

HARLOW COUNCIL

Access to Information Policy

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INTRODUCTION

This document supports the legislative framework for responding to requests for information under the statutory access regimes of the Freedom of Information Act 2000; the Environmental Information Regulations 2004; the Data Protection Act 1998 and other legislation that provides a right of access to information (listed at Appendix A).

Access to information is principally governed by two main legislative provisions under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. They both provide rights of access to information publicly held with limited exception; however any request for information held is technically a Freedom of Information request in the first instance. Section 39 of the Freedom of Information Act then exempts environmental information from being dealt with under the Act and provides that it should be dealt with under the Environmental Information Regulations 2004 (see Appendix B for definition of Environmental Information).

If it is determined that part or all of the information requested is personal information, where the applicant is the subject of that information, access to that information will be dealt with under the Data Protection Act 1998.

This policy also deals with the rights of the data subject to access personal data held by the Council and the Council's responsibilities as the Data Controller (people or organisations that hold and process details of living individuals) to comply with the eight principles (rules governing the use of personal data) and to bear in mind the rights and freedoms of those individuals when processing their details.

This policy explains how Harlow Council will meet the legal requirements of the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

RESPONSIBILITIES AND CONTACTS

The Chief Executive of Harlow Council has overall responsibility for ensuring that the Council comply with the requirements of the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Data Protection Act 1998 as set out in this policy.

The Head of Governance and the Corporate Information Manager are responsible for ensuring that policies and procedures are in place to facilitate the Council's compliance of the above legislation.

All staff are obliged to adhere to this policy; failure to do so may result in disciplinary action. Strategic Directors/Heads of Services and managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of this. They are also responsible for ensuring that staff are updated in regard to any changes in this policy.

The law is set out in the legislation, copies of which are obtainable from the Office of Public Sector Information (<http://www.opsi.gov.uk/>). Further information and advice may be obtained from:

The Office of the Information Commissioner
Wycliff House
Water Lane
Wilmslow
Cheshire SK9 5AF
Website: www.ico.gov.uk

DATA PROTECTION ACT 1998

The Data Protection Act 1998 (“the Act”) came into force on 1 March 2000 after receiving Royal Assent on 16 July 1998. The Act replaces the Data Protection Act 1984 and certain other legislation that gives rights of access to information held by organisations.

The Act extends the rights given to individuals in previous legislation and requires Data Controllers (people or organisations that hold and process details of living individuals) to comply with the Eight Principles (rules governing the use of personal data) and to bear in mind the rights and freedom of those individuals when processing their details.

1. Statement of Intent

- 1.1 Harlow Council intends to fulfil all its obligations under the Data Protection Act 1998.
- 1.2 The Council will ensure that all types of data processing are appropriately notified to the Information Commissioner. The Council also intends to conduct a periodic review and update of the register entries. It is the aim of Harlow Council that all appropriate staff are properly trained, fully informed of their obligations under the Data Protection Act 1998 and are aware of their personal liabilities.
- 1.3 All staff using personal data within the Council will be told the limits of their authority to use and disclose such information.
- 1.4 Any employee deliberately acting outside their recognised authority may be subject to the Council’s disciplinary procedures, including dismissal where appropriate, and possibly legal action. Individuals whose information is held and processed by Harlow Council can be assured that the Council will treat their personal data with all due care. It is possible that other legislation may (at times and under certain conditions) override Data Protection law – individuals should note that the Council intends to fulfil all of its legal responsibilities.

2. Fair Obtaining / Processing

- 2.1 Harlow Council will, as far as practicable, ensure that all individuals whose details we hold are aware of the way in which that information will be held, used and disclosed. Individuals will, where possible, be informed of the likely recipients of the information, whether the recipients are internal or external to the Council. Processing within Harlow Council will be fair and lawful; individuals will not be misled as to the uses to which the Council will put the information given. If a person feels they have been deceived or misled as to the reason for which their information was collected, they should use the complaints procedure detailed at Section 8 of this document.
- 2.2 Collection forms requiring personal information will contain a “fair obtaining” statement giving details of the likely uses of the information and, where information is collected in person or by telephone, the employee asking for the details will tell the individual how those details will be used. People are entitled to ask the person collecting the information why they want the details and what they will be used for.
- 2.3 If a person’s details are going to be used for “auto-decision” processing (where a computer decides something based on a score or other information) the person will be told about how the system works and whether the decision can be challenged.
- 2.4 Should a person’s details need to be processed for a purpose that does not appear on the Council’s register entry, the individual will be advised in order to make the processing fair and lawful.

