



PROCEDURE FOR REQUESTING INFORMATION FROM WEST LINDSEY DISTRICT COUNCIL

Introduction

This procedure deals with requests for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Requests for information can also be made under the Data Protection Act 1998 and Local Government Act 1972 (as amended). If you are unsure about which legislation applies to your request, further information can be obtained from the Freedom of Information Office on 01427 676676 or by emailing foi@west-lindsey.gov.uk.

The Council has a “Publication Scheme” setting out the information we publish routinely. A copy of the Publication Scheme is available on request and can also be found on our website (www.west-lindsey.gov.uk) and at each of our office receptions. Requests for information covered by the Publication Scheme will be dealt with in accordance with that Scheme and not under this procedure.

Requests for Information

A request for information under the Freedom of Information Act must be in writing (which includes a request transmitted electronically). A request for information under the Environmental Information Regulations need not be in writing. All requests must include your name and contact details to enable us to reply, and addressed to the Freedom of Information office. (See address at the end of this document).

Advice and Assistance

We can provide help and assistance with requests for information (unless your request is considered to be vexatious). We cannot ask why a request is being made nor base our reply on what we think you might want the information for. If we need more particulars for requests under the Environmental Regulations, we have to request these within 20 working days. We will aim to use the same timescale for requests under the Freedom of Information Act.

Dealing with Your Request

The timescale for dealing with your request is normally 20 working days. The time limit for responding to requests under the Environmental Information

Regulations is still 20 working days even if the public interest (see “exemptions” below) applies. Regulation 7 of the Environmental Regulations allows for an extension from 20 to 40 working days for complex or high volume requests.

If you have requested the information in a particular format, we will endeavour to comply with your request as far as reasonably practicable. Under the Freedom of Information Act, we do not have to comply with your request if the cost of locating and retrieving the information is £450 or more. This restriction does not apply to requests under the Environmental Information Regulations except in specified limited circumstances although we will levy a reasonable charge for the information. We are not required to comply with a number of related requests (ie those which appear to be part of an organised campaign) if the cumulative cost of complying would exceed the £450 limit referred to above. We will, however, consider if the information could be disclosed in a more cost effective manner.

Exemptions

The information requested may be covered by an exemption. Under the Freedom of Information Act, there are two types of exemption:

- Absolute
- Public Interest Test

The full list is set out in Appendix 1.

Where an absolute exemption applies, we may use our discretion and still release the information. Where exemption can be claimed under the public interest, we must still tell you if we hold the information and communicate the information to you unless we decide that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. When we need to consider where the public interest lies, we do not have to deal with your request within 20 working days but will give you a reasonable estimate as to when we expect to reach a decision.

The exceptions under the Environmental Information Regulations are set out in Appendix 2.

Transferring Requests

If your request is for information we do not hold, but we believe is held by another public authority, we will consider consulting that authority to see if it does hold the information. If it does, we may decide to transfer your request to it and will tell you. Before transferring the request, we will consider if you are likely to have any grounds to object to the transfer and ask you first if we think you would. It would be helpful if you could indicate in your request if you would want to be notified before your request is transferred.

Consultation with Third Parties and Accepting Information in Confidence from Third Parties

If the information requested relates to a third party, we may consult the third party. Where the interests of a number of third parties may be affected, we may consult a representative organisation if one exists or a sample of the third parties in question. It would also be helpful if you would indicate in your request if you would want to be notified prior to any consultation with third parties. We will only accept information “in confidence” from third parties where we have to obtain the information in connection with the exercise of any of the Council’s functions. We will not agree to hold “in confidence” information from a third party that is not confidential in nature.

Public Sector Contracts

When entering into contracts, we will refuse to include contractual terms which purport to restrict the disclosure of information beyond the restrictions permitted by the Act. Where one of our services is provided by a contractor, you should still address your request for information to the Council. If you make your request to the contractor, it will be passed to us (the Council) to reply.

Up to and including evaluation, all tender information will be treated as confidential. As part of the contract letting process, agreement will be reached as to what tender information will be disclosed and what is to be treated as confidential and for how long.

Refusal of Requests

If your request is refused, this will be communicated to you in writing, together with the reasons for refusing it. You need to be aware that, as part of our procedures for managing the information we hold, we destroy certain material after a given period of time. Your request may be refused because we no longer hold the information. A copy of our records management procedure, which includes our destruction arrangements, is also available on request or from our website (www.west-lindsey.gov.uk).

