

**Central Bedfordshire Council**

# **Environmental Information Regulations Policy**

Issued by

Knowledge and Information Management

Version 1

February 2009

Not Protected

## Policy Governance

Accountable Director	Director Of Business Transformation
Policy Author (Title)	Principle Information and Records Officer
Approved By (Title)	Shadow Executive Committee
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Person Responsible for Review (Title)	Principle Information and records Officer
Include in Publication Scheme (Y/N)	Y
Publish to Web (Y/N)	Y
Circulation	<p>This policy is to be made available to all CBC staff and observed by all members of staff, both social care and otherwise.</p> <p>There will be an ongoing professional development and educational strategy to accompany the implementation of this policy.</p>

## **Policy Approval**

Central Bedfordshire Council (CBC) acknowledges that information is a valuable asset. It is therefore wholly in its interest to ensure that the information it holds, in whatever form, is appropriately governed, in terms of protecting the interests of all of its stakeholders.

This policy and its supporting standards and work instructions are fully endorsed by the Council Executive through the production of these documents and their minuted approval.

I trust that all staff, contractors and other relevant parties will, therefore, ensure that these are observed in order that we may contribute to the achievement of the Council's objectives and the delivery of effective services to our community.

**Chief Executive:** \_\_\_\_\_

**Date** \_\_\_\_\_

The current version of the Central Bedfordshire Council's Environmental Information Regulations Policy is available from the website at [www.centralbedfordshire.gov.uk](http://www.centralbedfordshire.gov.uk).

Alternatively, a copy can be obtained by writing to the Principle Information & Records Officer at:

Central Bedfordshire Council  
Priory House  
Chicksands  
Shefford  
SG17 5TQ

## Revision History

<b>Version Number</b>	<b>Revision Date</b>	<b>Summary of Changes</b>	<b>Author</b>
0.1	6 September 2008	Draft	Rob Hutton
0.2	8 October 2008	Revision	Rob Hutton
0.3	8 December 2008	Revision	John Armstrong
0.4	20 January 2009	Revision	Rob Hutton
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## Glossary

<b>DEFRA</b>	Department for Environment, Food and Rural Affairs – responsible for implementation of the Environmental Information Regulations
<b>Information Commissioner</b>	Responsible for implementation and policing of the Data Protection Act and the Freedom of Information Act, with the authority to investigate and prosecute.
<b>Personal Data</b>	Any information – held manually or electronically – which relates directly to a Data Subject. This can include: Name and Address, Date of Birth, Qualifications, Income level, Employment history.
<b>Processing</b>	In relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including- <ul style="list-style-type: none"> <li>• organisation, adaptation or alteration of the information or data,</li> <li>• retrieval, consultation or use of the information or data,</li> <li>• disclosure of the information or data by transmission, dissemination or otherwise making available, or alignment, combination, blocking, erasure or destruction of the information or data.</li> </ul>
<b>The Council</b>	For the purposes of this document this refers to Central Bedfordshire Council.

## **1. Introduction**

- 1.1 The [Environmental Information Regulations 2004](#) (EIR) came into force on 1 January 2005. They updated the previous (1992) regulations and brought the UK into line with international requirements.
- 1.2 EIR gives certain rights of access to environmental information to the general public.
- 1.3 All environmental information held by the Council, both paper and electronic documents (including email), is considered to be publicly available. All information, unless subject to an exception, will be released if requested.
- 1.4 This document replaces any previous Environmental Information Regulations policy documents created by this Council's predecessors.
- 1.5 Central Bedfordshire Council shall make its own decisions in relation (but not limited) to access to information and shall not be bound by previous decisions of Bedfordshire County Council, Mid Bedfordshire District Council or South Bedfordshire District Council.
- 1.6 Reference to any document, guidance note, Act or regulation includes any amendment made from time to time.

## **2. Scope**

- 2.1 The purpose of this document is to define the elements of the Council's EIR policy, which include:
  - Confirmation that the Council will comply with the EIR Act (2004)
  - The duties imposed by the Regulations and how the Council intends to discharge those duties
  - Responsibility for ensuring Council compliance
  - Charges
  - Appeals
  - The role of Department for Environment, Food and Rural Affairs ([Defra](#))
  - The role of the Information Commissioner
- 2.2 Operational procedures for managing and responding to requests are outlined in Officer Guidelines - Environmental Information Regulations.

## **3. What is covered by the Act?**

- 3.1 Regulation 2(1) states that environmental information is information held in any format on any of the following:
  - The state of the elements of the environment, such as
    - Air and atmosphere,

- Water, soil, land, landscape and natural sites including wetlands, coastal and marine areas,
- Biological diversity and its components; genetically modified organisms, and the interaction among these elements.

