



Access to Information Policy

January 2010
Version 3.1

INDEX

Section	Page
1) Purpose and Scope	3
2) Aims.....	3
3) Policy Statement.....	4
4) Requests for Information	5
6) The UK Data Protection Act, 1998.....	6
7) Freedom of Information Act, 2000	8
8) The Environmental Information Regulations, 2004.....	10
9) Roles and Responsibilities in Relation to Access to Information within Torbay Council.....	11
Document Change Control	13

1) Purpose and Scope

The purpose of this policy is to give an insight into the legislative framework for responding to requests for information under the Freedom of Information Act, 2000 (FoI) The Data Protection Act, 1998 (DPA) and the Environmental Information Regulations (EIR), 2004, collectively referred to as 'Access To Information' legislation.

The scope of this policy is to set out the general principles that will be adopted by Torbay Council in response to any requests for information under the applicable statutory access regimes, with particular reference to:

- How responses to requests for information are processed
- How, why and where there is access to the provision of advice and assistance
- Roles and responsibilities of those dealing with access to information requests
- General information regarding access to information such as complaints procedures; refusal of requests; consultation with third parties; recording and monitoring of requests
- The application of exemptions
- Recording and monitoring requests for information

2) Aims

The aims of this policy are to ensure that Torbay Council promotes openness and transparency when it comes to decision making and building public confidence and trust in accessing information. By doing this the Council can demonstrate its' commitment to the promise of local government accountability.

Alongside openness and transparency, there is the need to balance the inherent confidentiality of some of the information that is requested, such as data relating to personal privacy; commercial sensitivity. In such instances the Council will explain where the disclosure of that information would not be deemed to be within the wider public interest.

Torbay Council is committed to openness and will always favour the disclosure of information if it is lawfully possible, and if it does not breach privacy rights and expectations of either individuals or organisations, or breach other legislative responsibilities that the Council maybe subject to.

3) Policy Statement

Torbay Council is committed to providing a framework for access to information which ensures that:

- 1) All requests for information are processed within the applicable statutory timescales.
- 2) Advice and assistance is offered to help any enquirer determine what their request is.
- 3) Any requests will be assessed to ensure that personal or commercially sensitive information is treated as confidential, so privacy and/ or human rights are not breached, and that disclosure of such information is only made in accordance with the applicable legislation and is demonstrably in the public interest.
- 4) Information will only be withheld if there is appropriate legislative reasoning for doing so, such as an exemption to disclosure. The Council will ensure that if an exemption is used this is explained fully to the requestor.
- 5) The requestor will be kept up to date with the progress of their request and will be informed of any delays that may occur.
- 6) Torbay Council endeavours to make a wide variety of information available to the public as a matter of course. In order to comply with the Freedom of Information Act 2000, Torbay Council now has a Publication Scheme featured on the website, this includes a disclosure log of all Freedom of Information requests as well as information that was set in a model scheme issued by the Information Commissioners Office.
- 7) Charges for requests will be made with in accordance with any existing Council policies, and the enquirer will be made aware of these at the earliest opportunity.
- 8) Particular members of staff shall be given specific responsibility for managing and monitoring all requests for information made under any Access to Information legislation. This responsibility currently sits within the Information Governance Function. The Team can be contacted on 01803 207467 or via email at freedomofinformation@torbay.gov.uk or dataprotection@torbay.gov.uk.
- 9) Any Access to Information request that is received by the Council must be handled centrally by the Information Governance Team (IG). The IG Team will log the requests and make sure that requests are handled in a consistent manner, and that responses are made in accordance with applicable legislation. Any responses made to requests must be formulated on the standard template

letters found on the Information Governance web-pages, under the relevant section (for example, the Freedom of Information section for Freedom of Information responses; or the Data Protection section for any enquiries regarding the Data Protection Act, 1998). No responses are sent out unless they have been authorised by the Information Governance Team.

10) The Council will offer assistance to anyone who has received an answer to their request and requires a further explanation of the information.

11) The Council will ensure that all requestors are given the opportunity to make a complaint via the Council's complaints procedure if they are not happy with the outcome of their request. Full explanation of this and the subsequent option of contacting the Information Commissioner's Office will always be given in the relevant correspondence.

12) The Council will ensure that all staff are appropriately trained and given guidance to enable them to manage requests efficiently.

13) All requests shall be monitored and performance indicators made available to demonstrate compliance with legislation. The Information Governance Manager has ultimate responsibility for this.

14) The Council will respond to all requests for information in accordance with the appropriate legislative requirements in order to assist the public in exercising their "right to know" and will undertake to ensure that all protocols are known to, and understood by its employees, and that internal procedures are in place to allow timely access.

15) All requests must be treated fairly and without prejudice, and employees must provide advice and assistance in response to requests for access to information in so far as they reasonably can and where such help is required.

4) Requests for Information

All recorded information, personal and non-personal, held by the Council, in any format is subject to a statutory access regime under applicable legislation such as Data Protection Act, Environmental Information Regulations, Freedom of Information Act.