- 2.5 Any person whose details are to be included in the Council's web site will be asked to provide written consent. At the time the information is included; all such individuals will be properly informed about the consequences of their data being available worldwide.

3. Data Uses and Processes

- 3.1 Harlow Council will not use or process personal information in any way that contravenes its notified purposes or in any way that would constitute a breach of Data Protection law. Any new purposes introduced will, where appropriate, be notified to the individual and, if required by law, their consent will be sought.
- 3.2 The Council's registration / notification entry can be viewed on the Information Commissioner's website at www.ico.gov.uk.

4. Data Quality and Integrity

- 4.1 Harlow Council will not collect data from individuals where that information is excessive or irrelevant in relation to the notified purpose(s). Details collected will be adequate for the purpose and no more. Information collected, which becomes (over time or by virtue of changed purposes) irrelevant or excessive, will be deleted.
- 4.2 Information will only be held for as long as is necessary for the notified purpose(s), after which the details will be deleted. Where details of individuals are stored for long-term archive or historical reasons and where it is necessary to retain the personal detail within the records, it will always be done within the requirements of the legislation. In many cases personal details will be removed from the record so that individuals cannot be identified.
- 4.3 The Council will ensure, as far as it practicable, that the information held is accurate and up to date. It is the intention of Harlow Council to check wherever possible the details given.
- 4.4 Information received from third parties (i.e. neither the individual concerned nor the Council) will carry a marker indicating the source. Where a person informs the Council of a change of their own circumstances, such as home address or non-contentious data, their record(s) will be updated as soon as possible. Where the individual requests that information be changed, or asks that it be stopped being processed, and it is not possible to update it immediately, or where the new information needs to be checked for its accuracy or validity, a marker will be placed on the disputed record indicating the nature of the problem. The Council and the individual will attempt to reach an amicable agreement on the complaint, but where this is not possible the Council's Complaints procedure will be implemented.

5. Technical and Organisational Security

- 5.1 Harlow Council has implemented appropriate security measures as required under the Data Protection Act 1998. In particular, unauthorised staff and other individuals are prevented from gaining access to personal information. Appropriate physical security is in place with visitors being received and supervised at all times within Harlow Council buildings where information about individuals is stored. The general public visiting Harlow Council buildings should not feel that the measures are restrictive or oppressive; the measures are there to protect the Council's data.
- 5.2 Computer systems are installed with user-profile type password controls and, where necessary, audit and access trails to establish that each user is fully authorised. In addition, employees are fully informed about overall security procedures and the importance of their

role within those procedures. Manual filing systems are held in secure locations and are accessed on a need-to-know basis only.

- 5.3 Security arrangements are reviewed regularly, all reported breaches or potential weaknesses are investigated and, where necessary, further or alternate measures will be introduced to secure the data. Such reports are received by the Corporate Information Manager for the Council who will liaise with the ICT Service and / or Head of Service as necessary.
- 5.4 All staff are informed and frequently reminded about the limits of their authority on disclosing information, both inside and outside the Council. Details will only be disclosed on a needs basis within the Council. Where details need to be passed outside the Council it will in general be done with the person's consent except where this is not possible or where it is required by law, allowed under Data Protection Act exemptions (such as crime prevention / detection, to prevent injury, etc) or where it is in the person's vital interests. Any unauthorised disclosure will be dealt with under the Council's disciplinary procedures.
- 5.5 Redundant personal data will be destroyed using the Council's "procedure for disposal of confidential waste". In general, paper waste is shredded and magnetic media (disks, tapes, etc) are either electronically "wiped" or physically destroyed beyond recovery.
- 5.6 The security of the Personal Data processed by Harlow Council will be at the level of BS 7799, although the organisation will not be certified to BS 7799.

6. Disclosure of Personal Data to / by Elected Members

- 6.1 Elected Members are entitled to have access to information necessary to enable the conduct of his/her official duties as a Councillor. Councillors do not, however, have the automatic right to access any data and personal data will only be disclosed where there is a recognised need (e.g. as a member of a specific committee or when acting on behalf of a constituent).
- 6.2 Councillors will always treat personal information provided to them for council business, or collected by them when acting on behalf of a constituent, as having been provided in confidence. It will not be disclosed to third parties unless permission has been sought from the individual.
- 6.3 Councillors will not use or process personal information in any way that contravenes the Council's notified purposes or in any way that would constitute a breach of Data Protection Law. Any Councillor disclosing personal information inappropriately could be subject to a complaint for breach of the Member's Code of Conduct.

