

Wyre Forest District Council

Freedom of Information Policy 2009-2011

Appendix B

1. Procedure for Dealing with Requests

- 1.1 To handle a request for information under the Freedom of Information (Fol) Act (the Act) the nominated officer will need to ask a series of questions. These are set out below and shown on pages 6 and 7 as process maps.

2. Is it a Fol request for information?

- 2.1 A request for information may be covered by one, or all, of three information rights:
- A Data Protection enquiry (or Subject Access Request) is where the enquirer asks to see his or her personal information held by the Council. If the enquiry is a Data Protection request, the Council must follow its Data Protection Act guidance.
 - An Environmental Information Regulations enquiry relates to air, water, land, natural sites, built environment, flora and fauna, and health, and any related decisions and activities. These could therefore include enquiries about recycling, phone masts, pollution, car parking etc. If the enquiry is about environmental information, the Council must follow its guidance on dealing with a request for information under the Environmental Information Regulations.
 - A Freedom of Information enquiry is concerned with all other information and the reasoning behind decisions and policies. The request does not have to mention the Fol Act. All requests for information that are not data protection or environmental information requests are covered by the Fol Act.

3. Is the request for information valid under the Fol Act?

- 3.1 An Fol request should:
- be **in writing**, including e-mail or fax;
 - **state the enquirer's name and correspondence address** (e-mail addresses are allowed);
 - **describe the information requested** - there must be enough information to be able to identify and locate the information; and
 - not be covered by one of the other pieces of information legislation.
- 3.2 Verbal enquiries are not covered by the Fol Act. Council employees are encouraged to resolve straightforward enquiries in the course of the normal day-to-day requirements of their role and function. For more complex enquiries, however, and to avoid disputes over what was asked for, enquirers should be asked to put the request in writing or e-mail, when the request will become subject to Fol.

4. Does the Council hold the information?

4.1 “Holding” information means information relating to the business of the Council that:

- the Council has **created**; or
- the Council has **received from another** body or person; or
- **is held by another body on the Council’s behalf.**

4.2 Information means information held in both hard copy and digital information, including e-mail, visual recordings and audio recordings.

4.3 If the Council does not hold the information, it does not have to be created or acquired just to answer the enquiry, although a reasonable search should be made before denying that the information is held.

5. Has the information requested already been made public?

5.1 If the information requested is already in the public domain, for instance in the Publication Scheme or on the Council’s website, the enquirer should be directed to the information with an explanation as to how to access it.

6. Is the request vexatious or manifestly unreasonable or repeated?

6.1 The Act states that there is no obligation to comply with vexatious requests. This is taken to mean a request clearly designed to: cause inconvenience, harassment or expense rather than to obtain information; require a substantial diversion of resources; or otherwise undermine the work of the Council. This however does not provide an excuse for bad records management.

7. Can the Council transfer a request to another body?

7.1 If the information is held in full or in part by another public body, an enquiry to that body should initially determine whether the information is held, then subject to a positive response to the initial enquiry the request may be transferred.

- The enquirer must be notified that the requested information is not held by the Council and to whom it is to be transferred.
- The enquirer’s permission must be obtained to pass all personal contact details to the public body to which the enquiry is to be transferred.
- The Council must respond to any element of the enquiry where it holds information requested.

8. Could a third party's interests be affected by disclosure?

8.1 Consultation with third parties may be required if their interests could be affected by release of the information requested. Any such consultation may influence the decision. Consultation is not required where the information is not going to be disclosed due to the application of an exemption.

8.2 Consultation will be necessary where:

- disclosure of information may affect the legal rights of a third party, such as the right to have certain information treated in confidence or rights under Article 8 of the European Convention on Human Rights;
- the views of the third party may assist in the determination as to whether information is exempt from disclosure, or
- the views of the third party may assist in the determination of public interest.