Complaints Procedure

If you have a complaint about the handling or outcome of your request, you may complain. Complaints must be in writing, stating the grounds for complaint.

In the first instance, your complaint should be addressed to the Head of Revenues & Benefits and Central Services (see address at the end of this document), who will acknowledge your complaint and give an indication as to when it might be determined (normally 20 working days).

Your complaint will be dealt with by a sub-group of the Senior Management Team. Any member of the Senior Management Team who was involved in making the decision to which your complaint relates shall not participate in determining the complaint. The outcome could be the reversal or amendment of decisions already taken in relation to your request for information. It is intended that all complaints will be dealt with promptly. You will be advised of progress. If there is any delay in dealing with your complaint, you will be advised as to the reasons for the delay.

What if I am still dissatisfied?

If you are dissatisfied with the outcome of your complaint, there is a further right of appeal to the Information Commissioner, whose contact details are as follows:

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Telephone: 01625 545740
www.informationcommissioner.gov.uk

Further Information

Further information can be obtained from:

Freedom of Information Office
West Lindsey District Council
Guildhall
Marshall's Yard
Gainsborough
Lincolnshire
DN21 2NA
Telephone 01427 676676

FREEDOM OF INFORMATION ACT EXEMPTIONS

Absolute Exemptions

- (a) Information accessible to the applicant by other means (for example, information which the Authority is required by law to communicate or publishes in the context of its approved Publication Scheme). It must be “reasonably” accessible to the applicant.
- (b) Information supplied by, or relating to, bodies dealing with security matters. (This only applies to information supplied by, or relating to, one of the security bodies listed in section 23 of the Freedom of Information Act 2000.)
- (c) Court records (information that is **only** held as part of the documentation for a court or tribunal case or a statutory inquiry).
- (d) Parliamentary privilege.
- (e) Information provided in confidence. (This exemption applies where disclosure would constitute an actionable breach of confidence.)
- (f) Legal prohibitions on disclosure (information, the disclosure of which is prohibited by any other enactment, is incompatible with any community obligation or would be a contempt of court).

Public Interest Test

- (a) Information intended for future publication. (This applies where publication was planned at the time the request was made.)
- (b) National security information that is not covered by Section 3 of the Freedom of Information Act 2000 but exemption is needed to safeguard national security.
- (c) Defence information likely to prejudice national defence or the Armed Forces.
- (d) International relations information likely to prejudice the UK’s international relations or interests.
- (e) Relations within the UK where the information is likely to prejudice relations between the UK administrations: the UK Government, the National Assembly for Wales, the Scottish Administration, and the Executive Committee of the Northern Ireland Assembly.

- (f) The economy where the information is likely to prejudice the economic interests of the UK or part of the UK, or the financial interests of the Government or any of the national administrations in the UK.
- (g) Investigations and proceedings conducted by public authorities (eg information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising from them).
- (h) Law enforcement (eg information not covered by Section 30 of the Freedom of Information Act 2000 and which is likely to prejudice a wider range of investigations and conduct, including prevention of crime, assessment and collection of any tax; regulatory enforcement; health and safety; any civil proceedings).
- (i) Audit. (This exemption applies to information held by public authorities which have functions relating to audit who are examining the economy, efficiency and effectiveness of the use of resources of other public authorities. The information is exempt if its disclosure is likely to prejudice those functions.)
- (j) Formulation of government policy (eg information held by a Government Department or the National Assembly for Wales relating to the formulation of Government policy).
- (k) Prejudice to the effective conduct of public affairs. (This applies to information held by any public authority. With the exception of statistical information, a “qualified person” is required to operate the exemption. For Local Authorities, this is a Minister of the Crown or someone authorised for this purpose by a Minister.)
- (l) Communication with her Majesty etc and Honours. (This applies to information that relates to communications with Her Majesty, Member of the Royal Family or Royal Household, or the confirming of Honours.)
- (m) Health and safety (eg information that would, or would be likely to, endanger the physical or mental health or safety of any individual).
- (n) Environmental information. (Environmental information does not fall within the Freedom of Information Act. It must be released in accordance with the Environmental Information Regulations. However, if the information is subject to a discretionary exemption under the Environmental Regulations, the Freedom of Information Act public interest test would apply.)
- (o) Legal Professional Privilege. (This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings.)
- (p) Commercial interests. (This exemption applies to trade secrets and to information which, if disclosed, would, or would be likely to, prejudice

the commercial interests of any person, including the Authority holding it.)