7. Subject Access Requests

- 7.1 Any person whose details are held / processed by Harlow Council has a general right to receive a copy of their own information. There are few exceptions to this rule, such as data held for child protection or crime detection / prevention purposes, but most individuals will be able to have a copy of the data held on them.
- 7.2 Completion of a Subject Access Request form is required to obtain the information, if the applicant requires assistance to complete the form this will be given by Contact Harlow Advisors.
- 7.3 The Council has a policy of charging a sum of £10.00 for such requests, and this fee must be paid before fulfilling such a request; the request must also be made in writing. Any codes used in the record will be fully explained; any inaccurate, out of date, irrelevant or excessive data will be dealt with under the procedures outlined previously in this policy.

- 7.4 Harlow Council will attempt to reply to subject access requests as quickly as possible and in all cases within the 40 calendar days set out in the Act.
- 7.5 Repeat requests will be fulfilled unless the period between is deemed unreasonable, such as a second request received so soon after the first that it would be impossible for the details to have changed.
- 7.6 A subject access request should be submitted on the appropriate form; this will ensure that the Council has the required information to be able to conduct a data search and to fulfil the request. In some cases, further information may be required from the requester, which may delay the start of the 40 calendar day maximum time limit.

8. Complaints Procedure

- 8.1 Harlow Council has in place a procedure for dealing with complaints from people who consider that their request for access to their personal data has not been properly handled, are dissatisfied with the outcome of their request or may have concerns about how the Council process their data.
- 8.2 All complaints should be in writing and should include details of the complainant as well as a detailed account of the nature of the problem.
- 8.3 Details of the Council's Complaints procedure can be found on the Council's website at www.harlow.gov.uk.

FREEDOM OF INFORMATION ACT 2000

The right of access that the Freedom of Information Act (“the Act”) affords to the public came into force on the 1 January 2005. Under the Act there are two general rights in relation to information. One: on written request, members of the public (which will include companies and other organisations) have a right to be told whether or not the information requested is held by the authority or on the authority’s behalf; and two: the right of access to that information within 20 working days, subject to the Council’s approved fees and charges. Where exemptions apply (except where the exemption is absolute), the duty to inform the applicant whether the information is held and to communicate that information remains unless the public interest in maintaining that exemption outweighs the public interest in disclosure.

There is also a duty on all public authorities to adopt and maintain a publication scheme that details the classes of information it will regularly publish. The publication scheme must be approved by the Information Commissioner, who has wide powers to enforce the rights contained in the Act.

9. Statement of Intent

- 9.1 Harlow Council intends to fulfil all its obligations under the Freedom of Information Act 2000.
- 9.2 The Council will ensure that the public have a general right of access to information it holds, subject to the conditions and exemptions contained in the Act.
- 9.3 In cases where information is exempt from disclosure, the Council will inform the applicant whether they hold the information, and communicate the information to him / her, unless to do this is also contrary to the exemption or the public interest (where applicable). In these cases the applicant will be informed of the reason the information is considered exempt e.g. information requested may be commercially sensitive.
- 9.4 The Council has adopted and will maintain a publication scheme, approved by the Information Commissioner, which relates to information the Council has published and undertakes to publish information in accordance with that scheme.
- 9.5 The Council will ensure that proper training is provided to officers who may be required to provide information, and that these officers are familiar with the requirements of the Act, taking into account any relevant guidance on good practice issued by the Information Commissioner.

10. Making requests for information

- 10.1 Since 1 January 2005 the public have had the right of access to any recorded information, however it is held.
- 10.2 Requests for information have to be in writing (which includes a request transmitted by electronic means which is received in legible form and is capable of being used for subsequent reference) and must provide the name of the applicant and an address to which the information can be sent. The Council intends to respond to requests within 20 working days, although longer is allowed if an exemption applies that requires the public interest to be considered.
- 10.3 Harlow Council will provide advice and assistance (as set out below) to those who propose to make, or who have made requests for information to it in order to facilitate their rights under the Act.
- 10.4 Harlow Council will publish their procedures for dealing with requests for information, which will include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance.

