



# Saltash Town Council

Policy/Procedure:

Freedom of Information Requests DRAFT

Date of Adoption:

This is a Policy or Procedure document of Saltash Town Council to be followed by both Councillors and employees.

Current Status			
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Date	Version	Author/Editor	Comments

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## **Introduction**

The Freedom of Information Act 2000 ("the Act") was passed by Government to encourage free and open access to information held by Public Authorities across England, Wales and Northern Ireland. The Act allows access for any person or organization worldwide and there is no need for them to state their reason for wanting the information.

There are two main parts to the Act:

- The requirement for the Authority to develop and maintain a Publication Scheme (Guide to Council services and Information), and;
- The requirement for the Authority to respond to any request for information within twenty working days in most cases.

## **Who can make a request?**

Under the terms of The Freedom of Information Act 2000 ("the Act") and the Environmental Information Regulations 2004 ("EIR"), absolutely anyone may make a Freedom of Information request. There is no age limit, and applicants do not need to be a resident of the local region, or even of the UK. Requests do not need to go through a solicitor or other third party.

Commercial companies, pressure groups, other Public Authorities and Law firms all also have equal rights under the Act and EIRs.

## **Obtaining information and information held**

### Town Council website

The website holds the type of information which the council routinely publishes e.g. minutes and agendas and accompanying documents. Information available under the Publication Scheme can also be found on the website

### Inspection of documents held by the Clerk

Requests to view certain documents should be made by contacting the Clerk either via the website, telephone or in writing. Some documents required time to locate so it may be necessary to make an appointment. Full contact details are available at the end of this document.

## **Requests under the Freedom of Information Act 2000**

All Freedom of Information requests must:<sup>1</sup>

- be in writing;
- include the requesters name and an address for correspondence; and,

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<sup>1</sup> Freedom of Information Act 2000 (Section 8)

- describe the information being requested. If the description of the information is unclear or ambiguous, the requester will be asked for further clarification in accordance with Section 1 (3) of the Act.

The requester can be an individual, a company or an organization but in each case they must provide their real name. A request made under pseudonym will be invalid.

Requests should be sent to the Freedom of Information Officer at the address at the end of this document.

### **Dealing with Freedom of Information Requests**

The Town Council is committed to dealing with requests within statutory guidelines; no more than 20 working days and more speedily where possible. This may be extended in specific circumstances or when the public interest test is engaged.

We will claim exemptions under FOI, or exceptions under EIR as appropriate, whilst maintaining a commitment to openness, transparency, scrutiny and the public interest. This is adhered to through the application of the Public Interest Test (PIT) where required.

Any repeated requests or requests that place an unnecessarily large burden on the authority may be refused as vexatious or manifestly unreasonable, taking into account prescribed legislation and guidance.

The Council reserves the right to refuse requests where the cost of supply of the information would exceed the statutory maximum, the 'appropriate limit', currently 18 hours of officer time under FOI.

### **Charges**

Rather than routinely charge fees whenever the cost limit is exceeded, it is our policy to offer advice and assistance to applicants to ensure that the applicant has the option of submitting a new modified request, capable of being dealt with free of charge.

#### Charging below the appropriate limit

- The Council will charge applicants a fee in accordance with the fees regulations made under Section 9, 12 and 13 of the FOIA.
- The "appropriate limit" for FOI requests is 18 hours (or £450). No charges to produce the request will be made for requests taking under 18 hours (although disbursements may still apply).
- If the actual cost of answering the request turns out to be greater than the estimated amount charged, the additional cost will be borne by the Council.
- The Council will not charge VAT on requests for information, unless that information is available from another non-public authority source. VAT will be charged for information which is provided in accordance with the Council's Publication Scheme.

### Charging above the appropriate limit

If it is calculated that in order to comply with a request, the appropriate limit would be exceeded, the Council will provide help and assistance to bring the request under the appropriate limit, in order to respond. If it is not possible to narrow down the request, the Council may charge the actual cost of complying with the request or issue a refusal notice under Section 12 of the FOIA. The Council will use its discretion on a case by case basis.

