

Access to Data and Information Policy

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Access to Data and Information Policy

1. INTRODUCTION

1.1

The Freedom of Information Act 2000 is part of the Government's commitment to greater openness in the public sector, a commitment supported by North East Derbyshire District Council ("the Council"). The Act enables members of the public to question the decisions of public authorities more closely and ensure that the services we provide are efficiently and properly delivered. This policy will outline how the Council will implement the Freedom of Information Act to ensure the public have access to data and information as appropriate.

1.2

The main features of the Freedom of Information Act are:

- A general right of access to recorded information held by public authorities, subject to certain conditions and exemptions;
- in cases where information is exempted from disclosure, except where an absolute exemption applies, a duty on public authorities to:
 - inform the applicant whether they hold the information requested; and
 - communicate the information to the applicant, unless the public interest in maintaining the exemption in question outweighs the public interest in disclosure;
- a duty on every public authority to adopt and maintain a Publication Scheme;
- the provision of an Information Commissioners Office with wide powers to enforce the rights created by the Act and to promote good practice, and a the Information Tribunal;
- a duty on the Lord Chancellor to promote Codes of Practice for guidance on specific issues.

2. SCOPE

2.1

This policy applies to all North East Derbyshire District Council employees, unpaid volunteers/work experience placements and elected members.

2.2

Rykneld Homes Limited has its own equivalent policy and is therefore not included within the scope of this document.

2.3

The policy will be made available to the public.

3. THE PRINCIPLES OF THE POLICY

3.1

This policy links to the Strategic Objective of 'High Performing Council' and specifically 'Providing excellent customer service.' It can, however, be considered to cover all.

3.2

The policy has been produced to ensure compliance with the relevant legislation and to ensure customers gain appropriate access to data and information on request.

4. THE POLICY STATEMENT

4.1

For ease of use the Access to Data and Information Policy is split into the following sections:

- Freedom of Information
- Data Protection
- Environmental Information Regulations
- Re-use of Public Sector Information

4.2 FREEDOM OF INFORMATION

4.2.1

The Freedom of Information Act 2000 makes provision for the disclosure of information held by public authorities or by persons providing services for them. The Act amended the Data Protection Act 1998 and the Public Records Act 1958.

4.2.2

In line with the Act the Council aims to create a climate of openness and dialogue with all customers and improve access to information about the Council. The aim of this policy is to facilitate the development of such an environment.

4.2.3

The Council believes that individuals also have a right to privacy and confidentiality. This policy does not overturn the common law duties of confidence or statutory provisions that prevent disclosure of personal identifiable information. The release of such information is still covered by the subject access provisions of the Data Protection Act 1998.

4.2.4

The Council believes that public authorities should be allowed to discharge their functions effectively. This means that the Council will use the exemptions contained in the Act where an absolute exemption applies or where a qualified exemption can reasonably be applied in terms of the public interest of disclosure. Exemptions are covered in more detail in section 4.2.12 below.

4.2.5

This policy will be underpinned by operational procedures and activities connected with the implementation of the Freedom of Information Act.

4.2.6

The Council has a duty to provide employees and elected members with training and development to assist and support them in understanding the implications of the Freedom of Information Act.

General Rights of Access

4.2.7

Section 1 of the Act gives a general right of access to recorded information held by the Council, subject to certain conditions and exemptions contained in the Act. Any person making a request for information to the Council is entitled:

- to be informed in writing whether the Council holds the information of the description specified in the request; and
- if the Council holds the information, to have that information communicated to them.

This is referred to as the 'duty to confirm or deny'. These provisions are fully retrospective in that if the Council holds the information it must provide it, subject to certain conditions and exemptions. The Council will ensure that procedures and systems are in place to facilitate access by the public to recorded information. 4.2.8 In accordance with section 8 of the Act, a request for information under the general rights of access must be received in writing, stating the name of the applicant and an address for correspondence, and describing the information required. For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted to the Council by electronic means, is received in legible form and is capable of being used for subsequent reference.

4.2.9

The Council will maintain corporate systems and procedures to process applications arising from the introduction of general rights of access on under the Act.

Conditions and Exemptions

4.2.10

The duty to confirm or deny is subject to certain conditions and exemptions. Under section 1(3) the duty to confirm or deny does not arise where the Council:

- reasonably requires further information in order to identify and locate the information requested; and
- has informed the applicant of that requirement.