3.2 Substances:

- Energy,
- Noise, radiation or waste, including radioactive waste,
- Emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the environment.

3.3 Reports on the implementation of environmental legislation.

3.4 Cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to above.

3.5 The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in 3.1 or, through those elements, by any of the matters referred to in 3.2 and 3.3 above.

#### 4. Roles and responsibilities

##### Head of Legal and Democratic Services

4.1 Head of Legal and Democratic Services or their delegated officer is responsible for:

- Providing legal support for compliance with EIR,
- Providing impartial reviews in the case of appeals where the monitoring /freedom of information officer has had direct dealings in the original response.

##### Corporate Freedom of Information Officer/Monitoring Officer

4.2 This person has delegated responsibility for the following:

- Drafting guidance to process access requests made under the Act
- Logging and monitoring the volume of access requests and ensuring compliance
- Ensuring appropriate and adequate training is delivered to Council officers/members
- Providing technical support and guidance to Council officers as necessary
- Liaison with Legal and Democratic Services over the application of qualified exceptions
- Leading the internal appeals process.

## **Environmental Services/Health Manager**

- 4.3 Environmental Services/Health Manager is responsible for:
- Ensuring all environmental information is accessible under EIR
  - Setting the fees levels for accessing Environmental information

## **Customer Relations Manager**

- 4.4 This person will have responsibility for:
- Managing the team responsible for processing information requests
  - Ensuring that enquiries are logged and processed on time and in accordance with the Act
  - Ensuring that the application of any absolute exceptions is performed correctly
  - Compiling statistical reports to identify trends and levels of enquiries
  - Ensuring the disclosure log and publication scheme are up to date.

## **Service Managers**

- 4.5 Service Managers or delegated officers are responsible for:
- Complying with this policy and any associated procedures in handling requests.
  - Ensuring that their teams maintain their information in a way that is compatible with ensuring an effective and efficient response to any request.
  - Providing access to information following a request.
  - Ensuring that their officers are appropriately trained in their responsibilities under the Act.

## **Officers**

- 4.6 All Officers have responsibility to:
- Assist in the processing of requests in accordance with the Council's Policy and Procedures.
  - Advise and assist the public in obtaining the information they require.
  - Ensure that information is created and managed in accordance with the Council's policies and procedures.

## **5. Codes of Practice**

- 5.1 The Council will ensure its compliance with EIR according to the codes of practice issued from time to time by the Department for Environment, Food and Rural Affairs ([Defra](#)).

5.2 This policy will be supported by appropriate Officer Guidelines. – Environmental Information Regulations.

## **6. Access Rights**

6.1 From 1 January 2005 the EIR gave a general right of access to the public for recorded environmental information. EIR applies to all public authorities in England, Wales, and Northern Ireland.

6.2 'Public authority' means government departments and any other public authorities. This definition is the same for both EIR and Freedom of Information (FOI); but in addition EIR includes the following authorities that are not covered by FOI:

- Any other body or other person, that carries out functions of public administration, such as utility companies; or
- Any other bodies or other persons under the control of the aforementioned, such as waste contractors performing waste collection on behalf of a local authority.

6.3 The Regulations allow retrospective access to all Council information that is in the public domain.

6.4 The Council will respond to requests for environmental information within the 20 working days time limit. In certain circumstances, under [Regulation 7](#) of EIR, the Council may extend that deadline up to a maximum of 40 working days (if it reasonably believed that the complexity and volume of the information requested means that it is impracticable to comply with or refuse the request within the shorter period).

6.5 The Regulations list [exceptions](#) under which disclosure can be refused. All of these require a '[public interest test](#)' to determine if it is in the public interest to disclose the information. See section 10 of this Policy for further details.

6.6 Consult Appendix A for a summary of relevant exceptions.

## **7. Disclosure Log**

7.1 The Council's Customer Relations team will log all Freedom of Information and Environmental Information requests for tracking and audit purposes and will be able to identify repeat, similar or vexatious requests.

7.2 Multiple requests for information on a particular subject will prompt the Customer Relations team to consider adding it to the Publication Scheme during the annual review. Further information on the Council's disclosure log may be consulted in Officer and Elected Member Guidelines - Freedom of Information.

