

Leicester
City Council

WARDS AFFECTED
ALL

DECISION TIMETABLE:
ORGANISATIONAL WORKING PARTY
CABINET

13 NOVEMBER 2002
18 NOVEMBER 2002

FREEDOM OF INFORMATION ACT 2000

REPORT OF THE DIRECTOR OF RESOURCES, ACCESS AND DIVERSITY

1. Purpose of Report

To report on the Council's progress in meeting its legal obligations under the Freedom of Information Act 2000, "FOIA", and to seek guidance in key areas.

2. Summary

FOIA creates a general, totally retrospective and world wide right of access to **all** information a Public Authority holds. It is central to the concept of "open government" and its objectives of making local government transparent and as much information as possible available to the public so they can understand decisions being made.

The Council has a policy and continuing practice of publishing as much of its information as it can, certainly more information than the law requires, in line with the Political Conventions. FOIA provides an opportunity for the Council to build on this and to become a centre of best practice.

There are three targets the Council must meet if it is to comply with FOIA:

- **Submit** a "Publication Scheme", to the Information Commissioner's Office ("ICO") between October and the 31st December 2002. The Scheme is a guide to the information the Council either publishes or intends to publish routinely;
- **Publish** the scheme, following approval by the ICO, during February 2003; and
- From 31st December 2004 **make available** to anyone on request all information it holds covered by FOIA.

The Publication Scheme must reflect local communities needs as far as possible. Consultation with the public and stakeholders is seen as essential and recommended by all guidance. Rather than consult superficially with a large number of organisations it is recommended that the Council consult in

detail with a smaller number of interested bodies. It is hoped that the media will work with the Council in encouraging comments on the Scheme from their clients, for example readers of the Leicester Mercury or listeners to Radio Leicester.

Further broader consultation can take place as part of the initial review of the Scheme that is scheduled for completion by 31 July 2003.

It seems appropriate to make information available under FOIA free of charge initially and review the levels of charge when request levels become clear. This could be as late as the first half of 2006. The only exceptions to this should be where information is charged for at the moment or where the request is likely to be for commercial gain.

Further work is needed on access issues and is on-going.

Appendix C contains details of items highlighted during consultation and answers to them for Cabinet's information.

3. RECOMMENDATIONS

3.1 The Organisational Working Party is asked to consider:

- 1 The proposed method of charging;**
- 2 The proposed Best Practice Ideas;**
- 3 The draft Scheme;**
- 4 The proposed consultations;**
- 5 And support the proposed response to the Office of the Deputy Prime Minister's consultation paper.**

3.2 Cabinet is asked to:

- 1 Support the proposed consultation programme;**
- 2 Support the proposed method of charging;**
- 3 Consider the proposed Best Practice Ideas;**
- 4 Approve the draft Scheme;**
- 5 Delegate authority to the Town Clerk in consultation with group leaders, to finalise the Publication Scheme for submission to the Information Commissioner by no later than 31 December 2002;**
- 6 Support the proposed response to the ODPM consultation paper.**

4. Headline Financial and Legal Implications

4.1 Financial Implications

Financial implications will be contained within departmental budgets.

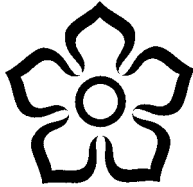
4.2 Legal Services

The Head of Legal Services, Peter Nicholls - NWC 6302, has assisted in the production of this report.

5. Report Author/Officer to contact:

5.1 Ed Smith

Contracts & Security Manager
Resources, Access and Diversity Department
NWC 7605



Leicester
City Council

WARDS AFFECTED
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**FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
ORGANISATIONAL WORKING PARTY
CABINET**

**13 NOVEMBER 2002
18 NOVEMBER 2002**

FREEDOM OF INFORMATION ACT 2000

1 SUPPORTING INFORMATION

1. REPORT

1.1 BACKGROUND

FOIA is new legislation that extends the concept of public access to information by creating a general, totally retrospective and world-wide right of access to **all** information a Public Authority holds. It is central to the government's concept of "open government" and its objective is to make as much information as possible available to the public so they can understand decisions being made by public bodies and to make local government transparent. FOIA is one of several pieces of recent legislation aimed at enhancing human rights.

The Council has a policy, and continuing practice, of publishing as much of its information as possible, certainly more information than the law requires, in line with the Political Conventions. FOIA provides an opportunity for the Council to build on this and become a centre of best practice.

The Council is taking the opportunity to consult as widely and fully as possible as part of producing its Publication Scheme to ensure that the Scheme is as representative of the public's and all elected members views as possible. While this may cause time constraints the Council sees taking every opportunity to build on its commitment to open and transparent government as essential.

There are three targets the Council must meet if it is to comply with FOIA:

- **Submit** a "Publication Scheme", to the Information Commissioner's Office ("ICO") between October and the 31st December 2002. The Scheme is a guide to the information the Council either publishes routinely or intends to publish routinely;

- **Publish** the scheme, following approval by the ICO, during February 2003; and
- **Make available** to anyone on request all information the Council holds that is covered by FOIA from 31st December 2004.

1.2 STRATEGIC AIMS

Implementing plans to ensure compliance with FOIA will also support corporate strategic aims by:

- creating greater transparency in decision making which will encourage more open and effective governance;
- promoting community cohesion; and
- contributing to revitalisation of neighbourhoods by opening up information to the public and scheme participants.

An open and transparent Scheme means the public will be better able to understand the decision making process and how and when they can best become involved with or influence it. The greater availability of information will help all parties in revitalising schemes to move projects on quickly, identify people they need to talk to more easily and generally facilitate the process.

The Scheme allows the Council to publicise the services it provides to the public and raise public awareness of what is involved – in effect it becomes an advertising medium for the Council. It also provides the opportunity to put the Council's view of issues into the public arena thereby ensuring a more balanced public perception of what is happening.

1.3 TIMETABLE

Approval of the Scheme has not been reserved to Council and is a matter for Cabinet to decide on.

The following timetable is tight, but allows time to obtain the views of key stakeholders and committee members of all three parties prior to the Scheme being submitted to the ICO:

| | |
|---------------------------------------|---------------------------|
| Organisational Working Party | 13 th November |
| Cabinet | 18 th November |
| Further Leader's Briefing if required | 25 th November |

The **Absolute** deadline for submission of the Scheme is 31st December 2002.