The Council will make reasonable efforts to contact the applicant for additional information pursuant to their request should further information be required.

4.2.11

Under section 2 of the Act the Council does not have to comply with this duty if the information is exempt under the provisions of Part II of the Act sections 21 to 44. These provisions either confer an absolute exemption or a qualified exemption. A qualified exemption may be applied if, in all circumstances in all of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Council holds the information. The Part II exemptions are listed in Annex A of this document. The Council will seek to use the qualified exemptions sparingly and will, in accordance with section 17 of the Act justify the use of such exemptions.

4.2.12

The duty to confirm or deny does not arise if a fees notice has been issued to an applicant and the fee has not been paid within the period of three months beginning on the day on which the fees notice is given to the applicant.

4.2.13

The duty to comply with a request for information does not arise if the Council estimates that the cost of compliance with the request would exceed the appropriate limit established in national Fees Regulations. The Council will work with applicants to keep compliance costs to a minimum but reserves the right to either (a) refuse or (b) charge for the communication that exceeds this limit.

4.2.14

The Council is not obliged to comply with a request for information if the request is vexatious. Where the Council has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequently identical or similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The Council will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests. The Council will work within the guidelines provided by the Information Commissioner's office if requests are thought to be repeated or vexatious. The Council has set out its approach to vexatious complaints in the Compliments, Comments and Complaints Policy.

Charges and Fees

4.2.15

The Council will follow the national Fees Regulations for general rights of access under the Freedom of Information Act. These Regulations set an appropriate limit on costs of compliance, a manner in which an appropriate fee may be calculated and circumstances in which no fee should be levied.

4.2.16

In all cases where the Council chooses to charge for information published through the Publication Scheme (see section 4.2.57) or levy a fee arising from an information request under general rights of access, a fees notice will be issued to the applicant as required by section 9 of the Act. Applicants will be required to pay any fees within a period of three months beginning with the day on which the fees notice is given to them. The Council is not required to make the requested information available if the fee is not paid within this period.

Time limits for compliance with requests

4.2.17

The Council has establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with section 10 of the Act. All employees and elected members will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

4.2.18

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this in accordance with section 9(2), the working days in the period from when the applicant received the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt.

4.2.19

If the Council chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of this decision.

Means by which information will be conveyed

4.2.20

When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant;
- the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant; the Council shall, in so far as is reasonably practicable, give effect to that preference in accordance with section 11 of the Act.

4.2.21

In determining whether it is reasonably practicable to communicate information by a particular means, the Council will consider all the circumstances, including the cost of doing so. If the Council determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the Council will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances.

4.2.22

The Council will establish corporate systems and procedures to monitor the provision of information arising from requests under the Act.

Refusal of requests

4.2.23

As indicated above, the duty to confirm or deny does not arise if the Council:

- using section 2 of the Act applies an exemption under Part II of the Act, as illustrated in Annex A;
- has issued a fees notice under section 9 of the Act and the fee has not been paid within a period of three months beginning with the day on which the fees notice was given to the applicant;
- under section 12 of the Act estimates that the cost of compliance with the request for information exceeds the appropriate limit; can demonstrate that the request for information is vexatious or repeated, as indicated by section 14 of the Act.

4.2.24

If the Council chooses to refuse a request for information under any of the above clauses, the applicant will be informed of the reasons for this decision within twenty working days. As set out in section 17(7) of the Act, the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Council under the Act and the rights of appeal to the Information Commissioner conferred by section 50 of the Act.

4.2.25

If the Council is, to any extent, relying on a claim that:

- any provision of Part II (relating to the duty to confirm or deny) is relevant to the request; or
- on a claim that information is exempt information;
- a notice will be issued within twenty working days under section 17 of the Act.

The notice will:

- state that fact;
- specify the exemption in question; and
- state (if that would not otherwise be apparent) why the exemption applies;
- give details of the Council's complaints procedure and
- how to appeal to the Information Commissioner.

4.2.26

Where the Council is considering applying an exemption and has not yet reached a decision as to the application of an exemption the notice will indicate that no decision as to the application of an exemption has been reached. It will contain an estimate of the date by which the Council expects that a decision will have been reached.

4.2.27

As indicated by the Lord Chancellor's Code of Practice issued under section 45 of the Act, such estimates should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given a reason(s) for the delay and offered an apology by the Council. If the Council finds, while considering the public interest, that the estimate is proving unrealistic, the applicant will be kept informed. The Council will keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.