## 8. Charges

- 8.1 Under [Regulation 8](#) of the EIR the Council may charge the applicant for environmental information. Access to and viewing of Environmental Information that forms part of a public register will be free of charge. It is at the Council's discretion to make a reasonable charge for Environmental Information that does not form part of the public register (or for copies thereof). If it levies a fee the Council will act in line with the guidance at [Defra, UK - About Defra - Access to information - Environmental Information Regulations 2004 - Guidance - Fee guidance](#).
- 8.2 The charge will cover only the processing and making available of the information and not the time taken to consider any exceptions. A Charges Schedule will be made available to the requester. Where advanced payment is required the case will remain active for 60 working days until payment is received. During this period the response time for dealing with the request will be put on hold.
- 8.3 A regular and transparent system for reviewing such charges will be in place. Requesters may appeal to the Environmental Health Manager for a review of any such charges made.
- 8.4 The Council will not comply with any request for information that is 'manifestly unreasonable' as defined in [Regulation 12\(4\)](#) of the Regulations. This also applies to repeated and vexatious requests.

## 9. Requests

- 9.1 Environmental information requests should be submitted to the Customer Relations team for logging and processing. Enquiries can be made via the following channels:
- **In person:** At Council offices or Points of Presence
  - **By post:** Customer Relations and Access to Information Team, **<INSERT ADDRESS>**
  - **By fax:** **<INSERT FAX NUMBER>**
  - **By email:** [accesstoinfo@centralbeds.gov.uk](mailto:accesstoinfo@centralbeds.gov.uk) **<TO BE CONFIRMED>**
- 9.2 Note - EIR requests do not have to be submitted in writing, they can be received verbally. For further information on managing the request process, see Officer Guidelines - Environmental Information Regulations.

## **10. Exceptions and the Public Interest Test**

- 10.1 On all requests for environmental information, the Council is required to conduct a [public interest test](#) to determine if it is in the public interest to release the requested information.
- 10.2 The presumption is that environmental information must be released, unless there are compelling and substantive reasons to withhold it. The Regulations list the conditions under which a body can refuse information (see Appendix A for further information).
- 10.3 A request for information will be refused (or information redacted) if:
- Information is not held (then there is a duty to refer the request onwards as appropriate)
  - The request is manifestly unreasonable, such as vexatious requests, continuous questioning and multiple questions on the same theme.
  - The request is too general (after fulfilling the duty to advise and assist), such as a request for pollution incidents in Dunstable. This would be far too general as there are different types of pollution matters, e.g. air, water land etc.
  - The request is for unfinished documents or data (in which case estimated time for completion will be given) such as contaminated land prioritisation lists
  - The request is for internal communications (as with all EIR exceptions, the public interest test must be applied), such as unfinished data being sent to others in the Council, in draft format, information between the Environment Agency and the Council; information regarding on-going or closed accident investigations.
- 10.4 Information may also be withheld or redacted in order to protect the following, subject to the public interest test:
- Confidentiality of proceedings
  - International relations / public security / defence
  - The course of justice and right to fair trial
  - Commercial confidentiality
  - Intellectual property rights
  - Personal Information
  - Data supplied voluntarily
  - Environmental protection
- 10.4 On receipt of a request to supply information, Service Managers should advise the Customer Relations Officers on any potential exception that needs to be considered. The Customer Relations Officers will conduct the public interest test and where necessary, seek advice from Legal and Democratic Services. If there is equal weight between withholding information and disclosing, the Council will disclose.

- 10.5 The final say on applications of the public interest test will rest with the Monitoring Officer. Where an exception may apply to all or part of the information requested, the requestor will be notified in writing, citing the relevant exception. The Customer Relations Officer will maintain an audit trail of decisions in the disclosure log.
- 10.6 For more detailed guidance see Officer Guidelines - Environmental Information Regulations.

## **11. Appeals**

- 11.1 If the requester is not satisfied with the information disclosed the Council will provide an avenue for appeal. Appeals will be administered through the Corporate Freedom of Information Officer.
- 11.2 In the event of a complaint or challenge about the use of an exception, the initial request, decision audit trail, correspondence and information released will be reviewed independently of the original decision maker. This will initially be undertaken by an appropriate Council officer. If a decision cannot be made at this point, it will be referred to the Monitoring Officer. In circumstances where the Monitoring Officer made the disclosure decision, it will be referred to another senior member of the Legal Services team.
- 11.3 If the requester is dissatisfied with the appeal outcome they may seek an independent review by the Information Commissioner, who has the authority to demand disclosure.