Because pre-submission consultation will not be complete before 07 December and this may entail changes to the Scheme, Cabinet should delegate to the Town Clerk the task of finalising the scheme in consultation with group leaders.

1.4 PUBLICATION SCHEME: ESSENTIAL PRINCIPLES

The Council's Scheme, a guide to the information the Council routinely publishes or intends to publish in the future, must be submitted to the ICO by the end of 2002.

"Publish" means to make the information publicly available and is not limited to producing items in bound or printed form. A document stored electronically and downloaded from the web is as much published as one on paper.

"Information" does not mean a document, a piece of paper or a computer printout. All of these are likely to contain a variety of sets of information. Information can be virtually anything and exemptions only apply to information sets, or "classes". This means some information on a document may be exempt from disclosure, while the rest is not.

Approval will only be for a limited period of time. This has not been statutorily defined, but indications are this is unlikely to be more than three years. The Council will have to review and re-submit its Scheme before 01 January 2005.

Information published under the Scheme will be exempt from the general right of access that FOIA will introduce at the end of 2004.

1.5 PUBLICATION SCHEME: OPTIONS

The Council must decide what type of scheme it wants and how much information it will make available. It has two options:

- opt for a very full scheme, thereby reducing the information it has to make available under the access to information regime; or
- produce a restrictive scheme that will increase workload under the access regime.

Publishing as much information as possible is in the Council's long term strategic interests. The window between approval in February 2003 and full implementation on 01 January 2005 allows this to happen. A fully open Scheme should not be adopted until the full implications are assessed.

The recommended option is to produce a minimalist Scheme in the short term consisting of what is published already or where publication is clearly in the public interest. Other information sets (or "Classes") can be added as the implications of doing so become clear and are addressed, enabling the Council to achieve its long term objective of a comprehensive scheme without undue risk. A draft Scheme, that assumes this approach, is at **Appendix A**.

Charges

The level of requests for information under FOIA is unknown. Indications from other countries with a FOIA regime is that the majority of requests will be in two areas:

- Access to personal information. This is covered by the Data Protection Act 1998; and

- Access to commercial information by businesses.

FOIA is all about making information as openly available as possible. It recognises it is unreasonable to expect Public Authorities to provide swathes of paper at no cost, and the Act contains provisions for Public Authorities to charge for part of their costs in making information available.

The Council does not charge for access to personal information under the Data Protection Act 1998. Until the level of requests become clear it is recommended that the Council extend this to cover information requested under FOIA, with two exceptions:

- Charges that the Council already raises for access under legislation should continue, at least in the short term. Departments should review the need to continue applying these charges on a regular basis, with a view to discontinuing them; and
- Where businesses or individuals request information with a clear commercial interest the maximum charges possible at the time should be levied for providing the information.

Where the Council charges for information included in its Publication Scheme it must identify these charges within the Scheme.

Freedom of Information: Exemptions

The Council must declare any exemptions it wants to claim for information published through the Scheme as part of the Scheme. Details of the FOIA exemptions available is contained in **Section 4 of the draft Scheme -see Appendix A..**

It is recommended that the Council claims all exemptions initially and relaxes the use of them subsequently when the impact of this has been assessed rather than give an essential exemption up prematurely.

1.6 DECISION MAKING PROCESS

Practical application of FOIA must be balanced by addressing the need to retain a robust policy and decision making mechanism that allows uninhibited and confidential interaction between senior management and leading members in a forum such as Leader's Briefing.

FOIA does not create a right of access to meetings, only a right of access to information retained by the Council.

There is an expectation that there will be disclosure of all retained information unless an exemption applies.

Draft papers intended for future publication are exempt and authors can rely on such reports being withheld until finalised. This exemption only applies to information published through the Scheme and must be highlighted for the information classes it applies to. Section 36 of FOIA also provides a Public Interest Test exemption where disclosure will prejudice the effective conduct of public affairs.

Information destroyed legitimately, for example in accordance with a record retention and deletion plan, does not have to be recreated to answer an access request, although it is a criminal offence to withhold, change or delete information to avoid disclosure. Disciplined destruction of records no longer needed for the purposes they were created for is good records management practice and supports compliance with the Data Protection Act 1998.

It is common practice for Officers to retain draft reports to maintain an audit trail. Drafts retained beyond the finalisation of a report will have to be published unless some other exemption applies, for example, legal privilege, data protection or commercial sensitivity.

To some extent this can be overcome by ensuring that reports include all relevant material and options. Nevertheless it is recommended that part of the response to the ODPM paper, see **Appendix B**, includes a proposal that the decision making process is protected.

1.7 PUBLIC ACCESS TO INFORMATION: OPTIONS

The Council must decide on what access provisions it wants to make to meet its obligations. The Information Commissioner has said just publishing information on the web will not satisfy FOIA's requirements. The minimum the Commissioner expects is that hard copies are also be available for inspection.

Providing hard copies and/or viewing facilities in designated areas such as libraries and Customer Service Centres will address most of the issues in this area. Some allowance may be needed as well to satisfy the Council's obligations under legislation such as the Disability Discrimination Act. Work needs to be done to identify, agree and implement ways of meeting these obligations. The Consultation Program, see later, will assist in this.

1.8 BEST PRACTICE IDEAS

There is an opportunity for the Council to champion best practice under FOIA. Some examples of positive measures that can be taken are as follows:

- Review application of the Publication Scheme six months after its implementation, ie September 2003, to include further consultation with the public and elected members of all parties;
- Pilot full application of FOIA six months in advance of the Statutory deadline, 31 December 2004;
- Voluntarily introduce the practice of providing access to currently exempt information under the Access To Information Rules where disclosure at the time of request is not harmful. This is in line with FOIA, and as recommended by the Campaign for Freedom of Information, "CFI";
- Political Conventions could be updated to make it clear that when considering whether or not to allow access to information under current

Access to Information Rules the Public Interest Test be applied, again as recommended by the CFI.

1.9 THE EFFECTS OF FAILURE TO COMPLY

An aggrieved person must first exhaust the Council's complaints system before s/he can complain to the Commissioner. Complaints must not be unreasonably delayed or vexatious or frivolous. If unhappy with the outcome of a complaint the complainant can then complain to the Commissioner.

The Commissioner can issue different notices under FOIA dependant on the type of contravention. The Council can appeal against any of the three notices to the Information Tribunal. There can be a further appeal on points of law.

