

# Thame Town Council

## Freedom of Information Procedure

### 1. Introduction

- 1.1 The Freedom of Information (FOI) Act was introduced to encourage public organisations to publish more information proactively and develop a greater culture of openness. The Act gives a general right of access to information held by the Town Council, subject to certain exemptions outlined in the Act. It applies to information that is held:
- Electronically
  - On paper
- 1.2 Information, which is readily available to members of the public, are those documents listed in the Town Council's Publication Scheme, which is published on the Town Council's website and ensures transparency. Documents within the Publication Scheme are not subject to the Freedom of Information Act.
- 1.3 Requests for information will be considered under the Freedom of Information Act (FOI) 2000 and the Environmental Information Regulations (EIR) 2004.

### 2. Procedure for Dealing with Requests for Information

- 2.1 Members of the public have a general right of access to information held by the Town Council. This means that they have the following rights:
- To be told whether or not the information is held by the Town Council,
  - And if it is, to have the information communicated to them.
- 2.2 There are certain exemptions and limitations on this general right, but just because a document is marked "Confidential" does not automatically mean that it is exempt information, but it may be covered by certain exemptions. Each case will be dealt with on its merits. Personal information will not be provided if it is in breach of the Data Protection Act 2018.
- 2.3 Requests for information must be in writing, must give the applicant's name, an email address, telephone number and a return address and must describe the information requested with a clear description in such a way that we are able to locate it. A written request includes an e-mail.
- 2.4 All written requests for information will be logged on a separate record sheet. Receipt will be acknowledged but if it is possible to respond with the information requested, this will be done instead. If further information is required in order to locate the information requested, this will be undertaken as quickly as possible. All correspondence, phone calls, e-mails etc., that follow the original request will be recorded.

### 3. Timescales

- 3.1 The Town Council has 20 working days in which to deal with a request for information. If it is not clear what information is required, the 20 day period does not begin until clarification is received from the applicant as to exactly what is required.

- 3.2 The Town Council will inform the individual if we require longer than the 20 days to apply the public interest test and the individual will be informed at that point what exemptions are being looked at and how long it will take. If more time is require then up to a maximum of a further 20 days can be added so the total time will be 40 working days.

#### **4. Refusal**

- 4.1 The Town Council may refuse a request if we consider that:
- it is vexatious (designed to cause disruption or annoyance rather than having a serious purpose)
  - to comply would exceed the statutory cost limit (£450 with staff time charged at £25 an hour which is the statutory rate). If we believe it will exceed the cost limit we will issue a refusal notice and invite the applicant, if possible, to revise the request to make it less expensive
  - it falls within an exemption under the legislation

#### **5. Charging**

- 5.1 If a charge is going to be made for photocopying and disbursements, a fee notice will be sent detailing the costs. The requestor has three months in which to pay and once payment has been received, the 20 working day period becomes effective

A charge will be made for the photocopying of information requested as follows:  
20p per single A4 size

- 5.2 If the Town Council does not receive the fee within three months, we are not obliged to comply with the request. However, the Town Council may consider whether it can release any information without charge.

#### **6. Clarification**

- 6.1 The Town Council can seek clarification about what is being requested. The time limit for responding stops whilst we wait for a response to our request for clarification.

#### **7. Exemptions**

- 7.1 The most common exemptions are:
- Section 21 – information reasonably accessible to the applicant by other means. There is a duty to confirm or deny whether we hold it and to tell the requestor where they can find it. This is an absolute exemption which means the public interest test does not need to be applied, (see below).
  - Section 22 – information intended for future publication. This means it is in draft, still being worked on but when completed, or approved, it will be published. The public interest test must be applied here.
  - Section 31 – prejudicial to law enforcement (preventing crime, collecting tax)
  - Section 36 – prejudicial to the effective conduct of public affairs.
  - Section 40 – personal data
  - Section 42 – legal professional privilege
  - Section 43 – commercial sensitivity

- 7.2 All except section 21 are qualified exemptions requiring the application of the public interest test. This means weighing up whether the public interest is best served by disclosing the information, or not disclosing it.