- 10.5 Where an applicant is unable to make their request in writing, the Council will ensure that appropriate assistance is given by referring them to a relevant sub-agency. Alternatively, the Council may offer to take a note of the application over the phone, sending the note to the applicant for confirmation which, when verified by the applicant, will constitute a written request so that the time limit for dealing with the request will begin on receipt of the confirmation.
- 10.6 Harlow Council will provide assistance to an applicant to enable him/her to describe more clearly information requested if his/her initial description is insufficient for the Council to identify and locate such information. This may include providing the applicant with an outline of the different kinds of information which might meet the terms of the request, detailed catalogues and indexes of information, a general response to the request setting out options for further information which could be provided on request, or where a request would be refused on cost grounds, an indication of what information could be provided within the cost ceiling (see section 12 – Fees).
- 10.7 If, following the provision of such assistance, the applicant has failed to describe the information requested in a way that would enable the Council to identify and locate it the Council is not expected (obliged) to seek further clarification. The Council will disclose any information relating to the application, which has been successfully identified and found, and which can be disclosed under the provisions of the Act. The Council will also explain to the applicant why it cannot take the request any further and provide details of its complaints procedure.
- 10.8 Harlow Council will not require information from an applicant which he or she cannot reasonably be expected to possess, such as a file reference number, or a description of a particular record, unless this information is made available by the Council for the use of applicants.
- 10.9 Harlow Council will not provide assistance to applicants whose requests are vexatious within the meaning of the Act.

11. Requests for information where the Public Interest must be considered

- 11.1 Where Harlow Council needs to consider the public interest in respect of an application for exempt information, although there is no statutory time limit on the length of time the Council may take to reach its decision, it will give an estimate of the date by which it expects to reach such a decision. This estimate will be reasonable in the circumstances of the particular case, taking account, where necessary, of the need to consult third parties.

12. Fees

- 12.1 The Act does not require charges to be made for requests for information, but the Council has discretion to charge applicants a fee in respect of requests under the general right of access in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The Council's fees and charges under the Act are detailed in the Access to Information Fees and Charges Policy which is available on our website.
- 12.2 The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 do not cover material made available under a publication scheme, information reasonably accessible by other means, or information the disclosure of which the Council is permitted to charge for under any other enactment.

- 12.3 Fees and charges under this provision will be reviewed annually and recommendations made Committee, to ensure that any charges made for information are within the terms of any relevant guidance issued by, or approved by, the Information Commissioner or relevant government departments.

13. Transferring requests for information

- 13.1 When Harlow Council receives a request for information which it does not hold, but which it believes is held by another authority, then it will consider whether it can consult that authority with a view to finding out whether it does actually hold the information and, if so, whether it should transfer the request to it or ask the applicant to re-apply to the other authority. Harlow Council will be under a duty to take into account before transferring the request whether the applicant would object or whether a transfer is possible. All transfers of requests must take place "as soon as practicable".
- 13.2 When a request for information has been transferred to another authority with the agreement of the receiving authority, then Harlow Council has no further responsibility for handling the request.
- 13.3 The Council will also consider the most helpful way of assisting the applicant with his or her request. This may be to inform the applicant that another authority holds the information and to provide him or her with contact details for that authority.

14. Consultation with third parties

- 14.1 In some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, such as the right to have certain information treated in confidence, or rights under Article 8 of the European Convention on Human Rights (the right to respect for private and family life), or the Data Protection Act 1998. Where the consent of the third party would enable a disclosure to be made, Harlow Council may consult that party prior to reaching a decision unless this is not practicable.

15. Public Sector contracts

- 15.1 When entering into contracts, Harlow Council will refuse to include contractual terms which purport to restrict the disclosure of information held by the Council relating to the contract, beyond the restrictions permitted by the Act and the statutory guidance produced under its provisions. The Council will not agree to hold information in confidence, which is not in fact confidential in nature. Any such decisions will be taken on a case-by-case basis.
- 15.2 When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.
- 15.3 It is for Harlow Council, and not the contractor, to disclose information pursuant to the Act. However, the Council may need to protect from disclosure by the contractor, information which would be exempt from disclosure under the Act, by appropriate contractual terms. Any such constraints will be drawn according to the individual circumstances of the case.

16. Accepting Information in confidence from third parties

- 16.1 Harlow Council will only accept information from a third party in confidence if it is necessary to obtain that information in connection with the exercise of any of its functions. The Council will not agree to hold information received from third parties “in confidence” if it is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.