## **12. Advice and assistance**

- 12.1 The Council is obliged to provide advice and assistance, so far as it would be reasonable to expect it, to those persons who propose to make, or have made, requests for information. Where the records are not held by the Council but are held by another public body, the requester will be directed, where possible, to the appropriate body.
- 12.2 The Council acknowledges its commitment to fair and equal access in regard to the Community Strategy and equalities legislation (such as the Disability Discrimination Act 1995 and the Race Equalities Act 1976 and Race Relations Amendment Act 2000) and will make such reasonable adjustments as might be required to assist with an access request under the Regulations.

## **13. Use of Personal Information**

- 13.1 The [Data Protection Act 1998](#) prohibits the disclosure of personal data without the explicit consent of the data subject. Therefore, personal

and identifying information that is contained within documents collated in response to an information request will be removed.

- 13.2 Where appropriate, and depending on the sensitivity of the personal data, advice and guidance will be sought from the Corporate Data Protection Officer to ensure that the integrity of personal data is not compromised. In exceptional circumstances and under [Regulation 13](#), personal data may be released if it is in the public interest to do so.
- 13.3 For further guidance see the Council's Data Protection Policy.

#### **14. Third party information**

- 14.1 The Council is obliged to provide environmental information to the public unless an exception applies. The Council is not obliged to consult with third parties regarding the information that it holds (information that may be owned wholly or in part by a third party) but may choose to do so.
- 14.2 Further policies and guidance are contained in Officer Guidelines - Environmental Information Regulations.

#### **15. Copyright**

- 15.1 Information released under EIR may be subject to copyright. If a requester wishes to re-use the information in any way they must apply to the copyright holder. The Office of Public Sector Information ([OPSI](#)) (formerly HMSO) has issued guidance on applying for copyright.
- 15.2 The requester may apply to re-use Council information in accordance with the Council's Re-Use of Public Sector Information Policy.

#### **16. Role of the Information Commissioner and Information Tribunal**

- 16.1 The Information Commissioner's Office is the enforcement body for EIR and is responsible for arbitrating on information requests that have not been resolved to the applicant's satisfaction after the Council's appeals process has been completed.
- 16.2 The Information Commissioner also has the responsibility to enforce and arbitrate on matters of Data Protection and Freedom of Information.
- 16.3 The Information Tribunal provides the avenue of appeal against decisions made by the Information Commissioner. The Tribunal has the power to request and inspect all documentation pursuant to the initial request, to enable an independent disclosure decision to be

made. The Information Tribunal has the authority to use the courts to enforce its disclosure decisions.

## 16.1 Appendix A - Summary of Relevant Exceptions for the Council

Below is a list of exceptions most relevant to the Council. For a complete list of exceptions, consult the [EIR exceptions](#).

Regulation(s)		Guidance
12(3)	Personal Data	Information that would breach the Data Protection Act. Disclosure of 3 <sup>rd</sup> party information will only be made in accordance with Regulation 13 of EIR
12(4)	Type and/or Amount of Information	Requests for information we do not hold or ones that are manifestly unreasonable, too general a request, drafts that are incomplete and internal communications
12(5)(b)	Adversely affect justice or disciplinary procedures	That releasing information would not jeopardise the administration of justice or personnel-related disciplinary proceedings
12(5)(c)	Intellectual Property Rights	To protect the registered rights of both 3 <sup>rd</sup> parties and those of the Council where disclosure would harm those rights
12(5)(d)	Confidentiality of Proceedings	The Statutory duties carried out by the Council where disclosure would not be in the public interest (except emissions)
12(5)(e)	Commercial Interest	Where the disclosure of information would prejudice the commercial interests of an individual or body, or of the public authority itself.
12(5)(f)	Voluntary Information	Where the disclosure of information would harm the interests of a third party if that third party supplied the information voluntarily and has not consented to its release (except emissions).
12(5)(g)	Protection of the Environment	Releasing the information would cause harm to the environment (except emissions).
12(9)	Emissions	Exceptions listed in 12(5)(d to g) above may not be used to release information about emissions
13	Third Party Personal Data	Data that would be in breach of the Data Protection Act

## **16.2 Appendix B - Related Council Policies**

- 1 Data Protection
- 2 Freedom of Information
- 3 Public Sector Re-use of Information
- 4 Information Security
- 5 Information Governance
- 6 Information & records management Policy
- 7 ICT Acceptable Use Policy

