillors of this and other councils and others.
- The same complaint is made repeatedly, perhaps with minor differences, after the complaint's procedure has been concluded and where the Complainant insists that the minor differences make these 'new' complaints which should be put through the full complaint's procedure.

Imposing restrictions

In determining whether or not behaviour or a complaint is unreasonable or vexatious, the Council will first ensure that the complaint has been dealt with properly in line with its policy and every effort to satisfy the Complainant's expectations and resolve the complaint has been made.

Any restriction that is imposed on the Complainant's contact with the Council will be appropriate and proportionate and the Complainant will be advised of the period of time the restriction will be in place for. In most cases restrictions will apply for between three and six months but in exceptional cases may be extended. In such cases the restrictions would be reviewed on a quarterly basis.

Restrictions will be tailored to deal with the individual circumstances of the Complainant and may include:

- Banning the Complainant from making contact by telephone except through a third party acting on their behalf.
- Banning the Complainant from communicating with an individual and/or all Council officers in a certain way.
- Banning the Complainant from accessing any Council building except by appointment.
- Requiring contact to take place with one named member of staff only.
- Restricting telephone calls to specified days / times / duration.
- Requiring any personal contact to take place in the presence of an appropriate witness.
- Letting the Complainant know that the Council will not reply to or acknowledge any further contact from them on the specific topic of that complaint (in this case, a designated member of staff should be identified who will read future correspondence)
- Informing the Complainant that any further complaints from him or her will only be considered if the Town Clerk agrees that it warrants investigation.
- The decision to deem behaviour unreasonable or a complaint vexatious will be made by the Town Clerk in consultation with the Town Mayor. Details of any individual's behaviour deemed to be unreasonable or a complaint vexatious will be reported to the next meeting of the Employment Committee.

When the decision has been taken to apply this policy to a complainant, the Town Clerk will contact the Complainant in writing to explain why the Council has taken the decision, What action the Council is taking, The duration of that action, The review process of this policy and the Town Clerk will enclose a copy of this policy in the letter to the Complainant.

Where a complainant continues to behave in a way which is unacceptable, the Town Clerk may decide to refuse all contact with the Complainant and stop any investigation into his or her complaint.

Where the behaviour is so extreme or it threatens the immediate safety and welfare of staff, the Council will consider other options, for example, reporting the matter to the police or taking legal action. In such cases, the Council may not give the Complainant prior warning of that action.

New complaints from people to whom the policy has already been applied will be treated on their own merits. The Town Clerk will decide whether any restrictions which have been applied before are still appropriate and necessary in relation to the new complaint. The Council does not support a "blanket policy" of ignoring genuine service requests or complaints where there are genuine grounds for the complaint.

The fact that a complaint is judged to be unreasonably persistent or vexatious, and any restrictions imposed on contact with the Complainant will be recorded in the STC Complaint Log and notified to those who need to know within the Council.

The Complaints, Comments or Compliment Process

Sheringham Town Council will aim, where necessary to complete all 3 stages (see below) of the process within 16 weeks. In the event that we are unable to meet this target we will advise the Complainant of the reasons why and give an indication of the anticipated timescale.

How to give your feedback

By Telephone: 01263 822213 / Email: info@sheringhamtowncouncil.gov.uk / By post or in person: Sheringham Town Council, Community Centre, Holway Road, Sheringham NR26 8NP

The complaints process can be explained using the following steps:

Recording your complaint - The person receiving your complaint (normally the Administrator) will record it in the Sheringham Town Council Complaints Log. This is stored electronically. This enables us to monitor the number and type of complaints and how they were resolved, which assists us in improving our services.

Confidentiality and Storing your data - The Administrator on receipt of your complaint will provide you with a privacy and consent notice informing you of how and why we will store your data and requesting your consent to do so. The Administrator will also ask if you are willing to waive your right to confidentiality beyond those in the Council who need to consider the complaint.

Acknowledging your complaint - Whenever possible your complaint will be dealt with at the first point of contact. If this is not possible your complaint will be acknowledged within 5 working days and you will be given the details of the person looking in to the matter.

Responding to your complaint - The person responsible for responding to your complaint will contact you to agree the best way to deal with your particular complaint. Our aim is to give you a full response within 10 working days. If for any reason we cannot do this we will let you know when you can expect to receive a response. In any event we would endeavour to respond within 21 working days.

Room for error - If we have made a mistake we will apologise and try to put things right. We will explain what actions we intend to take as a result of your complaint.

Your right to respond - On receipt of a response you have up to 21 working days in which to decide whether to accept or reject the actions/ recommendations we have stated to resolve your complaint.

Stage 1- Many complaints can be dealt with quickly and satisfactorily at stage 1. In the first instance, please contact the STC Administrator, tell them your complaint and in most cases the complaint can be dealt with to the satisfaction of all parties.

Stage 2 - If you are not happy with the outcome or response at stage 1, you can appeal to the STC Clerk and the Mayor who will review and where necessary; carry out a further investigation of your case.

Stage 3 - If you are still not satisfied with the response from the outcome at stage 2, you should contact The Town Clerk who will arrange for the complaint to be dealt with at the next appropriate meeting of the Council's relevant committee:

- under Standing Order 3D, where members of the public will be excluded for the relevant item on the agenda
- within the guidelines and timescales listed above, who will carry out a further investigation on your behalf.

The Complainant will be invited to attend this meeting and to

- submit copies (at least 7 clear working days in advance) of any correspondence or details that they wish the Committee to be informed of.
- The Council will provide the Complainant with copies of any documentation which it wishes to rely on at the meeting (at least 7 clear working days in advance of the meeting).
- The Complainant may be accompanied or represented at the meeting if they wish.

It is possible that further information may be required. The Complainant will be advised of this along with details of how the matter will be further considered. The Outcome of the complaint will be confirmed in writing to the Complainant within 5 working days of the decision being reached.

How Will We Put Things Right?

If we have made a mistake we will apologise and tell you what action we will take so that the same situation does not arise again in future. All complaint statistics will be reported as part of the Annual Policy and Process Report to Full Council for the Annual Report. The information gathered from them will assist in improving our service.

Comments

If you wish to make a comment, either positive or negative in relation to a Policy decision, practice or service, this will be recorded and your comment will be acknowledged within 5 working days. This comment will be passed to the next meeting of the Policy and Process Committee who will take into consideration any comments made about a Policy during their review process.

Compliments

If you wish to express a compliment this will be recorded and shared with the Councillor(s) or member of staff it relates to. We will acknowledge your compliments within 5 working days. All compliment statistics will be reported as part of the Annual Policy and Process Report to Full Council for the April meeting. The information gathered from them will assist in improving our service.

Freedom of Information Requests

If your complaint makes any requests for provision of documents or information under the Freedom of Information Act 2000, then this Act will be followed (either instead of or as well as the Town Council's Complaints, Comments and Compliments Policy).

Supporting document - Freedom of information. Code of practice:

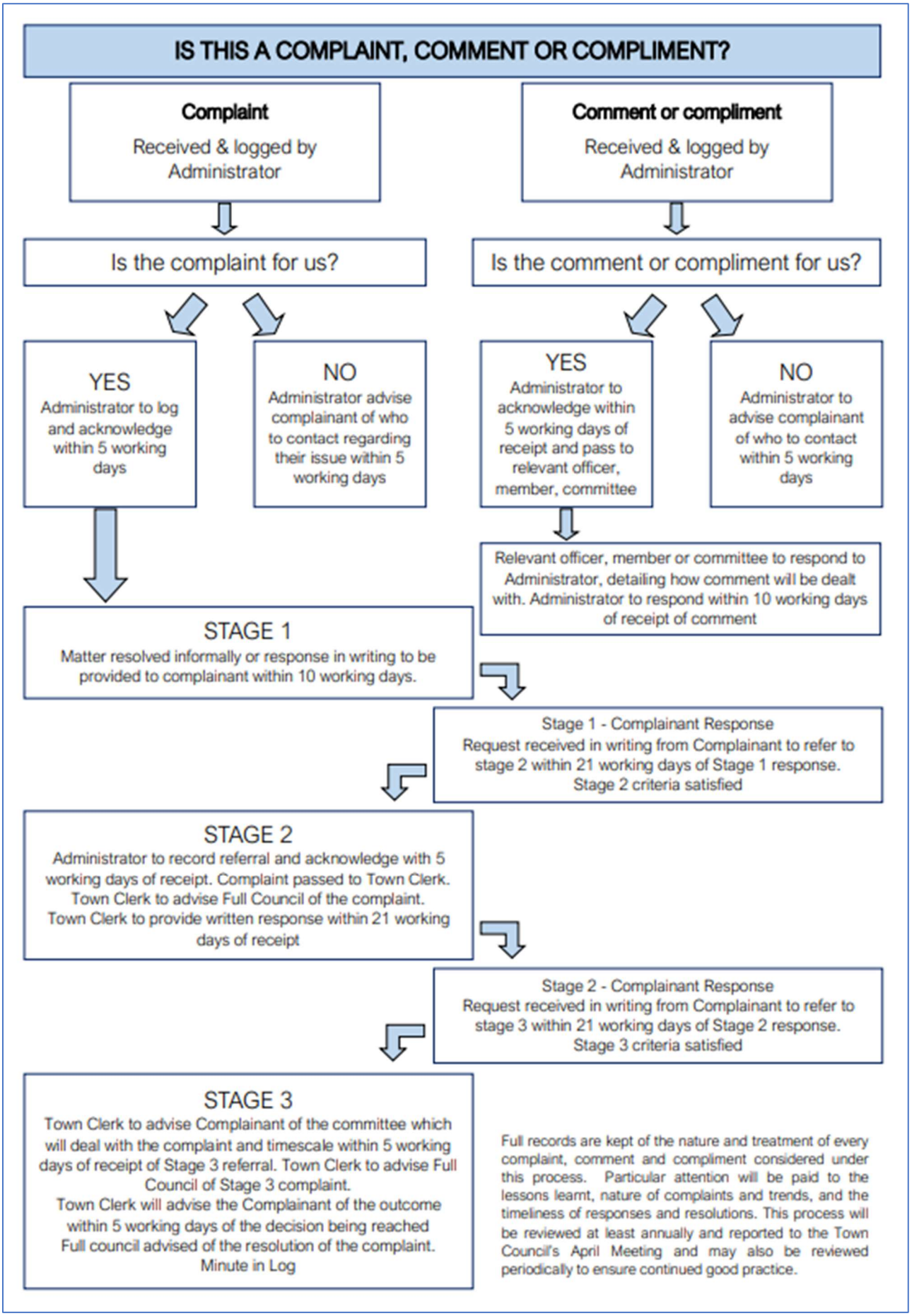
FOI COP.pdf

Supporting document – Internal Review Process

FOI Internal Review Process.pdf

Record Management and General Data Protection Regulations

All aspects of the Feedback Procedure meet the requirements of the legislation regarding Data Protection and Freedom of Information. Any personal information obtained in relation to a complaint will only be used for that purpose.


IS THIS A COMPLAINT, COMMENT OR COMPLIMENT?
Complaint
Received & logged by Administrator
Comment or compliment
Received & logged by Administrator
Is the complaint for us?
Is the comment or compliment for us?
YES
Administrator to log and acknowledge within 5 working days
NO
Administrator advise complainant of who to contact regarding their issue within 5 working days
YES
Administrator to acknowledge within 5 working days of receipt and pass to relevant officer, member, committee
NO
Administrator to advise complainant of who to contact within 5 working days
Relevant officer, member or committee to respond to Administrator, detailing how comment will be dealt with. Administrator to respond within 10 working days of receipt of comment
STAGE 1
Matter resolved informally or response in writing to be provided to complainant within 10 working days.
Stage 1 - Complainant Response
Request received in writing from Complainant to refer to stage 2 within 21 working days of Stage 1 response.
Stage 2 criteria satisfied
STAGE 2
Administrator to record referral and acknowledge with 5 working days of receipt. Complaint passed to Town Clerk.
Town Clerk to advise Full Council of the complaint.
Town Clerk to provide written response within 21 working days of receipt
Stage 2 - Complainant Response
Request received in writing from Complainant to refer to stage 3 within 21 working days of Stage 2 response.
Stage 3 criteria satisfied
STAGE 3
Town Clerk to advise Complainant of the committee which will deal with the complaint and timescale within 5 working days of receipt of Stage 3 referral. Town Clerk to advise Full Council of Stage 3 complaint.
Town Clerk will advise the Complainant of the outcome within 5 working days of the decision being reached
Full council advised of the resolution of the complaint.
Minute in Log
Full records are kept of the nature and treatment of every complaint, comment and compliment considered under this process. Particular attention will be paid to the lessons learnt, nature of complaints and trends, and the timeliness of responses and resolutions. This process will be reviewed at least annually and reported to the Town Council's April Meeting and may also be reviewed periodically to ensure continued good practice.

Cabinet Office

Freedom of Information Code of Practice

4 July 2018

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Cabinet Office

Freedom of Information Code of Practice

This information is available on the GOV.UK website at:
https://www.gov.uk/government/publications/freedom-of-information-code-of-practice]

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Foreword

Freedom of Information is one of the pillars upon which open government operates. The Government is committed to supporting the effective operation of the Freedom of Information Act. For any Freedom of Information regime to be truly effective it is important that both its users and those subject to it have faith in it.

This Code of Practice provides guidance for public authorities on best practice in meeting their responsibilities under Part I of the Act. It sets the standard for all public authorities when considering how to respond to Freedom of Information requests.

The Information Commissioner also has a statutory duty to promote good practice by public authorities, including following this Code of Practice. In addition to this Code of Practice, public authorities should also consult the Commissioner's own guidance regarding best practice which can be found at www.ico.org.uk.

The Commissioner can issue practice recommendations where he or she considers that public authorities have not conformed with the guidance set out in this Code. The Commissioner can also refer to non-compliance with the Code in decision and enforcement notices.

This foreword does not form part of the Code itself.

Introduction

This Code of Practice provides guidance to public authorities on the discharge of their functions and responsibilities under Part I (Access to information held by public authorities) of the Freedom of Information Act 2000 ("the Act'). It is issued under section 45 of the Act.

1. Right of Access

Information

1.1 The Freedom of Information (FOI) Act 2000 ('the Act') gives a right of access to information. Any person who makes a request to a public authority for information is entitled:

- To be informed in writing by a public authority whether it holds information meeting the description set out in the request; and
- To have information the public authority holds relating to the request communicated to them.

These rights apply unless an exemption in Part II of the Act applies, or the request can be refused under sections 12 or 14, as set out in the legislation.

1.2 Section 84 of the Act defines the 'information' a public authority can be asked to provide under the Act. It makes clear that it means recorded information held in any form, electronic or paper.

1.3 Public authorities are not required to create new information in order to comply with a request for information under the Act. They only need to consider information already in existence at the time a request is received.

1.4 A request to a public authority for recorded information will be treated as a request under the Act, other than:

- information given out as part of routine business, for example, standard responses to general enquiries;
- a request for environmental information; or
- the requester's own personal data.

1.5 A request for environmental information only should be dealt with under the Environmental Information Regulations 2004[1], and a request for a person's own personal data should be dealt with under the subject access provisions of the Data Protection Act 2018. Sometimes it may be necessary to consider a request under more than one access regime.

1.6 The Act provides a right to information. Disclosing existing documents will often be the most straightforward way of providing information. However, in other cases it may be

[1] Public authorities may wish to refer to the Information Commissioner's *Regulation 16 Code of Practice: Discharge of Obligations of Public Authorities under the EIR*.

appropriate to extract the relevant information for disclosure and put in a single document rather than redact the existing document that contains it.

1.7 There will be occasions where a request is made under the Act but does not in fact meet the above description of being a request for recorded information. This may include requests for explanations, clarification of policy, comments on the public authority's business, and any other correspondence that does not follow the definition of a valid request in section 8. It is best practice to provide an applicant with an explanation of why their request will not be treated under the Act if this is the case and to respond to their correspondence through other channels as appropriate. It is open to the applicant to appeal the handling of their correspondence to the Information Commissioner's Office.

Information held

1.8 In order to respond to a request for information public authorities need to consider whether the requested information is 'held' for the purposes of the Act. This is because there may be instances when a public authority possesses information, either electronically or in physical copy, that does not meet the criteria for information 'held' set out in the Act and to which the obligations set out in the Act therefore do not apply.