If the Council doesn't comply with a notice the Commissioner may certify failure to the High Court and deal with the Council as if it had committed a contempt of court.

1.10 EQUAL OPPORTUNITIES

Access provisions under FOIA must make provision for equality of opportunity. The Disability Discrimination Act makes it unlawful to treat a disabled person less favourably than if they were not disabled. Any information must be as available and accessible to disabled people as it is to other members of the community. The Council is also under a duty to make reasonable adjustments to facilitate the access of information, services etc. to disabled people including advice and assistance.

The Race Relations Act was recently extended in scope by the Race Relations (Amendment) Act 2000. It places a statutory obligation on local authorities to ensure they work towards eliminating unlawful discrimination and promote equality of opportunity and good race relations, including consulting appropriately when developing new policies.

1.11 RECENT ODPM CONSULTATION PAPER: ACCESS TO INFORMATION

On 2nd September the Government published a policy paper, "Access to Information in Local Government", which invites comments by the 2nd December on FOIA and the existing rules governing public access to information. Copies of the paper are available on the Office of the Deputy Prime Minister's web site at:

<http://www.local-regions.odpm.gov.uk/consult/review/index.htm>

The policy paper is part of a review looking at the operation of the current access to information regime in local government, looking ahead to the new requirements under FOIA. Comments are invited on the following:

- how councils can most effectively provide local people with information both now and when FOIA comes into force, and how the new requirements will work alongside existing responsibilities;
- the working of the regulations government access to information for those authorities operating executive arrangements; and

- how authorities operating executive arrangements define “key” decisions with a view to disseminating best practice in this area.

Suggestions for inclusion in the Council’s response are at **Appendix B**.

1.12 CONSULTATION

Emerging guidance promotes consultation with interested parties, for example the media and special interest groups. Time available for consultation is limited and timescales have been severely compressed as a result of the Information Commissioner’s Office’s (ICO) decision in June 2002 not to produce a model Scheme for Local Authorities as originally stated. This meant the Council had to produce its Scheme from scratch rather than either adopting fully or building on the Commissioner’s model.

The Council needs to identify:

- What the people of Leicester want to see in its Publication Scheme;
- How the Scheme should be structured for them to use it easily;
- Where they want to access information;
- What format they want their information supplied in; and
- What special requirements are there to meet the needs of the disadvantaged members of the community.

There will be strong adverse criticism if the Council does not consult rigorously with its key stakeholders and the citizens of Leicester on the content and format of its Scheme. Rather than enter into a wide consultation with a large number of different organisations that is likely to result in minimal feedback, the Council is recommended to consult with a lesser number selected for its willingness to participate in previous consultations. This is more likely to produce valuable and useful feedback.

It is hoped that the media will co-operate in this process by using their facilities to encourage feedback on the Scheme from its users, for example readers or listeners. Use will also be made of the Council’s web site to encourage more general feedback from anyone who wants to give it

It is recommended that wider consultation occurs during the first six months of 2003 as part of the Scheme’s initial half yearly review. Again web site feedback will also be encouraged.

Consultation is being sought with other Public Authorities in the County to share best practice, and establish common ground and common procedures in parallel to this exercise.

1.13 LINKS TO DATA PROTECTION LAW AND OTHER INITIATIVES

There are strong links between FOIA and the Data Protection Act 1998, "DPA". Once FOIA comes into full effect at the end of 2004 it will be the primary legislation for all access to information requests, including those covered by the Data Protection Act.

The relationship between FOIA and the DPA is uneasy and can be contradictory in practice. FOIA tries to ensure open access to information in all circumstances. The DPA makes personal information accessible to the data subjects, the people the information is about, but also seeks to protect individual privacy by greatly restricting any other person or organisation's access to it.

The Council's Implementing Electronic Government statement clearly recognises the importance of FOIA and the need for e-government to accommodate FOIA. Activities between the various interested groups must be co-ordinated and a draft FOIA status report will be presented to the Leicester Shire E Government team as a discussion document.

1.14 INFORMATION MANAGEMENT

The Council must have adequate Information Management policies, and the supporting procedures and technologies, in place if it is to comply with FOIA.

Experience with the DPA has shown the Council does NOT have adequate Information Management standards. The following requirements must be satisfied if the Council is to meet its obligations under FOIA:

- to be able to produce an audit trail eg to evidence proper destruction;
- policies, standards and procedures in place to support the Information Management process;
- a corporate Information Management Strategy. It is likely that this will sit over the corporate and departmental ICT Strategies;
- to be able to know what information it holds, its format, how to get hold of it and where appropriate who owns it (this could impact disclosure).

2 FINANCIAL, LEGAL AND OTHER IMPLICATIONS

1. Financial Implications

Financial implications will be contained within departmental budgets.

2. Legal Implications

The Head of Legal Services, Peter Nicholls - NWC 6302, has been involved in the production of this report.

3. Other Implications

| OTHER IMPLICATIONS | YES/NO | Paragraph Within Supporting information | References |
|-------------------------------|--------|-----------------------------------------|------------|
| Equal Opportunities | YES | 1.10 | |
| Policy | YES | 1.2 | |
| Sustainable and Environmental | YES | Potential | |
| Crime and Disorder | YES | Potential | |
| Human Rights Act | YES | 1.1 | |
| Elderly/People on Low Income | YES | Potential | |

4. Background Papers – Local Government Act 1972

DMT Report 04 September 2002;
SRG Report 17 September 2002;
Directors' Board Reports 24 September and 01 October 2002;
Leader's Briefing Report 07 October 2002.

5. Consultations

Financial Services;
Legal Services.

