



Lewes District Council



Working in association with **Eastbourne Homes**

Access to Information Policy Document

For Lewes District Council and Eastbourne Borough Council (The councils)

Version: V01

DOCUMENT INFORMATION

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1. Introduction

- 1.1 Access to information is principally governed by the [Freedom of Information Act 2000](#) (FOIA) and [Environmental Information Regulations 2004](#) (EIR). They both provide rights of access to information publicly held with limited exemptions or exceptions.
- 1.2 Any request for information held is technically a FOIA request in the first instance. [Section 39](#) of the FOIA exempts environmental information from being dealt with under the FOIA and provides that it should be dealt with under the EIR (see [Appendix 1](#)).
- 1.3 Whilst the spirit of the FOIA and EIR are the same there are some differences in their application which are highlighted within this policy. The generic term of information request will be used to cover the process of applying for information under the FOIA and EIR.
- 1.4 Requests for re-use of information for which we hold the copyright or related rights are governed by the [Re-use of Public Sector Information Regulations 2015](#) (RPSI) and this policy sets out our approach with regards to dealing with these requests. It also covers requests for re-use of datasets as defined in [Section 11A](#) of the FOIA.
- 1.5 Re-use means the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body's public task for which the document was produced.
- 1.6 If it is determined that part or all of the information requested is personal information where the applicant is the subject of that information, access to that information will be dealt with under the General Data Protection Regulation (GDPR).
- 1.7 Each council has produced a Publication Scheme in accordance with the FOIA, which determines the information that is currently available to the public, its location within the relevant organisation and whether there is an existing charge for supplying the information.
- 1.8 The FOIA and EIR allow anyone to request any information from us regardless of their age, nationality, location, motive or history, subject to a limited number of exemptions or exceptions and conditions laid down by law.
- 1.9 This will include information that we have produced internally as well as information that is maintained by us about another organisation following a mutual exchange of information, e.g. a contract or partnership agreement.
- 1.10 The Access to Information Policy applies to all information we process regardless of how it was created or received. It applies regardless of the way information is stored, or whether the information may be in paper or electronic format.

2. Purpose

- 2.1 The purpose of this policy is to ensure that the provisions of the FOIA, EIR and RPSI are adhered to.

3. Aim

- 3.1 We aim to supply all of the requested information in all cases and to make it available for re-use under the [Open Government Licence](#) taking into account any exemptions or exceptions that apply and third party copyright restrictions.
- 3.2 To promote greater openness, provide increased transparency of decision making and to build public trust and confidence. These objectives will be balanced against the need to maintain the confidentiality of some information relating to such areas as personal privacy, and where disclosure would not be considered to be in the public interest.

4. Statement of access to information requirements

- 4.1 We support the aims and objectives of the FOIA, EIR and RPSI and will proactively publish information and datasets that are available for re-use.
- 4.2 We will comply with the guidance offered by the [Secretary of State's Code of Practice made under Section 45](#) of the Act which details best practice to be followed when handling Information Requests, the [Secretary of State's Code of Practice \(datasets\) made under Section 45 of the Act](#) which details best practice regarding the publication of datasets and the [Lord Chancellor's Code of Practice made under Section 46](#) which details best practice to be followed in respect of the management of records.
- We will make individuals aware of their right of access to information we are responsible for and will provide information about their statutory rights under the FOIA, EIR and PSI, both on our websites and through our Publication Schemes.
 - We will make available the maximum amount of information to any requester in order to respond to an information request in the most transparent and open way possible by answering all questions accurately and with up-to-date and relevant information.
 - The information we hold will be kept in accordance with the 6 principles of the GDPR.

- Elected Members and staff will be trained to an appropriate level in order to understand the procedure of responding to an Information Request should they personally receive one.
- Breaches of this policy may be subject to action under our disciplinary procedure.