1.9 Section 3(2) sets out the criteria for when information is held by a public authority for the purposes of the Act. This includes:

- information held by a public authority at the time of the request;
- information stored in off-site servers or cloud storage; and
- information held by other organisations and authorities on behalf of the public authority including, for example, off-site storage or information provided to lawyers for the purposes of litigation.

1.10 Information is 'held' by the public authority if it is retained for the purposes of the public authority's business. Purely personal, political, constituency, or trade union information, for example, will not be 'held' for the purposes of the Act and so will not be relevant for the purposes of the request. Where a public authority holds or stores information solely on behalf of another person or body that material will also not be 'held' by that authority for the purposes of the Act.

1.11 Information created after a request is received is not within the scope of the application and is therefore not "held" for the purposes of the Act. A search for information which has been deleted from a public authority's records before a request is received, and is only held in electronic back up files, should generally be regarded as not being held[2].

[2] Public authorities should make sure they are also aware of the guidance provided in the Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000.

1.12 Public authorities need to search for requested information in order to communicate to the applicant whether the information they are seeking is held or not held by that public authority. These searches should be conducted in a reasonable and intelligent way based on an understanding of how the public authority manages its records. Public authorities should concentrate their efforts on areas most likely to hold the requested information. If a reasonable search in the areas most likely to hold the requested information does not reveal the information sought, the public authority may consider that on the balance of probabilities the information is not held.

Section 77 (Offence of altering records etc. with intent to prevent disclosure)

1.13 Public authorities should make sure that their staff are aware that under section 77 of the Act it is a criminal offence to alter, deface, block, erase, destroy or conceal any information held by the public authority with the intention of preventing disclosure following a request under the Act for the information.

Valid requests

1.14 Section 8 sets out the criteria for what constitutes a valid request under the Act:

- Section 8(1)(a) requires that a request for information must be made in writing. This can either be in hard copy or electronically;
- Section 8(1)(b) requires that a request for information must state the name of the applicant and an address for correspondence. Applicants must provide their real name and not use a pseudonym. Both email and postal addresses are acceptable;
- Section 8(1)(c) requires that a request for information must also adequately describe the information sought.

1.15 Public authorities do not have to comply with requests that do not meet the requirements set out in section 8. It is good practice to write to the applicant and explain this if this is the case.

1.16 A request submitted through social media will be valid where it meets the requirements of section 8 by providing an applicant's name and address for correspondence and a clear request for information. Addresses for correspondence can take the form of an email address or a unique name or identifier on a social media platform (for example a Twitter handle), as well as postal addresses. Requests must be addressed directly to the public authority the applicant is seeking information from, which includes elected officials and appointed representatives, when acting in their formal capacity. In order to be addressed directly, a public authority must have a formal, monitorable presence on the particular platform being used by an applicant.

1.17 Requests submitted in a foreign language are not generally considered valid requests. Public authorities are not expected to obtain translations of suspected requests for information. It is good practice when receiving a request in a foreign language to ask the applicant to provide their request in English or Welsh in order for the request to be processed.

Fees

1.18 It is open to public authorities, as a result of Regulations made under sections 9 and 13 of the Act, to charge for the cost of providing information requested under the Act. However, the majority of public authorities do not currently do so. It is also only possible to charge where information will be released. It is not possible for public authorities to charge for requests where, for example, information is being withheld under exemptions.

1.19 Where the public authority intends to charge for the cost of providing information, they should send a fees notice stating the amount to be paid, including how this has been calculated, as soon as possible within the 20 working day response period. The notice should inform applicants:

- that the 20 working day period for responding to the request will be paused until payment is received (it is reasonable to set a deadline of three months in which the fee should be paid);
- how to pay the fee; and
- their rights of complaint via internal review and to the Information Commissioner about the fee levied.

1.20 Public authorities may charge for:

- actual production expenses (e.g. redacting exempt information, printing or photocopying);
- transmission costs (e.g. postage); and
- complying with the applicant's preferences about the format in which they would like to receive the information (section 11) (e.g. scanning to a CD).

1.21 It is not possible to charge for any staff time where the cost of compliance falls below the cost limit (see Chapter 6). There is no obligation to comply with any request exceeding the cost limit. However, should a public authority decide to respond to a request that exceeds the cost limit on a voluntary basis it can charge for the staff time needed to do so. In such circumstances staff time is chargeable at a standard rate, including the cost of making redactions (but only the physical cost of making redactions and not staff time for considering whether exemptions apply), to be included in the initial fees notice.

1.22 Public authorities may already charge for supplying specific categories of information on a different statutory basis to the fees they are allowed to charge under the Act. They can continue to do this even when these charges are higher than the fees that can be charged

under the Act. However, public authorities may not charge where a statutory obligation to provide information free of charge already exists.

1.23 Once the fee is received, the public authority should process it promptly and inform the applicant of the revised 20 working day response deadline. It is permissible to wait until a cheque clears before recommencing work. Should a public authority underestimate the costs to be charged, it should not issue a second fees notice and should bear the additional cost itself.

Means of communication

1.24 Section 11 of the Act says that if an applicant states a preference for receiving information in a specific format a public authority shall, if they are required to disclose information, aim to meet this preference as far as is reasonably practicable. Applicants may, for instance, request to receive the information in an electronic or hard copy format.

1.25 When considering whether it is reasonable to meet an applicant's wishes under section 11, public authorities may, for instance, consider the cost and complexity of providing information in the format requested and the resources they have available.

1.26 If an applicant doesn't state a preference, public authorities can communicate information by "any means which are reasonable in the circumstances" as set out in section 11(4). For example, where the platform used by an applicant to make their request imposes restrictions on the format of a response (for example, Twitter restricts the length of a response and does not allow the direct attachment of documents) it would be reasonable to respond in another format.

1.27 Guidance on additional requirements in relation to datasets is provided in Chapter 11 and for model communications in Chapter 10.

2. Advice and assistance

2.1 Section 16 of the Act sets out a duty for public authorities to provide reasonable advice and assistance to applicants requesting information. This duty to advise and assist is enforceable by the Information Commissioner. If a public authority does not meet this duty, the Commissioner may issue a decision notice under section 50, or an enforcement notice under section 52.

2.2 Public authorities should bear in mind that other Acts of Parliament may also be relevant to the way in which they provide advice and assistance to applicants or potential applicants, for example, compliance with duties under the Equality Act 2010.

Advice and assistance to prospective requesters

2.3 Public authorities should, as a matter of best practice, publish a postal address and email address (or appropriate online alternative) to which applicants can send requests for information or for assistance.

2.4 There is no requirement for a request for recorded information specifically to mention the Act in order to be a valid FOI request. Where an applicant asks a public authority to disclose recorded information but does not specifically mention the Act, and the request complies with section 8 (see paragraph 1.14 above), the public authority should consider the request under the Act in any case and let the applicant know that this is how the request is being handled. Where a person seeks to make a request orally they should be advised to put their application in writing in accordance with section 8(1)(a) of the Act.

2.5 There may be circumstances where a person is unable to frame their request in writing, for example owing to a disability. In these instances the public authority should make sure that assistance is given to enable them to make a request for information. For example, advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf. Public authorities may also consider, in exceptional circumstances, offering to take a note of the application over the telephone and sending the note to the applicant for confirmation. Once verified by the applicant this would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received.

Clarifying the request

2.6 There may be instances when a public authority needs to contact an applicant to seek clarification either regarding their name or the information they are seeking in order for the request they have made to meet the requirements set out in section 8 of the Act.

2.7 If a public authority considers the applicant has not provided their real name the public authority can make the applicant aware it does not intend to respond to the request until further information is received from the applicant. For example, this may be the case when an applicant appears to have used a pseudonym rather than their own name.

2.8 There may also be occasions when a request is not clear enough to adequately describe the information sought by the applicant in such a way that the public authority can conduct a search for it. In these cases, public authorities may ask for more detail to enable them to identify the information sought.

2.9 Where a public authority asks for further information or clarification to enable the requester to meet the requirements of section 8, the 20 working day response period will not start until a satisfactory reply constituting a valid request is received. Letters should make clear that if no response is received the request will be considered closed by the public authority. Two months would be an appropriate length of time to wait to receive clarification before closing a request.

