

Central Bedfordshire Council

Freedom of Information Policy

Issued by

Knowledge and Information Management

Version 1.0

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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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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 Information & Records Management Policy is available from the website at www.centralbedfordshire.gov.uk.

Alternatively, a copy can be obtained by writing to the Information Governance Manager at:

Central Beds Council

Priory House

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Glossary

Information	This includes records and data held in any format by Central Bedfordshire Council.
Information Commissioner	Responsible for implementation and policing of the Data Protection Act and the Freedom of Information Act, with the authority to investigate and prosecute.
Personal Data	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.
Processing	In relation to information or data, this 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">• organisation, adaptation or alteration of the information or data• retrieval, consultation or use of the information or data• disclosure of the information or data by transmission, dissemination or otherwise making it available• alignment, combination, blocking, erasure or destruction of the information or data
The Council	For the purposes of this document this refers to Central Bedfordshire Council.

1. Introduction

- 1.1 The Freedom of Information Act 2000 (hereafter referred to as the Act) came into force for all public bodies on 1 January 2005. The Act provides the legal right for any person or group to ask any public authority for access to information held by that authority.
- 1.2 Freedom of Information provides a disclosure regime for accountability and transparency in decision-making. The Act covers all recorded information held by the Council.
- 1.3 There are twenty-three exemptions under the Act, and information, unless subject to an exemption, will be released if requested.
- 1.4 This document replaces any previous Freedom of Information policy documents created by this Council's predecessors.
- 1.5 Central Bedfordshire Council 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 Freedom of Information Policy, which include:
 - Confirmation that the Council will comply with the Freedom of Information Act 2000.
 - The duties imposed by the Act and how the Council intends to discharge those duties.
 - Responsibility for ensuring Council compliance
 - Charges
 - Appeals
 - The role of the Information Commissioner.
 - High-level procedures – Detailed procedures for are outlined in the following:
 - Officer Guidelines – Freedom of Information
 - Elected Member Guidelines - Freedom of Information
- 2.2 Requests for third party personal information are exempt under section 40 of the Act and will be dealt with under the Data Protection Act 1998, which is covered by the Council's Data Protection Policy.
- 2.3 Requests for environmental information are exempt under section 39 of the Act, which is covered by the Council's Environmental Information Regulations policy.

- 2.4 Requests for the re-use of information will be dealt with separately in accordance with the Council's Re-use of Public Sector Information policy.

3. Roles and responsibilities

Chief Executive

- 3.1 The Chief Executive is ultimately responsible for ensuring the Council complies with the Act. The responsibility has been delegated to the Monitoring/Freedom of Information Officer to manage the day-to-day responsibility for the Act.

Head of Legal and Democratic Services

- 3.2 Head of Legal and Democratic Services or their delegated officer is responsible for:
- Providing legal support for compliance with the Act.
 - Providing impartial reviews in the case of appeals where the monitoring /freedom of information office has had direct dealings in the original response.
 - Act as a Qualified Officer.

Corporate Freedom of Information Officer

- 3.3 This person has delegated responsibility for the following:
- Drafting guidance to process subject 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 exemptions.
 - Leading the internal appeals process.
 - Act as a Qualified Officer.
 - Escalate appeals relating to enquiries dealt with by the Monitoring /Corporate Freedom of Information Officer to the Head of Legal and Democratic Services.

Qualified Officer

- 3.4 This person or persons will have the delegated responsibility for the following:
- Conducting Public interest tests in accordance with the Act.
 - Applying the appropriate 'Qualified exemptions' under the Act.

Principle Information and Records Officer

- 3.5 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 exemptions is performed correctly
 - Liaising with the Qualified Officers over the application of absolute exemptions
 - Compiling statistical reports to identify trends and levels of enquiries
 - Ensuring the disclosure log and publication scheme are up to date

Service Managers

- 3.6 Service Managers or delegated officers are responsible for:
- Complying with this policy and any associated procedures in handling freedom of information 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

- 3.7 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 getting the information they require.
 - Ensure that information is created and managed in accordance with the Council's policies and procedures.

Elected Members

- 3.8 Elected members may process information for three separate reasons:
- **Council business** – any requests regarding this must be forwarded to the appropriate part of the Council.
 - **Councillor information** – these generally comprise of case files relating to constituents and are therefore exempt under section 40 of the Act (Data Protection).
 - **Party Political information** – this is not public information and therefore not subject to the Act.
- 3.9 Elected Members should note that for efficient management of requests for information under the Act, they should encourage constituents to make requests relating to Council business directly to the Council.

