



Elected Members' Guide to FOI and EIR

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Introduction

The Freedom of Information (FOI) Act 2000 provides individuals and organisations with the right to request any recorded information held by the Council. Recorded information includes information held in paper files, such as file notes, post-its, letters, as well as information held electronically such as email, word documents and CCTV – in fact, anything which has been captured and kept.

FOI supports the Council's commitment to be open and transparent and builds trust and credibility in public authorities ensures that the public understand how key decisions are made and shows there is accountability for the spending of public money.

Elected Members must be aware the information that they produce or receive as County Councillors could be subject to disclosure.

The provisions of both the Freedom of Information Act and the Environmental Information Regulations are enforced by the Information Commissioner (ICO).

What characteristics do FOI and EIR have?

The Freedom of Information Act provides:

- A right of public access to recorded information held by public authorities;
- A request can be made, in writing, by any individual and does not need to refer to the legislation;
- We have 20 working days to comply with the request.

The Environmental Information Regulations (EIR) provide:

- A separate right to FOI about “environmental information”
- This includes information about land development, pollution levels, energy production, and waste management
- A request can be made verbally and does not need to refer to the legislation
- We have 20 working days to comply with the request

Neither FOI or EIR provides any right of access to their own personal data – this type of request is a Subject Access Request (SAR) under data protection legislation (and has different rules).

Responding to requests

The Council must respond to all written FOI requests within 20 working days. Elected Members are required to support any requests received by the Council and be able to provide any relevant information they hold to the Council in a prompt manner to meet those statutory requirements.

Information generally has to be provided free of charge if the appropriate cost limit of £450, the equivalent of 18 hours work [the ‘appropriate limit’] is not reached. If a request will take longer than

18 hours to determine whether the information is held, and locate, retrieve, and extract the information requested the request can be refused, although advice about what information can be provided within the appropriate limit should be provided to the requester.

Access is to recorded information, not necessarily documents, therefore parts of documents can be extracted to respond to a request. Information does not have to be created to answer a request if it does not already exist.

Can requests be refused?

In every case the law requires that there will be full and unconditional disclosure unless one of the statutory exemptions applies.

The reasons set out in law explaining why some information may not be disclosed are known as exemptions. They cover such things as legal professional privilege, personal information, commercial interests and information intended for future publication.

If the information requested is exempt, or the request exceeds the appropriate limit, it may be refused. A request may also be refused if it is vexatious or repeated.

When applying an exemption the content of the information must be assessed. It is likely that several tests will have to be undertaken to identify the harm and the public interest in releasing or withholding the information.

How FOI applies to Members

Members can be affected by FOI in a number of ways such as:

- receiving requests for information they hold to be disclosed
- be the subject of requests for information which are received by the Council (e.g. allowances, attendance etc)

FOI applies to information held by public bodies (as defined in the legislation). Any information held by the Council, or by Members for the purposes of the Council's functions, is subject to FOI. Information relating purely to Members' political party matters or held in their personal capacity is not subject to FOI.

There are, therefore, circumstances where information produced, received or held by elected members could be liable to disclosure to the general public under FOI. For example, if you were to write to, or email, an officer of the Council about an issue that related to the business of the Council, then the information would be covered by FOI (subject to any exemptions).

Elected Members are responsible for the proper management of the information they hold, and this will include being able to retrieve information that relates to Council business in a timely manner so the Council can meet the statutory timescales.

If a Member receives a request for information held by the Council that is not a routine matter which the member can deal with as part of the ordinary course of events they should contact the Member Support Unit, email membersupport@worcestershire.gov.uk in order for the correct FOI procedure to be followed. If you are unsure whether something needs to be treated as a formal FOI request – please contact us and ask!

What about political information?

Where information produced is of a political nature, such as election strategy, this does not relate to the business of the Council and the FOI provisions would not apply to such correspondence.

However, there are potential 'grey' areas. For example, members might consider information relating to their voting intention on the budget to be political, but it could be argued that the information would relate to the business of the Council and be potentially subject to FOI disclosure. There are certain exemptions but **please be aware of the potential for disclosure under FOI when you are sending emails or letters on Council business.**

Publication Scheme

The Council is required to have, and maintain, a Publication Scheme, which helps the public know what information is routinely available and how they can access it. The Council's [Publication Scheme](#) is available on our website: If information is declared to be public in the scheme it can be easily found and a charge may be applied where appropriate.

Examples of information Elected Members may hold that is covered by FOI

- Information emailed by a member about an education review, to a Children's Services officer
- Information sent from one member to another, including emails, will be covered if it relates to council business as above
- Details of members' expense claims submitted to the council would be covered (but are published routinely)
- Written comments on reports which have been prepared for consideration by a council member body would be covered

Examples of information Elected Members may hold that would not be covered by FOI

- Information sent from a member to another member about their chances in any forthcoming local elections or other party-political matters would not be covered – it's not information held on behalf of the Council
- Information about political matters – it's not information you are holding on behalf of the Council
- Any information you are holding in relation to your personal matters or private businesses
- Information you may be holding for your ward purposes is not usually subject to FOI

What type of requests does the Council receive?

Requests made under FOI must be submitted in writing, but there is no requirement to refer to the Act in the request – a written request for information is enough for it to fall within FOI. The Council receives a variety of request and recent topics include:

- Staffing and organisational structures
- Highways maintenance, potholes, and bridge repairs
- Deceased persons records

- Social care provision
- SEND services
- School catchment placements

The Council aims to respond to all requests within the timescale, but this can prove challenging at times. The table below shows our compliance rates over the last years:

	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23
Requests Received	1292	1321	1391	1548	1642	1480	1444	1341
Volume change on previous year	-2%	+2%	+5%	+11%	+6%	-10%	-2%	-7%
Requests Completed on time	1222 (95%)	1228 (93%)	1206 (87%)	1278 (83%)	1488 (91%)	1321 (89%)	1356 (93%)	1223 (90%)

Need further information?

For more information or clarification of any part of this document, please contact the Corporate Information Governance Team (CIGT) on 01905 72 8544 or email foi@worcestershire.gov.uk.

Alternatively visit our [Information Governance OurSpace pages](#) or the [Council's Freedom of Information web pages](#).