The following examples will not, as a general rule, be treated as a request for information:

- Requests that do not include a name and address for correspondence
However, an email address is sufficient for correspondence purposes
- Requests for information that is released as part of the Council's everyday business process

- Correspondence that is not a request for information, such as that referring to the way in which a query was answered
- Information that is reasonably accessible by the public (for example, on the internet). Although in this case the Council should always make the requestor aware that the information is reasonably accessible and provide assistance/ advice on how to find it

5) Fees and Charges

Wherever possible, Torbay Council will provide information free of charge. Applicants will be encouraged to access information via the website and download or print accordingly. However those applicants that do not have access to electronic facilities will be provided with a paper copy of the information free of charge, provided that it is readily available from the website and is not regarded as being in a category where charges apply.

Charges may be imposed for certain information. In this case the applicable charge will be payable prior to the information being released. In these cases, the Council will issue a fees notice.

Under the Freedom of Information legislation, charges usually arise when it is felt that it would take more than 18 hours of work to complete a request for information.

In the case of Subject Access Requests made under the Data Protection Act, a set fee of £10 is incurred.

Details regarding applicable charges can be found on Torbay Council's internet pages on the Freedom of Information page under the Frequently Asked Questions section. There is also a comprehensive guide to all charges that maybe incurred when requesting information. This can be found in the Torbay Council Access to Information Charging Policy 2009.

6) The UK Data Protection Act, 1998

The UK Data Protection Act, 1998 (DPA) exists to protect individuals about whom information is held, whether in soft copy e.g. electronic records and databases, or hard copy e.g. paper files.

The law controls how this information, described as 'personal data', can be processed by organisations such as the Council ('data controllers') and grants important rights to those who are the subject of personal data ('data subjects').

Requests for personal information under the DPA

One of the rights granted by the legislation is an individual's right of access to his/ her personal data. This is known as making a 'subject access request'.

There is an absolute requirement under Section 7 of the DPA to meet requests for personal information within 40 calendar days of receipt of the subject access request. The subject access request must include sufficient detail from the requestor to locate the information; proof of identity, and the fee.

In exceptional circumstances, due to the quantity and complexity of the information, the Council may find itself unable to meet the deadline, e.g. in the case of Social Services information. In such circumstances the Council will communicate regularly with the applicant, by whatever means appropriate, to apologise for any delay and to keep him/her informed of progress.

The Council will seek to release whatever information it can within the 40-day deadline.

All subject access requests are handled centrally within the Council by the Information Governance Team.

Compliance with the DPA

An independent regulator, the UK Information Commissioner (ICO), is charged with the duty of promoting and enforcing compliance with the UK data protection law.

Both the Council and individual employees could be liable for action by the Information Commissioner in the event of a failure to process personal data in compliance with the Act and the rights of individuals contained within the law.

If breaches of the Act occur it can amount to a criminal prosecution.

The ICO also has the power to levy fines directly for a DP breach. This can occur for any breaches of the eight data protection principles that can be found to lead to substantial damage or distress. In these cases a 'monetary penalty notice' will be issued by the ICO

There are a number of offences that can be committed under the Act. These include:

- Processing personal data without notification to the ICO
- Failing to notify the ICO of changes to a notification entry
- Failure to comply with a written request for the details of processing
- Failure to comply with an Information or Enforcement notice (see below)

- Knowingly and recklessly supplying false information in response to an Information Notice served by the Information Commissioner
- Obstructing the execution of a warrant
- Forcing someone to make a subject access request for another's benefit
- Knowingly or recklessly obtaining, disclosing, procuring the disclosure of personal data or offering to sell, personal data without the consent of the data subject

Further detailed information on the UK Data Protection Act, 1998, such as:

- How to process personal data lawfully
- The main principles of the Act
- The Information Commissioner and his role
- The terms used in the legislation

Can be found on the Council's internet site.

Look under the Access to Information pages: <http://www.torbay.gov.uk>. Then go to the Data Protection section

7) Freedom of Information Act, 2000

The Freedom of Information (Fol) legislation is intended to create openness within all public sector bodies, such as the Council, by giving individuals more access to information. Further details can be found on Torbay Council's Internet pages under Access to Information.

The Act provides a general right of access to non-personal information held by public authorities. There are two types of exemption which allow public authorities to legitimately withhold information under certain circumstances.

1) Qualified Exemptions

With these exemptions information is subject to an assessment of the balance of public interest both for and against disclosure. In these cases, the Council cannot justify withholding information unless, on a proper assessment, the balance of the public interest is against disclosure. This includes information in relation to law enforcement and that intended for future publication.

2) Absolute Exemptions

These exemptions have no need to take into consideration public interest, for example where information that is regarded as confidential, or that involving matters of security. If information falls under an absolute exemption, there is no need for the Council to disclose such information.

Publication Schemes

Every public authority must also make some information available as a matter of course through a 'Publication Scheme'.

The publication scheme is both a commitment by the local authority to ensure that certain information is available to the public along with a guide as to how that information can be obtained.