8.3 In all cases, it is for the Council, not the third party, to decide whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

9. Does an exemption apply?

9.1 The presumption of the legislation is that the Council will disclose information unless the Act provides a specific reason to withhold it. Only where there are real concerns about disclosing information should an exemption be considered. There are more than 20 exemptions mainly intended to protect sensitive or confidential information. These include:

- information that can be accessed by other means, for example through the publication scheme;
- information that concerns security;
- personal information;
- legally protected information, including information used in the prevention and detection of a crime as well as reports for legal proceedings;
- information provided in confidence;
- information that would prejudice the economic interests of the Council;
- information from auditing the accounts of another public body;
- information that could affect the conduct of Council affairs including anything that would prevent the exchange of free and frank advice or views;
- information that would endanger a person's health or safety;
- environmental information; and
- trade secrets and information that would damage commercial interests.

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- 9.3 Some exemptions are 'absolute' and if invoked there is no obligation to consider the request for information any further.
- 9.4 Most of the exemptions are 'qualified' and subject to a test of the balance of public interest to determine if the public interest in applying the exemption outweighs the public interest in disclosing the information.
- 9.5 The Council will apply the 'Public Interest Test' before any qualified exemptions are applied.

10. What if the request is for personal information?

- 10.1 Personal information requested by the subject of that information is exempt under the FoI Act as such information is covered by the Data Protection Act.
- 10.2 If a request is made for a document that contains personal information and the release of the document in full to a third party would breach the Data Protection Act, the document may be issued by blanking out the relevant personal information – known as redaction.

11. How much can we charge?

- 11.1 The Act allows governing bodies to charge for providing information, however most information requested under the Act can be supplied without charge.
- 11.2 The Council will provide up to a maximum of 18 hours of employee time in order to:
- determine whether it holds the information requested;
 - locate the information or documents containing the information;
 - retrieve such information or documents; and
 - prepare the information for disclosure including any necessary redaction of 'exempt' information.
- 11.3 The Council reserves the right to refuse to supply information where the cost of doing so would exceed £450. This is known as 'the appropriate limit'.
- 11.4 The Council may choose, at its discretion, to charge a fee for complying with a request where the cost of compliance would exceed £450. Any fee must be calculated according to the regulations within the Act and the individual notified of the charge. The information will be made available once the fee has been paid.
- 11.5 Where a request for information is likely to exceed the 'appropriate limit' it is good practice to contact the enquirer and see if the extent of the request can be reduced, with the effect of bringing the time and costs below the 'appropriate limit'.

- 11.6 Where a request for information can be resolved within the 'appropriate limit' charges may only be applied for direct costs such as printing and postage.
- 11.7 The Council may choose, at its discretion, to charge a fee for direct costs.

12. Is there a time limit for replying to the enquirer?

- 12.1 Compliance with a request must be prompt and within the legally prescribed limit of 20 working days. Failure to comply with the statutory timescale could result in a complaint to the Information Commissioner. The response time starts from the time the request is received. Where the enquirer has been asked for more information to clarify the request, the 20 days start time begins when this further information has been received.
- 12.2 If a qualified exemption applies and more time is needed to consider the public interest test, a reply should be sent within the 20 days stating that an exemption applies but including an estimate of the date by which a decision on the public interest test will be made. This should be within a "reasonable" time – in practice, it is recommended that normally this should be within 10 working days.