### **Complaints**

Complaints relating to information provided under FOIA should be sent to the Town Clerk to be dealt with under the internal review procedure. A request for an internal review should be sent by the requester within 40 days of receiving a response. The Council has 40 days to deal with the request.

Where a requester is still unhappy following an internal review, they have the right to complain to the Information Commissioner's office.

## **Procedure**

### Overview

All FOIA requests will be directed to the FOI Officer who will follow the procedure laid out in the ICO flowchart of request handling. Additional guidance where required, will be sought from the ICO.

The application will be given a number and a file created to hold all correspondence and records. A record sheet should be completed detailing the date received, the deadline to supply the information and a record of any correspondence that may pause the clock together with any other relevant information.

Where a request is to be refused the FOI Officer will refer to the Head of Library and Administration Services who will in turn refer to the Town Clerk before issuing a refusal notice.

### **Time Limits**

Requests will be dealt with within the Limits prescribed in FOIA Section 10.

### **Releasing information**

Where a request is identified as valid and not subject to an exemption under the FOIA Part II (Exempt Information), the requester will be informed that the information is held and notified of any charges to be applied before the request can be fulfilled. Charges that apply should be paid in full before any work is done on providing information. If no payment is received within three months, the request can be deemed as withdrawn.

All information to be released must be screened prior to release for information that falls under GDPR and Data Protection. This information must be securely redacted from all documents.

### **Refusing a request**

The FOIA gives a right of access to information that public authorities hold, but it also contains several possible exemptions from that right, which are listed in Part II of the Act. Some of these exemptions require the authority to consider the balance of public interest in deciding whether to withhold the information; these are known as 'qualified' exemptions. Others do not; these are known as 'absolute' exemptions. The absolute exemptions are listed in Section 2 (3); the exemptions in Part II that are not listed in are qualified.<sup>2</sup>

An intention to refuse a request should be carefully explored before proceeding. Advice should be taken from the ICO and a report attached to the request when the file is closed. STC should consider the amount of work involved (and the strain on resources) in responding to a FOIA request that can be established as acceptable before it can identify what is "disproportionate".

Grounds for refusal may include but are not limited to the following:

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<sup>2</sup> Source ICO: the public interest test version 2.1

## **Section 12 (cost limit) as grounds for refusing a request<sup>3</sup>**

### Overview

Section 12 of FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to: - either comply with the request in its entirety or; - confirm or deny whether the requested information is held.

The estimate must be reasonable in the circumstances of the case.

The appropriate limit is currently £600 for central government and £450 for all other public authorities.

Where a public authority claims that Section 12 is engaged, it should, where reasonable, provide advice and assistance to help the requester to refine the request so that it can be dealt with under the appropriate limit.

### Same or similar information:

Regulation 5 (2) of the Fees Regulations-requests which are to be aggregated relating to any extent to the same or similar information.

Whilst every request should be considered on its own facts same or similar information applies where there is an overarching theme or common thread running between requests in terms of the nature of the information that has been requested.

Requests received within 60 consecutive working days can be aggregated.

## **Section 14 dealing with vexatious requests<sup>4</sup>**

Note: If relying upon section 14 Town Council must build a strong and substantiated case to the ICO.

### Overview

- Under section 14(1) of the Act, public authorities do not have to comply with vexatious requests. There is no public interest test.
- Section 14(1) may be used in a variety of circumstances where a request, or its impact on a public authority, cannot be justified. Whilst public authorities should think carefully before refusing a request as vexatious they should not regard section 14(1) as something which is only to be applied in the most extreme of circumstances.
- Section 14(1) can only be applied to the request itself and not the individual who submitted it.
- Sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious.

