



ANDOVER TOWN COUNCIL

INFORMATION POLICY – 2019 (March 2019)

Contents	Subject	Page No
	GDPR Privacy Statement	1
1	Introduction	3
2	Purpose	3
3	Aims	3
4	Key Requirements & Commitment to Access to Information	3
5	Roles & Responsibilities	3
6	Statutory Access Regimes	4
7	Processing a FOI Request	4
8	Advice & Assistance	5
9	A Formal Request for Information	6
10	Request for Information as part of an organised campaign	6
11	Prompt replies to requests	6
12	Consultation with third parties	7
13	Information provided in confidence	7
14	Contracts	8
15	Refusal of a request	8
16	Complaints	8
17	Document Information	9
18	Document Control	9
	Appendix 1	10
	Appendix 2	10

The General Data Protection Regulation (GDPR) standardizes data protection law across all 28 EU countries and imposes strict new rules on controlling and processing personally identifiable information (PII). It also extends the protection of personal data and data protection rights by giving control back to EU residents. GDPR replaces the 1995 EU Data Protection Directive and goes into force on May 25, 2018. It also supersedes the 1998 UK Data Protection Act.

GDPR PRIVACY STATEMENT

(General Data Protection Regulations)

This is a privacy statement of Andover Town Council. Our registered office address is 68b High Street, Andover, Hampshire, SP10 1NG.

INTRODUCTION

- This is a statement to inform you of our policy about all the information we record about you. It sets out the conditions under which we may process any information that we collect from you or that you provide to us. Any information that identifies you (“Personal Information”) is used to provide you with the services you require.
- We regret that if there are one or more points below that you are not happy with us holding, we have to hold this under General Data Protection Regulations (GDPR) law.

Issue Date 14 March 2019



Information Policy 2019

- We take seriously the protection of your privacy and confidentiality. We understand that all visitors to our websites, customers and clients are entitled to know that their personal data will not be used for any purpose other than the lawful basis upon which it was provided for.
- We undertake to preserve the confidentiality of all information that you provide to Andover Town Council.
- Our policy complies with UK law accordingly implemented including that required by the GDPR.
- The law requires us to tell you about your rights and our obligations to you in regards to the processing and control of your personal data. We do this now by requesting that you read the information provided at www.knowyourprivacyrights.org.
- Except as set out in our GDPR policies (which can be found at www.andover-tc.gov.uk we do not share, sell or disclose any personal data to any other organisation or third party.

THE BASIS ON WHICH WE PROCESS INFORMATION ABOUT YOU

The law requires us to determine under which of the six defined bases, we process different categories of your personal information. If a basis on which we process your personal information is no longer relevant, your personal information will be destroyed.

If the basis changes then as required by law, we will notify you of the change and of any new basis under which your personal data is being held.

ALLOTMENTS

Data is held on an internal Town Council database/software system and is used to send you Newsletters, Yearly Invoices, Receipts, Follow-Up letters and Terminations if necessary. Tenancy Agreements are held for 1 year after the expiry of the agreement under the GDPR guidelines (subject to change).

EMAILS & WEBSITES

If you contact the Town Council via email or our website, your personal data i.e. email address, will be kept for the time it takes to answer your enquiry, unless another lawful reason becomes apparent, which we will notify you of, after which time it will be destroyed.

For details of our full Privacy Policy, please refer to www.andover-tc.gov.uk. Alternatively, you may write to us at Andover Town Council, 68b High Street, Andover, Hampshire, SP10 1NG and we will send you a hard copy.



1. Introduction

This policy supports the legislative framework for responding to requests for information under the statutory access regimes of the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA), the General Data Protection Act 2018 (GDPR), the Environmental Information Regulations Act 2004 (EIR) and any other legislation that provides a right of access.

As a result of the Local Government Transparency Code 2015 there will be a presumption in favour of disclosure to promote transparent, open and accountable Local Government. The Town Council will ensure that it remains open about the way it operates and endeavours to supply information wherever possible.

2. Purpose

The purpose of this policy is to ensure compliance with the provisions of FOIA, EIR and other access regimes with effect from April 2015. The Town Council will also ensure compliance with the DPA, GDPR, which provides for the protection of personal information held by the Town Council.

This policy should not be read in isolation and regard should be had to the Secretary of State's Code of Practice under section 45 of FOIA which provides guidance on good practice to be followed in handling requests for information. The Town Council recognises that although not legally binding, failure to comply with the Code may lead to failure to comply with the Act. Similarly, the Town Council recognises that the Secretary of State's Code of Practice under section 46 of FOIA on records management will assist the Town Council in complying with the duties imposed on public authorities by FOIA.