6. Report Author

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**DRAFT
SUBJECT TO APPROVAL**

**PUBLIC ACCESS TO INFORMATION
FREEDOM OF INFORMATION ACT 2000
PUBLICATION SCHEME OF THE CITY OF LEICESTER COUNCIL**

INDEX

- 1 INTRODUCTION**
- 2 HOW TO ASK FOR INFORMATION**
- 3 HOW TO COMPLAIN ABOUT THE SERVICE**
- 4 WHAT THE COUNCIL DOES NOT HAVE TO RELEASE AND WHY**
- 5 THE INFORMATION THE COUNCIL MAKES AVAILABLE THROUGH ITS
PUBLICATION SCHEME**

Introduction

- 1. INFORMATION ABOUT THE RUNNING OF THE COUNCIL**
 - 1.1 CONSTITUTION AND CODE OF CONDUCT
The Council's Constitution
Matters to do with Members
 - 1.2 COUNCIL INTERNAL PRACTICE AND PROCEDURE
Agendas and supporting papers for council, committee and committee meetings, limited in each case to the forthcoming meeting.
Terms of reference for Committees
 - 1.3 PERIODIC ELECTORAL REVIEW
Information relating to the last Periodic Electoral Review of the council area
Information relating to the latest boundary review of the council area
 - 1.4 EMPLOYMENT PRACTICE AND PROCEDURE
Equal Opportunities Policy
Health & Safety Policy
Staffing Structure
 - 1.5 PLANNING DOCUMENTS
Planning Applications
Tree Preservation Orders
 - 1.6 FINACIAL MANAGEMENT

Fees and charges applied by the council
Safety inspection records for example for playgrounds
Register of members allowances

- 1.7 DEVELOPMENT AND IMPLEMENTATION OF POLICY
- 1.8 BEST VALUE
- 1.9 BYELAWS
- 1.10 COUNCIL CIRCULARS/NEWSLETTERS
- 2 SERVICES PROVIDED BY THE COUNCIL
 - 2.1 ALLOTMENTS
 - 2.2 BURIAL GROUNDS
 - 2.3 COUNCIL TAX AND BUSINESS RATES
 - 2.4 HOUSING BENEFITS
 - 2.5 COUNCIL HOUSING
 - Allocations
 - Rents
 - Repairs and Maintenance
 - Homelessness
 - 2.6 SUPPORTING PEOPLE
 - 2.7 LIBRARIES
 - 2.8 SCHOOLS AND ADMISSIONS

1 INTRODUCTION

This publication scheme is operated by the City of Leicester Council under its obligations arising from the Freedom of Information Act 2000. The Act received Royal Assent on 30 November 2000 and creates a general right of access to all types of recorded information held by public authorities – the Council is a Public Authority under the Act.

The Council is committed to open and transparent government and already publishes a large amount of its information through a variety of media such as its Internet site, the press and Newsletters. This reflects the Council's belief that making its information available to the public is at the heart of the democratic process.

You already have the right of access to information about yourself under the Data Protection Act 1998. From 01 January 2005 the Freedom of Information Act also gives you the right to access all the information the Council holds.

Your Rights Under The Act

In broad term the Act gives you two related rights:

- 1 To be told if the Council holds the information you want; and
- 2 To receive a copy of the information you have requested, where possible in the manner you requested, eg as a copy or summary.

There are some exceptions to these rights. The Act calls them "exemptions" and the Council does not have to release information that any of the exemptions apply to. The Council has also provided details of the exemptions it will use and their scope as part of this scheme.

Publication Scheme

The Act says the Council must adopt and maintain a "Publication Scheme" or "Scheme" - a route map to the information the Council publishes. It tells you:

- what information the Council routinely publishes or intends to publish;
- how it is published;
- when it is available;
- where it is kept;
- how you can access it; and
- what it costs, if anything, to access it.

The Information Commissioner, the Government appointed "watchdog" for both the Freedom of Information and Data Protection Acts, must approve the Council's scheme by February 2003. This information must be made available to you in the defined ways as from February 2003.

Information detailed in the Scheme will either be information the Council feels is of specific interest or information that has been proven to be of special public interest, for example information requested on a regular basis.

The Council will review its Scheme on a regular basis, at least annually, and add information to it. It will only remove information from the Scheme where there are both good reasons for this and the Information Commissioner agrees to the removal.

Information Not Covered By The Scheme

Not all the information the Council produces will be detailed in the Scheme. You can ask for any other information the Council holds although this right does not come into effect until 01 January 2005. Details of how to obtain copies of this information follow at section 2.

Deletion of Information

A lot of information the Council produces is only needed for a limited period. It costs a lot to keep information once it is no longer needed in accordance with its Record Retention and Deletion Plan.. The Council will destroy information that is no longer needed. The only exception to this is information that is required by the County Archivist and details of this type of information can be obtained from the Public Records Office in Wigston.

The Council is neither allowed to withhold information requested properly nor amend or destroy information to avoid its release. It is allowed to destroy information in accordance with a document retention and disposal plan.

The Council is reviewing its plan to ensure it meets both statutory requirements and the Council's business needs. The revised plan will be included in the publication scheme before 31 December 2004. The Council will not make available information destroyed in accordance with this plan.

Who to Contact About The Scheme

The Council Officer responsible for the Scheme is the Contracts and Security Manager within the Council's Resources, Access and Diversity Department who is also the Council's Freedom of Information Officer.

2 ASKING FOR INFORMATION

How to Ask For Information

From 01 January 2005, you will be allowed to ask the Council for a copy of any information it holds where an exemption does not apply. This applies to ALL information the Council holds, not just that created after 01 January 2005.

You should address your request to:

Freedom Of Information Officer
CISSU
Resources, Access and Diversity Department
Leicester City Council
New Walk Centre
Welford Place
LEICESTER LE1 6ZG

Alternatively you can either request the information by e-mail to the following address:

FOIA@leicester.gov.uk

or send a facsimile to 0116 252 7936

Your request must be either in writing, on a facsimile or by e-mail. If you are not sure how to make your request you are entitled to ask the Council for help. If you do require help to make your request please contact 0116 252 7605 or 0116 252 7606.

How Long Does the Council Have to Meet a Request?

By law the Council must supply you with the information you have asked for within twenty working days of receiving your request. The only exception is where you have to pay for the information when the response time is extended to three months from when you pay the relevant fee.

We will always acknowledge your request within one working day of receipt. If you don't have to pay a fee our target is to provide you with the requested information within ten working days. If we do not manage this we will write to you explaining why and telling you when we will get the information.

Charges for Information

If you do have to pay a fee our targets remain the same except we aim to provide you with the requested information in ten days from when you pay us rather than when we receive your request.

The Council will NOT charge for any information that you download from its Internet site:

<http://www.leicester.gov.uk/>

It will also make information available for you to look at either at its libraries and/or other designated offices. Again there is no charge for this.

Apart from this the Council will usually charge for providing information unless either the law says it can not charge or you have a disability that means you can not reasonably use either of the above two methods of access.