5. Roles and responsibilities

- 5.1 We recognise our corporate responsibilities under the FOIA, EIR and RPSI to provide a general right of access to the information we hold and to make it easily available for re-use.
- 5.2 Overall responsibility for the FOIA, EIR and RPSI and amendments to this policy will rest with the Corporate Management Team.
- 5.3 The councils' Information Governance Manager will take the lead role for the provision of advice, guidance and training regarding the FOIA, EIR and RPSI.
- 5.4 In respect of an information request where an appeal, or any form of dissatisfaction relating to the original request is expressed, this will be dealt with via our internal appeals process.
- 5.5 Under [Section 36](#) of the Freedom of Information Act the councils' Monitoring Officer will be the only 'Qualified Person' when making decisions about the disclosure of information that is believed to prejudice the conduct of public affairs.
- 5.6 In the absence of the Monitoring Officer, this role will be performed by the councils' Chief Executive.
- 5.7 The Information Governance Manager will be responsible for keeping the councils Publication Schemes updated and for improving them over time.
- 5.8 Heads of Service will be responsible for ensuring operational compliance with this policy within their own services and for becoming involved in consultations with the Information Governance Manager when applicable.
- 5.9 Internal Audit will undertake reviews to assess the procedures and policies in place that relate to Access to Information, ensuring that constructive feedback is integrated into the current policy.
- 5.10 All employees (including, but not limited to, contractors and partnership members) will have a responsibility for ensuring that Information Requests are dealt with in accordance with this policy, the FOIA, or EIR.

- 5.11 All employees are also responsible for good information handling practices and implementing sound record management practices appropriate to their post.

6. Official information requests

- 6.1 The FOIA requires that an information request must be made in writing; this may include a request transmitted by electronic means, providing it is received in an eligible form and is capable of being used for subsequent reference. However, the EIR allow an information request to be made verbally as well.
- 6.2 The RPSI requires that a request for re-use must be in writing and also state the purpose for which the document requested is to be re-used.
- 6.3 If a person is unable to articulate their request in writing the councils will provide advice and assistance to enable them to make their request. Officers should be considerate of any difficulties the applicant may have, taking into account any issues of equality.
- 6.4 All requests should clearly indicate what information is being required and state the name of the applicant and contact details for correspondence. Applicants do not have to state the purpose of their request.
- 6.5 If the information sought is not described in a way which would enable us to identify and locate the requested material, or the request is ambiguous, we will seek clarification of the request. The 20 working day response period will then be placed on hold until clarification is received.
- 6.6 We will provide reasonable assistance to help the requester in clarifying the nature of the information sought and make contact with them regarding clarification at the earliest opportunity. (See Section 7 – [Advice and Assistance](#))
- 6.7 We will not seek to determine the motivation or aims of the applicant for requesting the information.
- 6.8 If we consider that the cost of compliance will exceed the ‘appropriate limit’, as explained by [Section 12\(4\)](#) of the FOIA, we will not be bound to continue processing the request.
- 6.9 If we consider that the cost of compliance with an Information Request under the EIR will exceed a ‘reasonable amount’, as explained by [Section 8\(3\)](#) of the EIR, we will not be bound to continue processing the request.
- 6.10 We may consider on a case by case basis what information could be provided within the ‘appropriate limit’ or within a ‘reasonable amount’ with the agreement of the requester. (See Section 10 – Fees and Charges)

7. Advice and assistance

- 7.1 We have a duty to provide advice and assistance to applicants under [Section 16](#) of the FOIA and [Section 9](#) of the EIR.
- 7.2 We will provide advice and assistance ‘so far as it would be reasonable to expect them to do so’ to anybody who proposes to make or has made an information request or a request for re-use.
- 7.3 We will attempt to be as flexible as possible with the advice and assistance provided. However, following the provision of any advice and assistance in order to clarify the information sought, if the applicant still fails to describe the information requested in a way which would enable us to identify and locate it, we will consider that we have complied fully with the Information Request or request for re-use.
- 7.4 We will not provide assistance to applicants whose information requests are considered to be vexatious, as detailed in [Section 14](#) of the FOIA.
- 7.6 We will, where possible, make information available in other formats, if requested, when this will increase accessibility. Documents may also be available in audio, large print format, or other languages upon request.
- 7.7 When responding to a request for re-use we will, where possible and appropriate, make a document available by electronic means. We are not obliged to:
- Create or adapt a document or provide an extract from it in order to comply with a request for re-use where to do so would involve disproportionate effort
 - Continue to produce or store a certain type of document for the purposes of re-use by another person
- 7.8 We will, as far as reasonably practicable, make datasets available in an electronic form which is capable of re-use, i.e. a re-usable format. A re-usable format is one that is machine readable.
- 7.9 If we conclude that, in all the circumstances of the case, it would not be reasonably practicable to provide the dataset in a re-usable format, it will be provided in another format.