4.2.28

If section 2 of the Act, the Council will, either in the notice issued or a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming: applying a qualified exemption under subsection (1)(b) or (2)(b) of:

- that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the Council holds the information; or
- that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The statement should not involve the disclosure of information, which would itself be exempt information.

4.2.29

The Council has the right to refuse to deal with questionnaires/surveys/letters which purport to be Freedom of Information requests but which ask for perceptions or views rather than information we hold.

4.4.30

Repeated and / or vexatious requests will be handled in accordance with the relevant legislation, advice from the Information Commissioner's Office where appropriate and in line with our own internal policies (e.g. Unreasonably Persistent Complainant Policy).

4.2.31

The Council will keep a record of all notices issued to refuse requests for information.

Duty to provide advice and assistance.

4.2.32

The Council will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Council to do so, to persons who propose to make, or have made, requests for information. This is a duty under section 16 of the Act and supports the Council's aim of promoting social inclusion and equality.

4.2.33

The Council will ensure that the systems and procedures that are deployed to meet the section 16 duty also conform to the Code of Practice issued under section 45 of the Act.

Transferring Requests for Information

4.2.34

A request can only be transferred where the Council receives a request for information which it does not hold, within the meaning of section 3(2) of the Act, but which is held by another public authority, including Rykneld Homes. If the Council is in receipt of a request and holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Council recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the Act).

4.2.35

Upon receiving the initial request for information the Council will always process it in accordance with the Act in respect of such information relating to the request as it holds. The Council will also advise the applicant that it does not hold part of the requested

information, or all of it, whichever applies. Prior to doing this, the Council must be certain as to the extent of the information relating to the request, which it holds itself.

4.2.36

If the Council believes that some or all of the information requested is held by another public authority, the Council will consider what would be the most helpful way of assisting the applicant with their request. In most cases this is likely to involve:

- contacting the applicant and informing them that the information requested may be held by another public authority;
- suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;
- providing the applicant with contact details for that authority.

4.2.37

All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Council is unable, either to advise the applicant which information it may or may not hold, or may not be able to facilitate the transfer of the request to another authority (or considers it inappropriate to do so), the Council will consider what advice, if any, it can provide to the applicant to enable them to pursue their request.

Consultation with Third Parties

4.2.38

The Council recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example: where information is subject to the common law duty of confidence or where it constitutes "personal data" within the meaning of the Data Protection Act 1998. Unless an exemption provided for in the Act applies in relation to any particular information, the Council will be obliged to disclose that information in response to a request.

4.2.39

Where a disclosure of information cannot be made without the consent of a third party, for example, where information has been obtained from a third party and, in the circumstances, the disclosure of the information without their consent would constitute an actionable breach of confidence (such that the exemption at section 41 of the Act would apply), the Council will consult that third party. This will be with a view to seeking their consent to the disclosure, unless such a consultation is not practicable, for example, because the third party cannot be located or because the costs of consulting them would be disproportionate. Where the interests of the third party, which may be affected by a disclosure, do not give rise to legal rights, consultation may still be appropriate.

4.2.40

Where information constitutes "personal data" within the meaning of the Data Protection Act, the Council will have regard to section 40 of the Act which makes detailed provision for cases in which a request relates to such information and the interplay between the Act and the Data Protection Act in such cases.

4.2.41

The Council will undertake consultation where:

- the views of the third party may assist the Council to determine whether an exemption under the Act applies to the information requested; or
- the views of the third party may assist the Council to determine where the public interest lies under section 2 of the Act.

4.2.42

The Council may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Council will consider the most reasonable course of action for it to take in light of the requirements of the Act and the individual circumstances of the request. Consultation will be unnecessary where:

- the Council does not intend to disclose the information relying on some other legitimate ground under the terms of the Act;
- the views of the third party can have no effect on the decision of the Council, for example, where there is other legislation preventing or requiring the disclosure of this information; and
- no exemption applies and so, under the Act's provisions, the information must be provided.

4.2.43

Where the interests of a number of third parties may be affected by a disclosure and those parties have a representative organisation that can express views on behalf of those parties, the Council will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Council may consider that it would be sufficient to consult a representative sample of the third parties in question.

4.2.44

The fact that the third party has not responded to consultation does not relieve the Council of its duty to disclose information under the Act, or its duty to reply within the time specified in the Act. In all cases, it is for the Council, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Act. A refusal to consent to disclosure by a third party does not, in itself mean information should be withheld.

