



**CABINET**

**24 January 2005**

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**FREEDOM OF INFORMATION ACT 2000**

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**REPORT OF THE CORPORATE DIRECTOR OF RESOURCES, ACCESS AND DIVERSITY**

**1. PURPOSE OF REPORT**

To inform Cabinet of the action taken to ensure the Authority meets the requirements of the Freedom of Information Act 2000 (FOIA) and to seek decisions regarding charges to be made when providing information under the Act, the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR).

**2 RECOMMENDATIONS**

2.1 Cabinet is recommended to:

- 1 Support actions taken to date (see sections 3.2, 3.4 and 3.6);
- 2 Decide the levels of fees if any to be raised for answering requests for information (RFI) under the Freedom Of Information Act 2000 (see Appendix C):
  - (i) whether to charge for disbursements and at what rate (see Appendix C4);
  - (ii) whether to charge for disbursements if less than the cost of processing an invoice (see Appendix C3);
  - (iii) whether to refuse to answer an RFI if estimated costs exceed the £450 limit (see Appendix C2.1 E);
  - (iv) where the cost of answering an RFI exceeds the £450 limit whether to charge for all of the (see Appendix C2.1 E);
  - (v) whether to charge up front or to process an RFI and then raise any associated charges (see section 4.3);
  - (vi) whether to waive the charges for anyone for example people in receipt of benefits (see Appendix C3);
- 3 Reconsider the Data Protection Act 1998 charges (see Appendix C2.2); and
- 4 Decide on the level of charges to be raised under the Environmental Information Regulations 2004 (see Appendix C2.3).

### **3 REPORT**

- 3.1 The Freedom of Information Act and the Environmental Information Regulations came into effect on 01 January 2005 and give wide access to information held by Public Authorities. Changes made to the Data Protection Act at the same time mean it now covers all recorded personal information held by Public Authorities however it is stored. The application of access to information rights needs to be in accordance with the rights contained in the Human Rights Act 1998
- 3.2 A Project Board, supported by a Project Team drawn from all departments, has overseen the Council's preparations for these changes and the Council is well positioned to meet its obligations. The Strategic Resources Group has acted as both a resource facilitator and a quality review function for work undertaken.
- 3.3 FOIA is new legislation, is totally retrospective and is also more wide-ranging than similar law in other countries. Subject to limited exemptions, all non-personal information the Council holds has to be disclosed within twenty working days of request. It is difficult to quantify its impact at this stage.
- 3.4 Work started in 2001, when the Council began to produce its Publication Scheme that came into effect in March 2003. This is a key element in minimising the work faced in complying with legal obligations since the Council does not have to respond to requests for information already published through the Scheme. Other areas of work completed include an organisational Information Retention and Disposal strategy and an accompanying Information Classification Scheme.
- 3.5 Properly resourced Information Management systems are now essential to meeting legislative requirements and business needs. These need to be supported by adequate staff and electronic aids such as a corporate Electronic Document and Records Management System. Work has begun on specifying these requirements and a business case is being developed.
- 3.6 A significant amount of training has been provided targeted at key areas, such as managers and front-line staff. Initial support is provided through departmental co-ordinators, with further support being provided centrally by Information Management & Contracts and lawyers in Legal Services, and an INTRANET site. **Appendix A** to this report contains guidance issued to elected members, and **Appendix B** guidance issued to managers and supervisors.
- 3.7 The Government has not provided extra funding to local Authorities to meet the costs of these new statutory obligations. All three pieces of legislation allow charging, but the necessary FOIA regulations were only produced just before Christmas. It is suggested that the approach to charging be considered after a period of operating the Act.

3.8 FOIA is untested legislation and is being introduced simultaneously across all Public Authorities. At the same time changes to both EIR and the DPA also means their scope is extended. The overall impact, the level of requests and potential benefits from charging will be kept under review.

#### 4. FINANCIAL CONSIDERATIONS

4.1 The Authority is likely to receive requests for information in accordance with 3 main pieces of legislation; the Data Protection Act 1998 (DPA), the Environmental Information Regulations 2004 (EIR) and the Freedom of Information Act 2000 (FOIA). The provisions for charging those who request information are different for each, and these are summarised in Appendix C to this report.

4.2 Within the charging options available, it is important to get the right balance between the amount of income generated and the costs associated with obtaining that income.

4.3 It is difficult to predict the public response to the opportunity to seek information under the FOIA, hence it is difficult to assess either the likely costs of providing information or the income that might be generated from the levying of charges. There are two main outcomes that could cost the Council significant money:

- a) if there are a large number of requests for information that are time consuming to answer. These are the requests that would fall into the category of costing more than £450. If the decision is taken to respond to these but to make no charge, this could be costly. This is the possible outcome that could prove the most expensive as, in theory, some requests could be very involved and time-consuming.
- b) if there are a very large number of smaller requests (ie under £450) but no charges are made for the disbursement costs this too could be expensive.