17. Consultation with Devolved Administrations

- 17.1 Harlow Council may consult with the relevant devolved administration before disclosing information provided by or directly concerning that administration.

18. Refusal of Requests

- 18.1 Harlow Council will when relying on a claim that the duty to confirm or deny does not arise because of an exemption, or on a claim that the information is exempt, notify the applicant of that fact, specifying the exemption in question and stating why it applies. This will be done within the time limit for compliance of 20 working days.
- 18.2 Where the Council has not yet reached a decision as to whether to disclose in the public interest, (despite exemption), it will notify the applicant within 20 working days that no decision has yet been reached. The notice will contain an estimate of the date by which the Council expects that such a decision will have been reached.
- 18.3 Harlow Council is not obliged to make a statement if this would involve the disclosure of information which would itself be exempt information.
- 18.4 A notice under any of these paragraphs will also contain details of any procedure provided by the Council for dealing with complaints about the handling of requests for information. The notice must also contain particulars of the right to apply to the Information Commissioner for a decision.

19. Exemptions

- 19.1 Harlow Council may be exempt from its duty to disclose information or its duty to confirm or deny whether it holds information if it falls under one of the exemptions contained in the Act.
- 19.2 There are two general categories of exemptions, those that are absolute, and those that are qualified. Where exemptions are qualified there is a duty to weigh up the public interest in disclosing information against the public interest in withholding the information. In the case of absolute exemptions, there is generally no obligation on the Council to disclose the information or consider the public interest in possible disclosure and generally no requirement on the Council to confirm or deny that it holds such information.
- 19.3 There are 23 exemptions listed in the Act (see Appendix C), but only 6 are absolute exemptions and 2 are absolute in part. Even in the case of absolute exemptions Harlow Council is still under the obligation to provide reasonable advice and assistance to persons making requests.
- 19.4 The existence of an absolute exemption does not mean that disclosure is not required in all cases; it means that disclosure is not required by this Act. For example, disclosure of personal information to a data subject may be required under the provisions of the Data Protection Act 1998.

- 19.5 The second general category of exemption covers those which are qualified, where there is a duty for the Council to consider the public interest in confirming or denying that the information exists and in disclosing information.
- 19.6 In the event of a complaint that information is not provided in response to a request under the Act, the Information Commissioner can, on request, decide whether the information in question is subject to the exemption that has been applied, unless a certificate which provides conclusive evidence of the application of the exemption applies.

20. Complaints procedure

- 20.1 Harlow Council has in place a procedure for dealing with complaints from people who consider that their request has not been properly handled, or who are otherwise dissatisfied with the outcome of their request and the issue cannot be resolved in discussion with the official dealing with the request.
- 20.2 When communicating any decision made in relation to a request under the Act, the Council will provide details of its complaints procedure, including how to make a complaint. Where practicable, a person who was not a party to the original decision will handle the complaint. If this is not possible, the circumstances will be explained to the complainant. In all cases, the complaint will be acknowledged and the complainant will be informed of the outcome of his or her complaint.
- 20.3 Harlow Council will publish target times for determining complaints and information as to how successful it is with meeting those targets. If a complaint is not going to be dealt with within the target time, the authority will inform the complainant and explain the reasons for the delay.
- 20.4 Records will be kept of all complaints and of their outcome. The Council has procedures in place for monitoring complaints and for reviewing, and, if necessary, amending, policies where such action is indicated by regular reversals of initial decisions.
- 20.5 Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the Council's favour, the applicant will be informed of his / her right to apply to the Information Commissioner, and will be given details of how to make an application for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.
- 20.6 Details of the Council's Complaints procedure are available on the Council's website www.harlow.gov.uk.

ENVIRONMENTAL INFORMATION REGULATIONS 2004

The Environmental Information Regulations 2004 (“the Regulations”) replace and widen the scope of the Environmental Information Regulations 1992 and from 1 January 2005 granted the public wider rights to request access to environmental information held by the Council, this includes information held on behalf of any other person, subject to certain conditions and exceptions contained in the Regulations. Any person making a request for environmental information to the Council is entitled to receive that information no later than 20 working days after the Council receives the request.

The Regulations stipulate that a request for environmental information does not need to be in writing.