8. Prompt replies to requests

- 8.1 We are committed to dealing with requests for information and re-use requests promptly and no later than the statutory guideline of 20 working days. We would not expect every request for information or re-use to take 20 working days and will endeavour, where possible, to provide requested information at the earliest opportunity from the date of receipt of the request.

- 8.2 If we are considering applying an exemption under the FOIA, which is accompanied by the public interest test, we may extend this limit under [Section 10](#), by up to an additional 20 working days to consider this.
- 8.3 If an EIR request is particularly complex or the volume of requested information is such that it may be impractical to comply with the request [Section 7](#) of the EIR allows us to extend the deadline to 40 working days.
- 8.4 Where a request for re-use is particularly complex or the volume of requested information is such that it may be impractical to comply with the request, [Regulation 8\(2\)](#) allows us to extend the response deadline by such time as is reasonable in the circumstances.
- 8.5 In these cases, we will notify the applicant in writing that the Information Request or request for re-use requires consideration of the public interest test, or more time and will provide an estimate of a 'reasonable time' by which they expect to reach a final decision.
- 8.6 These estimates shall be realistic and reasonable in the circumstances of the particular case, taking account the need to consult third parties or seek legal advice.
- 8.7 In respect of requests for re-use, if the information or dataset that is being provided is a relevant copyright work owned solely by either council, they will be made available for re-use in accordance with the terms of one of the licences that form part of the UK Government Licensing Framework (see [Appendix 2](#)).

9. Adopting and maintaining a Publication Scheme

- 9.1 We will update our Publication Schemes on a regular basis and undertake to review the schemes at least every three years.
- 9.2 Details of the information contained within the Publication Schemes, and a copy of the schemes, will be readily available on our website.

10. Fees and charges

- 10.1 Most information provided under the FOIA and EIR will be provided free of charge and in most instances we have determined not to charge for the re-use of information or datasets; however, we reserve the right to decide on a case by case basis if a charge is to be made.
- 10.2 Charges will not be made for allowing an applicant to:

- Access any public registers or list(s) of information (including environmental information) held by us; or
 - To examine the information requested, at a place which we make available for that examination, provided the provision of the information requested does not exceed the 'appropriate limit' and the use of the designated room does not exceed half a day (3.5 hours).
- 10.3 Any charge for re-use will be limited to the marginal costs incurred in respect of the reproduction, provision and dissemination of documents. We will not charge for costs incurred in respect of the cost of collection, production, reproduction and dissemination of documents if that cost has been included in any other fee charged under access to information legislation.
- 10.4 We reserve the right to refuse requests under FOIA where the cost of supplying information will exceed the statutory 'appropriate limit'. The 'appropriate limit' is currently set at £450 for a local authority. This figure equates to a maximum of 18 hours officer time, excluding disbursement costs, before a local authority has the choice to either commence charging at £25 per additional hour or not to respond to the request.
- 10.5 We reserve the right to refuse an extremely burdensome request under [Regulation 12\(4\)\(b\)](#) of the EIR as 'manifestly unreasonable' on the basis that the cost of compliance would be too great (provided the councils' are satisfied that the public interest test favours maintaining the exception).
- 10.6 When considering this exception to the EIR we will take into account what is considered to be the 'appropriate limit' under [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004](#).
- 10.7 Further information regarding our charges can be found in [Appendix 4](#).