Fees are calculated according to the Fees Regulations Under the Act and are based on an hourly rate for efficiently locating and copying the information you have asked for. There is no charge for the other work associated with your request, for example considering whether an exemption applies to any of the information you have requested.

3 HOW TO COMPLAIN ABOUT THE SERVICE

Complaining to the Council

If you do not agree with the response you receive from the Council's Freedom of Information Officer you should write to:

D:\MODERNGOV\DATA\PUBLISHED\INTRANET\C00000078\M00000644\AI000 16 04529\FREEDOMOFINFORMATIONACT20000.DOC v 2.4 EJSS

The Head of Legal Services
Leicester City Council
New Walk Centre
Welford Place
LEICESTER LE1 6ZG

The Head of Legal Services will conduct an internal review of the decision and advise you of the review's decision within twenty working days of receiving your letter.

What To Do If You Are Unhappy With The Council's Reply To Your Complaint.

If you have not had a response within twenty working days or you are still unhappy with the Council's reply you may seek an independent review from the Information Commissioner. Requests should be made in writing to:

The Information Commissioner
Wycliffe House
Water Lane
WILMSLOW SK9 5AF
Telephone: 01625 545 510
Facsimile: 01625 545 510

4 WHAT DOESN'T THE COUNCIL HAVE TO RELEASE?

The Council does not have to release all the information it holds. There are good reasons for this. For example, some information may be needed to be withheld for crime prosecution purposes, some to protect vulnerable people and some for reasons of commercial confidentiality such as trade secrets.

FOIA details the types of information that the Council may be exempt from publishing and/or disclosing and calls them "exemptions". There are 24 exemptions in FOIA. 8 are absolute exemptions - there is no obligation on the Council to disclose the information; 16 non-absolute, that is they rely on a Public Interest Test, "PIT", applied on a case by case basis to determine whether the information that is covered by them should be released or withheld. Where a PIT is used the intention will be to release as much information as possible, not to withhold information.

FOIA allows the Council to claim these exemptions for information in its Scheme's Classes of Information, "Classes". Some exemptions will apply to all the Classes, for example information that the Council is not allowed to publish because of other legislation. Other exemptions will be specific to an individual class of information.

This section of the scheme tells you about the exemptions that apply to all or most of the classes of information contained in the Council's Scheme. Exemptions that apply to a single class of information can be found in the relevant class.

These exemptions are:

- 1. Information you can access by other means.**
This is an absolute exemption and can be found at section 21 of FOIA. It applies to information you can reasonably access other than by any other means than FOIA, even if there is a fee involved in accessing it. Examples include information made available under other legislation, books or pamphlets published by the Council or certificates of birth, death or marriage.
- 2. Information the Council intends to publish at some time in the future.**
This exemption, which is created by section 22 of FOIA, can only apply if a PIT is undertaken first. It comes into effect when you ask the Council for information it holds that is meant to be published at some time in the future, and where it is reasonable that the information should not be disclosed until the intended date of publication, for example statistics published at set intervals.
- 3. Information supplied by or relating to bodies dealing with security matters.**
Another absolute exemption covered by section 23 of the Act. It stops the Council releasing any information it holds that:

 - was supplied either directly or indirectly by one of the security bodies listed in section 23 of FOIA; or
 - relates to, any one of these security organisations.
- 4. National Security**
A PIT exemption detailed at section 24 to the Act. It excludes information covered by section 23 of FOIA, see above, and exempts information from disclosure if this is required to safeguard national security.
- 5. Supplementary Provisions – National Security & Security Matters**
Section 25 of the Act covers the powers allocated to defined members of Government covering the issuing of certificates to make additional information exempt under sections 23 and 24.
- 6. Defence.**
A further PIT, created by section 26, that makes information exempt if disclosure could damage:

 - the defence of the British Islands or of any colony; or
 - the capability, effectiveness or security of any of the armed forces of the Crown and/or any forces co-operating with those forces.
- 7. International relations.**
Subject to a PIT, section 27 of the Act makes information exempt from disclosure if this could harm:

- relations between the UK and any other state, international organisation or international court;
- the interests of the UK abroad; or
- the promotion or protection by the UK of its interests abroad.

8. Relations within the UK.

Section 28 of FOIA creates an exemption where release of information would, or would be likely to, prejudice relations between the Government, Scottish Administration, the Executive Committee of the Northern Ireland Assembly, or the National Assembly for Wales.

9. The Economy.

A PIT created by section 29 that exempts information from disclosure if this would, or would be likely to, prejudice the economic interests of the UK or any part of the UK, or the financial interests of any administration in the UK.

10. Investigations and proceedings conducted by public authorities.

A further PIT created by section 30 that covers information held for investigating and prosecuting crime, including making any decision to start criminal proceedings, under powers the Council holds to prosecute, for example Trading Standards. It also exempts information held for these proceedings related to obtaining information from confidential sources

11. Law enforcement

Under section 31, information not covered by the exemption created by section 30, see above, is still exempt from disclosure, subject to a PIT, where disclosure can or could harm:

- The prevention or detection of a crime;
- The apprehension or prosecution of offenders;
- The administration of justice;
- The assessment or collection of any tax or similar imposition;
- The operation of immigration controls;
- The maintenance of security and good order in prisons and other institutions;
- To undertake exercises such as:
 - finding out if anyone has broken the law;

- finding out if anyone is responsible for any improper conduct;
 - assessing whether circumstances justify regular action;
 - assessing someone's fitness or competence in relation to their profession;
 - protecting people (other than those at work) against risk to their health and safety arising from the actions of others;
 - identifying the cause of an accident; or
 - protecting charities or recovering their property.
- Civil proceedings bought by or on behalf of the Council because of an investigation conducted for any of the purposes specified above.

12. Court records.

Section 32 creates an absolute exemption for any information contained in any document:

- in the custody of, or filed with, a court for any proceedings;
- served on, or by, the Council for any proceedings; or
- created by a court or its administrative staff for any proceedings.

13. Audit.

A PIT created by section 33 of FOIA that covers information held by the Council for its functions relating to the audit or examining the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is similarly exempt if its disclosure is likely to prejudice these functions.

14. Parliamentary privilege

Section 34 provides an absolute exemption from disclosure for information covered by Parliamentary Privilege.