Personal Information

An absolute exemption applies to subject access requests and in certain other situations; the public interest test applies to third party requests. Subject access requests are decided under the terms of the Data Protection Act. Third party requests for personal information are decided in accordance with the data protection principles, but within the overall framework of the Freedom of Information Act.

ENVIRONMENTAL INFORMATION EXEMPTIONS

International relations, national defence, public security

Information relating to matters affecting international relations may be withheld. The Official Secrets Act 1989 makes it unlawful for Crown servants to release information that might endanger the interests of the UK abroad, seriously obstructs the promotion or protection of those interests, or endangers the safety of British citizens abroad. Any information, document or other article relating to international relations or any confidential information, document or other article which was obtained from a State other than the UK or an international organisation could be restricted for these reasons. As noted in paragraph 18, the release of environmental information relating to overseas territories may be restricted for reasons of international relations.

Information relating to matters affecting national defence may be withheld. Bodies may restrict access to environmental information when its release would damage national security. This could include properly classified documents. There are statutory provisions that prohibit the inclusion of information on public registers when, in the opinion of the Secretary of State, this would be contrary to the interests of national security. There are non-statutory agreements that might lead bodies to believe that the release of information could be damaging to national security.

Information relating to matters affecting public security may be withheld. There are unlikely to be many cases of environmental information whose release could compromise public order. Examples might include information collected for the enforcement of the Public Order Act 1936 as it relates to processions and assemblies, and information about firms manufacturing explosives or arms which could be of use to terrorists.

Legal proceedings

Information relating to, or to anything which is the subject matter of, any legal or other proceedings (whether actual or prospective) may be withheld. By virtue of Regulation 4(5), legal or other proceedings include any disciplinary proceedings and the proceedings at any local or other public enquiry or hearing. Examples might include: information collected and to be used for the purpose of investigative proceedings (eg police proceedings); the subject matter of appeals to a Secretary of State; information which could reasonably be expected to interfere with enforcement proceedings; information which would deprive a person of a right to a fair trial or an impartial adjudication. However, every effort will be made to release information once legal proceedings have been concluded unless there are statutory restrictions to the contrary.

Confidential deliberations and internal communications

Information relating to the confidential deliberations of any body may be withheld. Bodies must be allowed to think in private. The background deliberations, papers and reports leading up to policy statements or decisions are frequently confidential and, where they are, they would not normally be released. Other properly classified documents should not be released. However, the exemption does not cover transactions of business which are merely administrative or routine - any environmental information contained therein will be released.

Under the Local Government (Access to Information) Act 1985, the public has rights of access to Council, committee and sub-committee meetings and to the papers and background papers relating to those meetings. Therefore, rights of access to information are triggered by rights of access to meetings. However, not all information is accessible in this way: that defined as "confidential" by Section 100 A(3) of the Local Government Act 1972 (inserted by the 1985 Act) cannot be released and that defined as "exempt" by Schedule 12A to the 1972 Act may be released only at the discretion of the Council if it resolves that the public should be excluded from the relevant part of the meeting. Under these the Environmental Information Regulations, the public may have wider rights of access to any environmental information held by the Council.

Information relating to the contents of any internal communications of a body corporate or other undertaking or organisation may be withheld. These could include Ministerial and MP correspondence, letters to and from members of the public, information passed between officials in the course of their duties, internal minutes and submissions to Ministers and Members of Parliament.

Unfinished documents

Information contained in a document or other record which is still in the course of completion may be withheld. Bodies may carry out their own studies including inspection, testing, evaluation, monitoring and research; data may be collected in the process. It is reasonable that access to the documents and data should await the completion of the study or report so that analysis and interpretation can proceed unhindered. Of course, this does not stop a body granting premature access if it so wishes. If a study is aborted, any interim reports and any completed data sets should be released as soon as reasonable.

The test as to what constitutes a completed data set is problematic. If a study depends upon a scientifically selected sample of cases, then the data set is not complete until a satisfactory level of responses has been achieved. The satisfactory level of response will normally have been specified as part of the study requirement, or is the level at which data collection is closed down on grounds of cost or practicality. If a study depends on making a series of tests until a hypothesis is accepted or rejected, so that the number of items tested cannot be specified in advance, then the data set is completed once sufficient

items have been tested to confirm or reject the hypothesis. In the case of a longitudinal survey, each individual stage of the survey will normally be regarded as if it were a separate survey and data released at the end of each stage. Data which are part of regular routine monitoring will not be regarded as part of an unfinished set and will normally be released as soon as practicable after it is collected, or according to a planned and published timetable. For example, if readings are taken on an hourly or daily basis, it might be reasonable to release them at least once a month.