Torbay Council has adopted the Information Commissioner's 2009 model publication scheme. This can be found on the Council's website at <http://www.torbay.gov.uk/index/advice-benefits/accesstoinformation/freedomofinformation/foi-publication.htm>

Making a request under Fol

Any individual can request to see recorded information held by the Council.

These can requests can be either in writing or by telephone, however if the request is by telephone then a valid email or contact address is required to enable the response to be sent.

Individuals do not have to state why they are requesting the information, although they will need to describe the information they require in sufficient detail for the Council to process the request.

Upon making a request for information, individuals have the right:

1. To be told whether or not the information is held (known as 'the duty to confirm or deny'), and
2. If the information is held, to have it provided to them (unless it is subject to an exemption) within 20 working days from making their request.

All Freedom of Information requests are handled centrally by the Information Governance Team.

Compliance with Fol

This legislation is regulated by the Information Commissioner's Office (ICO), who has a duty to ensure that all public authorities adhere to the requirements of the Freedom of Information Act, 2000. This includes aspects such as ensuring that a publication scheme is in place and that the authority is responding to requests within the specified timeframe.

8) The Environmental Information Regulations, 2004

These Regulations contain specific rights which give individuals access to a wide range of information which relates to the environment.

Therefore, if a request for information relates to 'environmental issues', it will need to be handled under the Environmental Information Regulations, 2004 (EIR) rather than the Freedom of Information legislation.

The EIR contains many of the principles of the Freedom of Information Act, 2000 as it is a parallel piece of Access to Information legislation.

The definition of environmental information is very broad and includes information on:

- The state of elements of the environment (such as air, water, soil, and, landscape and natural sites, flora and fauna, including cattle, crops, GMO's, wildlife and biological diversity) and interaction between them
- The state of human health and safety, conditions of human life, the food chain, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment and interaction between them
- Substances, energy, noise, radiation or waste affecting or likely to affect the state of the elements of the environment and interaction between them
- Measures (including administrative measures, policies, legislation, plans, programmes and environmental agreements) and activities affecting or likely to affect, or intended to protect the state of elements of the environment and the interaction between them
- Emissions discharges and other releases into the environment
- Cost benefit and other economic analysis used in environmental decision making

Requests for information under EIR

The procedure for compliance with the Environmental Information Regulations is very similar to the Freedom of Information. Requests can also be made in the same way as for Freedom of information. Any requests regarding Environmental Information Regulations can be made to the Information Governance Team.

Compliance with EIR

The Environmental Information Regulations is also governed by the Information Commissioner's Office.

If a public authority continuously fails to respond to requests under EIR it will be liable for enforcement by the ICO, who will produce Decision Notices.

9) Roles and Responsibilities in Relation to Access to Information within Torbay Council

Chief Executive

As the head of the organisation, the Chief Executive has the ultimate responsibility for ensuring compliance with any current applicable legal framework. It is also the Chief Executive's role to ensure that the Council is regarded as open and accountable in respect of the services it provides and the decisions it takes.

The Chief Executive delegates operational responsibility to a variety of staff available for the purpose of ensuring that all information held by the organisation is managed in accordance with applicable law, relevant British Standards and internally adopted standards, policies and procedures.

Information Governance Manager (IGM)

As the head of the Information Governance Function, the IGM has the role of proactively promoting awareness of, and compliance in, the field of Information Governance – including Access to Information – across Torbay Council and any partnership organisations.

One of the IGM's responsibilities is to ensure that the relevant members of the IG Team perform their operational duties of responding to and dealing with access to information requests in a timely, cost-effective and customer focused manner.

The IGM deals with all complaints received relating to ATI requests.

Information Governance Advisor (IGA)

As a member of the IG Team, the IGA contributes to the development and implementation of Torbay Council's Access to Information compliance programme and obligations, including but not limited to fulfilling legislative requirements under the UK Data Protection, 1998; the Freedom of Information Act, 2000, and the Environmental Information Regulations, 2004. Also any official notices and enforcement procedures received.

The IGA is the second point of contact for access to information requests, and has specific responsibility for dealing with the application of exemptions to disclosure of information, in consultation with the IGM where necessary.

Information Governance Officer (IGO)

The IGO is the first point of contact for all access to information requests received by Torbay Council.

The IGO is responsible for processing requests from members of the public for access to information under any of the legislative regimes, and for ensuring that the request is handled by the relevant Council department within the statutory time-frame.

The IGO is responsible for ensuring requests are handled in accordance with the Council's applicable standard operating procedures and for ensuring requests are entered into the Council's tracking and logging system.

Document Change Control

Version Number	Date Approved	Reason for change	Issued by
0.1 (draft)	N/A	Draft policy - drafted by Access to Information Officer; review by Information Governance Manager	N/A
0.2 (draft)	N/A	Draft policy - amended to reflect IGM's comments	N/A
1.0 (draft)	Aug 08	Review by IGM	IGM
2.0 (draft)	Dec 08	Review by IGM	IGM
2.1 (draft)	Mar 09	Review by IGM	IGM
3.0 (final)	Jul 09	Finalised by Information Governance Advisor	IGM
3.1	Jan10	Signed off and Published	IGA