Public Sector Contracts

4.2.45

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. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

4.2.46

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. As recommended by the Lord Chancellor's Department, the Council will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner. When entering into the above contracts, the Council will make it clear that these restrictions apply to subcontractors also and that the Secretary of State has the powers to designate them as 'public bodies' for the purpose of making them comply with the Act.

4.2.47

The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person and the disclosure of the information to the public, otherwise than under the Act, would constitute a breach of confidence actionable by that, or any other person.

4.2.48

It is for the Council to disclose information pursuant to the Act, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Act) by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.

Accepting Information in Confidence from Third Parties

4.2.49

The Council will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with the exercise of any of the Council's functions and it would not otherwise be provided.

4.2.50

The Council will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

Complaints about the discharge of the duties of the Council under the Act

4.2.51

The Council will deal with complaints about the discharge of the duties of the Council under the Act, including the handling of requests for information under the corporate complaints procedure ('Tell us what you think...'). This will apply to all Freedom of Information requests, including those which fall under the Data Protection Act and Environmental Information Regulations. The 'Tell us what you think...' scheme can be found on the Council's website at <http://www.ne-derbyshire.gov.uk/council-democracy/tell-us-what-you-think/> .

4.2.52

The procedure will refer applicants to the right under section 50 of the Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Council following attempts at local resolution of their complaint.

Corporate Record Retention and Disposal Schedule

4.2.53

The Council has produced a Corporate Record Retention and Disposal Schedule to ensure compliance with the Lord Chancellor's Code of Practice on the Management of Records under section 46 of the Freedom of Information Act 2000. The schedule can be provided to customers on request and can be found on NEDi (internal intranet) at <http://intranet/Interact/Pages/Content/Document.aspx?id=23824&click=34097> .

4.2.54

The schedule is a list of records that need to be kept by North East Derbyshire District Council for a specific length of time. The schedule contains recommended retention periods for records created and maintained by the Council and refers to all information regardless of the media in which it is stored, i.e. manual files, photographs, computer files, tapes, microfiche, etc.

4.2.55

The aim of this retention schedule is to provide a consistent approach to the way the Council handles its records, and provides a clear set of guidelines to all staff. A retention schedule serves the purpose of identifying records that may be worth preserving permanently as a part of a local authority archive as well as preventing the premature destruction of records that need to be retained for a specific legal, financial or statutory period.

4.2.56

A record can be defined as: Recorded information, in any form, created or received and maintained by an organisation or person in the transaction of business or conduct of affairs and kept as evidence.

4.2.57

The schedule will be amended and updated as and when retention details change, new information is kept, or regulations and legislation that govern information and its use are introduced or altered.

Publication Scheme

4.2.58

Under the Freedom of Information Act 2000, all public authorities are required to produce and maintain a Publication Scheme. The Council's Publication Scheme is a 'living' document, detailing the information that the Council publishes at that point in time and intends to publish in the future. It details the format in which the information is available, who to contact to obtain the information and whether or not a charge will be made for the provision of that information.

4.2.59

The Publication Scheme is available in hard copy on request and on our website at <http://www.ne-derbyshire.gov.uk/council-democracy/data-foi/pubscheme/> . It will be subject to ongoing review in terms of content and will be formally reviewed by the Information Commissioner.

4.2.60

Applications for information listed in the Publication Scheme may be received verbally or in writing.

4.2.61

The Council will not generally charge for information that it has chosen to publish in its Publication Scheme. Charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM. The Publication Scheme and the procedures that support this Policy will provide further guidance on charging.

Data Transparency

4.2.62

The Council will endeavour to publish information in accordance with the Government's Code of Recommended Practice on Data Transparency.

4.2.63

Information published on the Council's data transparency web page will be published under the UK Open Government Licence.

Dataset Provisions

4.2.64

The new dataset provisions were set out in Section 102 of the Protection of Freedoms Act 2012 and amended section 11 (Means of which communication is made) and section 19 (Publication Scheme) of Freedom of Information Act.

4.2.65

The dataset provisions are intended to ensure that public authorities make datasets, either in response to a Freedom of Information request or proactively under a publication scheme, in a form that allows them to be re-used. They create a duty to provide datasets in a re-usable form and under licensing conditions that permit re-use.