3. Aims

The Aims of this policy are to ensure access to information held by the Town Council in order to promote greater openness, provide increased transparency of decision making and to build public trust and confidence. These aims will be balanced against the need to ensure the confidentiality of some information relating to areas such as personal privacy, confidentiality and commercial sensitivity where disclosure would not be in the public interest.

4. Key Requirements and Commitment to Access to Information

Andover Town Council is committed to openness about the way in which it operates and makes decisions and will favour disclosure of information where possible. This policy sets out the general principles that are adopted by the Town Council in response to requests for information under all statutory access regimes.

5. Roles & Responsibilities

This policy has been agreed by full Council. The Town Clerk has overall responsibility for access to information and amendments to the policy. The Town Clerk is also the Town Council's Data Protection Officer and will take the lead and be responsible for the provision of advice and guidance on FOIA, EIR, DPA and GDPR. They will also be responsible for decision making, in particular in relation to any refusal of requests for information.



Individual Officers will be responsible for ensuring operational compliance with this policy within their own areas of responsibility and for routine requests where information is released in accordance with a request, whether written or otherwise.

Complaints received in connection with access to information will be handled in accordance with the Town Councils Complaints Procedure. Where the Town Council receives a request to review the handling of a request or the decision is made, the review will be dealt with by the Policy and Resources Committee.

6. Statutory Access Regimes

Access to information is principally governed by the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 1998 and the General Data Protection Regulations 2018. They all provide rights of access to information with limited exceptions. The EIR enables access to environmental information, the DPA enables access to personal information of which the applicant is subject, the GDPR gives protection to the use of personal information and the FOIA enables access to all other information.

Any written request for information is technically an FOIA request in the first instance. Section 39 of the FOIA then exempts environmental information from being dealt with under the Act and provides that it should be dealt with under EIR (see Appendix 1).

If part or all of the information requested is personal information, where the applicant is the subject of that information, access to that information will be dealt with under the DPA and GDPR.

The Town Council has a Publication Scheme as required by the FOIA. The Publication Scheme sets out details of information and where it is available, usually through links on the website. All information available through the Publication Scheme is exempt from the FOIA. Where possible, requestors should be directed to the relevant pages of the website to find information – for example Committee Minutes.

The FOIA allows anyone (including organisations) to request information from the Town Council after the 1 January 2005 regardless of their identity, location or motive. Any information held by the Town Council is potentially eligible for release. However, a number of exemptions (Appendix 2) may be applied to protect some categories of information. The Act requires that all requests must be in writing (including emails), must state clearly what information is required and must provide the name of the person making the request with an address for correspondence. This can simply be an email address. The EIR slightly differ in that a verbal request may be made.

7. Processing an FOI Request

All FOIA and EIR requests should be logged on monitored on the FOI database. Requests must be logged on the database as soon as they are received. The majority of requests are received via email.

On receipt of any request for information the Town Council will, within 10 working days, either provide the information or acknowledge receipt of the request. If the information requested cannot be provided within 10 working days, a reply must be sent no later than 20 working days after receiving the request.



Information Policy 2019

If the request does not provide enough information for the Town Council to locate the information, we will ask for further details in order to help us locate the information. The Town Council is under a duty to advise and assist the applicant and therefore will provide reasonable assistance to enable a request to be properly made.

If the information requested is contained within the Publication Scheme, it is exempt from the FOIA requirements. In practice, this means that the applicant should simply be provided with the information in accordance with the Scheme. Most of the information available through the Publication Scheme is available on the website www.andover-tc.gov.uk

If the information requested is not contained within the Publication Scheme, the Town Council may charge a fee for disbursements (such as the cost of photocopying and postage).

The Town Council will attempt, where possible, to send information electronically as is less expensive and more efficient for the Town Council and the requestor. The Town Council may charge for providing paper copies, calculated at 10p per A4 sheet.

The reply to the request should either

- Provide the information that has been requested, or
- Confirm or deny whether the Town Council holds the information in a formal refusal letter. The refusal letter will either be written or approved by the Town Clerk.

If the information is held by the Council but is not provided, the reply should explain why not, quoting a statutory exemption and the reasoning behind it. If confirming or denying will itself provide the information which is exempt, then the Council does not have to confirm or deny that it holds information.

A request for information may only be refused if an exemption under FOIA (or EIR or GDPR) applies. If information is refused, a refusal letter will be issued by Legal Services giving reasons for the refusal and setting out details of which to do if the recipient of the Notice is not satisfied with the way the Town Council has dealt with the request.

8. Advice and Assistance

The Town Council has a duty to provide advice and assistance to applicants under Section 16 of the FOIA and under the provisions of the EIR.

