

# Upchurch Parish Council Freedom of Information Act Procedure

## Introduction & Scope

The Freedom of Information Act 2000 (FOI) gives rights of public access to information held by public authorities.

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities

The Act covers all recorded information held by a public authority. It is not limited to official documents and it covers, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings. Nor is it limited to information created by Upchurch Parish Council (UPC), so it also covers, for example, letters received from members of the public, although there may be a good reason not to release these (see Appendix 1).

A FOI request is not the same as responding to enquiries/questions raised in association with the ordinary business of UPC.

## Responsibilities

All **Councillors** and **Clerks** are responsible for identifying FOI Requests. Requests may not always be clearly marked "FOI" by the public.

All **Councillors** and **Clerks** should forward FOI Requests to the **Parish Clerk**.

The **Parish Clerk** will record the FOI Request and acknowledge receipt, providing a schedule for the 20 day rule and issue a Fees Notice where necessary (see below).

The **Parish Clerk** will co-ordinate information gathering where that information is not available on the internet.

The **Parish Clerk**, after liaising with the **Chair**, will notify the requester and any other Public Body if the request is passed to another Authority.

The **Chair** of the Council will release all FOI Responses prior to the **Parish Clerk** sending a response where that information is not readily available on the internet.

## Principles of the FOI Act

1. Section 10 of the Act sets out the time frames within which a public authority must respond to an FOIA request. It applies whenever the public authority has:

- a duty under section 1(1)(a) to confirm or deny whether the information is held;
  - a duty under section 1(1)(b) to provide information that is held to the requester;
  - a duty under section 17 to issue a refusal notice explaining why a request has been refused.
- a) UPC must respond to requests promptly and by the twentieth working day, starting the working day after the Request has been received.
- A working day is any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday.
- b) If the authority needs further details to identify or locate the information, then the 20 working days will commence the day after it receives the required clarification from the requester.
- c) Where required, UPC may claim a reasonable extension of time to consider the public interest test. However, this must not extend beyond an additional 20 working days.
2. Where the authority requires a fee to process the request, the 'clock' will stop on the date the Parish Clerk issues a **Fees Notice** to the requester and restart once payment is received.
- Under section 10(2) the period starting from the day the Fees Notice is given and ending on the day the payment is received can be disregarded from any calculation of the 20 working day time limit.
  - The Information Commissioner's interpretation of the wording 'the day on which the fees notice is given' is the date on which the notice is sent to the requester.
  - UPC should therefore pause the 20 working day clock on the day it issues the Fees Notice. The clock will restart again the day after the fee is received.
  - If the requester elects to pay by cheque then the clock will only restart once this has cleared.
  - Should the requester fail to provide the fee within 3 months of the fees notice being issued, then under section 9(2) of the Act, the authority will no longer be obliged to comply with the request.
3. If UPC is transferring the request because it does not hold the information itself but believes it to be held by another public authority, UPC must inform the requester that the information is not held within the 20 working day limit.
4. Section 10(3) enables an authority to extend the 20 working day limit up to a 'reasonable' time in any case where it requires more time to determine whether or not the balance of the public interest lies in maintaining an exemption; or it needs further time to consider whether it would be in the public interest to confirm or deny whether the information is held.

- This extension will only apply to requests where the authority considers a 'qualified exemption' (an exemption that is subject to a public interest test) to be engaged. The Act does not define what might constitute a 'reasonable' extension of time. The view is that an authority should take no more than an additional 20 working days to consider the public interest, meaning that the total time spent dealing with the request should not exceed 40 working days.

## **Appendix 2**

### **How does the Freedom of Information Act affect data protection?**

The Data Protection Act 1998 gives rules for handling information about people. It includes the right for people to access their personal data. The Freedom of Information Act and the Data Protection Act come under the heading of information rights and are regulated by the Information Commissioner's Office.

When a person makes a request for their own information, this is a subject access request under the Data Protection Act. However, members of the public often wrongly think it is the Freedom of Information Act that gives them the right to their personal information.

The Data Protection Act exists to protect people's right to privacy, whereas the Freedom of Information Act is about getting rid of unnecessary secrecy. These two aims are not necessarily incompatible but there can be a tension between them and applying them sometimes requires careful judgement.

When someone makes a request for information that includes someone else's personal data, you will need to carefully balance the case for transparency and openness under the Freedom of Information Act against the data subject's right to privacy under the Data Protection Act in deciding whether you can release the information without breaching the data protection principles.

**Date Approved:**

**Signed by the Chairman:**