



Salhouse Parish Council

Access to Information Policy

Purpose

1. The purpose of this policy is to set out the expectations of Salhouse Parish Council (SPC) staff and councillors when in receipt of Freedom of Information (FOI) requests and those against the Environmental Information Regulations (EIR). It takes into account the guidance provided by the Information Commissioner's Office (ICO) and is written in accordance with the FOI Act 2000 and the EIR 2004.

FOI general outline

2. As SPC is a public body, it is accountable for all aspects of its various actions which include the collection, processing, disclosure and deletion and/or destruction of information. Anyone can make a request to a public body for information, regardless of where they live, or their status and it is not required to confirm the identity of the requester unless there is just cause to do so. In general, responses to FOI requests must be completed as soon as is practical but worst case, within 20 working days.

FOI Act principles

3. The main principle behind freedom of information legislation is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to.

4. It is also the case that disclosure of information to one person is the equivalent of it being released to the world at large. This means that disclosure under the FOI Act cannot be conditional to the receiver not passing on the information.

The scope of information

5. For the purposes of this policy, information can be held in any format and could include, inter alia, maps, documents, both approved and in draft, whether in hard copy or held electronically, the content of emails held by staff and councillors on their private devices as well as devices provided by the council, handwritten memos and invoices.

6. Typically, information held may be related to statistical data, running costs for the council and supporting functions, social care matters and planning applications, but this is not an exhaustive list.

7. What is not covered by the FOI Act is personal data for which requests are handled by subject access request processes which comes under the UK General Data Protection Regulation (GDPR). Where information being requested includes or makes references to named individuals, due regard is made to their rights and freedoms, under the UK GDPR, before disclosure.

Information and documentation

8. The Act covers information, not documents, which means that:

- A requester does not have to ask for a specific document (although they may do so)
- They could ask about a specific topic and expect SPC to gather the relevant information to answer their enquiry, or
- They might describe other features of the information (e.g., author, date or type of document)

Valid requests

9. SPC is only obliged to respond to valid requests. For a request to be valid it must:

- Be in writing (could be a letter or email) or made via the web, including the whatdotheyknow.com website
- Include the requester's real name
- Include an address for correspondence
- Describe the information being requested

10. The onus is on SPC to be as helpful as possible so in the event that the description of the information would not meet the criteria needed, then SPC will work with the requester to establish a workable description.

The general approach of SPC when processing FOI requests

11. The processing of any FOI request is conducted as follows:

- A check is made to determine whether any and all FOIA requests identified are valid
- If any clarifications around the request are needed to enable SPC to fulfil their obligations
- A check is made as to whether the information being requested is actually held by SPC
- An initial estimate of the cost of retrieving and disclosing any information is made to see whether it exceeds the threshold above which SPC are not required to proceed, where the threshold is £450 based on 18 hours work at £25 per hour
- In the event that the threshold would be exceeded, SPC will inform the requesting party and provide options

12. Assuming there is information for disclose, SPC will:

- Undertake the search which will also include requests to councillors to search their personal electronic devices and for copies of any correspondence that they may have in relation to the request.
- Review it and decide whether an absolute exemption applies, or whether prejudice and public interest factors must be considered in line with the FOI Act.
- For disclosable material, decide whether parts of it should be redacted, either because it is not relevant to the request or to protect the rights and freedoms of individuals whose personal data would otherwise be revealed unnecessarily.

13. The legislation requires SPC to respond within 20 working days, where a working day is normally taken to mean Monday to Friday and does not include bank holidays. Under certain conditions, the FOI Act allows for longer response times, but these do not normally apply to parish and town councils.

Internal Review

14. In the event that the requester is not satisfied by the response of SPC, they are entitled to ask for an 'internal review' as long as the request is in writing and is submitted within 40 days of SPC's response. SPC is then to revisit the actions and any related decisions taken in preparing the response. Ideally (but only when possible) involving someone or third parties with appropriate standing, that were not directly involved in the original proceedings. An updated response shall be provided to the requester within 20 working days of the internal review request.

Refusal to disclose information

15. There are occasions when SPC is not obliged to provide the information being requested and the FOI Act (Part II) sets out the conditions when disclosure is exempt. When public interest is being considered, SPC shall consider and record both sides of the argument, namely whether information being released is or is not in the public interest.

16. There are occasions when SPC may have information but is not obliged, for justifiable reasons, to confirm that such information is held. In such an event, SPC is to issue a simple statement that it cannot confirm nor deny it is in possession of the information.

17. Regardless of the scenarios described above, SPC is to provide a response to the requester, as soon as is practical and no later than 20 working days of the original request. Where appropriate, the response shall include an explanation as to why information is not being disclosed with references to the FOI Act, if relevant.

