

Caerphilly County Borough Council

Access to Unpublished Information Policy

Version:	Version 5
Date:	February 2018
Author/s:	Corporate Information Governance Manager
Consultee/s:	Senior Information Risk Owner; Head of Legal Services; Corporate Management Team, Information Governance Project Team
Approved by:	Cabinet
Review frequency:	Every 2 years
Next review date:	February 2020

A greener place
Man gwyrddach



1. Guiding principles

1.1 Caerphilly County Borough Council values its information as a critical asset for effective service delivery. The Council aims to make as much information as possible available for consultation and re-use to facilitate open and transparent government, and for the benefit of the local and national economy.

1.2 The Council is committed to:

- openness and transparency in the way it conducts its business, encouraging partner organisations engaged in public service to do the same, to help improve public services and empower citizens;
- making as much information available as possible without copyright, patent or other control restrictions, subject to the terms of the Open Government Licence, to foster innovation in the local area and drive economic growth;
- respecting principles of privacy and confidentiality whilst making available information that is in the public interest, in line with laws governing the release of information;
- providing a prompt, courteous and comprehensive response to requests for information, presenting information in clear language, in a format that takes account of different needs and free of charge wherever reasonable;
- providing a right of complaint where an individual is not satisfied with the response received.

2. Scope of policy

2.1 This policy outlines the Council's commitment to making unpublished information available in accordance with principles of open government and with the law, which includes:

- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Data protection law including the 1998 Act, the new 2018 Act, and the General Data Protection Regulations 2016
- Digital Economy Act 2017
- Protection of Freedoms Act 2012
- Re-use of Public Sector Information Regulations 2015
- INSPIRE Regulations 2009
- The Local Government (Access to Information) (Variation) (Wales) Order 2007
- The Access to Information Act 1985

2.2 This policy does not cover elected members' rights of access to information, as these rights are covered by a protocol in the Council's Constitution.

- 2.3 This policy does not cover the sharing of personal information with other organisations in order to deliver services to individuals. Provisions within data protection law together with agreements such as the Wales Accord on Sharing Personal Information (WASPI) would cover this activity.

3. Principal Information Access Laws

- 3.1 The principal laws that cover access to unpublished public sector information are described below. These laws and case law change from time to time, and the Council adapts to these changes to ensure full compliance with the law.
- 3.2 In cases where an applicant requests information which needs to be considered under more than one information access law, applicants will be advised of which information is being considered under which law and the relevant timescales.

Freedom of Information Act 2000 (FOI)

- 3.3 The FOI Act is a general right of access to unpublished information. Once in receipt of a request made in writing, the Council has a duty to confirm or deny whether information is held, and supply the information, normally within 20 working days, as long as an exemption does not apply.
- 3.4 The FOI Act also imposes a duty for the Council to proactively publish certain categories of information. To fulfil this duty, the Council has adopted the Information Commissioner's Model Publication Scheme for Local Government. The Publication Scheme can be found on the Council's website, but the information listed can be located in a variety of places as outlined in the Scheme, for example via the Council's website, library, or reception of main public buildings.

Environmental Information Regulations 2004 (EIR)

- 3.5 Information that is classed as 'environmental information' must be dealt with under EIR, rather than FOI. The definition of environmental information is very broad ranging, and can include information on the state of the environment e.g. flooding; on measures that affect the environment such as policies and legislation; and on state of human health and safety, the food chain, cultural/built structures, air pollution etc.
- 3.6 Requests can be made verbally as well as in writing; in some circumstances exceptions may apply where the public interest is against disclosure of information; and whilst the timescale is usually 20 working days, it can be extended in certain circumstances.

Data protection law (DPA)

- 3.7 A great deal of the information that the Council holds is personal data, and FOI does not make this information available to the public.
- 3.8 The Council takes its legal duty to protect personal information of individuals very seriously, and any request for information that contains personal data will be carefully

considered with reference to data protection law. This includes the 1998 Act (DPA), the General Data Protection Regulation 2016 (GDPR), the new UK Data Protection Act expected to be enacted during 2018, as well as the common law duty of confidentiality and the Human Rights Act 1998.

- 3.9 If any person wants access to information that is held about themselves they can make a Subject Access Request under data protection law.

Routine requests for information

- 3.10 Examples of a routine request could be a request for a copy of a document produced by a service area or a request for opening hours or details of service. The Council will not fully engage FOI, EIR or DPA procedures, but will seek to comply with the statutory deadlines.

4. Making a request for information

- 4.1 The Council would encourage any individual seeking to make a request for information from the Council to follow the guide on the Information Commissioner's website at www.ico.org.uk. In line with the Section 45 Code of Practice under FOI, the Council will provide applicants with advice and assistance in making requests for information.
- 4.2 In most cases requests for information must be made in writing (including email), but requests for environmental information can be made verbally. The request for information must include the following:
- a name and address to which a reply may be sent;
 - sufficient detail for officers to identify what information is required - if a request does not contain enough detail, clarification will be sought from the applicant;
 - in the case of a Subject Access Request, proof of identification is also required.
- 4.3 Applicants may express a preference for how the information is to be supplied and where reasonably practicable the Council will comply with the stated preference or provide an explanation if this is not possible.

5. Third party information that does not contain personal data

- 5.1 The approach to handling any request for third party information that is personal in nature is described in Section 3.3.
- 5.2 If non-personal information is requested from the Council that relates to a third party, for example a supplier or a partner organisation, the request will be considered with reference to exemptions available under FOI/EIR law, many of which are subject to a public interest test, to judge whether disclosure would be in the public interest.
- 5.3 The Council will endeavour to consult with third parties affected by disclosure of information as long as timescales permit, but the final decision must rest with the Council.

- 5.4 Contracts/agreements in place between the Council and partner organisations will include terms outlining the Council's legal responsibilities to consider disclosure of information on receipt of a request.

6. Charging for Information

- 6.1 The Council aims to make as much information as possible available free of charge. If there are charges for Council publications or information listed in the Publication Scheme, these charges will be advertised in advance.
- 6.2 The law enables a charge to be made to respond to a request for unpublished information in some circumstances, for example if it takes a significant amount of time to locate, retrieve or extract information to answer a request, or to cover the costs of communicating information to the applicant, e.g. for photocopying, printing and postage.
- 6.3 If a charge applies, it will be calculated in accordance with the law and guidance from the Information Commissioner, and will be explained to the applicant in advance.
- 6.4 There is no charge for inspection of public registers held at Council offices or for information held at public libraries including during normal working hours.

7. Equalities and Welsh language

- 7.1 The vast majority of information published by the Council is available bilingually, in line with Welsh Language Standards. If a request is made for unpublished information in Welsh, the information will be provided in the format in which it was originally produced, but the covering letter will be sent in Welsh.
- 7.2 The Council will make every effort to make information available in other formats. In some cases a charge will apply, and this would be explained to applicants in advance.

8. Complaints

- 8.1 The Section 45 FOI Code of Practice requires the Council to provide advice and assistance to people seeking information, to state the basis for any refusal of a request for information, and to provide advice on how to make a complaint.
- 8.2 Advice on how to make an Information Request Complaint can be obtained from Corporate Information Governance Unit on 01443 864322 or at foi@caerphilly.gov.uk.
- 8.3 If the applicant is still not satisfied after the internal Information Request Complaint has been dealt with, they have a further statutory right of complaint to the Information Commissioner.

9. Related policies and resources

- 9.1 Caerphilly CBC Data Protection Policy

- 9.2 Caerphilly CBC Records Management Policy
- 9.3 Information Commissioner website www.ico.org.uk

Appendix 1 Which access regime is applicable?