15. Formulation of government policy

Section 35 states that, subject to a PIT, information held by a government department or the Welsh Assembly is exempt if it relates to:

- The formulation or development of government policy;
- Ministerial communications;
- Advice by any law officers or any requests for advice; or

- The operation of any ministerial private office.

16. Prejudice to effective conduct of public affairs

This PIT exemption, created by section 36 of the Act, exempts information from disclosure where disclosure would be likely to inhibit:

- The free and frank provision of advice;
- The free and frank exchange of views, for example to ensure a full and proper debate takes place; or
- Would otherwise prejudice, or would be likely to prejudice the effective conduct of public affairs.

17. Communications with Her Majesty, the Royal Family or Household or the conferring by the Crown of any honour or dignity.

Section 37 of the Act says that, subject to a PIT, and information that the Council holds in this area is exempt from disclosure.

18. Health and Safety

Any information whose disclosure would, or would be likely to, endanger anyone's physical or mental health or their safety is exempt from disclosure under section 38 of the Act subject to a PIT.

19. Environmental information.

Section 39 says that, subject to a PIT, environmental information that must be released in accordance with the Environmental Information Regulations introduced to implement the Aarhus Convention does not fall within FOIA.

20. Personal Information

Section 40 of FOIA operates as a gateway to the Data Protection Act 1998. Subject access requests are decided under the terms of the Data Protection Act. Third party requests for personal information are decided in accordance with the data protection principles, but within the overall framework of the FOIA and are subject to a PIT.

Applications made under the Data Protection Act 1998 must be in writing. When making your application please ensure that you tell us what information you are looking for and in relation to what services. If you have a Council reference number or any contact details please provide them as well because this will help us to help you.

Relevant Legislation: Data Protection Act 1998

Documents Available for Inspection: Various

Contents of Documents: Various

| | |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Presentation of Documents: | Computer printouts; copies of paper documents. |
| Cost: | No Charge |
| Location for viewing documents: | Not applicable. |
| Applications should be in writing to: | Data Protection Officer CISSU Resources, Access and Diversity Department Leicester City Council New Walk Centre LEICESTER LE1 6ZG |

21. Information provided in confidence

Section 41 provides an absolute exemption for information obtained from any other person if its disclosure creates a breach of confidence that could lead to anyone starting court action. This could be because of a specific undertaking to keep information confidential or because the particular circumstances of the case implies information will be kept confidential.

22. Legal professional privilege

A right of exemption from disclosure, subject to a PIT, is created by section 42 for information where a claim to legal professional privilege can be maintained.

23. Commercial interests ⇌ public interest test – section 43.

Certain information that the Council holds for business purposes, for example trade secrets and information whose disclosure could damage the commercial interests of any person (including the Council), is exempt from disclosure by virtue of section 43 subject to a PIT.

24. Legal prohibitions on disclosure ⇌ absolute ⇌ section 44.

Section 44 creates an absolute exemption for information disclosure if disclosure is illegal, is incompatible with any European Community obligation or would lead to contempt of court.

5 PUBLISHED INFORMATION

This section tells you:

- what information the Council makes available under its scheme;
- how it is published;
- where you can access it;
- any costs associated with accessing it;

- any specific exemptions the Council is applying to individual classes of information.

The Scheme is structured in two parts to help you locate the information you require:

- **Information about the running of the Council**
This is information that tells you how the Council operates and how and why decisions are taken, for example its constitution and financial records.
- **Services**
In this part of the Scheme the Council classifies the information it holds relating to the services it provides for you, for example the provision of Council Houses.

5.1 INFORMATION ABOUT THE RUNNING OF THE COUNCIL

5.1.1 THE COUNCILS CONSTITUTION AND CODE OF CONDUCT

Information to be found in this section includes the Council's Constitution (the rules governing what it does and how it does this – for example Contract and Financial Procedure Rules) and the Code of Conduct for both Elected Members and Officers of the Council.

| Councillors Allowances - year end figures | |
|--------------------------------------------------|--------------------------------------------------------------|
| Description: | Details of allowances claimed by each elected member. |
| Frequency of update: | Annually |
| Availability: | Information given to the Leicester Mercury who publishes it. |

5.1.2 COUNCIL INTERNAL PRACTICE AND PROCEDURES

Procedural Standing Orders

Councils Annual Report

Agendas and supporting papers for council, committee and sub-committee meetings-limited in each case to the forthcoming/immediate meeting.

Terms of Reference for Committees

| Agendas and Minutes of Cabinet and Committees | |
|------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Description: | |
| Frequency of update: | As and when meetings happen – published in accordance with timescales required by the Access to Information Regulations. |
| Availability: | Internet Paper copy in Customer Service Centres and Libraries for reference Paper copies available on request |
| Exemptions: | Information classified as exempt under the Access to Information Regulations; Schedule 12A; Local Government Act 1972 |

Etc – As Detailed in the Index

5.2 COUNCIL SERVICES

5.2.1 ARTS, ENTERTAINMENT & TOURIST INFORMATION

This relates only to information produced by the council.

5.2.2 ALLOTMENTS

Plans

Standard tenancy Agreements

5.2.3 BURIAL GROUNDS

Plans

General policies

5.2.4 BIRTHS DEATHS AND MARRIAGES

5.2.5 PROPERTY MANAGEMENT

The purpose of this section is to provide information of how the Council manages its business property portfolio. It does **not** include information about Council Housing that is contained at section 5.2.8.

5.2.6 Council Tax and Business Rates

Information about how the Council assesses, collects and uses your Council Tax and Business Rates, including details of other organisations that use some of the money, for example the Police.

| Council Tax Leaflet | |
|----------------------------|-----------------------------------------------------------------------------------------|
| Description: | Statutory information sent with bills, plus other information. |
| Frequency of update: | Annual |
| Availability: | Issued with bills. Council web site Paper - on request from the Revenues Division |

| Leicestershire Police Authority | |
|----------------------------------------|-----------------------------------------------------------------------------------------|
| Description: | Information sheet on policing issues. |
| Frequency of update: | Annual |
| Availability: | Issued with bills. Council web site Paper - on request from the Revenues Division |

5.2.7 Housing Benefits

Information telling you how to apply for Housing Benefit, the forms to complete and how it is assessed.

5.2.8 Council Housing

This section contains all the information the Council makes available concerning Council Houses including how it allocates houses, collects the Rent and maintains them.

- **Statistics**

Statistical information about the Council's Housing stock, tenants, etc.