4.2.66

The Council will put procedures in place to recognise when these provisions are triggered by a request and to adhere to the statutory Code of Practice and the Information Commissioner's guidance on datasets when administering such requests.

4.2.67

The Council will allow re-use of suitably identified datasets (and information contained on its Data Transparency webpage) under the Open Government Licence.

4.3 DATA PROTECTION

4.3.1

North East Derbyshire District Council is committed to full compliance with the Data Protection Act 1998. The Council will therefore follow procedures designed to provide that all elected members, employees, contractors, consultants, partners, or other servants or agents of the Council (collectively referred to as "the data users") who have access to any personal data held by or on behalf of the Council are fully aware of and abide by their duties and responsibilities under the Act.

4.3.2

The Act stipulates that anyone processing personal data must comply with Eight Principles of good practice. These Principles are legally enforceable. They are follows:

1. Shall be processed fairly and lawfully and in particular, shall not be processed unless specific conditions are met;
2. Shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or those purposes;
3. Shall be adequate, relevant and not excessive in relation to the purpose or purposes for which it is processed;
4. Shall be accurate and where necessary, kept up to date;
5. Shall not be kept for longer than is necessary for that purpose or those purposes;
6. Shall be processed in accordance with the rights of data subjects under the Act;
7. Shall be kept secure i.e. protected by an appropriate degree of security;
8. Shall not be transferred to a country or territory outside the European Economic Area, unless that country or territory ensures an adequate level of data protection.

4.3.3

All purposes for which personal data is obtained or processed will be notified to the Information Commissioner as required by the Act. No personal data will be obtained, held or processed, for any purpose, without that purpose being notified to the Information Commissioner as required by the Act.

4.3.4

The Council has delegated the responsibility of Data Protection Officer to the Assistant Director of Customer Service and Improvement.

4.3.5

Each department of the Council will compile and maintain a Data Protection register of databases, which will be subordinate to this policy.

4.3.6

Departments processing personal data must assess the risks associated with the collection and storage of personal data taking into account the likelihood of a breach of the Act, potential impact on the data subject and the reputation of the Council and the levels of controls put in place to safe guard data. In this policy document, the term "processing" means:

Obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including:

- 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 available,

- Or alignment, combination, blocking, erasure or destruction of the information or data.
- and "processed" shall be construed accordingly.

4.3.7

All data users are to be fully trained in and aware of this policy and their duties and responsibilities under the Act. All unpaid volunteers and work placements must be properly briefed on their duties and responsibilities under the Act.

4.3.8

All elected members are to be made fully aware of this policy and their duties and responsibilities under the Act.

4.3.9

The Council will undertake a rolling audit and review of all data protection systems and controls to ensure compliance with the Act, this policy and individual departmental codes of practice, including data security.

Data Protection Breaches

4.3.10

No disclosure of data is to be undertaken by any data user which breaches any of the provisions of the Act, as interpreted by the Council, the Information Commissioner or the courts for the time being.

4.3.11

The Data Protection Officer (Assistant Director of Customer Service and Improvement) or the nominated Deputy must be informed of any data protection breaches including accidental breaches. These will be recorded in the Data Protection Breach log. The Assistant Director of Customer Service and Improvement together with the relevant senior officer(s) will decide the appropriate course of action to remedy the breach. Serious breaches, which require immediate notification to the Information Commissioner's Office, will be discussed with the CEO/ and or Solicitor to the Council.

4.3.12

The Council regards any unlawful breach of any provision of the Act by any employee of the Council as being a disciplinary matter. Any employee(s) who breach this policy will be dealt with under the disciplinary procedure which may result in dismissal for gross misconduct.

Contractors, consultants, partners and other agents of the Council

4.3.13

All contractors, consultants, partners, or agents of the Council must:

- Ensure that they and all of their employees who have access to personal data held or processed for or on behalf of the Council are aware of this policy and are fully trained in and are aware of their duties and responsibilities under the Act. Any breach of any provision of the Act will be deemed as being a breach of any contract between the Council and that individual, company, partner or firm.
- Promptly, pass any subject access requests relating to the Council's business to the Council's Data Protection Officer for the time being and provide that person with any information needed by them to comply with the subject access request.
- Allow data protection audits by the Council of data held on its behalf.
- Indemnify the Council against any prosecutions, claims, proceedings, actions or payments of compensation or damages, without limitation.

Security of Data

4.3.14

All data users will ensure that appropriate security measures are undertaken to safeguard personal data, commensurate with the nature of the data concerned.