Reducing the cost of a request

2.10 Where it is estimated the cost of answering a request would exceed the "cost limit" beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit. Further guidance on the appropriate "cost limit" can be found in Chapter 6.

Transferring requests for information

2.11 There will be occasions when a public authority is not able to comply with a request (or to comply with it in full) because it does not hold the information requested.

2.12 In most cases where a public authority does not hold the information, but thinks that another public authority does, they should respond to the applicant to inform them that the requested information is not held by them, and that it may be held by another public authority. The public authority should, as best practice where they can, provide the contact details for the public authority they believe holds the requested information.

2.13 Where the public authority who originally received the request wishes to ask a different public authority directly to deal with the request by transferring it to them, this should only be done with the applicant's agreement in case the requester objects to their details being passed on. This is because public authorities have a duty to respond to a requester and confirm whether or not they hold information in scope of the request as set out in paragraph 2.12 above.

3. Consultation with Third Parties

3.1 There will be circumstances when a public authority should consult third parties about information held in scope of a request in order to consider whether information is suitable for disclosure. These may include:

- when requests for information relate to persons or bodies who are not the applicant and/or the public authority; or
- when disclosure of information is likely to affect the interests of persons or bodies who are not the applicant or the authority.

3.2 Public authorities may want to directly consult third parties in these circumstances particularly if, for example, there are contractual obligations which require consultation before information is released. In other circumstances it may be good practice to consult third parties, for example, where a public authority proposes to disclose information relating to third parties, or information which is likely to affect their business or private interests.

3.3 Consultation will often be necessary because third parties who have created or provided the information may have a better understanding of its sensitivity than the public authority. On this basis it is important the public authority understands the views provided by the third party and gives them appropriate weight. The expert view of a third party may, as long as it is reasonable, be helpful if the applicant appeals against any refusal. The views of third parties will be especially relevant in cases where it is necessary to consider the prejudice and public interest tests.

3.4 Public authorities are not required to accept views provided to them from third parties about whether or not information should be released. It is ultimately for the public authority handling the request to take the final decision on release following any consultation it undertakes.

3.5 If a decision is made to release information following consultation with a third party it will generally be best practice to give the third party advance notice or to draw it to their attention as soon as possible.

3.6 There may be occasions where information being considered by a public authority relates to a large number of third parties. If a public authority intends to release information that relates to a large number of third parties it may be helpful to contact a representative organisation who can express views on these parties' behalf rather than contacting each third party individually. Alternatively, if no representative organisation exists, public authorities can also consider only notifying or consulting a representative sample of third parties regarding the disclosure of information, but these will be case by case judgements for the relevant public authority.

4. Time limits for responding to requests

Statutory deadlines

4.1 The statutory deadlines for public authorities to respond to requests for information are set out in section 10(1) of the Act. These make clear that public authorities must respond to requests for information promptly and within 20 working days following the date of receipt of the request.

4.2 The date on which a request is received is the day on which it arrives or, if this is not a working day, the first working day following its arrival. Non-working days include weekends and public holidays anywhere in the UK.

4.3 Some public authorities are subject to different deadlines as a result of regulations made under section 10(4) of the Act. For example, maintained schools, academies, archives, the armed forces (frontline units) and information held outside the United Kingdom at for example, embassies, have had the initial 20 working day deadline extended in certain circumstances as they may sometimes find it difficult to deal with requests under the standard deadlines. These initial deadlines cannot go beyond 60 working days following receipt of a request, except where payment of a fee is awaited (paragraph 1.19).

Public interest test extensions

4.4 Public authorities may exceed the 20 working day deadline (or, where permitted by section 10(4) regulations, longer) if information falls within the scope of a qualified exemption and additional time is required to consider the public interest test. This is set out in Section 10(3) of the Act. This is normally described as a public interest test extension.

4.5 An extension is permitted “until such time as is reasonable in the circumstances”, taking account, for example, of where the information is especially complex or voluminous, or where a public authority needs to consult third parties.

4.6 In general, it is best practice for an extension to be for no more than a further 20 working days although this will depend on the circumstances of the case, including again the complexity and volume of the material, and in some circumstances a longer extension may be appropriate.

4.7 Where public authorities decide a public interest test extension is required they should write to the applicant to inform them that this is the case, stating which exemption(s) it is rely on, and why, and ideally provide the applicant with a new deadline for when they should receive their response. If the deadline has to be further extended they should write again to the applicant.

5. Internal reviews

5.1 It is best practice for each public authority to have a procedure in place for dealing with disputes about its handling of requests for information. These disputes will usually be dealt with as a request for an "internal review" of the original decision. Public authorities should distinguish between a request for an internal review, which seeks to challenge either the outcome or the process of the handling of the initial response, and a general complaint, which should be handled as general correspondence.

5.2 Public authorities are obliged, under section 17(7) of the Act, when responding to a request for information, to notify applicants of whether they have an internal review process and, if they do, to set out the details of their review procedures, including details of how applicants request an internal review. They should also inform the applicant of their right to complain to the Information Commissioner under section 50 if they are still dissatisfied following the outcome of the public authority's internal review.

5.3 It is usual practice to accept a request for an internal review made within 40 working days from the date a public authority has issued an initial response to a request and this should be made clear in that response to the applicant. Public authorities are not obliged to accept internal reviews after this date. Internal review requests should be made in writing to a public authority.

5.4 Requests for internal review should be acknowledged and the applicant informed of the target date for responding. This should normally be within 20 working days of receipt.

5.5 If an internal review is complex, requires consultation with third parties or the relevant information is of a high volume, public authorities may need longer than 20 working days to consider the issues and respond. In these instances, the public authority should inform the applicant and provide a reasonable target date by which they will be able to respond to the internal review. It is best practice for this to be no more than an additional 20 working days, although there will sometimes be legitimate reasons why a longer extension is needed.

5.6 In the event that clarification of an internal review request is required from the applicant, the normal 20 working day time period will not begin until it is received.

5.7 Public authorities who are allowed to exceed the normal 20 working day deadline as a result of regulations made under section 10(4), for example maintained schools and the armed forces, should apply the same time scales to internal reviews.

5.8 The internal review procedure should provide a fair and thorough review of procedures and decisions taken in relation to the Act. This includes decisions taken about where the public interest lies if a qualified exemption has been used. It might also include applying a different or additional exemption(s).

5.9 It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision. The public authority should in all cases re-evaluate their handling of the request, and pay particular attention to concerns raised by the applicant.

5.10 The applicant should be informed of the outcome of their internal review and a record should be kept of all such reviews and the final decision made.

5.11 If the outcome of an internal review is a decision that information previously withheld should now be disclosed, the information should normally be provided at the same time as the applicant is informed of the outcome of the review. If this is not possible, the applicant should be informed how soon the information will be provided.

5.12 In responding to a request for an internal review, the applicant should again be informed of their right to apply to the Information Commissioner for a review of whether the public authority has met the requirements of the Act.

6. Cost limit

6.1 Section 12 of the Act allows public authorities to refuse to deal with any requests where they estimate that responding to the request would exceed the "appropriate limit", or 'cost limit' as it is more commonly known.

6.2 If a public authority calculates that responding to a request will take it over the cost limit it is not obliged to provide a substantive response. The cost limit is calculated at a flat rate of £25 per hour. For central government departments the cost limit is £600 (24 hours) and for all other public authorities is £450 (18 hours).

6.3 Public authorities can only include certain activities when estimating whether responding to a request would breach the cost limit. These are:

- establishing whether information is held;
- locating and retrieving information; and
- extracting relevant information from the document containing it.

6.4 Other factors including redaction time or any other expenses likely to occur in cost limit calculations cannot be included when estimating whether the response would exceed the cost limit.

6.5 When calculating the cost limit public authorities can aggregate requests which ask for the same or similar information and are received within a 60 working day period. These requests can either be from the same person or a group of people acting together.

6.6 Public authorities do not have to search for information in scope of a request until the cost limit is reached, even if the applicant requests that they do so. If responding to one part of a request would exceed the cost limit, public authorities do not have to provide a response to any other parts of the request.

6.7 The cost limit can be applied on the basis of a reasonable estimate at the time the request is received. Public authorities are not under any obligation to make a precise calculation although estimates should be sensible and realistic.