- **Allocations**

Provision of information to tenants and prospective tenants about the Council's Housing Allocations policy and guidance about applying for a Council House.

| Policy on Offers, Lettings, Transfers and Exchanges | |
|------------------------------------------------------------|------------------------------------------------------------------|
| Description: | Current rehousing rules, and guidelines for applicants. |
| Frequency of update: | As required |
| Availability: | Council web site Paper – on request to the Housing Department |

| Terms of Introductory tenancies | |
|----------------------------------------|------------------------------------------------------------------|
| Description: | |
| Frequency of update: | As required |
| Availability: | Council web site Paper – on request to the Housing Department |

| Policy on disabled service users | |
|-----------------------------------------|------------------------------------------------------------------|
| Description: | |
| Frequency of update: | As required |
| Availability: | Council web site Paper – on request to the Housing Department |

- **Rents**

- **Repairs and Maintenance**

| Tenants' Guide to Housing Repairs | |
|------------------------------------------|------------------------------------------------------------------------------|
| Description: | |
| Frequency of update: | As required. |
| Availability: | Available from any Neighbourhood Housing Office or the Housing Advice Centre |

- **Homelessness**

Hostels
Refugees

- **Local Housing Associations**

Information about Housing Associations that the Council has to publish by law.

- **Supporting People**

Schools and Admissions

Libraries

Adult Services

Carers

Children & Families

| Child Protection and the Emergency Team | |
|------------------------------------------------|-------------------------------------------------------------------------------------------------|
| Description: | |
| Frequency of update: | As required. |
| Availability: | Paper – from Children & Families. Available in Bengali, English, Gujerati, Punjabi and Urdu. |

| Children & Family Centres | |
|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| Description: | |
| Frequency of update: | As required. |
| Availability: | Paper – from Children & Families. Available in English. Audio Tape, Available in Bengali, English, Gujerati, Punjabi and Urdu. |

| Leaving Care Folder Pack | |
|---------------------------------|------------------------------------------------------------|
| Description: | |
| Frequency of update: | As required. |
| Availability: | Paper – from Children & Families. Available in English. |

SSD GENERAL

| Getting in Touch | |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Description: | A guide to some of the adult and children & family services provided by Leicester's Social Services Department. |
| Frequency of update: | As required. |
| Availability: | Paper – from Children & Families. Available in Bengali, English, Gujerati, Punjabi and Urdu. Audio Tape, Available in Bengali, English, Gujerati, Punjabi and Urdu. Council web site. Available in Bengali, English and Urdu. |

**APPENDIX B SUGGESTED POINTS TO INCLUDE IN THE COUNCIL'S
RESPONSE TO THE LOCAL GOVERNMENT MINISTER'S
PAPER**

The following points could be included in any response the Council makes to the discussion document on the impact of FOIA in local government:

- Current Access to Information rules under the Local Government Act 1972 need to be modified so that they are as consistent as possible with FOIA, recognising that the former are specific to local government, whereas the latter is applicable to all public authorities;
- FOIA qualifies most of the exemptions available by a public interest test. In practice this test is applied by this Authority when committees consider whether or not to exempt items under the Access to Information Rules, so this Authority could support a statutory requirement for this approach;
- Current rules state that information relating to any particular “applicant” for or recipient or former recipient of any service provided by the Authority can be regarded as exempt. Scope and interpretation of the words “applicant” and “service” have raised difficulties in practice;
- Current rules provide an exemption for information relating to the financial or business affairs of any particular “person”. “Person” has a legal definition i.e. any individual or body which has a legal personality e.g. a company. There have been situations where external bodies have requested that information be regarded as confidential i.e. exempt even though they are not a “person” in the strict legal sense e.g. unincorporated association. It would be useful to ensure this provision relates to all such bodies;
- Current rules exempt instructions to Counsel and any opinion of Counsel etc. It would be useful to clarify and confirm that any legal advice to the Council, its committees or officers, can be treated as exempt where this is in the Council’s legal interests in line with Law Society guidance and Solicitor/client confidentiality standards;
- The consultation paper asks a number of questions about local arrangements relating to “Key Decisions”. This can be provided;
- It may also be appropriate to express a view that the current statutory definition of “Key Decision” is far too prescriptive and should be replaced. A “Key Decision” should be defined as one being of policy, budget or strategic significance, as identified in advance by the executive having regard to the information available;
- Further, it can be proposed that where an executive has voluntarily imposed on itself a presumption that it will meet in public, then it should be freed of the “Key Decision” bureaucracy.

- There is a need to clarify the statutory exemptions available to support retention of a robust policy and decision making process i.e. section 22 which enables confidentiality of contributions to reports that become public when finalised, and section 36 which provides a public interest test exemption where disclosure will prejudice the effective conduct of public affairs.

APPENDIX C ITEMS HIGHLIGHTED DURING CONSULTATIONS

1 SCHEME CONTENT:

1.1 What must the Council publish?

There is not a “Model Scheme”, guidance from the Commissioner, for a Local Authority such as the Council. The minimum statutory requirements are:

- Name of Authority;
- Classes of Information;
- Indication of whether fees apply to all or part of a class;
- Formats the information is available in – eg paper, audio tape, etc

As long as these requirements are met a scheme should be acceptable.

1.2 What do we want to make available

A minimal scheme as identified above will not satisfy the Council’s commitment to open government. The Commissioner has also produced a list of “like to see” information. Including all of this additional information in the Scheme will go a long way to meeting this commitment.

1.3 Maximum/minimum?

In the short term the Council must protect its interests and not publish information prematurely or inappropriately. This can be achieved by:

- a “minimalist” Scheme that lists the information the Council publishes;
- making a risk analysis check on each set of information, for example a document, report or database, of each set of information before it is included in the Scheme;
- including information already in the public domain in the Scheme without a check.

Long term the Council should make as much information as possible available through the Scheme. At some stage the Council will have to switch from listing published information to broad classes of information that list information that will not be published. This could be done as part of the six monthly review of the Scheme.

1.4 How can we ensure the appropriateness of publishing information before it is included in the Scheme?

Undertaking the risk analysis referred to at 1.3 will ensure that only appropriate information is published.