However, the costs of raising invoices and subsequently pursuing any outstanding debts should also be borne in mind. The current internal charge for raising an invoice, including any necessary reminders and final demands, is £5.75 inclusive of all overheads. **A decision is required** on whether to impose charges, and whether payment should be required immediately, thereby avoiding the cost of raising and pursuing invoices.

4.4 The introduction of elaborate systems for recording the costs of all information requests could also be costly, and may only be justified if the volume of requests is high. It may be advisable therefore to agree an interim, very simple charging regime, which will be reviewed once the volume and complexity of requests is better understood. As a minimum members should consider treatment of disbursements.

Andy Morley  
Chief Accountant  
Financial Services  
Ext 7404

**5. LEGAL CONSIDERATIONS**

5.1 All Legal implications have been addressed in this report.

Peter Nicholls  
Service Director - Legal Services  
Ext 6302

**6. DETAILS OF CONSULTATION**

Information Management Project Board  
Service Director - Legal Services  
Financial Services

**7 OFFICER TO CONTACT**

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

**DECISION STATUS**

<b>Key Decision</b>	No
<b>Reason</b>	N/A
<b>Appeared in Forward Plan</b>	No
<b>Executive or Council Decision</b>	Cabinet

## APPENDIX A

# FREEDOM OF INFORMATION GUIDANCE FOR ELECTED MEMBERS

The Freedom of Information Act comes into force from 1<sup>st</sup> January 2005. From that date **all** requests for information **must** be dealt with in **20 working days**.

Under data protection laws personal data remains confidential. However, with a few exceptions, other information must be given to anyone who requests it. Anyone can request recorded information held by the Council, which could include for example statistics, reports, minutes of meetings or procedures we use.

People do not have to mention the Act when they request information and can make their request to anyone within the Council. The Council will therefore continue to provide routine information, without formality but now within a **20 working day** time limit.

1. If you receive a written request for information held by the Council, send the request as soon as possible to Member Services' Freedom of Information Co-ordinator, **Yasmin Mataria** on extension **252 6709**.
2. If you are asked for information, tell the applicant that the Freedom of Information Act requires that the request:
  - Is in writing;
  - Has sufficient detail for us to find the information they want; and
  - Has an address for us to reply to.

Where information requires a substantial amount of work to obtain and prepare, the requester may have to pay a fee – the Council will let them know if this is the case. It would be helpful if you could get details from requesters such as a telephone number or an e-mail address in case we need to contact them.

If you are not sure what to do, please refer the request to Yasmin.

People can find much of our regular published information through the council's Publication Scheme, available on our Internet site [www.leicester.gov.uk](http://www.leicester.gov.uk) (look under the Freedom of Information Act).

Issued by:

Date: 00 December 2004

## APPENDIX B

# LEICESTER CITY COUNCIL FREEDOM OF INFORMATION ACT 2000 MANAGER'S BRIEFING NOTE

The Act is intended to:

- Promote a culture of openness and accountability amongst public sector bodies such as the Authority;
- Give the public a better understanding of how public sector bodies carry out their duties, why they make the decisions they do and how public money is spent; and
- Make the workings of Public Authorities transparent thereby encouraging a greater public interest in them.

The Act obliges the Authority to maintain and publish a Publication Scheme, which contains details of all information it routinely makes available, how to access the information and any related charges. We want to put as much information as possible into the Scheme, because it is then exempt from the Act. Tell your departmental Co-ordinator of any information you feel should be added to the Scheme - see later for details of who your Co-ordinator is.

The Act comes into full effect on 01 January 2005 and from this date anyone, anywhere in the world will be able to request a copy of any information the Authority holds. Subject to limited exemptions we must answer the request within 20 working days of its receipt by the Authority.

Requests must: be in writing and contain:

- The applicant's name;
- A correspondence address to send the information to; and
- A description of the information required.

As long as the request meets the above requirements, we cannot insist on where it is made or how it is worded. You and or your staff may receive a request at any time and if it meets the Act's requirements must accept it. You or they **must not** refuse to accept a request because the information is kept elsewhere in the Authority.

If you or your staff receive a request you are positive you:

- Can answer routinely within the 20 working days timescale;
- Know all of the information requested is not:
  - ❖ covered by the Data Protection Act 1998 or the Environmental Information Regulations 2004;
  - ❖ in the Publication Scheme; and
  - ❖ exempt information,

and you do not have any other concerns or misgivings about your ability to answer the request - answer it. If you do have any doubts, refer the request to your Co-ordinator.