11. Information requests forming part of an organised campaign

- 11.1 Where two or more requests for information are made to us by one person, or by different persons who appear to be acting in concert, or in pursuance of a campaign the estimated cost of complying with any of the requests will be taken to be the estimated total cost of complying with all of them.
- 11.2 Where the cost of compliance in providing the information in respect of these requests exceeds the 'appropriate limit' we will not be obliged to comply with the requests.
- 11.3 We may offer assistance as to what could be disclosed to bring the requests below the 'appropriate limit'.
- 11.4 It will be a matter for us to determine whether the various requests are related and form part of an organised campaign.

12. Transferring requests for information to another public authority

- 12.1 If we receive an information request for information that we do not hold, but are aware that another public authority holds, we will provide assistance to the applicant wherever possible and transfer their request to the other public authority if the requester's consent is given to do so.
- 12.2 If we hold any part of the information that has been requested by the applicant we will treat that part of the request as an official information request and process it accordingly.
- 12.3 We will inform the applicant, at the earliest opportunity, of the specific information they do not hold and provide as much assistance as is reasonable to enable the applicant to locate it elsewhere.

13. Consultation with third parties [individual(s) and business(es)]

- 13.1 We recognise the importance of the GDPR and the Human Rights Act 1998 in protecting an individual's personal data and this policy has been written accordingly.
- 13.2 We are aware that the disclosure of certain 'sensitive' information may affect the legal rights of a third party, including commercial interests.
- 13.3 We understand that unless a valid exemption is provided under the FOIA, or an exception under the EIR, we will be obliged to disclose the requested information about a company or individual in response to a legitimate information request.
- 13.4 If the consent of a third party is required prior to disclosure of information, we will, at the earliest opportunity, seek to consult with that third party to gain their consent to the disclosure, unless such a consultation is not practical.
- 13.5 We will not undertake consultation if:
 - The cost of consultation with the third party is disproportionate;
 - It does not intend to disclose the information for some legitimate reason under the terms of the FOIA or EIR;
 - It is our view that the third party would not assist the decision making of the Authority;
 - No exemption or exception applies.
- 13.6 We will only accept information from third parties in confidence if that information would not otherwise be provided to us in order to assist in the delivery of council functions.

14. Contracts

- 14.1 We will not hold information in confidence that is not proven to be confidential in nature. We consider information to be confidential in nature only if the disclosure of such information could result in an 'actionable breach of confidence' by the affected party.
- 14.2 We will not include contractual terms that purport to restrict the disclosure of information held by us in relation to the contract beyond the restrictions permitted by the FOIA or EIR.
- 14.3 Unless an exemption under the FOIA, or exception under EIR, applies in relation to any particular part of the contract, we will be obliged to disclose that information in response to an information request regardless of any terms of the contract.
- 14.4 Where it is necessary to include non-disclosure provisions in the contract, we will seek within the earliest possible timeframe to agree with the contractor a specific schedule of conditions. This schedule will clearly identify confidential material supplied by a contractor and will include the period for which it is to be held in confidence.
- 14.5 Even if such a schedule is drafted the restrictions on disclosure may be overridden by our obligations under the FOIA or EIR, for example, where the public interest outweighs the confidentiality of the information. However, we will consult with the contractor prior to disclosure of any confidential information.
- 14.6 If a non-public sector organisation is contracted to provide a service to either council then they will be deemed to be part of that council, commonly referred to as a 'hybrid' organisation. For the purposes of the FOIA and EIR these groups are bound by the terms of the FOIA or EIR like any other public authority.
- 14.7 We will endeavour to ensure that those companies, organisations and persons with whom it maintains contracts also support the principles of this policy, and that information will only be received in confidence where it is absolutely necessary to do so in connection with our functions.

15. Exemptions or exceptions from disclosure

- 15.1 In exceptional cases, we will withhold information if we consider disclosure would be subject to one or more of the exemptions under the FOIA or exceptions under the EIR.
- 15.2 We will not apply an exemption or exception unless there are clear reasons for doing so and will always explain our reasons for applying an exemption or exception to the requester.