6.8 Public authorities should generally focus their attention on the locations most likely to hold the relevant information. Searches may take longer, for example, where information is only held in paper records or they are organised in a way that does not lend itself to the request in question. In some cases it may be helpful to conduct a sampling exercise to help establish likely cost but this is not essential.

6.9 Where a request is refused under section 12, public authorities should consider what advice and assistance can be provided to help the applicant reframe or refocus their request

with a view to bringing it within the cost limit. This may include suggesting that the subject or timespan of the request is narrowed. Any refined request should be treated as a new request for the purposes of the Act.

6.10 The cost limit should be applied before any exemption in Part II of the Act. This is because it will generally be necessary to establish whether information is held and to collate it before applying an exemption.

7. Vexatious requests

7.1 Under section 14(1) of the Act a public authority is not obliged to provide a substantive response to a request if the request is vexatious. Like section 12, section 14 should be considered before consideration of any exemption in Part II of the Act.

7.2 The Act does not define what makes a vexatious request, though there are a number of Tribunal cases which have offered clarity and guidance on this issue. The Information Commissioner's Office's guidance for dealing with vexatious requests gives details of these. Public authorities should consider each case on its own facts, taking into consideration the best practice factors below. Section 14(1) may be used in a number of circumstances where a request, or the impact of a request, is not justifiable or reasonable.

7.3 Public authorities should always think carefully about applying section 14. However, Section 14(1) should not be considered as something to be applied as a last resort or in exceptional circumstances.

7.4 There will be times when a request is so unreasonable or objectionable that it is clear it is a vexatious request. For example, an abusive or offensive request that causes an unjustifiable level of distress or where threats are, or have been, made against staff.

7.5 In other circumstances it may be less immediately obvious that a request should be considered as vexatious. A public authority should consider a request vexatious where the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Factors public authorities might therefore want to consider include:

- the burden it places on a public authority and its staff;
- the likely motives for the request;
- the potential value or purpose of the request;
- any harassment or distress to staff.

7.6 It may be helpful for a public authority to ask itself the following questions when considering whether a request is vexatious:

- What is the burden imposed on the public authority by the request?
- Is there a personal grudge behind the request?
- Is the requester unreasonably persisting in seeking information in relation to issues already addressed by the public authority?
- Does the request have any serious purpose or value?
-

7.7 Public authorities can also take into account the wider context of a request to help them identify whether a request should be considered vexatious. For example:

- what other requests have been made by the same requester to the public authority;
- the number and subject matter of the requests if there are multiple requests; and
- previous dealings with the requester.

Having looked at the wider context, it is then important to assess whether the evidence supports or weakens the vexatious argument.

7.8 There may also be times when a public authority considers that responding to a new request following a series of previous requests would engage section 14(1) because doing so would be disruptive or burdensome to the public authority given the volume of previous correspondence.

7.9 The following are examples public authorities may want to use when considering whether a request is vexatious:

- When an applicant has engaged in a large volume of sustained correspondence over a number of years in abusive or confrontational language.
- Contact with a public authority that can be classified as long, detailed and overlapping. For example, a scenario when a requester has written to a series of officers on the same matters, repeating requests before a public authority has had the opportunity to answer an initial request and where responding to this correspondence would be a significant distraction from the public authority's main functions.
- Where a public authority considers that there is a deliberate 'campaign' by a number of requesters to purposefully disrupt the public authority's activities and functions via a high volume of requests on the same or similar topics.

These examples should not limit public authorities from using section 14 in other circumstances, as the reasons why a request might be considered vexatious will depend on the specific factors in each case. The website of the Information Commissioner's Office publishes examples of case law on this issue which may also be helpful to public authorities when considering whether a request is vexatious.

7.10 Public authorities should also keep in mind the requirements of section 8, in particular, the requirement for applicants to provide their real name and not use a pseudonym. As set out in paragraphs 1.14 and 1.15 pseudonymous requests are not valid requests under the Act. However, the use of pseudonyms may also form part of broader considerations when considering whether or not a request, or a series of requests, should be considered vexatious.

7.11 Finally, public authorities should note that the public interest in obtaining the material does not act as a 'trump card', overriding the vexatious elements of the request and requiring the public authority to respond to the request.

Interaction between section 12 (cost limit) and 14(1) (vexatious requests)

7.12 In some cases, responding to the request is so burdensome for the public authority in terms of resources and time that the request can be refused under section 14(1). This is likely to apply in cases where it would create a very significant burden for the public authority to:

- prepare the information for publication;
- redact the information for disclosure;
- consult third parties;
- apply exemptions.

7.13 It is not possible to use section 12 (cost limit) to refuse a request based on the above factors. In these cases, public authorities may want to instead consider using section 14 to refuse to respond to the request based on the burden that responding to the request would create.

7.14 Public authorities should avoid using section 14 for burdensome requests unnecessarily. On this basis they should always consider whether section 12 applies in the first instance. For example, if a public authority considers that locating and extracting the information in scope would exceed the cost limit, section 12 is likely to be most appropriate. However, if, for the reasons set out in paragraphs 7.12 to 7.13 above, section 12 cannot apply they should consider refusing the request using section 14(1).

7.15 An example of when this may happen may include the burden of redacting multiple entries on a large database as, although it may be possible to locate the database easily, redacting relevant entries (if there are thousands of entries) may create an unsustainable burden for the authority.

Repeated requests

7.16 Under section 14(2) of the Act, if a public authority has previously complied with a request for information (i.e. provided the information sought), it does not need to comply with a further request for the same information made by the same person, unless a reasonable interval has elapsed between compliance with the first request and receipt of the second. A repeated request should be interpreted as an identical or substantially similar request. This will depend on the circumstances and each case should be considered on its own merits.

Section 14 responses

7.17 If a public authority considers section 14 applies in any circumstances other than that referred in paragraph 7.14 they should provide a refusal notice to the applicant. This should

be issued within 20 working days and explain that the public authority considers section 14 to be engaged. Public authorities should also include details of their internal review procedures and the right to appeal to the Information Commissioner. There is no obligation to explain why the request is vexatious, though public authorities may wish to do so as part of their section 16 duty to provide advice and assistance.

7.18 There will be some circumstances when a public authority does not need to provide a refusal notice. Section 17(6) sets out that a public authority is not obliged to issue a refusal notice where it considers that it is unreasonable in all the circumstances to do so. For example, if a refusal notice has previously been issued for an earlier vexatious or repeated request, and the public authority does not consider it reasonable to issue a further notice. It is worth noting that although section 17(6) excludes a public authority from the duty to provide a refusal notice, the public authority is still required to establish that each request is vexatious.

7.19 Public authorities should consider keeping an ongoing evidence log to record relevant correspondence or behaviour that has been taken into account when using section 14. This will be helpful in the event the applicant complains about the handling of the request.

8. Publication Schemes

8.1 Section 19 of the FOI Act requires all public authorities to adopt and maintain a publication scheme. This element of the Act is designed to increase transparency and allow members of the public to routinely access information relating to the functions of a public authority.

8.2 The Information Commissioner's Office has approved a model publication scheme which public authorities should use in the first instance.

Public authorities should also produce a guide to the scheme setting out:

- what information is published and by what means;
- a schedule of fees, which should set out clearly any charges for obtaining any of the information.

8.3 Publication schemes must be updated and maintained, so public authorities must have a process for reviewing published information in order to ensure it is updated at appropriate intervals. Public authorities should also follow the timescales for publication of particular types of information as set out in the Information Commissioner's Office guidance.[3]

8.4 This Code of Practice provides more specific guidance on two areas to supplement the existing guidance by the Information Commissioner's Office.

Compliance Statistics

8.5 Public authorities with over 100 Full Time Equivalent (FTE) employees should, as a matter of best practice, publish details of their performance on handling requests for information under the Act. The information should include:

- The number of requests received during the period;
- The number of the received requests that have not yet been processed (you may also wish to show how many of these outstanding requests have extended deadlines or a stopped clock, e.g. because a fee notice has been issued);
- The number of the received requests that were processed in full (including numbers for those that were met within the statutory deadline, those where the deadline was extended and those where the processing took longer than the statutory deadline);
- The number of requests where the information was granted in full;
- The number of requests where the information was refused in full (you may wish to separately identify those where this was because the information was not held);

[3] This guidance is available on the Information Commissioner's website: https://ico.org.uk

- The number of requests where the information was granted in part and refused in part;
- The number of requests received that have been referred for internal review (this needs only reporting annually).