## **8. General Requests for Information**

- 8.1 The Town Council will continue to deal with routine requests for information as it does currently. Routine information which is freely available to members of the public is that listed in the Town Council's Publication Scheme on the website.
- 8.2 Any requests for information that is not contained in the Publication Scheme on the website will be passed to the Town Clerk to deal with under the FOI Act. A certain amount of guidance on dealing with requests is held by the Town Clerk, but it may be necessary that further specific guidance will be required from the Information Commissioner's office. If a member of staff is unsure as to whether a request for information is routine or not, they will refer to the Town Clerk. The use of personal information is covered by the Data Protection Act 2018.
- 8.3 The Office Administration Manager will act as the Freedom of Information Officer and has a responsibility to ensure that data subjects have appropriate access, upon written requests, to details regarding personal information relating to them.
- 8.4 The applicant will be kept informed at all stages of the process of supplying the information requested, particularly if it is a complex request, when guidance may have to be sought from other agencies.

## **9. Environmental Information Requests 2004 (EIR)**

- 9.1 Environmental Information broadly relates to:
- Air, atmosphere, water, soil, land, landscape, plants, animals, biological diversity and genetically modified organisms
  - Emissions, discharges, noise, energy, radiation, waste, recycling, and pollution
  - Measures and activities such as policies, plans and agreements
  - Reports, cost benefit analysis and economic analysis
  - The state of human health and safety, contamination of the food chain
  - Cultural sites and built structures ( the effect of the environment on the human world
  - Planning and development, building control, construction and renovation, floods and flooding issues, land use, traffic, parking, location of mobile phone masts and demolition of buildings
- 9.2 It covers documents, photos or maps. There is no distinction between formal approved documents, and anything else. The duty is to make the information available. This is not the same as the duty to disclose under FOI.
- 9.3 There are 20 working days to respond to the request. Unlike FOI there is no extension to the time limit for consideration of the public interest test. A further 20 days is permitted though if the request is complex, or there is a large amount of information involved. There is no right to charge for inspection. Cost recovery is permitted with reasonable charges published in advance.

## **10. Exceptions EIR**

- 10.1 There are exceptions to the requirement to disclose, these exceptions are subject to the public interest test like FOI. The exceptions are:
- personal data
  - information not held when the request was made
  - the request is manifestly unreasonable (similar to “vexatious” under FOI but with “manifestly unreasonable” used instead. The courts have treated both in the same way)
  - the request is too general
  - information is in draft or is unfinished
  - information is an internal communication
  - disclosure would adversely affect the course of justice or commercial confidentiality.
- 10.2 There is a lot of guidance, and case law, on the use of both FOI exemptions and EIR exceptions which can be found on the Information Commissioner’s website at [www.ico.org.uk](http://www.ico.org.uk).

## **11. Data Protection**

- 11.1 The Office Administration Manager will act as the Data Protection Officer and is responsible for gathering and disseminating information and issues relating to information security, the Data Protection Act 2018 and other related legislation.

## **12. Publication Scheme**

- 12.1 This is a scheme available via the website, setting out the classes of information that will be made routinely available and any charges. This includes policies and procedures, minutes of meetings, annual reports and financial information. This information is easily and quickly available.

## **13. Appeal Process**

- 13.1 If unhappy with the way their request has been dealt with an internal review can be requested. This will be carried out within 20 working days of the request for a review being received. If the individual remains unhappy with the result of the review the individual can ask the Information Commissioner to look at their concerns. The Town Council will provide details of the internal review process when it is requested. The process will vary depending on the type of request and who is available to review the process within the timescales.

## **14. Vexatious Requests**

- 14.1 Whilst the Town Council wishes to be open and transparent and to provide as much information as possible about the work it does there are occasions when it might be necessary to decide that a request is “vexatious” within the meaning of the legislation. There have been a number of legal cases which have helped to clarify what is meant, legally, by “vexatious” and which have stated that we have limited resources and that our obligations under the legislation must be proportionate to those resources.