4.3.15

All departments processing data will ensure that appropriate fair obtaining notices/ privacy notices are incorporated into all forms (electronic and paper) and electronic storage systems as laid down in the Fair Obtaining Notice Guidance.

Subject Access Requests

4.3.16

The Council will maintain corporate systems and procedures to process subject access requests from customers under the Data Protection Act. Further information regarding the Data Protection Act and Subject Access requests can be viewed on the Council's website at <http://www.ne-derbyshire.gov.uk/council-democracy/data-foi/data-protection/>

4.3.17

Data subjects have a right to receive information requested on themselves within 40 working days.

4.3.18

The Council will deal with requests from agencies/third parties under exemptions as detailed in Part 4 of the Act, for example crime and taxation, regulatory activities, disclosures required by law etc. These will be dealt with on an individual basis. The agency / third party body must provide adequate authorisation and state which part of the Data Protection Act entitles them to receive this information.

Charges and Fees

4.3.19

The Data Protection Act allows for public authorities to charge a 'reasonable fee' for complying with a subject access request. The fee is currently set at £10.00 which is in line with government guidance. The fee has to be paid in advance with a minimum of two sets of proof of identity. This fee will be payable by individuals requesting their own personal data or third parties working on their behalf, this applies to all forms of data including CCTV.

CCTV (Close Circuit Television)

4.3.20

CCTV is covered by the Data Protection Act. The Council has developed a number of CCTV control documents for each CCTV system operated by the Council. Together with a risk assessment these documents aim to ensure the Council is compliant with the Data Protection Act.

4.3.21

The Council will maintain corporate systems and procedures to process CCTV requests under the Data Protection Act.

Complaints about the discharge of the duties of the Council under the Act

4.3.23

The Council will deal with complaints about the discharge of the duties of the Council under the Data Protection Act under the Compliments, Comments and Complaints Policy and associated procedures. See section 4.2.49.

4.3.24

The Council has a duty to refer applicants to the right under section 50 of the Freedom of Information Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Council following attempts at local resolution of their complaint.

Information Sharing

4.3.25

The Data Protection Act is not a barrier to sharing information but provides a framework for personal information to be shared appropriately. Information should only be shared if there is a clear and legitimate purpose, for example safe guarding and promoting welfare, early intervention and wider public protection.

4.3.26

The Derbyshire Partnership Forum has produced an Information Sharing Protocol which the Council has signed up to. This can be found at www.derbyshire.gov.uk . Below this protocol sits a number of other protocols dealing with the sharing of specific personal data. Departments are responsible for ensuring employees work to these specific information sharing protocols which should be detailed in departmental Data Protection Codes. Any new or revised information sharing protocols should be discussed with the Customer Service and Improvement Team during the consultation process.

4.4 ENVIRONMENTAL INFORMATION REGULATIONS

4.4.1

North East Derbyshire District Council is committed to complying with the Environmental Information Regulations 2004.

4.4.2

Corporate and departmental operational procedures have been established to deal with information requests under the Regulations.

4.4.3

Training and development is provided to employees on the Environmental Information Regulations as part of the wider Freedom of Information training.

General Rights of Access

4.4.4

The Regulations replace and widen the scope of the Environmental Information Regulations 1992 and allows the public wider rights to request access to environmental information held by the Council, subject to certain conditions and exceptions contained in the Regulations. Any person making a request for environmental information to the Council is entitled to receive that information no later than 20 working days after the Council receives the request.

4.4.5

The Regulations stipulate that a request for environmental information does not need to be in writing. The Council will process verbal requests for environmental information in the same way as written ones.

Conditions and Exceptions

4.4.6

The duty to disclose information is subject to certain conditions and exceptions. Under Regulation 12, the Council may refuse to disclose environmental information requested if an exception to disclosure applies, or if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

4.4.7

The Council has the right to refuse to deal with questionnaires/surveys/letters which purport to be Environmental Information Regulations requests but which ask for perceptions or views rather than information we hold.

Charges and Fees

4.4.8

Regulation 8 allows public authorities to charge a 'reasonable fee' for complying with a request, unless they are providing access to a public register or if the applicant examines the information at a place made available by the authority. The Code of Practice suggests that the charge must not exceed the cost of producing the information unless the authority is entitled to also levy a market-based charge. The Council will comply with these guidelines.