8.6 It is for individual public authorities to decide whether they wish to publish more detailed information than that set out above (they may, for example, wish to show a breakdown of the exemptions they have used for refusing requests or to show a breakdown of the outcomes for their internal reviews). When public authorities publish their statistics, they should do so on a quarterly basis, in line with central government. Publication schemes are likely to form the best vehicle for publishing this information. A guide on producing a suitable publication scheme can be found on the Information Commissioner's website.

Senior Executive Pay & Benefits

8.7 Public authorities should also ensure publication schemes contain data to deliver sufficient transparency regarding the pay and benefits of senior executives and their equivalents.

8.8 In recent years, central government departments have increased the range of data published in respect of senior officials and primarily those at Director level (SCS2) and above. There will not always be a direct read-across for other public authorities but when considering what type of information should be published, authorities should consider those at management board level as a minimum equivalent.

8.9 Public authorities should publish information that covers the following four areas:

- Pay. Senior staff who form a public authority's senior management team; for central government departments this would be staff at Director level and above. Many other public sectors have published guidance, which set out sector-relevant salary levels suitable for publication (for example, the Local Government Association's "*Local Transparency Guidance - Publishing Organisation Information*"). The Information Commissioner's Office also publishes sector-relevant advice on this issue. Names and/or job titles should also be included (see 8.10 below).
- Expenses. As above, staff on the senior management team, including elected officials and appointed representatives, if these are not already covered elsewhere. This should cover details of international and domestic travel and business expenses.
- Benefits in kind. As above. Benefits in kind refer to benefits employees receive from their employment but which are not included in their salary. Examples include, company cars, private medical insurance paid for by an employer or cheap loans. Data should be published to the nearest £100.
- Hospitality. As above. This should include any gifts, hospitality and benefits that are received from third parties (though this does not need to include small and insignificant items of hospitality, such as refreshments). This should include the name of the person or organisation that offered the gift or hospitality and the type of gift or hospitality received. This may also include additional information, such as whether the staff member was accompanied by a spouse, family member or friend.

8.10 When publishing the names and other details of individual staff, public authorities need to bear in mind the general principle that it is acceptable to name senior managers who expect to be held publicly accountable, but that this does not extend to junior staff who do not have that same expectation. The Information Commissioner's Office generally upholds this distinction.

8.11 Public authorities should publish this type of information at regular intervals. It is recommended that information about pay should be published annually, expenses quarterly and benefits in kind annually. Public authorities can refer to the Information Commissioner's Office guidance as direction to the expected minimum level of detail. Local authorities should follow the publication requirements in the statutory Local Government Transparency Code on senior salary.

9. Transparency and confidentiality obligations in contracts and outsourced services

Transparency

9.1 As more public services are contracted out to the private sector it is important that they are delivered in a transparent way, to ensure accountability to the user and taxpayer. There will be some circumstances when contractors hold information about contractual arrangements on behalf of a public authority which will then be subject to the Act.

9.2 It is important that contractors and public authorities are clear what this information is, and that it is made readily available to the contracting public authority when it receives requests under the Act.

Information held on behalf of a contracting public authority

9.3 When entering into a contract with a third party it is likely that both the public authority and the contractor will hold information about these contractual arrangements. If a contractor holds information relating to the contract "on behalf" of a public authority, this information should be considered in the same way as information held by a public authority and so will be subject to the Act (as explained in Chapter 1). Such information would, for example, include that which a public authority has placed in the custody of a contractor (e.g. record storage) or where a contract stipulates that certain information about service delivery is held on behalf of an authority for FOI purposes.

9.4 When entering into a contract the public authority and the contractor should agree what types of information they consider will be held by the contractor on behalf of the public authority and indicate this in the contract or in an annex or schedule. They should also think about putting in place appropriate arrangements for the public authority to gain access to the information if a request is made under the Act.

9.5 These appropriate arrangements may include:

- how and when the contractor should be approached for information, and who the contact points in each organisation are;
- how quickly the information should be provided to the public authority bearing in mind the statutory deadline for responding to the request;
- how any disagreement about disclosure between the public authority and contractor will be addressed;

- how any request for internal review or subsequent appeal to the Information Commissioner will be handled;
- the contractor's responsibility for maintaining adequate systems for record keeping in relation to information held on behalf of the public authority; and
- where the public authority itself holds the requested information, the circumstances under which the public authority must consult the contractor about disclosure and the process to be adopted in such cases.

9.6 These arrangements should, as good practice, be set out in the contract or in a related Memorandum of Understanding.

9.7 Given the statutory obligations of public authorities to respond to requests under the Act, and the fact that information held on their behalf by contractors is information subject to the Act, contractors must comply with requests by a public authority for access to such information, and must do so in a timely manner.

9.8 Requests for information held by contractors on behalf of a public authority should be answered by the public authority. Contractors receiving requests should pass them to the public authority for consideration or respond to the applicant to let them know they should direct their request to the relevant public authority.

Contract clauses

9.9 Where contractors deliver services on behalf of a public authority the contract with the public authority will need to make clear that contractors will need to fully assist the public authority with their obligations under the Act in line with the guidance set out in this chapter. The contract should include details of how non-compliance with these obligations will be dealt with. This should apply to both new and amended contracts.

9.10 If existing contracts do not set out these provisions, public authorities and contractors should consider alternatives to ensuring that the contractor provides the public authority access to information held on the public authority's behalf. Options to consider include a supplementary Memorandum of Understanding.

9.11 Public authorities may be asked to accept confidentiality clauses when entering into a contract with a third party. Public authorities should carefully consider whether these agreements are compatible with their obligations under the Act and the public interest in accountability. It is important that both the public authority and the contractor are aware of the legal limits placed on the enforceability of such confidentiality clauses[4] and the importance of making sure that the public can gain access to a wide range of information about contracts and their delivery. Public authorities should be mindful of any broader transparency obligations to publish regular details of spending, tenders and contracts on external suppliers; contracts should not hinder such transparency reporting.

[4] Under common law a breach of a duty of confidentiality is not enforceable in the courts where an overriding public interest justifies the breach.

9.12 Where there is good reason to include non-disclosure provisions in a contract, however, it may be helpful for public authorities and contractors to agree the types of information which should not be disclosed within a contract and the reasons for this confidentiality.

9.13 There may also be circumstances when public authorities offer or accept confidentiality arrangements that are not set out within a contract. Public authorities should also follow the guidance set out in this chapter in these circumstances. There will be circumstances when these agreements will be appropriate in order for the public authority to receive information from a third party; hence, this information may be protected by the exemptions in the Act. It will be important that both the public authority and the third party are aware of the legal limits placed on the enforceability of expectations of confidentiality and the public interest in transparency, as well as for authorities to ensure that such expectations are created only where it is appropriate to do so.

10. Communicating with a requester

10.1 Public authorities may find the following guidance helpful for ensuring responses to requests for information and internal reviews meet the requirements set out in the Act.

10.2 Any initial response to a request for information under the Act should contain:

- A statement that the request has been dealt with under the Act;
- Confirmation that the requested information is held or not held by the public authority or a statement neither confirming or denying whether the information is held;
- The process, contact details and timescales for the public authority's internal review appeals process;
- Information about the applicant's further right of appeal to the Information Commissioner and contact details for the Information Commissioner's Office.
- If some or all of the information cannot be disclosed, details setting out why this is the case, including the sections (with subsections) the public authority is relying on if relevant. When explaining the application of named exemptions, however, public authorities are not expected to provide any information which is itself exempt.

10.3 The response to a request for an Internal Review should contain:

- Whether the Internal Reviewer agrees with the original response or not;
- Whether the reviewer considers that new exemptions are applicable and, if so, details of these exemptions and why they are engaged (to the extent they can without providing exempt information);
- Information about the applicant's further right of appeal to the Information Commissioner and contact details for the Information Commissioner's Office.

11. Datasets

11.1 Sections 11,11A, 11B and 19 of Part I of the Act provide additional rights in relation to the disclosure and, in some cases, re-use of datasets.

11.2 The provisions governing the release of a dataset apply to all datasets held by any public authority subject to the Act.