You or your staff may receive a verbal request for information from someone who visits a Council building that cannot be handled routinely. Help them complete the request (remember to get contact details such as a telephone number or an e-mail address if they will supply it) and deal with it as if it was a written request - this will probably mean forwarding it to your Co-ordinator for action. It will make life a lot easier for everyone, if we have contact details such as a 'phone or fax number or an e-mail address so try to get them.

If you or your staff receive a telephone request for information that you cannot handle routinely - ask the applicant to put the request in writing. They will need to provide the same details as they would for a written request (see above). Here again, life will be easier for everyone if we have contact details.

Remember to mention the possibility of charges where you have direct contact with the applicant. Where you charge now, continue to do so unless your Co-ordinator tells you not to. Fees may also apply where requests are handled under the Act - ie those you pass to your Co-ordinator. Unfortunately the government has still to define what the fees are, and when and how we can apply them so we cannot say precisely what they may be. Advice will be provided as soon as possible.

Departments have appointed staff to act as Freedom of Information Co-ordinators. Current Co-ordinators are:

CEO	Austin Roberts	7120
ELL	Mariam Forrester	7736
Housing	Julie Turner	6845
RAD	Alec Stevens	7114
R&C	Jacki Evans	6788
SCHD	Karen Mosley	35-8229

Remember staff and their responsibilities can change, so please check in the Intranet Freedom of Information section of the Information Governance site if you have any problems contacting your Co-ordinator.

The Co-ordinators will handle much of the work arising from the Act - answering non-routine requests and supporting all managers with advice and assistance. Just pass any non-routine requests to the Co-ordinators quickly and supply any information they ask for within any specified timescales.

Each department has also appointed back-up Co-ordinators with special telephone numbers and e-mail addresses to ensure that you have support at all times. Look on the Intranet site if you are not sure who they are.

Do **not** destroy, alter, amend or change any requested information to avoid release. This is a criminal offence with penalties of up to £5000. It is possible that the applicant already has the information and is just asking to check it! Leave any decision on disclosure to your Co-ordinator.

Your Department is responsible for training you to do your job. If you feel these needs haven't been addressed, raise them with your line manager who will review them with you and ask the Co-ordinator to provide any agreed training. Training for new starters will be delivered as part of the Induction Program.

Issued By: Information Management Project Board  
Date of Issue: 14 December 2004

## APPENDIX C CHARGING FOR ACCESS TO INFORMATION

### 1 WHAT CAN BE CHARGED

There are three sets of information law:

- personal information under the Data Protection Act 1998, the "DPA, which has also been amended so that all personal information held by a Public Authority, as defined by the Act and subsequently amended, is now subject to the DPA;
- environmental information as covered by the Environmental Information Regulations 2004; and
- non- personal information not covered by the Environmental Information Regulations 2004, which will be handled under the Freedom of Information Act 2000.

Each piece of legislation has a different charging regime:

#### ***DATA PROTECTION ACT 1998***

A standard charge of up to £10 can be made for access to information covered by the DPA. The only exception to this is access to school and medical records where certain additional charges can be raised. The Authority currently makes no charge;

#### ***ENVIRONMENTAL INFORMATION REGULATIONS 2004***

The regulations allow for a "reasonable charge" to be made although they do not define what this is. At the moment no charge is made;

#### ***FREEDOM OF INFORMATION ACT 2000***

This is the most complex regime of the three pieces of legislation.

- (a) The Authority can charge in the usual way for any information contained in the Publication Scheme, since this is exempt from FOIA charging rules. Any statutory provision for the charge must be followed and otherwise a reasonable charge can be made provided this is defined in the Scheme;
- (b) Specified disbursement costs, for example postage and copying charges, can be recovered under FOIA;
- (c) The other area where charging is allowed is staff time. Staff time may be charged if it is expended in:
  - Determining whether the information is held;
  - Locating the information or a document that may contain the information;
  - Retrieving the information, or a document that may contain the Information; and
  - Extracting the information from a document containing it.(Time spent in assessing whether disclosure is in the public interest cannot be charged).
- (d) Staff time can only be charged when recoverable time exceeds £450 calculated at the standard rate of £25 an hour. If less than 18 hours is



spent on the chargeable time elements a staff time charge cannot be raised, but a charge for the disbursements can. Where the staff time calculation exceeds £450 the full amount of this time can be recovered;

- (e) The Authority can refuse to answer a FOIA request where it estimates the recoverable staff time fee will exceed £450, but, in this case, it must liaise with the applicant to see if the request can be modified so that it falls within the limit;
- (f) If the Authority receives FOIA requests for the same or similar information from an individual or a group of individuals operating together (for example known members of a pressure group or different members of the same company) it can aggregate the total time needed to satisfy all requests received over a sixty days period.