4.4.9

Where the Council chooses to charge for environmental information, a fees notice may be issued to the applicant as stated in Regulation 8 (4). Applicants will be required to pay advance fees within a period of three months beginning with the day on which the fees notice is given to them. The Council is not required to make the requested information available if the fee is not paid within this period.

Time limits for compliance with requests

4.4.10

The Council will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with Regulation 5 (2). All employees will be required to comply with the requirements of these procedures; failure to do so may result in disciplinary action.

4.4.11

If the Council believes that the complexity or the volume of the information requested means it is impracticable either to comply with the request or make a decision to refuse to do so within twenty working days, it will extend the time limit to forty working days. A notice shall be issued within twenty working days informing the applicant of this decision. This is in accordance with Regulation 7.

4.4.12

If the information requested by the applicant incurs a charge or a fee and the applicant has paid this, the working days in the period from when the applicant received the fees notice to when they paid will be disregarded for the purposes of calculating the twentieth working day following receipt. This is in accordance with Regulation 8 (6).

Means by which information will be conveyed

4.4.13

When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:

- the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant;
- the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and, the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant;
- the Council shall, in so far as is reasonably practicable, give effect to that preference in accordance with Regulation 6 (1).

4.4.14

In determining whether it is reasonably practicable to communicate information by a particular means, the Council will consider all the circumstances, including the cost of doing so. If the Council determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the Council will notify the applicant of the reasons for its determination and will provide the information by such means as which it deems to be reasonable in the circumstances. This is in accordance with Regulation 6 (2).

Refusal of requests

4.4.15

If the Council chooses to refuse a request for information in accordance with an exception, the applicant will be informed in writing which exception has been claimed and why that exception applies, and will do so no later than 20 working days after the date of receipt of the request. This is in accordance with Regulation 14. As set out in Regulation 14 (5) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Council under the Regulations and the rights of appeal to the Information Commissioner conferred by Regulation 18.

4.4.16

If applying an exception under Regulation 12 (1)(b), the Council will, in the decision letter, state the reasons for claiming that the public interest in maintaining the exception outweighs the public interest in disclosure.

4.4.17

Repeated and / or vexatious requests will be handled in accordance with the relevant legislation, advice from the Information Commissioner's Office where appropriate and in line with our own internal policies (e.g. Unreasonably Persistent Complainant Policy).

4.4.18

The Council will keep a record of all notices issued to refuse requests for information.

Duty to provide advice and assistance

4.4.19

The Council will ensure that systems and procedures are in place to meet the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the Council to do so, to persons who propose to make, or have made, requests for information. This is a duty under Regulation 9 and supports the Council's aim of promoting social inclusion and equality.

4.4.20

The Council will ensure that the systems and procedures that are deployed to meet the Regulation 9 duty also conform to the Code of Practice issued under Regulation 16.

Transferring Requests for Information

4.4.21

Regulation 10 states that a request can be transferred where the Council receives a request for environmental information which it does not hold, but which is held by another public authority. If the Council is in receipt of a request and holds some of the information requested, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The Council recognises that "holding" information includes holding a copy of a record produced or supplied by another person or body and, unlike the Freedom of Information Act, extends to holding a record on behalf of another person or body. Where information is held on behalf of another person or body, the Council will consult on whether it should be supplied.

4.4.22

Upon receiving the initial request for information the Council will always process it in accordance with the Regulations in respect of such information relating to the request as it holds. The Council will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the Council must be certain as to the extent of the information relating to the request, which it holds itself.

4.4.23

If the Council believes that some or all of the information requested is held by another public authority, the Council will consider what would be the most helpful way of assisting the applicant with their request. In most cases this is likely to involve:

- contacting the applicant and informing them that the information requested may be held by another public authority;
- suggesting that the applicant re-applies to the authority which the original authority believes to hold the information;
- providing the applicant with contact details for that authority.

4.4.24

All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done. Where the Council is unable, either to advise the applicant which public authority holds, or may hold, the requested information, or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so), the Council will consider what advice, if any, it can provide to the applicant to enable him or her to pursue their request. In this event, the Council will also issue a refusal letter in accordance with Regulation 14. This letter will explain that the Council does not hold the information.

Consultation with Third Parties

4.4.25

The Council recognises that unless an exception is provided for in the Regulations in relation to any particular information, it will be obliged to disclose that information in response to a request.