11.3 Provisions relating to re-use only apply to the relatively small proportion of datasets not subject to the Re-use of Public Sector Information (PSI) Regulations 2015[5]. Guidance about the re-use of datasets under the FOI Act is provided in Annex B to this Code of Practice.

11.4 The Act does not require the creation of datasets for publication, nor does it require datasets to be updated if they would not otherwise have been updated as part of the public authority's function. In deciding whether to release a dataset, a public authority should consider any exemptions which may apply and in particular, the exemption in section 40 of the Act relating to personal data and the Information Commissioner's Code of Practice on Anonymisation.

11.5 These considerations should also be taken into account when considering the release of an incomplete or draft dataset. When releasing an incomplete dataset it is good practice to explain the dataset is not complete and the likely implications of this.

i. Scope

11.6 The definition of dataset is limited to the criteria specified at section 11(5) of the Act.

11.7 The first part of the definition (subsection (5)(a)) means that the datasets caught by the Act are those datasets which a public authority has originally obtained or recorded for the purposes of providing services or carrying out its functions, including decision-making.

11.8 The second part of the definition limits datasets to factual information subject to the two criteria in subsection (5)(b). The intention behind the first criterion is to catch 'raw' or 'source' data. Calculation of information within the dataset does not count as 'analysis' or 'interpretation'. Therefore aggregated data forming a high-level dataset (such as the creation of annual figures from data that were collected weekly), form a dataset within the definition of the Act.

11.9 The second criterion excludes official statistics which are subject to their own regime of disclosure and publication, including under the Statistics and Registration Service Act 2007.

[5] http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/

11.10 Subsection 5(c) is also intended to ensure only 'raw' or 'source' data is captured within the meaning of a dataset. The key consideration here is whether the reorganisation or adaptation represents a 'material alteration' to the original presentation of the dataset. Minor or insignificant changes to a dataset will not take it outside the definition.

11.11 The other key consideration in the definition is how much, if any, of the data in the dataset has been changed or altered. If 'all or most' of the data in the dataset meet the criteria set out in subsection 5, then the dataset will fall within the definition. Examples of where datasets will continue to fall under the definition within the Act include:

- The original dataset used to form a new dataset;
- Amended datasets where work has been undertaken to improve the quality of a dataset;
- Datasets that have been anonymised, or otherwise had exempt information removed.

11.12 Where information requested meets the definition of a dataset, the authority will be under a duty to provide the dataset in a re-usable format where reasonably practicable.

ii. Disclosing datasets in an electronic form which is capable of re-use

11.13 When releasing any dataset under the Act public authorities must, as far as reasonably practicable, provide it in a re-usable format. A re-usable format is one that is machine readable, such as Comma-separated Value (CSV) format.

11.14 Where datasets are only held in non-re-usable formats, the public authority is not obliged to convert the dataset before releasing it where it is not reasonably practicable to do so.

11.15 In deciding whether it would be practicable to provide the dataset in a re-usable format, the public authority can take account of all the relevant circumstances. These circumstances may include the time and the cost involved in converting the dataset from a proprietary to a re-usable format, and the resources available to the public authority.

11.16 If the public authority concludes that it would not be reasonably practicable to provide the dataset in a re-usable format, then the public authority must still provide the dataset in another format.

iii. Standards applicable to public authorities in connection with the disclosure of a dataset

11.17 When releasing datasets public authorities should adhere to the Public Data Principles where possible. These principles are expected good practice for central government departments and recommended for the wider public sector.

11.18 It is recommended good practice that datasets will be accompanied by sufficient metadata and contextual information about how and why the dataset was compiled or created.

11.19 When procuring new data processing systems, public authorities should reference the Government Principles for Open Standards in new government information technology specifications for software interoperability, data and document formats. The Principles are compulsory for central government departments, their agencies, non-departmental public bodies and any other bodies for which they are responsible.

iv. Cost of providing the dataset in a reusable format

11.20 If the cost of complying with the request would not exceed the appropriate limit and the information is not otherwise exempt, the public authority must provide the dataset (subject to any right to charge a fee). If the requester expresses a preference for the dataset in electronic form, the public authority must provide it in a reusable format, so far as reasonably practicable. A public authority may not charge for the cost of providing the dataset in a reusable format, but, in deciding whether it would be reasonably practicable to provide it in that format, it can take account of the cost, time and resources that would be involved.

v. Publication of datasets as part of a publication scheme

11.21 Public authorities should consider publishing existing and newly created datasets as part of their publication scheme. If the dataset would be released on request, the public authority should consider publishing it through the public authority's publication scheme.

11.22 Public authorities should consider their long term plans and processes for the collection and storage of datasets, keeping in mind that they should be made easily accessible and in a re-usable format for requests or publication as part of their publication scheme as well as for normal business purposes.

11.23 When publishing a dataset on their website, public authorities, should, where possible, publish it in a machine readable format, so that the data can be directly downloaded from a given URL.

11.24 If a dataset has been requested from a public authority under the Act, then the authority must publish that dataset in accordance with its publication scheme unless the public authority is satisfied that it would not be appropriate to publish it. If the public authority holds an updated version of the dataset it must also publish the updated version, unless it is satisfied that it is not appropriate to do so.

11.25 When the public authority publishes the dataset under its publication scheme, it must (as for responding to a request) provide it in an electronic form that is capable of re-use, where it is reasonably practicable to do so.

Annex A – Table of FOI Act Exemption Clauses

The table below sets out a straightforward reference guide to the exemption clauses that are set out under Part II of the FOI Act. Detailed guidance on the application of these exemptions is set out on the website of the Information Commissioner's Office.

* starred exemptions are absolute; all other exemptions require a public interest test.

Section No.	Description
21 *	Information accessible to the applicant by other means.
22	Information intended for future publication.
22A	Information obtained in the course of, or derived from, a programme of research.
23 *	Information supplied by, or relating to, bodies dealing with security matters.
24	Information for the purpose of safeguarding national security.
26	Information that would, or would be likely to, prejudice defence of the realm.
27	Information that would, or would be likely to, prejudice international relations.
28	Information that would, or would be likely to, prejudice relations between any administration within the United Kingdom.
29	Information that would, or would be likely to, prejudice the economic or financial interests of the United Kingdom or of any part of it.
30	Information held for the purposes of investigations and proceedings conducted by public authorities.
31	Information that would, or would be likely to, prejudice law enforcement.
32 *	Information contained in court documents and records.

33	Information that would, or would be likely to, prejudice the exercise of audit functions.
34*	Information for which exemption is required to avoid an infringement of the privileges of either House of Parliament.
35	Information that relates to the formulation or development of Government policy.
36*	Information that would, or would be likely to, prejudice the collective responsibility of Ministers, inhibit the free and frank provision of advice or prejudice the effective conduct of public affairs. This exemption is absolute only in relation to information held by the House of Commons or the House of Lords.
37*	Information relating to communications with Her Majesty and other members of the Royal Household or the conferring of honours (absolute exemption in relation only to communications with the Sovereign, the heir to the Throne and second in line to the Throne).
38	Information that would, or would be likely to, endanger the safety or the physical or mental health of an individual.
39	Environmental information within the meaning of the Environmental Information Regulations 2004.
40 *	Personal data (absolute exemption in relation only to information that is the personal data of the applicant).
41 *	Information that is obtained from another person or public authority and its disclosure would constitute an actionable breach of confidence.
42	Information that is covered by legal professional privilege.
43	Information that constitutes a trade secret or would, or would be likely to, prejudice commercial interests.
44 *	Information that is prohibited from disclosure by any enactment, EU obligation or whose disclosure would constitute contempt of court.

Annex B – Re-use of datasets

As well as providing additional rights in relation to the disclosure of datasets, the Act also provides for the re-use of datasets not subject to the Re-use of Public Sector Information (PSI) Regulations 2015. The National Archives has provided separate guidance about the re-use of information[6] in accordance with those Regulations.

Only where the PSI Regulations do not apply, should re-use be considered under the Act. They do not apply to datasets held by educational and research establishments, public service broadcasters, cultural or performing arts bodies (other than public sector museums, libraries and archives), or when held by other public authorities for purposes unrelated to their public task.[7] The easiest way for a public authority to comply with the licensing requirements of both FOI and PSI is to make datasets available for re-use under the Open Government Licence, where appropriate.