21. Statement of Intent

- 21.1 Harlow Council intends to fulfil all its obligations under the Environmental Information Regulations 2004.
- 21.2 The Council will ensure that the public will have a general right of access to information it holds, subject to the conditions and exemptions contained in the Regulations.
- 21.3 In cases where an exception from disclosure applies to the information, the Council will inform the applicant whether they hold the information, and communicate the information to him / her, unless to do this is not in the public interest. In these cases the applicant will be informed of the reason the exception applies to the information e.g. information requested may be commercially sensitive.
- 21.4 The Council will ensure that it progressively makes information available to the public by electronic means which are easily accessible.
- 21.5 The Council will ensure that proper training is provided to officers who may be required to provide information, and that these officers are familiar with the requirements of the Regulations, taking into account any relevant guidance on good practice issued by the Information Commissioner.

22. Making requests for information

- 22.1 Since 1 January 2005 the public have had a general right of access to any recorded environmental information however it is held. This includes information held by the Council on behalf of another person.
- 22.2 Requests for information can be made verbally or in writing, and must provide the name of the applicant and an address to which the information can be sent. The Council intends to respond to requests within 20 working days, although this can be extended to 40 working days for complex and high volume requests.
- 22.3 Harlow Council will provide advice and assistance (as set out below) to those who propose to make, or who have made requests for information to it in order to facilitate their rights under the Regulations.
- 22.4 Harlow Council will publish their procedures for dealing with requests for information, which will include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance.
- 22.5 Harlow Council will provide assistance to an applicant to enable him/her to describe more clearly information requested if his/her initial description is insufficient for the Council to identify and locate such information. This may include providing the applicant with an outline

of the different kinds of information which might meet the terms of the request, detailed catalogues and indexes of information, a general response to the request setting out options for further information which could be provided on request.

- 22.6 If, following the provision of such assistance, the applicant has failed to describe the information requested in a way that would enable the Council to identify and locate it the Council is not expected (obliged) to seek further clarification. The Council must disclose any information relating to the application, which has been successfully identified and found, and which can be disclosed under the provisions of the Regulations. The Council should also explain to the applicant why it cannot take the request any further and provide details of its complaints procedure.
- 22.7 Harlow Council will not require information from an applicant which he or she cannot reasonably be expected to possess, such as a file reference number, or a description of a particular record, unless this information is made available by the Council for the use of applicants.

23. Requests for information where the Public Interest must be considered

- 23.1 Where Harlow Council needs to consider the public interest test in respect of a request for information, the Council will do so no later than 20 working days after the date of receipt of the request.

24. Fees

- 24.1 The Regulations allow the Council to charge a 'reasonable fee' for complying with a request, unless they are providing access to a public register or if the applicant examines the information at a place made available by the authority.
- 24.2 The Council's fees and charges for Environmental Information are detailed in the Access to Information Fees and Charges Policy which is available on our website.
- 24.3 Fees and charges under this provision will be reviewed annually and recommendations made Committee, to ensure that any charges made for information are within the terms of any relevant guidance issued by, or approved by, the Information Commissioner or relevant government departments.

25. Transferring requests for information

- 25.1 When Harlow Council receives a request for information which it does not hold and which is not held by any other person on its behalf and it believes the information is held by another authority, then it will consider whether it can consult that authority with a view to finding out whether it does actually hold the information and, if so, whether it should transfer the request to it or ask the Applicant to re-apply to the other authority. Harlow Council will be under a duty to take into account before transferring the request whether the applicant would object or whether a transfer is possible. Harlow Council will not disclose the identity of the applicant requesting the information unless they have consented to the disclosure. All transfers of requests must take place "as soon as practicable".
- 25.2 When a request for information has been transferred to another authority with the agreement of the receiving authority, then Harlow Council has no further responsibility for handling the request.

- 25.3 The Council should also consider the most helpful way of assisting the applicant with his or her request. This may be to inform the applicant that another authority holds the information and to provide him or her with contact details for that authority.

26. Consultation with third parties

- 26.1 The Council recognises that unless an exception is provided for in the Regulations in relation to any particular information it will be obliged to disclose that information in response to a request.
- 26.2 The Council acknowledges that, unlike the Freedom of Information Act, the Regulations contain no 'absolute' exceptions, and the lack of consent of a third party does not necessarily preclude disclosure. The Council will disclose the information if the public interest in disclosing it outweighs the public interest in withholding it.
- 26.3 The Council may consider that consultation is not appropriate where the cost of consulting with third parties would be disproportionate. In such cases, the Council will consider the most reasonable course of action for it to take in light of the requirement of the Regulations and the individual circumstances of the request.
- 26.4 Where the interest of a number of third parties may be affected by a disclosure and those parties have a representative organisation that can express views on behalf of those parties the Council will, if it considers consultation appropriate, consider that it would be sufficient to consult that representative organisation. If there is no representative organisation, the Council may consider that it would be sufficient to consult a representative sample of the third parties in question.
- 26.5 The fact that the third party has not responded to consultation does not relieve the Council of its duty to disclose information under the Regulations, or its duty to reply within the time specified in the Regulations. In all cases, it is for the Council, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the Regulations. A refusal to consent to disclosure by a third party does not, in itself, mean information should be withheld.