- 14.2 Public authorities do not have to comply with vexatious requests. There is no requirement to carry out a public interest test or to confirm or deny whether the requested information is held.
- 14.3 The key question is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. There is no exhaustive list of circumstances. Every case is unique and judged within the context and history of that specific situation.
- 14.4 “Vexatious” Indicators
- Abusive or aggressive language
  - Burden on the authority
  - Personal grudges
  - Unreasonable persistence
  - Unfounded accusations
  - Intransigence
  - Frequent/overlapping requests
  - Deliberate intention to cause annoyance
  - Scattergun approach
  - No obvious intent to obtain information
  - Futile request

## **15. Process the Town Council will follow to determine if a request is vexatious**

- 15.1 The Town Clerk deals with all requests for information on behalf of Thame Town Council. If a request is considered to be potentially vexatious the Clerk will prepare a summary setting out the context and history to the request. This summary will be reviewed by members at Full Council.

## **16. The Review**

- 16.1 The following will be considered:
- The purpose and value of the request
  - Whether the purpose and value justifies the impact on the public authority
  - The context and history so, for example, if there has been a long and frequent series of requests the most recent request, though not obviously vexatious in itself, will contribute to the aggregated burden
  - Have there been numerous follow-up enquiries no matter what is supplied? This will be balanced against how clear our responses have been, has contradictory or inconsistent information been supplied or is a legitimate grievance being pursued?
  - Whether there are alternatives to the vexatious route. If it is too expensive then section 12 (costs in excess of £450) will be used. The Information Commissioner permits the total costs for all requests from one person (or several acting in concert) to be aggregated during a period of sixty days so long as they are requests for similar information
  - Is this a round robin, a “fishing” expedition or part of an orchestrated campaign? None of these make it vexatious but are factors

## **17. Final Warning**

- 17.1 If, having considered all of the above, the Town Council thinks there is a case for treating the request as vexatious then consideration will be given to a “final warning”. This is a letter, or email, to the person making the request explaining the impact the request(s) are having and asking that their behaviour be moderated. This “final” warning will not be appropriate in all cases but, if it is possible that the person making the request has not appreciated the impact of what they are doing, then it may assist.

## **18. Advice and Assistance**

- 18.1 In addition the Town Council may want to ask the person making the request whether advice and assistance would help in clarifying what exactly they wish the organisation to provide. Again this may not be appropriate in every circumstance but will be considered.

## **19. Report to Members**

- 19.1 The history of the matter will go forward as part of a report to Full Council setting out the evidence and reasoning behind the recommendation to propose that the request be treated as vexatious.
- 19.2 The decision to declare a request vexatious will be taken by the Town Council. This decision should be taken within 20 working days of receipt of the request. This time limit should be achievable in normal circumstances, however, if there is no meeting scheduled within that timescale then the decision will be formally delegated by the adoption of this procedure to the Mayor of the Council (in consultation with the Deputy Mayor).
- 19.3 Under section 14(1) of the Freedom of Information Act the refusal notice will set out the Council’s internal review procedure and the right of appeal to the Information Commissioner’s Office. However, under section 17(6) if the Town Council has issued a previous refusal notice for a vexatious request (and it would be unreasonable to provide another one) it is not necessary to do so. This will be done where the complainant has already been warned that further requests on the same, or similar topics, will not receive any response.
- 19.4 Please note that if a request is found to be vexatious and further requests are received on the same topic no response will be provided

## **20. Responsibilities**

- 20.1 The Office Administration Manager will act as the Freedom of Information Officer and has a responsibility to ensure that data subjects have appropriate access, upon written requests, to detail regarding personal information relating to them.

## **21. Review**

- 21.1 This procedure will be reviewed as necessary when there is a change in the law and in line with the Freedom of Information Policy.