4. Publication Scheme

- 4.1 A Publication Scheme is a requirement under the Act. It must comply with the model publication scheme requirements and is a guide to the information that the Council routinely publishes or intends to publish.
- 4.2 The Council is committed to a policy of open access to information under the Scheme and customers may browse the information that the Council regularly publishes.
- 4.3 The Publication Scheme also provides information on how to access the published information.
- 4.4 The Publication Scheme is maintained and updated regularly by the Knowledge and Information Management team.

5. Access Rights

- 5.1 From 1 January 2005 the Freedom of Information Act gave the general right of access to the public for recorded information held by the Council. The Act allows retrospective access.
- 5.2 Section 14(1) states that public bodies are not obliged to comply with a request for information that is vexatious, which means not having sufficient grounds for action or seeking to annoy or cause distress.
- 5.3 Section 14(2) states that it is not necessary to comply with a request for information if it is a subsequent identical request that has been previously made within a reasonable interval between requests. The Council has defined three months as the reasonable interval.
- 5.4 See Section 11 for detail of Exemptions and applying the Public Interest Test.
- 5.5 Consult Appendix B for a summary of relevant exemptions.

6. Disclosure Log

- 6.1 The Council's Information and Records 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.
- 6.2 Multiple requests for information on a particular subject will prompt the Information and Records team to consider adding it to the Publication Scheme during the annual review.

- 6.3 Further information on the Council's disclosure log may be found in Officer and Elected Member Guidelines

7. Charges

- 7.1 The Council will follow the 'Fees Regulations' for general rights of access issued under section 9(3) of the Act. The Regulations declare that all requests for information that cost less than £450 to process are free of charge. This equates to 18 hours, or three days of effort. This has been calculated in accordance with the Fees Regulations 4, which states that the costs to determine if the Council holds the information, locating and retrieving the information and extracting the information from the documents will be calculated at £25 per hour.
- 7.2 The Council will charge in advance for disbursements (post, photocopies, CD-ROM) where the cost exceeds £20. If disbursement charges are to be levied for requested information the Council will notify the requester in writing and payment must be received for the request to be processed.
- 7.3 Disbursement charges must be paid within three calendar months. Failure to pay will remove the Council's obligation to comply with the information request.
- 7.4 The duty to comply with a request for information does not arise if the Council estimates that the cost of compliance exceeds the £450 maximum limit. Under the duty to assist, if the costs exceed £450, where possible, we will advise and assist requesters in clarifying their request to remain under the £450 limit.
- 7.5 In special circumstances, the Council, on the advice of the Monitoring Officer, will authorise the processing of requests that require in excess of £450 or three days cumulative effort. In these special circumstances, fees and disbursements will be levied in full at the rate of £25 per hour. The Council will notify the requester in writing by issuing a fees notice. The fees notice must be paid within three calendar months. Failure to pay will remove the Council's obligation to comply with the information request.
- 7.6 However, the Council, in accordance with the legislation, reserves the right to refuse to comply if the cost of communicating any information exceeds the limit.
- 7.7 The Council will not usually charge for information listed in the Publication Scheme, however, where charges are levied for disbursement (including but not limited to post, hard copies, multiple copies, CD), this will be indicated on the Scheme.

8. Requests

Making requests

- 8.1 Access to information request must be in writing, and include the name and address for correspondence of the individual making the request. Requests via email are valid as long as they are legible and capable of being used for future reference.
- 8.2 The individual must provide sufficient details for the Council to be able to identify and locate the information and verification of identity of the requestor must be provided prior to release of any person identifiable information. This includes all requests including those requesting ancestral information.
- 8.3 Processing and monitoring of Freedom of Information Requests are the responsibility of the Customer Relations team. Each service has a Liaison Officer to co-ordinate responses to the Customer Relations team.
- 8.4 Access to 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:** Principal Information and Records Officer
 - **By email:** accesstoinfo@centralbedfordshire.gov.uk

Time limits for complying with requests

- 8.5 The Council has systems and procedures to ensure that the Council meets its commitment to confirm or deny and/or to provide information, not later than 20 working days after receiving a request in accordance with the Act. All officers must comply with the requirements of this procedure; failure to do so may result in disciplinary action.
- 8.6 However, this time limit is subject to the following:
- On receipt of the request the council may need to clarify with the individual exactly which information is required, the 20 working days commences after this clarification has been received.
 - The Council is entitled to issue a fees notice (see section 7 of this policy), setting out the amount they intend to charge for supply of the requested information. The 20 working days limit does not commence until the fee set out in a fees notice has been received.