27. Public Sector contracts

- 27.1 When entering into contracts the Council will refuse to include contractual terms that purport to restrict the disclosure of environmental information held by the Council and relating to the contract beyond the restriction permitted by the Regulations. Unless an exception provided for under the Regulations is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract. Where personal data is concerned, this will be done in accordance with the requirements of the Data Protection Act 1998.
- 27.2 When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. The Council will reject such clauses wherever possible and explain the relevance of the public interest test. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligation under the Regulations, as described in the paragraph above. Any acceptance of such confidentiality provision must be for good reasons and capable of being justified to the Information Commissioner.

- 27.3 The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. The Council acknowledges that certain exceptions including those for commercially confidentiality, and voluntarily supplied data, are not available when the information requested is about emissions in to environment.
- 27.4 It is for the Council to disclose information pursuant to the Regulations, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Regulations) by appropriate contractual terms. In these cases, contracts or other working arrangements will be made to ensure appropriate consultation about the handling of request for information exchanged between the parties. Any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.

28. Accepting Information in confidence from third parties

- 28.1 The Council will only accept information from third parties in confidence, if it is necessary to obtain that information in connection with the exercise of any of the Council's function and it would not otherwise be provided. Even in these circumstances the Council will explain the relevance of the public interest test and the fact that there could be circumstances in which the public interest in responding to a request outweighs the desires for confidentiality of a third party.
- 28.2 The Council will not agree to hold information received from third parties "in confidence" which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

29. Consultation with Devolved Administrations

- 29.1 Harlow Council may consult with the relevant devolved administration before disclosing information provided by or directly concerning that administration.

30. Refusal of Requests

- 30.1 If the Council refuses a request for information in accordance with an exception, the applicant will be informed in writing which exception has been claimed and why that exception applies, and will do so no later than 20 working days after the date of receipt of the request. The Council will state in its decision notice the reasons for claiming that the public interest in maintaining the exception outweighs the public interest in disclosure. The applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the Council under the Regulations and the rights of appeal to the Information Commissioner.
- 30.2 Harlow Council is not obliged to make a statement if this would involve the disclosure of information which would itself be withheld in accordance with the Regulations.
- 30.3 The Council will keep a record of all notices issued to refuse requests for information.

31. Exceptions

- 31.1 There is a presumption under the Regulations that environmental information must be released, unless there are strong public interest considerations to justify withholding it (outweighing the public interest in release).

- 31.2 Refusal is only permissible on the limited grounds set out in the Regulations. Details of the exceptions under the Regulations are listed at Appendix D.

32. Complaints procedure

- 32.1 Harlow Council has in place a procedure for dealing with complaints from people who consider that their request has not been properly handled, or who are otherwise dissatisfied with the outcome of their request and the issue cannot be resolved in discussion with the official dealing with the request.
- 32.2 When communicating any decision made in relation to a request under the Regulations, the Council will provide details of its complaints procedure, including how to make a complaint. Where practicable, a person who was not a party to the original decision will handle the complaint. If this is not possible, the circumstances will be explained to the complainant. In all cases, the complaint will be acknowledged and the complainant will be informed of the outcome of his or her complaint.
- 32.3 Harlow Council will publish target times for determining complaints and information as to how successful it is with meeting those targets. If a complaint is not going to be dealt with within the target time, the authority will inform the complainant and explain the reasons for the delay.
- 32.4 Records will be kept of all complaints and of their outcome. The Council has procedures in place for monitoring complaints and for reviewing, and, if necessary, amending, policies where such action is indicated by regular reversals of initial decisions.
- 32.5 Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the Council's favour, the applicant will be informed of his / her right to apply to the Information Commissioner, and will be given details of how to make an application for a decision on whether the request for information has been dealt with in accordance with the requirements of the Regulations.
- 32.6 Details of the Council's Complaints procedure are available on the Council's website www.harlow.gov.uk.

