

Merthyr Tydfil County Borough **Council**

FREEDOM OF INFORMATION **REQUEST PROCEDURE**

Information Governance Team



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<u>CONTENTS</u>	<u>PAGE</u>
1 Introduction	4
2 Objectives	4
3 Scope	4
4 Procedure Statement	4
5 Procedure Principles	4
6 Procedure for making a request for information	5
7 Timeframe for a response	6
8 Requesting clarification	7
9 Third Party Consultation	7
10 Transferring a Request to another Public Authority	7
11 Charging for information	8
12 Receiving a response	9
13 Refusing a Request for information	9
14 Disclosure Log	11
15 Complaints	11
16 Appealing a Refusal Notice	12
17 Appealing to the ICO	12
18 Legal Considerations	13
19 Implementation Responsibilities	13
20 Procedure Review and Maintenance	14

1. Introduction

The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by Merthyr Tydfil County Borough Council (the Council). This Procedure is for members of the public and explains how to make a request for information to the Council.

2. Objective

This document will outline the Procedure and procedures in place that must be adhered to at all times when dealing with requests for information made under the FOIA.

It sets out the principles which underpin the Council's approach to promote open government. It also reinforces the Council's commitment and intention to promote open government by following set procedures when dealing with requests for information.

3. Scope

This document outlines how an applicant can make a request for information under the FOIA.

This is not a legal document. It does not confer rights nor override any legal or statutory provisions which either require or prevent disclosure of information.

This document takes into account the key features of the FOIA and outlines how the Council will take steps to ensure compliance with the FOIA.

Throughout this document all references to the Council are references to Merthyr Tydfil County Borough Council.

4. Procedure Statement

The Council takes seriously its statutory responsibilities and will, at all times, act in accordance with the Freedom of information Act and ICO Codes and take necessary and proportionate action in these types of matters. In that regard, the Information Governance Forum is duly authorised by the Council to keep this Procedure up to date and to amend, delete, add or substitute relevant provisions, as necessary.

5. Procedure Principles

The FOIA provides a general right of access to recorded information held by the Council and places two general duties on the Council;

- a. To confirm or deny that it holds the information requested and
- b. If the information is held give the requestor access to it.

The FOIA also provides that some documents are subject to exemptions; these are set out under Part II of the FOIA. Some exemptions are subject to a public interest test.

The FOIA provides that in addition to the exemptions, the Council may refuse to confirm or deny holding information and/or to give access to it on the ground of non-payment of a fee, excessive cost, where the request has been repeated or if the applicant has not provided sufficient detail to identify the information required.

The FOIA allows the Council to charge fees in accordance with regulations to be made by the Home Secretary and exempts the Council from disclosing information until the fee has been paid. It also exempts the Council from the obligation to disclose the information requested if the cost of doing so exceeds a specified threshold.

The FOIA requires the Council to provide advice and assistance to people seeking information. It requires the Council to state the basis for the refusal of a request for information and to provide advice on how to complain in those circumstances. The FOIA also places statutory time limits for complying with a request for information on the Council which is 20 working days from the date of receipt.

6. Procedure for making a request for information

All requests must be made in writing and sent to the Data Disclosure and Records Officer for processing.

The Data Disclosure and Records Officers contact details are:

Address: Merthyr Tydfil County Borough Council
Information Governance Team
Civic Centre
Castle Street
Merthyr Tydfil
CF47 8AN

Email: FOI@merthyr.gov.uk

Phone: 01685 725000

There are numerous ways a request can be submitted to the Council. The main methods used are via the post, by fax, by email (using the details outlined above) or via the Council's online Request for Information Form. This form can be found on the Council's website www.merthyr.gov.uk.

Requests can also be submitted through the Council's social networking pages on Facebook and Twitter. The Council currently has 3 social networking accounts, details of which are below:

- ❖ Facebook: Merthyr Tydfil CBC
- ❖ Facebook: Visit Merthyr
- ❖ Twitter: @MerthyrCBC

When a request is received through a social networking site the Council will endeavour to respond through the same channel. When an applicant submits a request through the Council's social networking accounts, it is essential for the applicant to provide their real name in order to be compliant with Section 8 of the FOIA. In the instances where an applicant does not provide their real name, but a pseudo name, it is not a valid request. If the Council responds to a request where a valid name has not been provided, the Information Commissioner will not be able to deal with any subsequent complaint.