### 16.3 Appendix C - Relevant Statutes, Legislation and Standards

<b>Legislation</b>	<b>Notes</b>	<b>Area of impact</b>
The Data Protection Act 1998	The Data Protection Act requires that all personal information be handled in an appropriate way.	Access to Information Data Management Records Management Information
Freedom of Information Act 2000	Provides the legal framework around which the public are able to access information held by the council. Section 46 – of the Freedom of information act makes it clear that in order to comply with the FoI a public body must maintain its records in a way that makes the accessible.	Access to Information/Records Management
The Environmental Information Regulations 1992	Provides the framework for public access to Environmental information of an organisation Pt2 Section 5 (4) – requires that information is accurate and up-to-date and comparable	Access to information/ Management of environmental information
Human Rights Act 1998	Article 8.1 of the European Convention on Human Rights (given effect via the Human Rights Act 2000) provides that “everyone has the right to respect for his private and family life, his home and his correspondence”. However there are exemptions that override those rights, such as national security, public safety, prevention of disorder or crime, and protection of the rights and freedom of others.	The council has a duty to abide by the human rights act and ensure that all correspondence with the council is treated appropriately, which includes managing it in a way that will not invade the privacy of the individual.
Crime and Disorder Act 1998	Section 115 of this Act provides that any person has the power to disclose information necessary for the provisions of the Act to the police, local authorities, probation service or health authorities.	To be able to provide appropriate information the council must not only ensure access to the information, but that the context is not lost through poor management.
Children Act 2004	Background Every Child Matters: Change for Children (Dec 2004), and the draft statutory guidance on the Children Act 2004 S10 Duty to Cooperate (Dec 2004), set out clear expectations for local	Information retained in all service areas could potentially be valuable in ensuring the well being of children in the area.

	action to improve information sharing. It seeks to provide clarity on the legal framework for practitioners sharing information about children, young people and families; and give practitioners confidence in making decisions.	Therefore being able to access information from a wide range of sources across the council is essential.
Limitation Act 1980	This act places a limit on the validity of information, therefore provides the legal framework for retention and disposal of certain documents	Retention and disposal of records, although not all records or information has a legal limitation attached.
Public Records Acts 1958 & 1967	These two acts provide the framework for the appropriate management of Public Records, these were heavily amended in with the introduction of the Freedom of Information Act	Management of Public Records
Local Government (Records) Act 1962	(10 A local Authority may do all such things as appear to Power to it necessary or expedient for enabling adequate use to be made of records under its control, and in relation to such records may particular – a) Make provision for enabling persons, with or without charge and subject to such conditions as the authority may determine, to inspect the records and to make or obtain copies thereof	Records Management
Taxes Management Act 1970	Details the requirements for managing tax records	Records retention
Local Government Act 1972	Section 224 – without prejudice to the powers of the <i>custos rotulerum</i> to give directions as to the document of any county, a principle council shall make proper arrangements with respect to any documents, which belong to or are in the custody of the Council or any of their officers	Records Management

<b>Codes of Practice</b>	<b>Notes</b>	<b>Area of impact</b>
<i>FOI Code of Practice for Local Government</i>	“1. To set out practices which public authorities, and bodies subject to the Public Records Act 1958 and the Public Records Act (NI) 1923, should follow in relation	Access to Information

	<p>to the creation, keeping, management and destruction of their records (Part I of the Code); and</p> <p>2. To describe the arrangements which public record bodies should follow in reviewing public records and transferring them to the Public Record Office...”</p>	
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## Standards

ISO 15489-1 and ISO 15489-2, 2001 ‘best practice’ for managing records in an organisation.

PD 0008:1999 a code of practice for Legal Admissibility and Evidential Weight of Information Stored Electronically

PD 0010:1997 Principles for Good Practice for Information Management

BS 5454:2000 Recommendations for the Storage and Exhibition of Archival Documents,

ISO 18925:2002 Imaging materials – optical disk media – storage practices

PD 0016:2001 Guide to scanning business documents

MoReq 2001 Model requirements for the management of electronic records.

BS 7799:2002 Specification for information security management

## **16.4 Appendix D - Classification**

All corporate documents are classified using the two following classification methods:

### **16.4.1 Security Classification**

The purpose of security classification is to ensure that all information is secured and only accessible to the appropriate persons. All documents will have the security classification identified on the front cover.

The security classification is divided into the following three categories:

- Not Protected - can be shared with anyone, internal or external,
- Protected - internal circulation only
- Restricted - only for circulation to a specific internal audience

This security classification of this document is as follows:

Not Protected

### **16.4.2 Functional Classification**

The purpose of Functional Classification is to ensure that all key documents are placed in their correct position within the corporate information architecture. This is to facilitate effective management, access and disposal of information across the organisation. Each document will be marked using the corporate function (highest element of classification which describes the general area in which the document resides) under which it falls.

The classification for this document is as follows:

**Information Management**