

Kirby Misperton Parish Council

FREEDOM OF INFORMATION POLICY reviewed September 2013

1. BACKGROUND

1.1 The Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR) place legislative requirements on all public authorities, including town and parish councils.

The laws established the legal Right to Know; a presumption in favour of public access to information held by public authorities, subject to certain exemptions; and other measures to improve public sector transparency.

1.2 The Council is obliged to provide information:

- Through a publication scheme
- In response to requests made under the general right of access.

When responding to requests, there are set procedures that the Council needs to follow. These include:

- The time limit public authorities are allowed for responding to requests.
- The fees or amount that public authorities can charge for dealing with requests. Public authorities are not obliged to deal with requests if the costs of finding the information exceed a set amount known as the appropriate limit.
- Public authorities need not comply with vexatious or repeated requests.

The Act also recognises that there are valid reasons for withholding information by setting out a number of exemptions from the right to know, some of which are subject to a public interest test.

2. POLICY STATEMENT

As part of a society where information rights and responsibilities are respected by all, Kirby Misperton Parish Council will aim to move away from the need for individual freedom of information requests and complaints towards a culture of routine, proactive and substantially increased transparency on the part of the Council, by:

- Being open and transparent and endeavouring to provide the public with access to the official information we hold, as a matter of course.
- Making people aware of their rights to access the official information we hold.
- Providing reasonable advice and assistance to applicants for information, including pointing applicants to possible sources of the information they seek if it is not held by the Parish Council.

3. DEALING WITH REQUESTS FOR INFORMATION

3.1 Members of the public have a general right of access to information held by Kirby Misperton Parish Council, specifically:

- To be told whether or not the information is held by the Parish Council, and
- If it is, to have the information communicated to them.

Note: There are certain exemptions and limitations to this general right, but just because a document is marked “Confidential” does not automatically mean that it is exempt information, although it may be covered by certain exemptions. **Each case will be dealt with on its merits.**

3.2 Requests for information must be in writing, must give the applicant’s name and return address and must describe the information requested in such a way that we are able to locate it. A written request includes electronic requests which can be printed if necessary

3.3 All requests for information will be logged on a separate record sheet.

3.4 The request will be acknowledged but if it is possible to respond with the information this will be done concurrently. If further information is required in order to locate the information requested, this will be undertaken as quickly as possible.

3.5 All correspondence, phone calls, emails etc., that follow the original request will be recorded.

3.6 The Parish Council has 20 working days in which to deal with a request for information. If it is not clear what information is required, the 20 day period does not begin until clarification is received from the applicant as to exactly what is required. (For environmental information the response period is extended to 40 working days for information that is complex and bulky.)

3.7 A charge will be made for the photocopying of information requested as follows:

- 10p per single A4 size sheet
- Additionally, postage will be charged at cost.
- If the cost of finding, sorting and editing the information requested is more than £450 then, under the FOI Act, the Parish Council does not have to provide the information. (Under EIR, environmental information cannot be refused on the grounds of cost)

3.8 Any requests for information that is not contained in the Publication Scheme will be passed to the Parish Clerk to deal with under the FOI Act. A certain amount of guidance on dealing with requests is held by the Parish Clerk, but it may be necessary that further specific guidance will be required from the Information Commissioner’s office. If a member of staff is unsure as to whether a request for information is routine or not, clarification regarding personal information may be covered by the Data Protection Act.

3.9 The applicant will be kept informed at all stages of the process of supplying the information requested, particularly if it is a complex request, when guidance may have to be sought from other agencies.

3.10 If a request is refused, the refusal notice will give the reasons for refusing the request and advise the applicant as to their rights of appeal – both internally by way of a complaint and, following that, by way of an appeal to the Information Commissioner.

4. APPEAL PROCESS

4.1 If the information requested cannot be supplied, the reasons for this will be communicated to the applicant immediately. The applicant has the right of appeal against the refusal, initially to the Parish Council, but ultimately to the Information Commissioner.

4.2 If the initial appeal is made to the Parish Council, it will be dealt with by elected members, in accordance with the Parish Council's Complaints Procedure. If the original decision not to supply the information is upheld by the Parish Council, but is still not accepted by the applicant, then the applicant is able to appeal to the Information Commissioner.

4.3 Reasons for refusing information must be in accordance with the respective provisions of the legislation, including consideration of the public interest test where this applies.

5. RELATIONSHIP WITH OTHER LEGISLATION

Public Bodies (Admission to Meetings) Act 1960

The FOI Act does not amend the provision in the 1960 Act which allows local councils to exclude the press and public by resolution if publicity would prejudice the public interest by reason of the confidential nature of the business or for some other reason stated in the resolution.

However, the effect of the FOI Act is that any information held by the council which relates to matters discussed, either in open or private session (e.g. in a report or minutes), may have to be disclosed unless one of the exemptions under the Act applies.

Local Government Act 1972

The provisions of the FOI Act effectively supersedes the old exemptions in the Local Government Act 1972 in respect of the access to information rights and for this reason the categories of "exempt information" (Schedule 12A of the 1972 Act) were amended in 2006 to mirror relevant FOI exemptions.

Data Protection Act 1998

The Data Protection Act 1998 (DPA) gives an individual the right to obtain a copy of any personal information held about him/her (subject to access), and imposes responsibilities upon those who collect and process personal information. If someone requests information about himself, this should be handled as a subject access request under the DPA. The exemption in the FOI Act, which relates to information requested by the subject, simply means that the decision whether or not to

release the information must be decided in accordance with the provisions of the DPA, and not the FOI Act.

If a person requests personal information about a third party, then the matter should be decided under the FOI Act, but in accordance with the data protection principles set out in the DPA. For example, the authority must consider whether the third party has given consent to release, and if not, whether it would be fair and lawful to release the information.

Environmental Information Regulations 2004

The rules concerning the disclosure of environmental information are now set out in the Environmental Information Regulations 2004 (EIR), which replace Regulations made in 1992. "Environmental Information" is very widely defined in the Regulations which give effect to European Directives. A copy of the full definition is set out below.

The exemptions from disclosure under the EIR are more limited than for other information requests under the FOI Act and all are subject to a public interest test. The Local Government Association has produced an excellent guide to the Environmental Information Regulations and further information may also be obtained from DEFRA's website.

FURTHER INFORMATION

This is a complex area of legislation and nothing within this policy document is intended to excuse the Council from any of its legal obligations. Further guidance on specific points of law regarding FOI and EIR will be sought from the Information Commissioner at:

Helpline: 08456 306060 or 01625 545745

Website: www.ico.gov.uk

Email: via website enquiries

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

6. REVIEW

This policy will be reviewed every year (or earlier if required by changes to legislation or additional documentation) and amended as necessary based on good practice or evidence taken forward.