1.5 Some ideas for adding information not currently available, but without risk

There are various ways the Council can build on its initial Scheme with out risk. It can:

- Audit all of its information the Council and apply a public interest test for release against information sets as part of the Audit;

- Build a register of frequently accessed information and include other similar information in its Scheme;
- Build a register of frequently requested information and include it in its Scheme;
- Produce information with an assumption of general disclosure;
- Identify exempt information within an information set and publish the rest;
- Move to “A” and “B” agendas for all meetings.

2 CONSULTATION:

2.1 Must we consult?

There is no legal requirement to consult. Consultation is good practice and all guidance recommends it.

2.2 Cross party agreement

Cross party agreement on the Scheme’s format and content is essential. Consultation will take place through the Organisational Working Party. Consultation with groups could take place if required.

2.3 Officer Consultation

This is happening through working groups and departmental briefings. Groups involved to date include Directors’ Board, the Strategic Resources Group and the corporate Information Management & Security Group. Some departments’ are also using departmental Information Management & Security Groups.

2.4 External Consultation

There will be strong adverse criticism if the Council does not consult rigorously with its key stakeholders and the citizens of Leicester on the content and format of its Scheme. Consultation must be constructive and not “lip service”. One way of achieving this is to consult with:

- The media and other key stakeholders during November and the first week of December prior to submitting the Scheme at the end of December. This will allow time to consider and act on contributions;
- Citizens and all stakeholders during the first six months of 2003 as part of the initial half yearly review of the Scheme. This should be done through consultants to ensure comment is not restricted, especially from the public. Experience from other consultations indicates that generally people are not open and tend to say “the things they think we want to hear” when the Council undertakes consultation.

3 CHARGING:

3.1 Do we charge at all?

There is no legal obligation to charge for anything. Any charge is likely to be seen and/or portrayed as a “tax” on access to information.

The Council already charges for a lot of the information it makes available. There could be considerable sums involved. These have to be quantified.

Information published in the Scheme can be charged for at either a reasonable rate for the service or as defined by the appropriate legislation, for example Planning Applications. Alternatively the Council can waive all charges.

Information published outside of the Scheme can be charged as defined in the appropriate legislation, at FOIA defined rates (these are 10% of the reasonable costs of locating and copying the information concerned). Again "no charge" is an option.

The main difference between information published within and outside the Scheme is that any charges for information in the Scheme must be detailed in the Scheme. Charging outside of the Scheme is a matter of discretion on a case by case basis.

3.2 If we do charge what do we charge for and who do we charge?

This is a matter for the Council's absolute discretion. The Council can charge everyone for everything, some of the applicants, for example businesses, for access while waiving charges for others, for example students, or waive all charges.

One option is to encourage use of the Council's Internet site by not charging for access to information through this medium, while charging for access through all other media. This will have the potential benefit of reducing the workload on staff answering requests. Conversely there may be significant Equal Opportunities issues as the people least likely to have access to or be able to use the Internet are likely to come from disadvantaged areas.

3.3 How will this impact other charging the Council already has in place for access to information?

Not at all. The Council can continue to charge as it does now. However the Council must clearly identify in the Scheme any charges to be made for access to Scheme information.

3.4 How will this affect existing policy – eg not charging for Subject Access under the Data Protection Act?

It won't. It is the Council's decision what it does and does not charge for. There is no reason why the Council should not waive fees for access to personal information under the Data Protection Act 1998 but charge for access to other information under the Freedom of Information Act 2000.

Members instructed in 1985 that the Council should not charge people for accessing their personal information under the Data Protection Act 1984. This policy has continued for access under the 1998 Act. Members may wish to review this. The annual sum the Council would recover if it did charge for subject access under the Data Protection Act is approximately £3000.

4. LEGAL ISSUES

4.1 What are the implications of failure to comply?

There are two areas for non-compliance:

- Failure to produce a Scheme;
- Failure to meet an access to information request.

The ultimate legal implications of both are the same:

- the Commissioner issues a notice ordering the Council to comply;
- if the Council doesn't comply with a notice the Commissioner may certify failure to the High Court and deal with the Council as if it had committed a contempt of court.

Additionally there are several "non-legal" implications of non-compliance including adverse media publicity, lack of confidence in the Council by the public and its business partners and the work needed to achieve compliance following a judgement in what is likely to be a relatively short time scale.

4.2 Relationship between FOIA and the Data Protection Act 1998

FOIA comes into full effect at the end of 2004 and will become the primary legislation for all access to information requests, including those covered by the Data Protection Act 1998, the "DPA". The DPA regulates use of personal data, information about living people; FOIA controls the use of non-personal data.

The DPA's information access rules apply to anyone who processes personal data, FOIA only applies Public Authorities such as the Council. Members may have to meet access requests made under the DPA for any personal data they hold in their own right, but will not have to do this for FOIA.

4.2.1 Are Councillors part of the Council for the Purposes of FOIA?

Only where members undertake duties on behalf of the Council for example as a member of Cabinet or a scrutiny committee. In this case the disclosure request will be on the Council, not individual members.

4.4 Access to political group information

Unlikely to be an issue. FOIA only applies to Public Authorities such as the Council. Political groups are not classed as Public Authorities. Any information that belongs to a group and is held by the Council is covered by the duty of confidentiality or one of the other FOIA exemptions.

5 OTHER AREAS FOR CONSIDERATION

5.1 "Destruction Test" of a controversial decision

"Destruction testing" a potentially controversial decision to ensure the robustness of the decision making process and supporting procedures will enable the identification and resolution of most major issues. This is the best way the Council can test its procedures and should provide worthwhile training for all concerned.

5.2 Member's Home PCs

FOIA requests are to Public Authorities, for example, not individuals. Where a member holds information covered by FOIA, the access request should be made to the Council not the member. If a member receives such a request

they should forward it to Contracts & Security in RAD for action. The Council may have to ask the member for a copy of the information to answer the request, but this is unlikely.

5.3 How do we protect the decision making process.

FOIA does not create a right of access to meetings, only access to information held by the Council. FOIA expects information to be disclosed unless an exemption applies. The effective protection of the decision making process depends on how effectively the Council manages its information and any appropriate FOIA exemptions.

Draft papers intended for future publication are exempt until finalised. This exemption only applies to information published through the Scheme and must be highlighted for the information classes it applies to.

Information destroyed legitimately, for example in accordance with a record retention and deletion plan, does not have to be recreated to answer an access request. The Council will have to balance the need for keeping a clear audit trail of decisions against potential harm arising from disclosure where an exemption does not apply.