APPENDIX A – Other Legislation affording statutory access rights

- Local Government Act 1972
- Local Government (Access to Information) Act 1985
- The Local Authorities (Executive Arrangements)(Access to Information) (England) Regulations 2000 (these regulation are based on Part II of the Local Government Act 2000)
- Accounts and Audit Regulations 2003

This is not a definitive list

APPENDIX B – Environmental Information Definition

Environmental Information is defined as information that relates to:

- (a) the state of the elements of the environment such as, air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

APPENDIX C – Freedom of Information Act 2000 - Exemptions

Absolute exemptions

- Information accessible to applicants by other means.

If information is reasonably accessible to the applicant by a route other than the Act it is exempt information. This is the case even if the applicant would have to pay for the information under that alternative route. This exemption includes cases where an authority is required to communicate information under other legislation, for example in birth, marriage and death certificates, and where the information is available via publication schemes. Even though the information is exempt the duty to confirm or deny will still apply.

- Information dealing with security matters supplied by, or relating to, bodies dealing with security matters specified by the Act.
- Court records.
- Parliamentary privilege (as certified by the Speaker of the House or Clerk of the Parliaments).
- Information provided in confidence (where disclosure of the information would constitute an actionable breach of confidence).
- Information the disclosure of which is prohibited by an enactment is incompatible with any Community obligation or would be a contempt of Court.

Absolute in part:

- Prejudice to effective conduct of public affairs (only so far as relating to information held by the House of Commons or the House of Lords).
- Personal information (absolute where the applicant is the data subject of the information, as these requests should be dealt with under the Data Protection Act 1998, but not in relation to information relating to a third party).

Qualified exemptions (subject to the Public Interest Test)

- Information intended for future publication.
- National security (excluding matters covered by the absolute exemption).
- Defence.
- International Relations.
- Relations within the UK. (Information likely to prejudice relations between the UK administrations e.g. UK Government, National Assembly for Wales.)
- The economy.
- Investigations and proceedings conducted by public authorities.
- Law enforcement.
- Audit functions.
- Formulation of government policy.

- Communications with the Queen.
- Health and safety. (Information is exempt if its disclosure would, or would be likely to, endanger the physical or mental health of any individual or endanger the safety of any individual.)
- Environmental information.
- Legal Professional Privilege.
- Commercial Interests. (Information is exempt if it constitutes a trade secret or would, or would be likely to, prejudice the commercial interests of any person [including Harlow Council]. The duty to confirm or deny does not arise if prejudice would result to commercial interests, but not where the information constitutes a trade secret.)

Public Interest Test

In all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information.

APPENDIX D – Environmental Information Regulations 2004 – Exceptions

A public authority may refuse to disclose environmental information if:

- in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information;
- the information requested includes personal data of which the applicant is not the data subject and disclosure would contravene the Data Protection Act 1998;
- an exception to disclosure applies.

The exceptions are:

- 4(a) the authority does not hold the information when an applicant's request is received;
- 4(b) the request for information is manifestly unreasonable;
- 4(c) the request for information is formulated in too general a manner and the authority has complied with its duty under Regulation 9 to ask the applicant for more details in relation to the request;
- 4(d) the request relates to material which is unfinished or incomplete;
- 4(e) the request involves the disclosure of internal communications;

The request involves disclosure which would adversely affect:

- 5(a) international relations, defence, national security or public safety;
- 5(b) the course of justice, the ability of a person to receive a fair trial or the ability of an authority to conduct an inquiry of a criminal or disciplinary nature;
- 5(c) intellectual property rights;
- 5(d) the confidentiality of the proceedings of that or any other public authority which such confidentiality is provided by law;
- 5(e) the confidentiality of commercial or industrial information which such confidentiality is provided by law to protect a legitimate economic interest;
- 5(f) the interest of the person who provided the information where that person:
 - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority,
 - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from the Regulations to disclose it, and
 - (iii) has not consented to its disclosure.
- 5(g) the protection of the environment to which the information relates.

A public authority does not have to confirm or deny whether information exists if confirmation or denial would involve the disclosure of information which would adversely affect international relations, defence, national security or public safety, and would not be in the public interest.

A public authority cannot refuse to disclose environmental information relating to emissions under exceptions 5 (d) to (g) above.

Revision History

Date of this revision: 27/04/2009

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| 17/03/2008 | | Ratified at Policy and Resources Committee 13/03/2008 | |
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