13. What do I do if someone complains?

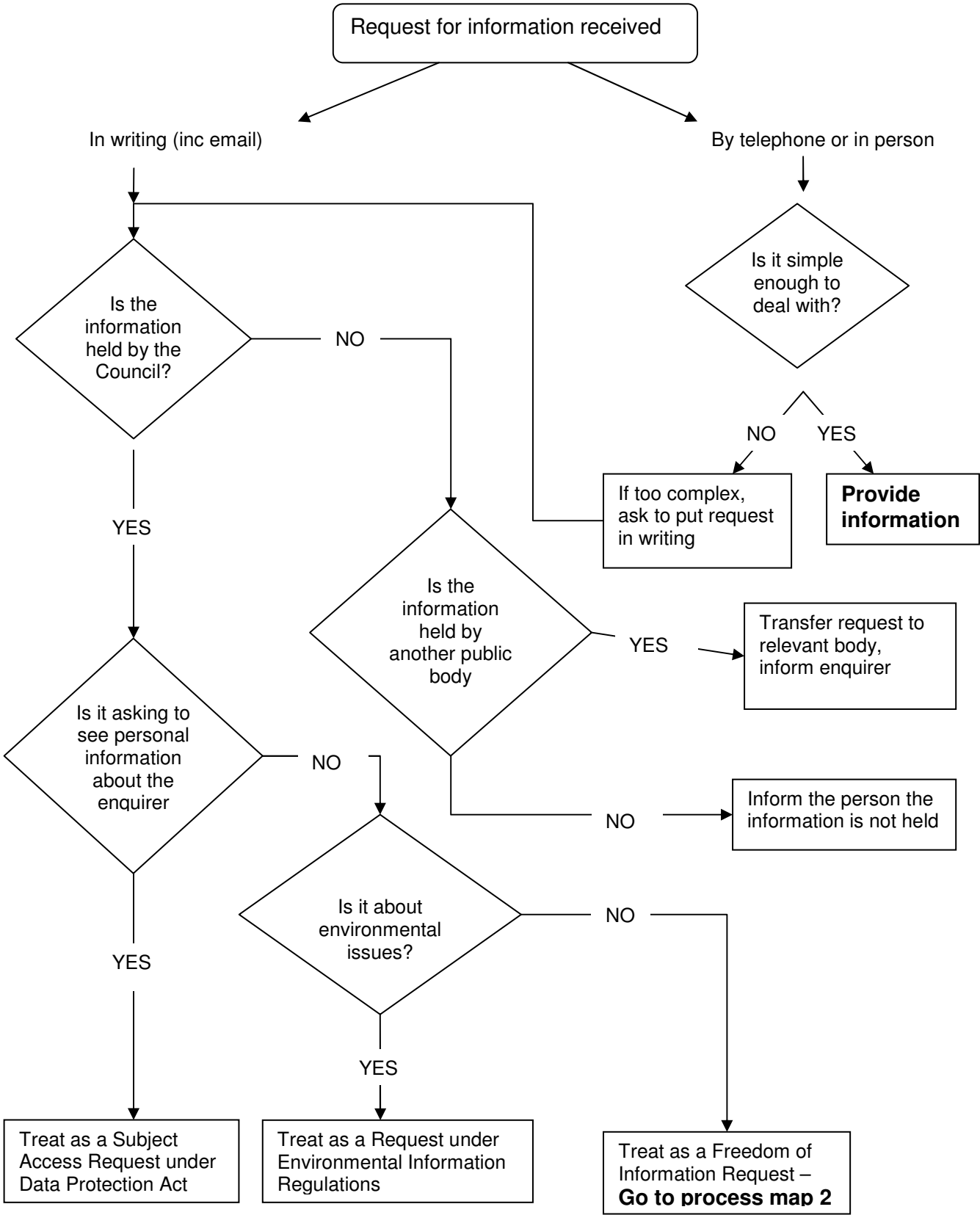
- 13.1 Any written (including e-mail) expression of dissatisfaction - even if it does not specifically seek a review – should be handled through the Council's existing complaints procedure which should be fair, impartial, clear and non bureaucratic. Wherever practicable the review should be handled by someone not involved in the original decision.
- 13.2 When an original request has been reviewed and the outcome is that information should be disclosed when the original decision was to withhold, this should be done as soon as practicable. When the outcome upholds the Council's original decision or action, the applicant should be informed of their right to appeal to the Information Commissioner at:

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

Telephone: 01625-545745

Website: http://www.ico.gov.uk/complaints/freedom_of_information.aspx

Process Map 1 for Dealing with Requests



Process Map 2 for Dealing with Requests