Commercial confidentiality

Information affecting matters to which any commercial or industrial confidentiality attaches or any intellectual property will not be released if it is the subject of existing statutory restrictions on disclosure. When not subject to other statutory restrictions it may be withheld. There will be circumstances where the disclosure of information would prejudice the commercial interests of an individual or business. There might be occasions when information produced for, or by, a body itself is confidential or whose ownership rests elsewhere (eg data generated by a government laboratory for a private customer as part of a contract, copyright material produced for sale). Bodies may restrict access to information on these grounds. However, we will not restrict the release of information unreasonably.

In the case of information received from a third party under contract or statute, it may be classified either when it is received or when access is first requested. Circumstances will vary.

If adopting the first approach, the supplier of the environmental information will be informed that it is subject to public release. If the supplier believes that its release would prejudice his/her commercial interest, he/she should be asked to write:

- identifying the information to be protected, giving, if deemed necessary by the Council, cogent evidence of the need for the protection of such information on grounds of confidentiality; and
- justifying a period of time over which protection is sought.

When appropriate, the Council can decide on the merits of the evidence whether the release of the identified information would prejudice the supplier's commercial interests. It is not possible to give hard and fast rules for making such a decision. However, it will not normally be appropriate to withhold information in response to a general claim that disclosure might damage the reputation of the supplier and hence his/her commercial competitiveness. Neither will it be reasonable to withhold information which could be obtained or inferred from other publicly accessible sources. Where it is agreed that information should be withheld, this will be limited to the minimum time necessary to safeguard the commercial or industrial interest. Information retained in this way will be kept under review with the intention of early release.

Where the Council believes that the information should not be withheld or the retention period is too long, the supplier will be told and the reasoning given. The Council may take legal advice before declassifying and releasing information in this way. In some cases, there may be statutory grounds for appeal against the decision before the information can be made publicly available. In the event of an appeal, disclosure of information should await the outcome and then be in accordance with any general or specific directions.

If adopting the second approach (ie classifying the information once a request for access is first received), the Council will seek the views of the supplier before releasing any information that might have a commercial value. This approach will also be adopted for historic information (ie that supplied to a body before the 31 December 1992 when the original Regulations came into force).

The Council has to avoid the possibility of legal action through wrongful release of commercially confidential information. When information in its entirety is deemed restricted on grounds of commercial confidentiality, it may be so annotated together with a release date to avoid improper disclosure. When part of supplied information is deemed restricted, an edited version containing any non-sensitive information may be prepared and marked "Public Access Copy". A statement indicating the existence (but not the content) of the withheld information and a release date may be attached to this public access copy.

Must be treated as confidential

Regulation 4(3) of the Environmental Information Regulations 2004 lists those circumstances where requested information **must** be treated as confidential. The specific circumstances are listed below.

Other statutory restrictions

Information must be treated as confidential if it is capable of being so treated and its disclosure in response to any request would (apart from Regulation 3(7)) contravene any statutory provision or rule of law or would involve a breach of any agreement; such confidential information must be withheld. This is a catch-all case designed to exempt from disclosure information required or permitted to be kept secret by other statutes etc. However, it is possible to withhold such information on grounds of confidentiality only if "capable of being so treated". An example would be the Radioactive Substances Act 1960, which makes it a criminal offence to disclose commercial information to third parties.

Personal information

Information which is personal information contained in records held in relation to an individual who has not given his/her consent to its disclosure must be withheld. Apart from being an unwarranted invasion of privacy, if personal

data about named individuals were to be made publicly available, few people would be willing to assist in the preparation of surveys. This would place in jeopardy the ability of the Council to monitor the state of the environment. In order to maintain the flow of information, access to personal data and/or files will be restricted; this exemption from disclosure could be waived where the individual or individuals concerned give their written consent.