Means by which Information may be conveyed

- 8.7 Under The Act the applicant can express a preference for recorded information to be communicated by one or more of the following means:
- Hard copy – the provision of a paper copy of information.
 - Electronic – the provision of information via electronic means such as electronic mail. All electronic documents will be provided using PDF format
- 8.8 The Council, in so far as is reasonably practicable, will respect the format preference of the applicant when processing requests by considering all options, including cost.
- 8.9 If The Council decides that it is not reasonably practicable to supply the request in the format requested, the Council will contact the applicant and inform them of their decision and will offer to provide the information in a means that it deems reasonable.
- 8.10 To ensure integrity, security and to meet DDA requirements it is the council’s policy to only publish documents using PDF format.

9. Exemptions and the Public Interest Test

- 9.1 The Act outlines 23 exemptions from disclosure, 15 of which require a ‘public interest test’ to determine if it is in the public interest to disclose. The public interest test is where the interests of the public are weighed against the potential application of an exemption.
- 9.2 Section 2 of the Freedom of Information Act provides that the Council *must* release information where there is a qualified exemption unless “in all circumstances of the case, the interest in maintaining the exemption outweighs the public interest in disclosing the information”.
- 9.3 If the balance is equal then the information should be disclosed. The Council has specially trained Freedom of Information (FOI) Officers, who conduct public interest tests, with the support of Legal and Democratic Services.
- 9.4 Public interest tests may, as required, be escalated to the Council’s Monitoring Officer who acts as a Qualified Person under the Act to make final decisions on disclosure. Consult Appendix B for a ‘Summary of Relevant Exemptions for Central Bedfordshire Council’.
- 9.5 Where a qualified exemption may apply to all or part of the information requested, the requester will be notified in writing, citing the applicable exemption and the information other than that deemed ‘exempt’ will be disclosed. This also applies for absolute exemptions; the exempt information will be removed from the document prior to disclosure.

10. Appeals

- 10.1 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.
- 10.2 In the event of a complaint or challenge about the use of an exemption, 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.
- 10.3 If the enquirer is dissatisfied with the appeal outcome they may seek an independent review by the Information Commissioner, who has the authority to demand disclosure.

11. Advice and Assistance

- 11.1 The Council is obliged to provide advice and assistance, so far as it would be reasonable to expect it to do so, to those persons who propose to make, or have made, requests for information. In circumstances where the records are not held by the Council but by another public body, the Council will direct the enquirer, where possible, to the appropriate body.
- 11.2 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 Act.

12. Third Party Information

- 12.1 The Council may receive requests for information about third parties or that contain details of third parties. Under section 45 of the Act there are provisions for consultation when third parties may assist in determining whether information is exempt from disclosure and where the public interest lies.
- 12.2 Ultimately, the Council, as custodians of the information will determine what should be disclosed. In the case of third party information the Council will notify the third party that information pertaining to them has been requested and released.

13. Public Sector Contracts

- 13.1 When entering into contracts the Council will refuse to include contractual terms that will refuse the disclosure of information under the terms of The Act. Unless exempt under The Act all information held by the Council can be disclosed regardless of contractual terms.
- 13.2 As recommended by the Lord Chancellors Department, the Council will reject confidentiality clauses in contracts. The Council can draw up a non-disclosure schedule within contracts but parties to the contract must be aware that restrictions on disclosure can be overridden by obligations under The Act. Confidentiality clauses must be for good reasons and be capable of being justified to the Information Commissioner.
- 13.3 The Council will take steps to protect from disclosure by the contractor, information provided to the contractor that would clearly be exempt under The Act.

14. Accepting Information in Confidence from Third Parties

- 14.1 The Council will only accept information in confidence from third parties if it is necessary for the Council to obtain this information for the running of any of its functions, and the information would not be available to the Council otherwise, such as in the case of intellectual property.

