

# TURVILLE Parish Council

## Freedom of Information Act 2000

( adopted by resolution 09/03/11)

### **FOI is all about the right of access.**

The Freedom of Information Act 2000 did, from 1 January 2005, give everyone for the first time a general legal right to be provided, on request, with any information held by all public authorities subject to stated exemptions. These authorities include Central Government and Local Authorities (including Parishes and Charter Trustees) under Schedule 1 of the Act. Anyone has a right to ask public authorities for any information they hold and there is no requirement to explaining why the information is being requested.

### **What information is covered by the Act?**

Anything public authorities create, hold or process. This includes, for example, e-mails, letters, reports, faxes, file notes, notes of phone calls, videos, audio records - they are all "information" potentially disclosable under the Act - even a casual comment scrawled on the side of a minute may be covered. The Act will apply retrospectively to existing information, no matter how old, as well as that produced from 1 January 2005.

### **How can requests for information under the Act be made?**

A request can be made in any written form (eg. letter, e-mail, fax) and need not mention the Act - it will still apply. It is important to bear this in mind whenever considering how to respond to requests for information. It is also important to be aware that requests can be made to anyone, at any level, within the public authority and that the request must state the name and address of the person applying for the information and the required information.

The information requested, unless exempted under the Act, must be supplied within 20 working days of being requested. A refusal to release the information must be given in writing and the reasons for refusal specified along with the applicant's right to appeal.

### **Should the information requested always be provided?**

The information should be disclosed unless it falls under one of the exemptions in the Act. The Act provides for public access to information which may be supplied in any format, unless the applicant has specified a preferred format for receiving it - this can include copies of or access to (ie viewing at offices) actual records if that is what the applicant requests.

There is a range of exemptions under the Act that will allow certain types of information to be withheld under certain circumstances. The majority of these exemptions require a "public interest test" to be applied. For those exemptions where the public interest test applies, a request may only be refused if the public interest in withholding the information outweighs that in disclosing it.

### **What are the Exemptions?**

There are 23 exemptions from the general rights of access. For example: Certain information relating to national security, information that would prejudice international relations, commercially sensitive information and confidential information.

Environmental information is exempt as access rights are covered by the Environmental Information regulations.

An applicant wishing to access information about themselves should use their rights under the Data Protection Act. Personal data about other people cannot be released if to do so would breach the Data Protection Act.

If the applicant already has reasonable access to the information they want then they should use that means. Therefore if information is available through a publication scheme the public authority can simply direct the applicant to its scheme.

Some of the exemptions require the public authority to consider whether it is in the public interest to withhold information. Consideration of the public interest may take longer than the 20 days normally allowed for responding to requests. In these cases the public authority must give the applicant an estimate of when it will have reached a decision on where the public interest lies within 20 days of receiving the request.

### **How should the information be provided?**

The applicant can either ask for a copy of the information they seek, the chance to inspect the records, or even to be provided with a summary of the information. The public authority should try and provide the information in the form requested unless it is unreasonable to do so. If any of the information requested is exempt the applicant should be told which of the exemptions has been relied on to withhold the information.

### **How will the access rights in the Act be enforced?**

The Act establishes an Information Commissioner who has wide-ranging powers of enforcement and is already taking a close interest in how public authorities are preparing to implement the Act. From 1 January 2005, anyone can complain if dissatisfied with the way a request has been dealt with, or with the information supplied.

### **Can information already published be used?**

The Act places a duty on public authorities to adopt and maintain publication schemes which must be approved by the Information Commissioner. Such schemes are intended to advise people how they can gain access to information, which has been pro-actively published. A publication scheme is a guide to the types of information that the authority routinely publishes, the format in which the information is available in and how much it will cost if there are any charges.

Information that is available by other means or is intended for future publication is always exempt and a request for such information may be refused.

A person can contact the authority in any way, such as telephone, email, fax or in writing and ask to see their publication scheme. They can then make a request for any of the information included within the scheme.

### **Are there codes of practice? Where can I get advice?**

Two codes of practice have been created under the Act which will be of help to public authorities in meeting their new responsibilities.

The first code produced under section 45 of the Act is sometimes referred to as the Access Code. It deals with how to handle requests for information including:

- the level of advice and assistance it is expected,
- transferring requests from one public authority to another,
- consulting with third parties who may be affected by the release of information.

It also deals with complaints procedures and how the Act impacts on public sector contracts. The second code is made under section 46 of the Act and deals with records management. If a public authority does not have good records management procedures in place it may well find it difficult to comply with its obligations under the Act.

Also available are full information and guidance on the Act on [www.dca.gov.uk](http://www.dca.gov.uk) (the website of the Department of Constitutional Affairs) and on the Information Commissioners website at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk).

### **Do Public Authorities have a duty to provide assistance?**

Public authorities are required to provide advice and assistance to people who have made or who are thinking of making a request. This will help applicants understand their rights under the Act and identify the information they want.

### **Can we Charge for the information?**

Public authorities are allowed to charge a fee for responding to requests. The amount that can be charged is set out in regulations (The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 - S.I. 3244/2004). Guidance on those regulations can be found at <http://www.dca.gov.uk/foi/feesguide.htm>.

The Freedom of Information Act also allows for public authorities to decline to comply with certain requests for information on the grounds of cost where these requests would be particularly expensive ie if the cost of complying would exceed the "appropriate limit" prescribed in the Regulations (£450).

The Freedom of Information Act has always been intended to build on existing channels for providing information: to provide access to information where it did not previously exist rather than replacing existing access regimes. To that end, it makes provision that where information is reasonably accessible to applicants through other means, such as through other legislation or through an authority's publication scheme, it is exempt from FOI. This means that the rules for costing and charging for compliance with the Act do not apply in these cases.

If a public authority wishes to charge a fee it must inform the applicant in writing. The 20 days for responding to requests is put on hold until the fee is paid. If the fee is not paid within 3 months it is assumed the applicant no longer wants the information.

### **What if there are complaints?**

If the applicant is not happy with the response they receive they must first complain to the public authority. If they are still unhappy they may complain to the Information Commissioner who will decide whether the request has been handled properly.

### **What can the Information Commissioner do by way of enforcement?**

Both the applicant and the public authority are informed of the Commissioner's decision in a Decision Notice. Where appropriate the Decision Notice will instruct the public authority what steps it needs to take to comply with the Act, this may include the release of information. Both the applicant and the public authority may appeal against a decision notice to the Information Tribunal.

The Commissioner can also issue a public authority with an Enforcement Notice stating what steps it should take to comply with the Act. Although it is similar to a Decision Notice in some respects, the Commissioner does not need to wait to respond to a complaint from an applicant that a request has been incorrectly handled before taking this form of enforcement action. Only the public authority may appeal to the Information Tribunal against such a notice.