In relation to requests received through Facebook, the Council will respond using the private message option where possible. It is essential that applicants have their Facebook message option set to 'everyone' so that the Council may respond. If an applicant's profile is set to 'public' and the 'write to wall' function is enabled, the Council will respond using this method. Where both of these options have been disabled the Council will comment on the applicant's original post providing a link to the Council's external website where the applicant can locate their response.

In relation to requests received through Twitter, the Council will respond by tweeting a link to the Council's website directly to the requester using @[profilename]. As Twitter only allows for short text messages it is advisable for the applicant to provide a suitable email address for communications to be sent.

Requests may also be submitted through independent websites that offer a service which allows the public to contact the Council, and make a request through the site. Requests for information can be submitted through an independent website, as long as the Council can reply to it.

It is essential for applicants to remember that unlike submitting requests via email, post or through the online request form, requests submitted through social networking and independent websites take place in the open. As such, all communications exchanged between the applicant and the Council can be seen by all within the public domain.

7. Timeframe for a response

The Council will inform the applicant in writing whether we hold the information requested and if so, communicate that information to the applicant, promptly, and no later than 20 working days after receipt of the request.

The 20 working day clock starts the day after the Council receives the request. According to section 10(1) the time limit for compliance is the twentieth working day following the date of receipt.

If a request for information is received after the close of the Council offices, which is 5pm Monday – Friday, it will be received by the Council the following working day.

A request is classed as received as soon as it is delivered to the Council, or it is within the Council's possession. In relation to emails, a request has been received as soon as it arrives in an Officers mailbox. In respect of e-mails, where an automated 'out of office' message

provides instructions on how to re-direct a message, the request would not be 'received' until it was re-sent to the alternative contact.

8. Requesting Clarification

In the event that a request received from an applicant is unclear or is not specific enough the Council may request clarification. The Council is not required to respond to a request for information until the further information has been provided.

The 20 working day deadline will not start until the Council receives the information required, which will enable the Council to prepare the required response. The Council will contact the applicant seeking further information as soon as possible, and will not under any circumstances, cause a delay for response in order to have more time to prepare a response.

The Council will acknowledge the applicants clarification promptly and respond in the same manner as other FOI requests.

9. Third Party Consultations

There are instances where information requested concerns the details of or documents that have been provided by another organisation, public body or individual, these are known as third parties. In these circumstances the Council will need to take reasonable steps to contact and consult with the third party prior to the release of the information.

During the consultation with the third parties the identity of the individual will not be disclosed. If the applicant's identity is required by the third party the Council will seek permission from the applicant first.

Although the third party will be consulted, the decision as to whether or not to release the information will remain with the Council. Each case will be considered based on its individual merits.

10. Transferring a Request to another Public Authority

There are instances where the Council will receive a request where part or all of the information is held by another public authority.

In these instances the Council will contact the applicant and inform them that the information they have requested may be held by another authority. The Council will suggest that the applicant re-applies to the authority that may hold the information; and we will also provide the applicant with contact details for that authority.

In some cases the Council can transfer a request directly to the other public authority on behalf of an applicant. If this is the case, then the Council will consult the other authority with a view to finding out whether it does in fact hold the information. After which the Council will consider whether a transfer is appropriate; and if so consider whether the applicant is likely to have any grounds to object to the transfer.

The Council will only transfer a request to another authority provided we have the applicants consent. All request transfers will take place as soon as possible. The Council will inform the applicant as soon as the transfer has taken place.

The 20 working day deadline will not begin until the other authority has received the request from the Council, at this point the Council will not take any further action with the request.

11. Charging for information

There are instances when the Council can charge for complying with a request for information.

Currently, the cost limit for complying with a request or a linked series of requests from the same person or group is set at £450. The Council is able to refuse a request if we estimate that the cost of compliance would exceed the £450 limit. This provision is found at section 12 of the FOIA.

The Council may also refuse a request if deciding whether we hold the information would exceed the cost limit, for example, because it would require an extensive search in a number of locations.

When calculating the costs of complying, the Council is able to aggregate the costs of all related requests received within 60 days from the same applicant or from applicants who seem to be working together.

When estimating the cost of compliance, the Council will take into consideration the cost of:

- ❖ Determining whether we hold the information requested
- ❖ Locating the information
- ❖ Retrieving the information or documents
- ❖ Extracting the information from the documents containing it

The cost of staff time associated with these activities is currently calculated at £25 per hour. This hourly rate has been set by Parliament and therefore cannot be altered by the Council. In order to reach the threshold of £450, complying with a request will need to take 18 hours or more.

When considering the costs of replying to a request, the Council will not include the time spent deciding whether or not information is exempt from disclosure when calculating the cost of responding.