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<sup>3</sup>

ICO Requests where the cost of compliance exceeds the appropriate limit

<sup>4</sup> ICO

Dealing with vexatious requests (section 14)

- In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
- This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request.
- The public authority may also take into account the context and history of the request, where this is relevant
- Although not appropriate in every case, it may be worth considering whether a more conciliatory approach could help before refusing a request as vexatious.
- A public authority must still issue a refusal notice unless it has already given the same individual a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one.
- If the cost of compliance is the only or main issue, the ICO recommend that the authority should consider first whether section 12 applies (there is no obligation to comply where the cost of finding and retrieving the information exceeds the appropriate limit).

**Section 14(1)** is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

Indicators: (not listed in any order of importance)

### **Abusive or aggressive language**

The tone or language of the requester's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.

### **Burden on the authority**

The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.

### **Personal grudges**

For whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity.

### **Unreasonable persistence**

The requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

**Unfounded accusations**

The request makes completely unsubstantiated accusations against the public authority or specific employees.

**Intransigence**

The requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.

**Frequent or overlapping requests**

The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.

**Deliberate intention to cause annoyance**

The requester has explicitly stated that it is their intention to cause disruption to the public authority, or is a member of a campaign group whose stated aim is to disrupt the authority.

**Scattergun approach**

The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.

**Disproportionate effort**

The matter being pursued by the requester is relatively trivial and the authority would have to expend a disproportionate amount of resources in order to meet their request.

**No obvious intent to obtain information**

The requester is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the authority, for example, by requesting information which the authority knows them to possess already.

**Futile requests**

The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation.

**Frivolous requests**

The subject matter is inane or extremely trivial and the request appears to lack any serious purpose. The request is made for the sole purpose of amusement.

As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) observed;

*'There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is*



*vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA’.*

Therefore, the fact that a request has one or more of the characteristics listed above does not necessarily mean it that it is vexatious. Some factors will be easier to evidence and support than others. It is also important that factors are considered on the circumstances of each individual case; the strength of the factors will vary in importance depending on the case.

## **Charges**

The FOIA does not allow STC to charge a flat fee but the Council can recover communication costs, such as for photocopying, printing and postage. Other costs cannot normally be charged for, such as for staff time spent searching for information, unless other relevant legislation authorises this.

The following ICO guidance should be referred to:

- Fees may be charged when the cost of compliance exceeds the appropriate limits<sup>5</sup>
- Requests where the cost of compliance exceeds the appropriate limit<sup>6</sup>

Regulation 4 (3) of the Fee Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- Determining whether the information is held;
- Locating information, or a document containing it;
- Retrieving the information, or a document containing it; and
- Extracting information from a document containing it

STC has identified that any request estimated to exceed 20 hours of staff time will place a significant burden on time and resources.

Communicating information:

Photocopying	10p per sheet	Black-and-white only
USB drive	At cost	
Postage and packing	At cost	To ensure that the information is handed to the individual who has requested, STC would prefer that the information is collected in person.

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<sup>5</sup> ICO version 2.2

<sup>6</sup> ICO version 1.2

A signature will be requested whether the information is collected in person or posted.

### **Completed requests**

When information has been provided the FOI officer will write to the requester asking for confirmation that the request has been fulfilled and noting that if a reply is not received within five working days that the file will be closed.

### **Closing the file**

When a request has been fulfilled the file should be closed and a report attached confirming that the request has been completed or the reason for not supplying the request.

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## Contact Details

### FOI Requests:

The FOI Officer

By post or by hand: Saltash Town Council  
The Guildhall  
12 Lower Fore Street  
Saltash  
PL12 6JX

Email: [FOI@saltash.gov.uk](mailto:FOI@saltash.gov.uk)

### To inspect documents held (by appointment with the Town Clerk):

By post or by hand: address as above

Telephone: 01752 844846

Email: [enquiries@saltash.gov.uk](mailto:enquiries@saltash.gov.uk)

STC website: [www.saltash.gov.uk](http://www.saltash.gov.uk)

### Further information on the Freedom of Information Act 2000:

<https://ico.org.uk/>

Information Commissioner's Office Wycliffe House Water Lane Wilmslow Cheshire  
SK9 5AF