- 15.3 Where documents contain information that is covered by an exemption or exception, any remaining information contained within the requested document, that is not subject of an exemption or exception will be disclosed under the FOIA or EIR.
- 15.4 Qualified exemptions or exceptions will only be applied if we believe it is not in the public interest to disclose the information having fully considered the Public Interest Test.
- 15.5 For details of exclusions from RPSI see [Appendix 3](#).
- 15.6 We have an internal appeals process for people to challenge a response to an information request.

16. Public Interest Test

- 16.1 The Public Interest Test (PIT) will apply to all qualified exemptions or exceptions. The PIT requires that information should be withheld under an exemption or exception if, in all the circumstances of the case, the public interest in maintaining the exemption or exception outweighs the public interest in disclosing the information.
- 16.2 If we claim that the public interest in maintaining the exemption or exception outweighs the public interest in disclosure, then we will state this in our decision letter together with the public interest factors we have considered in making the decision.
- 16.3 We will maintain a central record for monitoring purposes of all information that has been withheld and will audit decisions to ensure that such refusals are justified and reasonable.
- 16.4 If any part of information is withheld from an entire document that is made available, the document will be clearly marked to show which information has been removed, and why this decision was taken.
- 16.5 We will not interpret information of interest to the public in the same way as information that is genuinely in the public interest.

17. Refusal of an information request or request for re-use

- 17.1 An information request will be refused for the following reasons:
 - An exemption or exception under the FOIA or EIR applies;
 - We do not hold the information;
 - The request is considered to be vexatious;

- The request is an identical or substantially similar request made by the same applicant, which we have already responded to within the last 60 working days.
- 17.2 A 'Refusal Notice' will be sent to the applicant, which will clearly state why we have refused the request and/or where the information can be accessed.
- 17.3 If we refuse a request for re-use we will notify the applicant of the reason for refusal within 20 working days, providing a detailed explanation of the reasons for our decision.
- 17.4 If the information for re-use is refused because the copyright of the document is owned by a third party we will identify in our response the person who owns the relevant intellectual property rights, or the name of the person from whom we obtained the document.
- 17.5 All responses will provide details to the requester of the internal appeals process.

18. Personal information

- 18.1 Personal Information will be exempt from disclosure under [Section 40\(2\)](#) of the FOIA. This exemption covers the personal data of third parties (anyone other than the requester) where complying with the request would breach any of the principles in the GDPR.
- 18.2 [Regulation 12\(3\)](#) of the EIR prevents disclosure of personal data about individuals other than the requester, unless it is disclosed in accordance with both Regulation 13 of the EIR and the GDPR.
- 18.3 Requests for personal data made by the person to whom that data relates will be dealt with as a Subject Access Request under the GDPR.

19. Appeals and complaints

- 19.1 Where an applicant is dissatisfied with a decision they are entitled to an independent appeal of the decision through an internal appeals procedure. Under EIR the complainant must request an internal review within 40 working days of the alleged failure to comply with a request.
- 19.2 An appeal can be made with regards to the following:
- The requester disagrees with your interpretation of their request
 - The requester believes you have failed to respond adequately to a request

- The requester is dissatisfied with the outcome of the request
 - The requester believes you hold more information than you have disclosed
 - The requester is still waiting for a response and is unhappy with the delay
- 19.3 Appeals in respect of information requests will be dealt with within 20 working days of a written request being received by us, or 40 working days in exceptional circumstances.
- 19.4 Appeals, in respect of requests for re-use will be responded to within a reasonable time and reasons given for the determination.
- 19.5 We will consider any expression of dissatisfaction in response to a reply to an information request to be an appeal. If the applicant clearly identifies that they do not wish the matter to go through the appeals procedure, we will treat it as 'feedback'.
- 19.6 All comments received or sent, either as 'feedback' or through the appeals process will be analysed by us and where possible alterations to the current procedures will be made in response to these comments in order to improve the service we provide and avoid future appeals.
- 19.8 After the internal appeals procedure has been exhausted, further appeals about the same information request or request for re-use must be directed to the Information Commissioner for adjudication.