15. Role of the Information Commissioner and Information Tribunal

- 15.1 The Information Commissioner's Office is the enforcement body for Freedom of Information 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.
- 15.2 The Information Commissioner also has the responsibility to enforce and arbitrate on matters of Data Protection and Environmental Information Regulations.
- 15.3 The Information Tribunal provides the avenue of appeal for requests and has the power to request and inspect all documentation pursuant to the initial request, to enable an independent disclosure decision. The Information Tribunal has the authority to use the courts to enforce its disclosure decisions.

16.1 Appendix A - Procedures

Overview of the enquiry procedure:

1. Enquiry received
2. Enquiry is logged
3. Acknowledgement sent out (within three working days)
4. Enquiry sent to appropriate service team
5. Response collated
6. Response sent out (within 20 working days)
7. Enquiry closed.

Overview of the appeals Procedure

1. Appeal received
2. Appeal logged
3. Enquiry reviewed by appropriate person
4. Response compiled
5. Response sent out (within 20 working days)
6. Appeal closed.

Note: these procedures are outlined fully in the Officer and Elected Member Guidelines

16.2 Appendix B - Summary of relevant exemptions for Central Bedfordshire Council

Below is a list of exemptions most relevant to the Council. For a complete list of exemptions, consult Freedom of Information Act 2000.

Section(s)		Guidance
Absolute Exemptions		
21	Information Accessible to the Applicant by other means	Information that is readily available in the public domain.
32	Court Records	Information created by or held in custody of court / arbitration or hearing.
40	Personal Information	Individuals requesting information about themselves or a third party would be subject to right of access under Data Protection Act 1998.
41	Information Provided in Confidence	Information, that if provided, would amount to an actionable breach of confidence at the time the request has been made.
44	Prohibitions on Disclosure	Information that is prohibited from disclosure by any legislation, European community obligation or would be a contempt of court.
Qualified Exemptions: Requires Public Interest Test		
22	Information intended for future publication	Information that the Council has not yet published but plans to do so at a future date.
30	Investigations and Proceedings	Information relevant to criminal investigations and procedures and information obtained from confidential sources for criminal and civil proceedings.
31	Law Enforcement	Applies to a wider range of information not covered under section 30. Includes prevention or detection of a crime, concerning assessment or collection of tax or duty or relating to regulatory enforcement.
33	Audit Functions	Information that would prejudice the Council's audit functions of other public authorities or examination of the economy. Does not apply to internal audits or external audits of the Council.
36	Prejudice to the Conduct of Public Affairs	Information held that would inhibit free and frank provision of advice, exchange of views or deliberation. The Public interest test must be conducted by the Qualified Person.
38	Health and Safety	Information that would endanger the physical, mental health and safety of an individual.

Section(s)		Guidance
39	Environmental Information	Information covered by Environmental Information Regulations is similar to FOI but the request does not have to be in writing. Applies not only to physical environment but environment inside of buildings, conditions and quality of life.
42	Legal Professional Privilege	Information where a claim to legal professional privilege can be maintained in legal proceedings.
43	Commercial Interests	Information that constitutes a trade secret or that would prejudice the commercial interests of any person (including the Council's).

16.3 APPENDIX C - Related Council Policies

1. Data Protection
2. Environmental Information Regulations
3. Re-use of Public Sector Information
4. Information Governance
5. Information Security
6. Information and Records Management
7. ICT Acceptable Use Policy

16.4 APPENDIX D - Relevant Statutes, Legislation and Standards

Legislation	Notes	Area of impact
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	Background Every Child Matters:	Information retained in

2004	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 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.	all service areas could potentially be valuable in ensuring the well being of children in the area. Therefore being able to access information from a wide range of sources across the council in 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

Codes of Practice	Notes	Area of impact
<i>FOI Code of Practice for Local Government</i>	<p>“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 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>	Access to Information

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

16.5 APPENDIX E - Document Classification

All corporate documents are classified using the two following classification methods. For more detailed information see the corporate Information Records Management Policy.

16.5.1 Security Classification

The purpose of security classification is to ensure that all information is secured and only accessible to the appropriate persons. All documents (including emails) will have the security classification clearly identified.

The security classification is divided into the following three categories:

- Not Protected
- Protected
- Restricted

Refer to Information and Record Management Policy for a detailed explanation of the security classifications.

The security classification of this document is as follows:

- Not Protected

16.5.2 Functional Classification

The purpose of Functional Classification is to ensure that all significant 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 functional classification of this document is as follows:

- Information Management