Because of the effect of Regulation 2(1)(c), personal information will not be withheld when there are provisions to the contrary. For example, section 149(8) of the Environmental Protection Act 1990 places a duty on the Council to keep a register of prescribed particulars of, or relating to, dogs seized under that section: the name and address of the owner being part of the particulars. This personal information would be supplied under the Environmental Protection (Stray Dogs) Regulations 1992 (SI 1992/288).

Care should be exercised when handling information containing the addresses of individual properties. When that information relates to an individual occupant, it will be treated as personal information and not released without the occupant's consent. This confidentiality might be secured by other statutes or agreements. For example, section 1 of the Census (Confidentiality) Act 1991 makes it an offence to disclose any information relating to an identifiable household and radon tests are carried out on properties with the understanding that the results will not be released. However, in these and similar cases, it should be possible to release summary information or remove reference to the actual address and release the remaining information.

Volunteered information

Information held by a body in consequence of having been supplied by a person who was not under, and could not have been put under, any legal obligation to supply it to the Council must be withheld unless the person has consented to its disclosure or there are overriding powers of release. Making information which has been volunteered to bodies available to the public could inhibit the present open and constructive discussions between environmental control authorities and industry and the gathering of information on which environmental studies are based. The supply of volunteered information might well diminish - ultimately to the detriment of the environment. Such information will not, therefore, be made available, except where it is clearly understood that this will be done as in many consultation exercises by government departments or the information is freely available from another source.

Unless exempted under another Regulation, volunteered information is not exempted from disclosure if it falls within a category of information that the Council requires to be made available under statute. An example might be information provided to support an application for a licence. Data supplied in support of an application for pesticide approval, or a review of an older pesticide, are supplied voluntarily yet consent to the disclosure of this information is not required under Regulation 8 of the Control of Pesticides

Regulations 1986. Furthermore, where a statutory responsibility to provide information is introduced, any information previously supplied on a voluntary basis for the same purpose will be released as long as it is not covered by other exemptions (eg on grounds of commercial confidentiality).

It would not be in the spirit of the Directive to refuse to release all volunteered information as a matter of principle. Suppliers will, therefore, be encouraged to waive this exemption. This could be done in advance or when a request for access is first made. Once access permission is granted, the information will be suitably labelled for future reference.

Potentially damaging

Where the disclosure of information would, in the circumstances, increase the likelihood of damage to the environment, that information will be withheld. In some cases, the dissemination of environmental information could in fact harm or pollute the environment. For example, information about the location of nesting sites, rare habitats or endangered/protected species will be withheld to avoid the risk of damage. Information about possible Sites of Special Scientific Interest will not be made available until a formal notice is served as making information available prematurely could run the risk of pre-emptive damage being caused to the site before it is protected. The Council will exercise careful judgement when restricting information in this way.

Appendix 3

The Freedom of Information Act 2000 Fees Order – What can we charge?

The new FOI Fees Order was finally made on 10 December 2004 and set out below is a summary of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

Firstly we must comply with section 1 (1) of the Act by:

- Telling the applicant (in writing) if we hold the information they have requested
- Communicating that information (if held) to the applicant

Basic Rules

Upon receiving a request, if the cost of complying with the request will be:

- a) Below £450 – we cannot charge anything other than Disbursements:
- b) Over £450 – we don't have to comply but if we choose to do so, then we can only charge the Regulation 4 costs (see below) plus disbursements.

Disbursements:

These are:

- Complying with the applicants request to the information in a particular format (e.g. summary, inspection, copy)
- Reproducing any document (printing, photocopying, translation etc)
- Postage and other forms of transmission e.g. fax

Working out if we're under the Appropriate Limit

Upon receiving the request, estimate how long it's going to take to do any or all of the following (Regulation 4 costs) and cost that time at **£25 per hour** (set in the Fees Order):

- Determining whether we hold the information
- Locating the information or a document which may contain the information
- Retrieving the information, or a document, which may contain the information
- Extracting the information from a document containing it

If this works out at over £450 then we don't have to comply but, if we choose to do so, then we can only charge £25 per hour over the initial £450 plus disbursements.

We CANNOT Charge for time taken by us to inform the applicant that information is or is not held for us to communicate it to them.

Consultative or Campaign Requests:

These are: Two or more requests made by one person or different persons in concert or in pursuance of a campaign

The Rule: When calculating whether the Appropriate Limit may be reached in complying with any one consultative or campaign request, we aggregate the cost of complying with all of them. However there must be two or more requests that relate to the same or similar information and have been received within any sixty consecutive working day period.