Appendix 1

Environmental Information Regulations 2004

Environmental Information is defined in the Regulations as information falling into one of the six categories listed below:

- **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, including genetically modified organisms and the interaction among these elements;
- **Factors**, such as 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 1;
- **Measures (including administrative measures)**, such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to

affect the state of the elements and factors referred to above, and as well as measures or activities designed to protect those elements;

- **Reports** on the implementation of environmental legislation;
- **Cost-benefit** and other economic analyses and assumptions used within the framework of the measures and activities referred to above; and
- **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 in as much as they are or may be affected by the state of the elements of the environment or, through those elements by any of the factors or measures referred to above.

The Regulations allow anyone to request any information from a public authority regardless of their age, nationality, location, motive or history, subject to a limited number of exceptions and conditions laid down by law. This can include information that the Council has produced, and information that is held on behalf of another organisation.

Appendix 2 - Licence Agreements

Open Government Licence

The Open Government Licence is the default licence for most of the Council's copyright information produced. It is a non-transactional open licence which enables use and re-use with virtually no restrictions. It is applicable when use and re-use, including for commercial purposes, is at no cost to the user/re-user. The Open Government Licence only requires public authorities to link to the Open Government Licence which is hosted on The National Archives website at: [Open Government Licence](#).

Non-Commercial Government Licence

The Open Government Licence will not be appropriate in all cases; for example, in circumstances where information may only be used for non-commercial purposes. The Non-Commercial Government Licence covers this situation. As with the Open Government Licence a link to the licence is hosted on The National Archives website at: [Non-Commercial Government Licence](#).

Charged Licence

Where the Council charges a fee for the re-use of information, it must do so in accordance with the Charged Licence. The licence consists of standard licensing terms and, like the above licences, forms part of the UK Government Licensing Framework. It too can be access on The National Archives website at: [Charged Licence](#).

Appendix 3

Exclusions from the Re-use of Public Sector Information Regulations

The Regulations do not apply to:

- Information produced, held or disseminated outside the public task
- Information whose copyright does not belong to the public sector body
- Information that is not accessible
- Crests, logos, insignia
- Information restricted or excluded under information access legislation
- Personal data that must be protected
- Documents held by public service broadcasters, educational and research establishments, cultural and performing arts establishments (other than libraries, museums and archives)

Appendix 4

The table below and overleaf details the charges due for all information requests made under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

Type of Charge	Description	Charge
Freedom of Information Act & Environmental Information Regulations		
'Applicable/Reasonable Amount' <u>less than</u> £450	Estimation of the Officer time taken to process the request <u>less than</u> 18 hours	No Charge (disbursements will be charged separately)
'Applicable/Reasonable Amount' <u>more than</u> £450	Estimation of the Officer time taken to process the request <u>more than</u> 18 hours	Initial £450 costs plus any additional hours charged @£25.00 p/h. (disbursements will be charged separately)

Re-use of Public Sector Information Regulations

Please contact the councils' Information Governance Manager if you are considering applying for information under these regulations or would like more detailed information.

Telephone: +44 (0)1323 415 265

E-mail: foi@eastbourne.gov.uk

Licences	Applications for the re-use of information	No charge
Type of Charge	Description	Charge
Disbursement Costs		
Materials	Email transmission	No charge
	CD/DVD per disk	£1.00
	Postage Costs	Variable (weight & size) Costs based on Royal Mail Standard 2 nd Class
	Photographs	Cost of reproduction
Room Charge (after 3.5 hrs elapsed)	Small Private Room	£12.50 p/h
	Large Private Room	£25.00 p/h
Photocopy Charges		
Paper Size	Black and White (£ per sheet)	Colour (if applicable) (£ per sheet)
A4	10p + VAT	£1.25 + VAT
A3	20p + VAT	£2.50 + VAT
A2	£1.80 + VAT	£6.00 + VAT
A1	£2.40 + VAT	£12.00 + VAT
A0	£3.00 + VAT	£18.00 + VAT

A Fee Notice will be issued when the total disbursement costs, detailed above, exceed £10; however the councils' reserve the right to charge for amounts below this limit on a case by case basis. Payment needs to be received before the information will be sent and within three months of the Fee Notice being issued.