SPC approach to exemptions

18. In the event that the requested information is subject to exemptions or where public interest considerations are necessary, SPC is to:

- Assess the risk of disclosing the requested information
- Decide on the most appropriate exemption where disclosure could be harmful:

- Absolute as defined in the FOI Act
- Public Interest (PI) Test (see below)
- Prejudice & PI Test – need to prove prejudice, then apply the PI Test

19. Public interest broadly speaking is something that the public would benefit from knowing. Need to make a thorough analysis for disclosure as well as non-disclosure to ensure credibility of the reasoning

Refusal to respond

20. In the event that a request or requests are deemed vexatious or have already been dealt with, then only the briefest of responses will be made with an explanation to that effect. The term vexatious is not strictly defined but a vexatious request can be interpreted as being:

- Manifestly unreasonable/ unjustifiable, inappropriate or improper use of a formal procedure
- Or one that is disproportionate, or giving rise to an unjustified level of disruption, irritation or distress

21. In determining whether a request is valid, SPC shall also consider:

- The burden being placed upon individual staff members or the council as a whole
- The motive of the applicant, (to irritate/annoy deliberately)
- Whether a request is a cause of harassment of or distress to staff
- Value or the seriousness of the purpose of the request

22. SPC is to record all decisions regarding vexatious or burdensome requests with references to the salient points of the requests in question and be prepared to provide the justification to the ICO if required.

Non-holding of information

23. For those requests for information that the SPC does not have, it is not necessary to search elsewhere for information, instead it shall respond by either:

- Advising the requester that SPC does not hold the requested information and
- Advising the requester which public authority is more likely to have the requested information, if this is already known or
- Transferring the request to the public authority who is known to have the requested information

Information integrity

24. SPC is to maintain the integrity of the information being held at the time of the request. It is allowed to make routine changes to the information whilst dealing with the request as long as these would have been made regardless of the request. Scheduled deletion of requested information should be put on hold, unless there is a clear justification to proceed.

EIR general outline

25. SPC is also accountable for all aspects of its various actions which include the collection, processing, disclosure and deletion and/or destruction of information as it relates to environmental matters. Broadly speaking, the way SPC will process such requests mirror that for FOI which will not be duplicated other than to confirm that requests are to be handled within 20 working days. There are some notable differences to the FOI process:

- Requests can be made verbally: If this happens SPC is to communicate with the requesting party, in writing, stating its understanding of the request and to seek confirmation to ensure all parties have the same understanding
- SPC may charge fees for responding to EIR requests: The charge is set at £25 per hour for the locating, retrieval and extraction of the information only. Other costs may apply including 10p per sheet of photocopying or printing and postage – if required.

EIR principles

26. The main principle behind the EIR is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to, that is to say that disclosure is the default position unless there is a justifiable reason or exemption.

27. It is also the case that disclosure of information to one person is the equivalent of it being released to the world at large. This means that disclosure under the FOI Act cannot be conditional to the receiver not passing on the information.

28. Requests do not need to be justified and all requests are to be treated equally, that is to say, no consideration of the requesting party should be made.

The scope of information

29. As for FOI, information can be held in any format and could include, inter alia, maps, documents, both approved and in draft, whether in hard copy or held electronically, the content of emails held by staff and councillors on their private devices as well as devices provided by the council, handwritten memos and invoices.

30. Typically, information held may be related to

- street scene
- planning and building control
- Pollution and/or contamination levels
- Wildlife/conservation
- Parking/traffic management
- energy production
- waste and recycling
- new house builds and maintenance

31. If it is not clear whether a request is under EIR or under the FOI Act, SPC is to seek advice from the district council or the ICO.

32. What is not covered by the EIR is personal data for which requests are handled by subject access request processes which comes under the UK General Data Protection Regulation (GDPR). Where information being requested includes or makes references to named individuals, due regard is made to their rights and freedoms, under the UK GDPR, before disclosure.

The general approach of SPC when processing requests under the EIR

33. The processing of any EIR request is to be conducted as follows:

- Assess the risk of disclosure
- Identify if an exemption applies
- Consider whether there would be an adverse effect with disclosure
- Compile evidence (or provide a demo) as to what is likely to happen
- Apply the public interest test

34. Assuming there is information for disclose, SPC will:

- Undertake the search which will also include requests to councillors to search their personal electronic devices and for copies of any correspondence that they may have in relation to the request
- Review it and decide whether an absolute exemption applies, or whether prejudice and public interest factors must be considered in line with the EIR
- For disclosable material, decide whether parts of it should be redacted, either because it is not relevant to the request or to protect the rights and freedoms of individuals whose personal data would otherwise be revealed unnecessarily

Refusal to respond

35. SPC may have causes/ reasons not to or refuse to disclose information which are similar to those for FOI requests. Exemptions may apply and reference to the EIR is to be made in all instances prior to a decision whether to disclose or not. In particular, Section 12 (5) shall be considered whereby a public authority may refuse to disclose information to the extent that its disclosure would have an adverse effect on, for instance, international relations, defence, national security or public safety

36. SPC is to record all decisions for non- and be prepared to provide the justification to the ICO if required.

External support

37. When requests are of a complex or sensitive nature, SPC is to consider using external support services, such as the ICO or an external data protection specialist/ appropriate third party. In the case of the latter, a data processing agreement is to be in place between SPC and the specialist/ third party prior to disclosure of information, confidential or otherwise, other than describing the general nature of the situation for assessment purposes.