## **2 CHARGING OPTIONS**

### **2.1 FREEDOM OF INFORMATION ACT 2000**

The Authority has the following charging options under this legislation:

#### **A Do not charge at all**

This will reduce the costs involved in handling a request for information, by eliminating the monitoring necessary to ensure a proper fee is raised. However it will also mean that the Authority will have to answer all requests regardless of cost and will not recover any of the associated costs

#### **B Charge for disbursements**

This means that all applicants will pay the disbursement costs incurred in the Authority answering their request for information.

#### **C Do not charge initially, but review charges when the benefits are identified**

This involves not charging initially for answering requests for information, but monitoring the situation over a period long enough to enable the identification of requests, numbers, costs and money that would have been received. A decision on charging levels can then be made based on experience. It also allows for further changes to the legislation to emerge and the associated implications identified.

#### **D Charge for everything as the law allows**

Charging will not meet all of the costs involved, but will go some way towards achieving this objective. Charging will also deter malicious or mischievous requests and mean that resources are not diverted from "real" requests. The Authority could charge for all costs it incurs as allowed by statute. The government estimates that over 90% of requests will be "free", except for disbursements such as photocopying, because of the £450 staff time limit referred to above.

## **E Charge for requests that exceed the £450 limit**

This will mean that the Authority will have to monitor the costs involved in handling a request, but it will enable the identification of requests that exceed the statutory limit of £450 and provide the opportunity to reject these requests if the Authority chooses.

FOIA allows the Authority to refuse to handle this type of request, but it also imposes an obligation to work with the applicant to see if the request can be refined so that it falls under the £450:

- (a) If the Authority is willing to handle any request that exceeds the £450 limit, see Appendix C section 1.3. (c) above, it only has to decide if it wishes to charge for the service;
- (b) If it is not willing to provide this service it can reject all requests that breach the threshold. The Authority must work with the applicant to redefine the request so it falls under the limit before it may reject the request.

**Cabinet is asked to decide** if the Authority should answer requests for information that cost more than £450. If the decision is made to answer these requests **Cabinet is also asked to decide** what level of recovery should be made in these circumstances.

## **F Partial charging regime**

This means that the Authority will only charge for access to information once its costs have reached a certain level. This option will go some way to meeting the accusation that the Authority is deterring people from exercising their rights. The principle of charging to meet some of the costs involved in access to information will still be maintained, but by introducing charging at a higher level or providing discounts or both. Financial Services Trading Agreement quotes a cost of processing a payment transaction at £5.75 - including all staff costs, IT costs and an apportionment of premises costs.

### **2.2 DATA PROTECTION ACT 1998**

The Authority may raise a maximum charge of £10 per request with additional charges to cover disbursements for educational and medical records. **Cabinet is asked to decide** if it wishes to charge for access to information under the DPA and if so what level charges should be set at.

### **2.3 ENVIRONMENTAL INFORMATION REGULATIONS 2004**

The Authority may raise a reasonable charge for any work it undertakes when answering a request for information under the regulations. The regulations do not define what constitutes a "reasonable charge" and **it is recommended** that this be left to each department to identify in the same way as they do for charging for access to information in the Publication Scheme.

**NB** All valid EIR requests must be answered regardless of cost.

## 2.4 **VALUE ADDED TAX**

Customs and Excise has said that where a Public Authority such as the City Council provides information which is accessible by other means than from a Public Authority any charges raised are subject to VAT. The Authority already charges VAT elsewhere, for example through certain Customer Accounts charges.

## 3 **EXEMPTIONS**

There are a variety of persons who it could be argued should be exempt from charges under the above legislation, however the costs are likely to be such that most people will be able to meet them. **It is recommended** that any discount be restricted to those on benefits if exemptions are supported, for example:

- DPA, no charge;
- EIR, a reasonable charge for any cost over £30;
- FOIA, all costs to be recovered where allowed once these are greater than £30.

**It is neither recommended** that students be exempt from charges **nor is it recommended** that anyone be exempt from disbursements.

## 4 **DISBURSEMENTS**

These are the costs incurred in:

- Complying with the request by providing the information in a specific format (eg summary, inspection, etc);
- Reproducing any document; or
- Postage and other forms of transmission e.g. fax.

**It is recommended that** Cabinet either determines the level of disbursements be at cost or delegate power to the Corporate Director of Resources, Access and Diversity & Town Clerk to determine costs in line with appropriate guidance.