Giving permission for datasets to be re-used

Public authorities should release datasets with accompanying details of licence conditions that apply to the re-use of the dataset or any limitation on re-use by virtue of third party intellectual property rights.

Consideration should also be given to the extent to which such information is exempt from disclosure under sections 41 and 43(2) of the Act.

The public authority should ascertain whether copyright and/or database rights ('intellectual property') in the dataset are owned solely by the authority or whether there is a third party interest. Nothing in the Act's re-use provisions overrides the rights of any third parties who may own intellectual property contained in the datasets. If a public authority grants a licence to re-use a dataset or part of a dataset containing third party intellectual property without the owner's permission it may constitute an infringement of the third party's rights.

Where there is a third party interest any re-use licence must permit re-use only of those parts of the dataset that the public authority owns. If possible, and subject to any confidentiality requirements, the public authority should identify the requester who owns the remainder of the rights.

In some cases the public authority may be able to obtain the third party's permission to grant the re-use of the third party intellectual property outside the Act.

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[6] http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/

[7] http://www.nationalarchives.gov.uk/documents/information-management/guidance-on-public-task-statements.pdf

UK government policy is that, wherever possible, Crown Copyright material should be made available for re-use. If in doubt it is advisable to seek legal advice.

Licensing

If the dataset that is being provided, or any part of it, is a relevant copyright work owned solely by the public authority, the public authority must make that work available for re-use in accordance with the terms of one of the licences specified in the following paragraphs. The UK Government Licensing Framework[8] (UKGLF) provides an overview of the arrangements for licensing the use and re-use of public sector information. The starting point is that public authorities are encouraged to use the Open Government Licence for datasets which can be re-used without charge.

The Open Government Licence is the default licensing model for most Crown copyright information produced by the UK Government and supplied without charge. It is a non-transactional open licence which enables use and re-use with virtually no restrictions. It is applicable when use and re-use, including for commercial purposes, is at no cost to the user/re-user. Established as part of a wider UK Government Licensing Framework, it is hosted on The National Archives website[9].

It is recognised that the Open Government Licence will not be appropriate in all cases, for example, in circumstances where information may only be used for non-commercial purposes. The Non-Commercial Government Licence was developed to incorporate that situation. As with the Open Government Licence, public authorities can link to the Non-Commercial Government Licence on The National Archives website.

Where a public authority charges a fee for the re-use of a dataset, it must do so in accordance with the Charged Licence. The licence consists of standard licensing terms and, like the above licences, forms part of the UK Government Licensing Framework. It can also be accessed on The National Archives website[10].

Costs and fees

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8 http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/licensing-for-re-use/ukglf/

9 http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/open-government-licence/

10 http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/open-government-licence/other-licences/

It is important to distinguish between the cost to the public authority of disclosing a dataset (including in a re-usable format), and the fees that can be charged to the applicant for making a dataset available for re-use under section 11A (or, where relevant, the equivalent charging provisions in the PSI).

The Freedom of Information (Fees for Re-use of Datasets) Regulations 2013 provide that public authorities may charge a fee for making relevant copyright works available for re-use, unless it already has another applicable statutory power to charge. If a public authority wishes to charge a fee, and is already entitled to do so under any other applicable legislation for the re-use of the relevant copyright work, then it must do so on that other statutory basis instead of these regulations.

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Sheringham Town Council
Twixt Sea and Pine

Date adopted: July 2023
Review date: July 2025
Ratified: 18th July 2023

FOI COMPLAINTS: INTERNAL REVIEW PROCESS

Overview

If you are not satisfied with the way your request for information has been handled under the Freedom of Information Act, you can request a review using the Internal Review Process.

The Freedom of Information (FOI) Act and the Environmental Information Regulations (EIR) provide you with the right of access to information held by Sheringham Town Council. We will make every effort to ensure that valid requests are answered promptly and professionally. However, if you are not satisfied, you have the right to request a review into the response that you have received regarding your request for information or to complain about our handling of your request.

Advice and informal resolution

All responses to requests for information should include the standard appeals paragraph which advises requestors that if they are dissatisfied with the response they have received or wish to complain about the handling of their request, they should contact the official replying in the first instance.

This period of informal resolution is to be encouraged in an attempt to clarify outstanding points or resolve any misunderstandings at an early stage rather than proceeding direct to a formal review. All officers responding to requests have a duty to provide advice and assistance to the requestor as far as is it reasonably practicable to do so.

Whilst informal resolution should be attempted where appropriate, a requestor has a right at any stage to apply for an internal review.

What you can request a review about

A request for a review may involve a:

- request for a review of a decision to withhold information
- complaint about the handling of a request for information
- complaint about the Council's publication scheme

An applicant is entitled to complain to the Council if:

- it is believed that the application was not dealt with within the 20 working day time limit
- we have not confirmed whether the information is held
- all the information requested is not received
- a reason for the request being refused is not received
- it is felt that exemptions have been wrongly applied
- it is felt that a fee has been wrongly applied

The Council reserves the right to ask the applicant for clarification of their complaint, if the grounds are not clear.

What you can't request a review about

- Not liking the answer, you have received, for example a report shows that some repairs have been undertaken, but you don't think the work has been completed properly.
- If you are unhappy with the implications of the information provided to you, we will put you in direct contact with the department concerned.
- Please note that abuse of the review procedure, such as repeated requests for reviews following every request made, may be treated as vexatious and refused.

How to request a review

You must put your request for an internal review or complaint about our handling of your request in writing. The Sheringham Town Council contact details are:

Sheringham Community Centre, Holway Road, Sheringham, NR26 8NP / info@sheringhamtowncouncil.gov.uk

Your request should be made within 40 working days after receipt of our response. Unless there are extenuating circumstances, requests made more than 40 days after the response will not be considered. Please clearly explain the reasons why you disagree with our response or are dissatisfied with our handling of your request. You may provide supporting evidence if applicable, and any information provided will be used to help assess your request.

What you can expect

- your request for a review of our response, or the handling of it, will be considered free of charge
- it will be acknowledged promptly and within 5 working days of receipt by auto response email
- requests for reviews of responses to, or the handling of EIR requests will be dealt with as soon as possible, and in any event, within 40 working days of receipt, in accordance with the Information Commissioner's guidance
- requests for reviews of responses to, or the handling of, FOI requests will be dealt with within 20 working days of receipt
- in exceptional circumstances (for example, when it is necessary to reconsider the public interest) it may be necessary to extend the deadline for response by a further 20 working days. If that is the case, you will be informed and given an explanation for the delay, which will not exceed a total of 40 working days
- the review of responses to, or the handling of, requests will be dealt with in a fair and impartial manner. As such the review will be undertaken by a reviewing officer (the reviewer) who will assess the merits of the review request and who did not deal with your original request
- the reviewer will be trained in / understand FOI and EIR legislation
- the reviewer will request copies of all material (documents, emails etc) connected with the processing of the request whether or not it was disclosed in the original response. Other staff may also be involved before reaching a decision
- the reviewer will make a fresh decision based on all available evidence at the date of your request. As part of this process, the reviewer may need to consult with the responding officer and the team(s) that provided the information originally
- the reviewer will decide about the validity of the exemptions applied, and whether the Council has complied with its statutory duties
- the reviewer will let the requester know, in writing, the outcome of the review, giving a full explanation

Possible outcomes of the internal review process and action that will be taken

Possible outcome	Action that will be taken
Information should be disclosed which was previously withheld	➢ The information in question will be provided as soon as practicable and you will be informed how soon this will be. ➢ An apology will be provided
Procedures have not been properly followed by the Council	➢ Appropriate steps will be taken to prevent similar errors occurring in the future. ➢ Any recommendations for improving our internal processes to prevent a future occurrence will be made to the Policy and Partnerships team and/or to the team holding the information
The initial decision to withhold information is upheld, or otherwise in the Council's favour	➢ You will be informed of the decision and the reasons for this and told about your right to apply to the Information Commissioner

What you can do if you are not satisfied with our response

If your request for a review of our response, or handling of this, is not resolved to your satisfaction, you have the right of appeal to the Information Commissioner for a decision. Before doing so, you must exhaust this Internal Review Process.

Commissioner's Office: The Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or www.ico.org.uk / casework@ico.org.uk / Telephone: 0303 123 1113