Where the limit is not exceeded, or complying with a request will take less than 18 hours, the Council is able to charge the applicant for the cost associated with providing the information, for example photocopying and postage. These are collectively known as disbursements.

The Council charges in accordance with the ICO recommendations which are:

- | | |
|----------------------|-----------------------|
| ❖ A4 Black and White | £0.10p (single sheet) |
| ❖ A4 Colour | £0.15p (single sheet) |
| ❖ A3 Black and White | £0.20p (single sheet) |
| ❖ A3 Colour | £0.30p (single sheet) |

The first £4.99 of photocopying is free.

Postage charges will vary depending on the size and weight of the parcel.

If an applicant is required to pay a fee, according to Section 9 of FOIA the 20 working day deadline for a response will not start until the fee has been received by the Council. If the applicant pays the fee via cheque, the 20 working day deadline will not start until the cheque has cleared. The Council will bank all cheques received promptly and without any unnecessary delay.

12. Receiving a response

The Council will aim to provide responses to all requests for information within the 20 working day time limit.

Responses to requests will be in an easy to read clear language format. There are instances where an applicant may request their response to be in a specific format. Where reasonably practicable the Council will comply with the stated preference. Where it is not reasonably practicable to comply with the applicants preferences an explanation as to why this is will be given.

The Council will respond promptly and positively to each request. A detailed and comprehensive response will be provided to the applicant requesting information. The Council will be as open and helpful as possible ensuring compliance with the FOIA and all other legislation.

13. Refusing a request for information

The Council is not always able to provide the information that is requested under the FOIA. There are occasions where there will be a good reason why the Council should not disclose some or all of the information requested.

The Council can refuse all or part of a request under the following circumstances:

- ❖ It would cost too much or take too much staff time to deal with the request.
- ❖ The request is vexatious.
- ❖ The request repeats a previous request from the same person.
- ❖ If one of the exemptions under part II of the FOIA apply

The FOIA contains a number of exemptions that allow the Council to withhold information, therefore refusing entry into the public domain. It also enables the Council to refuse to confirm or deny whether the information requested is held.

Exemptions exist to protect information that should not be disclosed, for example because disclosing it would be harmful to another person or it would be against the public interest.

Some exemptions contained within part II of the FOIA relate to a particular type of information, for instance, formulation of Council Procedure and procedures. Other exemptions are based on the harm that would arise or would be likely arise from disclosure, for example, if disclosure would be likely to prejudice a criminal investigation or prejudice someone's commercial interests. There is also an exemption for personal data (this information relates to or identifies a living individual) if releasing it would be contrary to the General Data Protection Regulations.

When applying an exemption, the Council will consider the information contained within a document separately against each exemption. This may mean that an exemption may only apply to part of the information requested, or that different exemptions apply to different sections of a document.

There are two types of exemptions, absolute exemptions and qualified exemptions. An absolute exemption provides an automatic right to refuse the disclosure of information. Qualified exemptions are subject to a Public Interest Test (PIT). This is a balancing exercise used to weigh arguments for and against disclosure. As a result before withholding information under a qualified exemption, the Council must consider the public interest arguments. The FOIA requires the Council to disclose information unless there is good reason not to, so the exemption can only be maintained (upheld) if the public interest in doing so outweighs the public interest in disclosure.

The Council considers each request submitted on a case by case basis. We do not apply blanket exemptions to particular pieces of information. As such we do not automatically withhold information.

There are certain circumstances whereby the Council is unable to confirm or deny that the information requested exists. This situation arises when even confirming information is held would be damaging. In these instances the Council will give a neither confirm nor deny response. This response will be applied consistently in any case where confirming or denying the existence of information could be classed as harmful.

The Council will issue a refusal notice within the neither confirm nor deny response. Due to the nature of the response the Council would not address the question of whether any information that is held should be disclosed.

As a general rule, the Council will not take into account the identity or intentions of a requester when considering whether to comply with a request for information. However, the Council is able to refuse to comply with a request that is vexatious. A vexatious request is a repeated request from the same applicant.

When assessing whether a request is vexatious, the FOIA permits the Council to take into account the context and history of a request, including the identity of the requester and the Council's previous contact with them. The decision to refuse a request often follows a long series of requests and correspondence.

