

Appendix 2

Freedom of Information Policy

BRENTWOOD BOROUGH COUNCIL

Version Control Sheet

Title:	Freedom of Information Policy
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1. **Introduction**

- 1.1 The Freedom of Information Act 2000 creates significant new rights of access to recorded information held by public authorities in England and Wales.
- 1.2 Under the Act there are two general rights in relation to information. One, the right to be told whether or not the information requested is held, and two, the right to be given that information within 20 working days. Where exemptions apply (except where the exemption is absolute), the duty to inform the applicant whether the information is held and to communicate that information remains unless the public interest in maintaining that exemption outweighs the public interest in disclosure.

2. **Statement of Intent**

- 2.1 The Council intends to fulfil all its obligations under the Freedom of Information Act 2000.
- 2.2 The Council will ensure that the public will have a general right of access to information it holds, subject to certain conditions and exemptions.
- 2.3 The Council will adopt and maintain a scheme, approved by the Information Commissioner, which relates to the publication of information by the Council.
- 2.4 This policy document applies only to information covered by the Freedom of Information Act 2000, and will be updated / amended as necessary according to the laws of England and Wales.

3. **Making Requests for Information**

- 3.1 The public will have a right of access to any recorded information, however it is held. There is no formal application procedure, although requests for information have to be in writing and give the name of the applicant and an address to which the information can be sent. Requests will be dealt with in 20 working days, although longer is allowed in some cases.
- 3.2 The Council will provide advice and assistance to those who propose to make requests for information, or to any individuals who have made requests for information within the Act.
- 3.3 A request for information under the terms of the Act must be made in writing (which includes a request transmitted by electronic means which is received in legible form and is capable of being used for subsequent reference). Where an applicant is unable to frame their request in writing, the Council will ensure that appropriate assistance is given by referring them to a relevant sub-agency or offering to take a note of the application over the phone (which can be sent to the applicant for confirmation, which when verified by the applicant would constitute a written request).
- 3.4 The Council will provide assistance to an applicant to enable him/her to describe more clearly information requested if his/her description is insufficient for the Council to identify and locate such information.

- 3.5 If, following the provision of such assistance, the applicant has failed to describe the information requested in a way that would enable the Council to identify and locate it, then the Council is not expected to seek further clarification. The Council should also explain to the applicant why it could not take the request any further.
- 3.6 The Council will not seek information from an applicant that he or she cannot reasonably be expected to possess, such as a file reference number, or a description of a particular record, unless this information is made available by the Council for the use of applicants.
- 3.7 The Council will not provide assistance to applicants whose requests are vexatious (jokes or requests that waste the council's time).

4. Requests for Information where the Public Interest must be considered

- 4.1 Where the Council needs to consider the public interest test in respect of an application for exempt information, it will give an estimate of the date by which it expects to reach such a decision. This estimate will be reasonable in the circumstances of the particular case, taking account, where necessary, of the need to consult third parties.

5. Fees

- 5.1 The Council will charge disbursements fees for processing requests in accordance with the Fee Regulations and our information requests charging policy.
- 5.2 The Fees Regulations do not cover material made available under a publication scheme, or other information that is exempt information under the Act.
- 5.3 Where the estimated cost to process a request exceeds £450, the Council will refuse to deal with the request

6. Transferring requests for information

- 6.1 When the Council receives a request for information which it does not hold but which it believes is held by another Authority, then it will consider whether it can consult that Authority with a view to finding out whether it does actually hold the information and if so, whether it should transfer the request to it. The Council will be under a duty to take into account before transferring the request whether the applicant would object or whether a transfer is possible. All transfers of requests must take place "promptly". The time for complying with transferred requests is measured from the day that the receiving authority receives the request.
- 6.2 When a request for information has been transferred to another Authority with the agreement of the receiving Authority, then the Council has no further responsibility for handling the request.
- 6.3 The Council should also consider the most helpful way of assisting the applicant with his or her request. In most cases this may be to inform the applicant that another Authority holds the information and to provide him or her with contact details for that Authority.

7. Consultation with Third Parties

- 7.1 In some cases the disclosure of information pursuant to a request may affect the legal

rights of a third party such as the right to have certain information treated in confidence or rights under Article 8 of the European Convention on Human Rights (the right to respect for private and family life), or Data Protection legislation. Where the consent of the third party would enable a disclosure to be made, the Council will consult that party prior to reaching a decision. Where the interests of the third party who may be affected by a disclosure do not give rise to legal rights, consultations may still be appropriate.

8. Public Sector Contracts

- 8.1 When entering into contracts the Council will refuse to include contractual terms that purport to restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act. The Council will not agree to hold information in confidence, which is not in fact confidential in nature. Any such decisions should be taken on a case-by-case basis.
- 8.2 When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

9. Information in confidence from Third Parties

- 9.1 The Council will only accept information from a third party in confidence if it is necessary to obtain that information in connection with the exercise of any of its functions. The Council will not agree to hold information received from third parties “in confidence” if it is not confidential in nature. Again, an acceptance of any confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

10. Consultation with Devolved Administrations

- 10.1 The Council will consult with any relevant devolved administration before disclosing information provided by or directly concerning that administration.

11. Exemptions

- 11.1 The Council will be exempt from its duty to confirm or deny whether it holds the information in the first place, if confirming would have the effect of disclosing some of the relevant information or would cause harm. The Council will also be exempt from the duty to provide certain requested information. This is known as absolute exempt information.
- 11.2 Even if the Council is exempt from the duty to confirm or deny whether it holds information or to communicate requested information, it may still be required to disclose in the public interest where the exemption is a qualified exemption.

12. Categories of Exempt Information

- 12.1 There are two general categories of exemptions, those that are absolute, and those that are qualified. Where exemptions are qualified there is a duty to consider the public interest in disclosing information. In the case of absolute exemptions, there is no obligation on the Council to disclose the information or consider the public interest in possible disclosure. The Council will keep abreast of relevant decision notices from the

Information Commissioner where they affect how exemptions are applied.

13 **Refusals**

- 13.1 The Council will notify the applicant within 20 working days when relying on a claim that the duty to confirm or deny does not arise because of an exemption, or on a claim that the information is exempt. When notifying the applicant the exemption in question will be explained.
- 13.2 Where the Council has not yet reached a decision as to whether to disclose in the public interest, despite exemption, it will notify the applicant within the 20-day limit that no decision has yet been reached. The notice will contain an estimate of the date by which the Council expects that such a decision will have been reached.

14. **Complaints procedure**

- 14.1 The Council has in place a procedure for dealing with complaints from people who consider that their request has not been properly handled, or who are otherwise dissatisfied with the outcome of their request and the issue cannot be resolved in discussion with the official dealing with the request.
- 14.2 When communicating any decision made in relation to a request under the Act, the Council will provide details of its complaints procedure, including how to make a complaint. Where practicable, a person who was not party to the original decision should handle complaints procedures. In all cases, the complainant should be informed of the outcome of his or her complaint.

15. **Disputes between Applicants and the Council**

- 15.1 A complaint to the Information Commissioner is the only route through which disputes between an applicant and the Council will be resolved, subject to the limited route of judicial review. No private actions are permitted under the Act.