

Information Law (Freedom of Information, Environmental Information and Data Protection

The General Public's Right to Request Information – Request update from Information Manager

The Council controls a lot of data and information, and wherever possible, we make that information publicly accessible via the website. The only type of data we would not generally apply this to is personal data.

As a Councillor, if there is certain information you need but cannot find, please ask Democratic Services.

The Council are bound by several pieces of legislation which require us to be transparent and, in addition, provide information when requested by the public.

Under the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR), the public have the right of access to information either held by the Council, or on behalf of the Council (contractors).

Anyone (individuals, organisations and companies) has a right to request information from a public authority. For a request to be valid under the Freedom of Information Act it must be in writing, but requesters do not have to mention the Act or direct their request to a designated member of staff. The people requesting the information do not need to give reasons why they are requesting the information and we are not allowed to consider who has requested or for what reason in determining our response, this is known as being applicant blind.

The Council has two separate duties when responding to these requests:

- to tell the applicant whether you hold any information falling within the scope of their request; and
- to provide that information

The Council also need to consider whether information should be released and this may involve consideration of the wider public interest.

Information held by the Council

Are councillors subject to FOI/EIR?

The FOIA and EIR only apply to information “held” by a public body, such as the Council. Information created or received by a councillor but held on a local authority’s premises or computer system will be covered if it is held by the authority on its own behalf (section 3(2)(a)).

Elected members of a Council are likely to have a number of different roles.

Some will relate to their function as elected members (such as corresponding with residents in their ward), others will relate to the functions of the local authority (such as being a cabinet member with responsibility for a service area) and some will relate to party activity.

Information produced or received by councillors may be held on their own computers or in their own homes or offices, or it may be held on local authority premises or computer systems. As a general rule, any information being held for functions of the local authority should be held within Council systems (i.e. personal email should not be used for correspondence about committee attendance etc and

documents relating to these matters should be accessed from council systems not saved to personal devices/local systems at home).

Consideration of the purpose of the information and the capacity in which it is being held is more helpful when deciding whether information is covered by FOIA/EIR.

Local authorities are public authorities for the purposes of FOIA/EIR, but individual elected members are not. Therefore, information held by councillors for their constituent or party purposes will not be covered by the FOIA/EIR, but information they hold on behalf of, or as part of, a local authority will be. For example, any councillor using their personal email account for council business (committee, cabinet business etc) may bring that email account into scope of the FOIA/EIR as the information relates to council functions.

Information is not classed as held for the purposes of the FOI/EIR if it was produced by the councillor for private or political purposes and the authority is just providing storage, office space or computing facilities. This is because the authority is not holding the information to any extent for its own purposes. It is however advised that councillors do not use council systems for personal/party matters unless absolutely necessary. In those cases, filing structures should be used to make it clear what information is held (i.e. keep constituency and party matters filed separately from council business). Please also see the Council's recently updated Acceptable Use Policy which also covers elected members.

In summary:

- Do not hold council business information on your own systems unless you have no choice, as this may bring them into scope of FOIA/EIR.
- Do not use council email/systems for personal/private/party matters. Unless the correspondence is genuinely private or confidential, marking it as such will not mean the contents are protected.
- All information held by the council is generally considered accessible under the FOIA/EIR unless an exemption applies.

FOI or EIR?

Public authorities that are subject to EIR must consider disclosure of environmental information under the EIR, rather than under FOI.

Environmental information is any information on:

- the state of the elements of the environment and the interaction among these elements;
- factors affecting or likely to affect those elements;
- measures or activities affecting or likely to affect those factors or elements, or designed to protect those elements;
- reports on the implementation of environmental legislation;
- cost-benefit and other economic analyses and assumptions used within the framework of those measures and activities; and
- The state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are or may be affected by those elements.

• Public authorities should interpret the phrase 'any information on' broadly.

EIR carries a presumption in favour of disclosure and all exceptions are subject to a Public Interest Test.

Requests for information received by Councillors

Councillors and those acting as elected representatives of the smaller Councils, Parish Councils in England will need to consider whether correspondence received by them is received in their capacity as an individual or as a representative of the Council. It is not uncommon for individuals to write directly to the elected representatives of these Councils where the correspondence is intended for the

Council. A request for information delivered to a Councillor in these circumstances, where it is clear that it is in relation to information held by the Council, is treated as having been received by the Council. As a matter of good practice, it should be passed on as soon as possible but no later than 48 hours from receipt as there are strict legal response times which must be adhered to by the council.

Any Councillor who receives a request for information that could be a FOI/EIR request should forward the request to freedomofinformation@huntingdonshire.gov.uk. If you receive a verbal request, please ask them to put it in writing and pass it on accordingly. Postal requests should be passed to the information governance team in 3C ICT.

For further information please contact the council's information governance team on infogov@3cshardedservices.org

Data Protection

The UK General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA) exist to make sure data individuals and organisations take care of the personal data they are given/they collect from individuals regardless of its purpose. Data protection is important to all of us and is about ensuring people can trust us to use their data in a fair and responsible manner. As part of this, the legislation ensures we also have rights over our data and its use. Councillors should ensure they understand these rights as they not only apply to their constituents but also to themselves and other individuals they may work with.

What is personal data?

Personal data, simply put, is any information that can be used to identify a living individual. It doesn't necessarily need to include their name and we need to consider other information that may be available to the requester or in the public domain that could be linked to this data to identify someone. An address on its own may not constitute personal data but it can be linked to other data like the electoral register or the council's assisted scheme for bin collections so it should be treated as personal data as there is publicly available information that could be used to identify the person who lives at that address.

This applies to any individual, including you. It could apply to a member of staff, a business contact, a public figure, a neighbour, friend, or relative, a constituent, a member of the public. In short, any individual.

Data Controllers and the Principles of the GDPR

The Council is classed as a data controller for the personal information it uses to deliver services and support to our staff, councillors, residents and the general public. This is because we determine how and why it is used. We have responsibilities under the legislation to ensure personal data is only used responsibly, transparently and in a fair and lawful manner.

It also means we need make sure we are only collecting what we need, limiting any incompatible onward use, making sure it is accurate and up to date, keeping it secure and only held for as long as is necessary. These are known as the principles of the GDPR.

Councillors are also data controllers in their own right for their constituency matters and should ensure they are familiar with and understand how the principles of the UK GDPR apply to them and should consider carefully their use of personal data in handling requests from constituents. As a councillor, you should ensure you have a privacy notice in place (attached as Appendix J) and understand what allows you to collect and use personal data in these circumstances.

Councillors party activities are covered by the party as data controller and as such any personal information you use for party matters you should take advice from the party's data protection officer.

What is a personal data breach?

In the event that a councillor considers a breach of personal data has occurred it should be reported to the council's data protection officer without undue delay to infogov@3csharedservices.org

FAQ's, training guides from the LGA, a template privacy notice and other useful resources can be found on <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/personal-data-breaches/#whatisa>, including advice for elected and prospective councillors.

Training

Members will be provided with an opportunity to attend training on FOI/EIR and Data Protection. Please contact Democratic Services for details:

Tel: 01480 388169

Email: Democratic.Services@Huntingdonshire.gov.uk