4.4.26

The Council acknowledges that, unlike the Freedom of Information Act, the Regulations contain no 'absolute' exceptions, and that lack of consent of a third party does not necessarily preclude disclosure. The Council will disclose the information if the public interest in disclosing it outweighs the public interest in withholding it.

4.4.27

The Council may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Council will consider the most reasonable course of action for it to take in light of the requirements of the Regulations and the individual circumstances of the request.

4.4.28

The fact that the third party has not responded to consultation does not relieve the Council of its duty to disclose information under the Regulations, or its duty to reply within the time specified in the Regulations. In all cases, it is for the Council, not the

third party (or representative of the third party) to determine whether or not information should be disclosed under the Regulations. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

Public Sector Contracts

4.4.29

When entering into contracts the Council will refuse to include contractual terms that purport to restrict the disclosure of environmental information held by the Council and relating to the contract beyond the restrictions permitted by the Regulations. Unless an exception provided for under the Regulations is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract. Where personal data is concerned, this will be done in accordance with the requirements of the Data Protection Act 1998.

4.4.30

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. As recommended by the Lord Chancellor's Department, the Council will reject such clauses wherever possible and explain the relevance of the public interest test.

Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Regulations, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

4.4.31

The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. The Council acknowledges that certain exceptions including those for commercial confidentiality, and voluntarily supplied data, are not available when the information requested is about emissions into the environment.

4.4.32

It is for the Council to disclose information pursuant to the Regulations, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Regulations) by appropriate contractual terms. In these cases, contracts or other working arrangements will be made to ensure appropriate consultation about the handling of requests for information exchanged between the parties. Any such constraints will be drawn as narrowly as possible and

according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.

Accepting Information in Confidence from Third Parties

4.4.33

The Council will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with the exercise of any of the Council's functions and it would not otherwise be provided. Even in these circumstances, the Council will explain the relevance of the public interest test and the fact that there could be circumstances in which the public interest in responding to a request outweighs the desires for confidentiality of a third party.

4.4.34

The Council will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

Complaints about the discharge of the duties of the Council under the Regulations

4.4.35

The Council will deal with complaints about the discharge of the duties of the Council under the Act, including the handling of requests for information under the Compliments, Comments and Complaints Policy and associated procedures. This will apply to all Freedom of Information requests, including those which fall under the Environmental Information Regulations. See section 4.4.

4.4.36

The procedure will refer applicants to the right under section 50 of the Freedom of Information Act to apply to the Information Commissioner if they remain dissatisfied with the conduct of the Council following attempts at local resolution of their complaint.

5 RE-USE OF PUBLIC SECTOR INFORMATION

5.1

The Council has a duty to comply with the European Directive on re-use of public sector information. The directive does not provide access to the information itself. That remains available through the Freedom of Information Act, Environmental Information Regulations and Data Protection Act. 'Re-use' means using the information for a purpose other than the purpose for which the information was originally produced, including commercial purposes. This includes copying, adopting, developing, adding value, broadcasting or commercially exploiting.

6 RESPONSIBILITY FOR IMPLEMENTING THE POLICY

6.1

The Assistant Director for Customer Service and Improvement, who has delegated responsibility for the Freedom of Information, Data Protection and Environmental Information Regulations, will oversee the implementation of this policy on behalf of the Chief Executive.

6.2

The Assistant Director for Customer Service and Improvement will establish systems and procedures that will support the implementation of this policy which all employees, unpaid volunteers/ work experience placements and elected members will be expected to adhere to. This policy is a statement of what the Council is doing to ensure compliance with the Acts. It is not a statement of how compliance will be achieved; this will be a matter for operational procedures.

6.3

Managers at all levels are responsible for ensuring that the employees / unpaid volunteers and work placements for whom they are responsible are aware of and adhere to this policy. They are also responsible for ensuring that employees are updated in regard to any changes in this policy.

6.4

All employees, unpaid volunteers/work placements and elected members are obliged to adhere to this policy.

Appendix A

USEFUL LINKS

- The Information Commissioner's Office website (homepage).
- <http://www.ico.org.uk/> .

- The Data Protection Act in full can be seen on the ICO website.
- http://www.ico.org.uk/for_organisations/data_protection

- Information about the Freedom of Information Act can be found on the FOI pages of the Information Commissioner's Website.
- http://www.ico.org.uk/for_organisations/freedom_of_information .

- Information about the Environmental Information Regulations can be found on the EIR pages of the Information Commissioner's Website.
- http://www.ico.org.uk/for_organisations/environmental_information .