When deciding whether a request is vexatious, the Council will consider a number of different factors, including:

- ❖ how much work complying with the requests creates;
- ❖ the applicant's tone and manner when communicating with the Council;
- ❖ whether the request appears obsessive; and
- ❖ whether there is any value in the request

If the Council refuses all or part of a request a Refusal Notice will be issued to the applicant. The refusal notice will detail whether the Council is refusing to disclose information that is held, refusing to confirm or deny that the information is held, refusing to deal with a vexatious request or whether the cost of complying with a request exceeds the appropriate limit (£450).

The refusal notice will state what exemption has been applied and why. If the exemption is a qualified exemption then the public interest test will be applied and the Council's reasoning for applying the exemption will be explained.

14. Disclosure Log

If the information requested is released the response will be included in the Council's Disclosure Log.

The Council's disclosure log can be located on our external website (www.merthyr.gov.uk). This log holds a record of all the responses issued in relation to a request for information, including the request that have been refused.

The Council advises all applicants to view the Disclosure Log before submitting a request as they may find the information previously disclosed helpful.

15. Complaints

The Council will provide a right of complaint to all applicants in the event they are dissatisfied with the handling of their request.

If an applicant is unhappy with the service they have received they should firstly phone, visit or write to the Data Disclosure and Records Officer outlining any issues they have. The Data Disclosure and Records Officer will try and resolve the issues quickly and courteously, and offer the applicant any help required in order to resolve the issues. The Data Disclosure and Records Officer will try to sort out any mistakes or misunderstandings as soon as possible, in order to resolve the problem as soon as possible in an informal way.

If the applicant is dissatisfied with the Data Disclosure and Records Officers decision they have the right to make a formal complaint using the Councils Corporate Complaints Procedure.

Corporate Complaints are handled by the Councils designated Complaints Officer. If an applicant wishes to make a formal complaint about the handling of their request, they will be required to complete a Complaints Form.

Applicants can find more information about how to make a formal complaint by reading the Compliments, Comments and Complaints Procedure on our external website www.merthyr.gov.uk.

16. Appealing a Refusal Notice

If the Council issues a Refusal Notice and the applicant believes that an error has been made they are able to appeal the Councils decision by seeking an internal review.

The Data Protection Officer handles all internal reviews on behalf of the Council. Once an appeal has been received the Data Protection Officer will acknowledge receipt and reconsider the request. The Data Protection Officer will consider the initial request, the Councils refusal notice and any other supporting documents that were used in reaching the decision to refuse the request.

The Data Protection Officer will then reconsider whether or not a correct decision has been made in refusing the request. The applicant will be notified of the outcomes of the internal review as soon as possible. All internal reviews will be concluded within 20 working days.

If an applicant's appeal is successful they will receive the information they requested within that response. If the appeal is unsuccessful the Data Protection Officer will provide a detailed explanation of the findings and supply further information

17. Appealing to the ICO

If an applicant is not satisfied with the outcome of the internal review they have the right to submit a complaint to the ICO. The ICO will make an initial assessment of the case before carrying out an investigation.

The ICO has written guidance notes for applicants on how to complain to the ICO and published it on their website, www.ico.org.uk

The Information Commissioners Welsh Office contact details are:

Information Commissioner's Office (Wales)
2nd Floor,
Churchill House,
Churchill Way,
Cardiff
CF10 2HH

Tel: 0330 414 6421

Email: casework@ico.gov.uk

Website: www.ico.org.uk

18. Legal Considerations

In creating this Procedure the Council has given due regard to the following Legislative frameworks:

- ❖ The Human Rights Act 1998 – Article 8 of this Act gives a right to respect for private and family life, home and correspondence. The Council acknowledges that employees have a reasonable expectation of privacy in the workplace. This Procedure does not intend to infringe your Article 8 rights.
- ❖ The Data Protection Legislation – This includes the General Data Protection Regulations and the Data Protection Act 2018. This Act provides a legal framework which sets out how information relating to employees, customers, clients etc. can be collected, handled and used. This Procedure aims to set out how the Council will comply with data protection across Council Departments.
- ❖ The Regulation of Investigatory Powers Act 2000 – This Act covers the extent to which the Council is able to monitor and record private communications received within our telecommunication systems. It applies to all public and private communications networks. The Council will abide by these Regulations and will not unlawfully intercept your communications. Where appropriate approval will be sought prior to any interference of staff private communications.

19. Implementation Responsibilities

The Information Governance Team shall develop, maintain, and publish processes to achieve compliance with this Procedure.

Employees will be aware of and adhere to all other relevant policies and procedures.

All Heads of Service shall be responsible for implementing this Procedure within their areas of responsibility.

20. Procedure Review and Maintenance

The Freedom of Information Request Procedure shall be reviewed annually and at times as dictated by operational needs.