The Town Council's procedure for dealing with requests for information will be available on the website www.andover-tc.gov.uk. Advice and assistance by telephone can be obtained by telephoning: 01264 335592

Any queries about this policy or access to information within the Council should be directed to:-

The Town Clerk

Andover Town Council

68B, High Street

Andover

Hampshire. SP10 1NG Email: info@andovertc.co.uk

Issue Date 14 March 2019



9. A Formal Request for Information

Andover Town Council provides a wide range of information and will continue to do so with only certain requests being treated formally under FOIA, EIR or DPA. The FOIA requires that a request for information must be made in writing, which may include a request transmitted by electronic means, providing it is received in a legible form and is capable of being used for subsequent reference. If a person is unable to articulate their request in writing, the Town Council will provide advice to help them make their request.

The Town Council fully supports the principles of FOIA and will seek to comply with the Act. However, if the information requested is not described in a way which would enable the Town Council to identify and locate it, or the request is ambiguous, the Town Council will seek clarification and the 20 working day request period may be put on hold. The Town Council will provide reasonable assistance to help the applicant to clarify the nature of the information sought and contact will be made to clarify the request at the earliest opportunity. The Town Council will not require the applicant to provide reasons for requesting the information as this is irrelevant to the decision. However, if reasons are provided, it can assist staff to process the request more easily.

Whilst the Town Council will make every effort to provide assistance to enable the applicant to submit a successful request, if they still fail to provide enough detail to enable the information to be identified and located, the obligation to comply with the request will end unless further information to enable the request to be determined is provided.

Under Section 14 of FOIA, the Town Council is not obliged to comply with requests which are substantially similar to a request received from a person where a reasonable interval has not elapsed between the previous request and the current request. Nor is it obliged to comply with requests which are vexatious. Staff who believe that a request may be vexatious, should seek advice from the Town Clerk.

If the Town Council estimates that the cost of compliance would exceed the appropriate limit (currently £450) as set out in the Fees Regulations, the Town Council is not obliged to comply with the request. However, the Town Council may consider on a discretionary basis what information could be provided within the appropriate limit.

10. Request for Information as part of an organised campaign

Where the cost of compliance of providing the information to a number of related request exceeds the threshold limit described in the Fees Regulations, the Town Council will not be obliged to comply with the request. However, the Town Council may, on a discretionary basis, be prepared to offer assistance as to what could be disclosed in a more effective manner. It will be a matter for the Town Council to determine whether the various requests are related and part of an organised campaign.

11. Prompt Replies to Requests

The Town Council is required to comply with all requests for information promptly and no later than the 20 working days following receipt. The Town Council does not expect every application for



information to take 20 working days and will, where possible, provide information at the earliest opportunity from the date of the request. Requests for personal information under the DPA and GDPR will continue to be dealt with within one month.

If the Town Council is considering applying an exemption which is accompanied by a public interest test under the FOIA, the Town Council may need more than 20 working days. If so, the Town Council will notify the requestor in writing that the request for information engages the public interest test and will provide an estimate of a date by which it expects to reach a decision. The estimate will be reasonable in the circumstances of the particular case, taking account of such things as the need to consult third parties. If the estimate given proves to be unrealistic, the Town Council will notify the requestor at the earliest opportunity giving a new realistic estimate of when the decision will be issued.

12. Consultation with third parties

The Town Council recognises that disclosure of information may affect the legal rights of a third party. The Town Council recognises the importance of the Data Protection Act 1998 and the General Data Protection Regulation 2018 and the Human Rights Act 1998 and this policy is written in accordance with their terms. The Town Council further recognises that unless exemption is provided in the FOIA there will be a requirement to disclose that information in response to a request.

If the consent of a third party is required prior to disclosure of information, the Council will, at the earliest opportunity, seek to consult with that third party with a view to seeking their consent to the disclosure, unless such a consultation is not practical.

The consultation may assist the Town Council in determining whether an exemption under the Act applies to the information requested, or the views of the third party may assist the Town Council in determining where the public interest lies under section 2 of FOIA. A third party's refusal to consent to disclosure of information does not necessarily mean that information will not be disclosed.

Consultation with any affected third parties will not always take place. The Council will not undertake consultation if it does not intend to disclose the information because of another exemption, or where the views of the third party would have no effect on the decision of the Town Council because no exemption applies.

13. Information provided in confidence

Information provided in confidence by a third party is exempt information under section 41 of FOIA if the disclosure of that information to the public would be an actionable breach of confidence by the person providing the information to any other person.

The Town Council will only accept information from their parties on a confidential basis if that information would not otherwise be provided to the Town Council to assist the delivery of the Council's functions.

The Town Council will not agree to hold information in confidence if it is not actually confidential in nature. If a person or organisation seeks to provide information in confidence they will be told of it cannot be treated confidentially.



14. Contracts

The Town Council will not include contractual terms, such as confidentiality clauses, which purport to restrict the disclosure of information held by the Council in relation to the contract beyond the exemptions in the FOIA. Unless an exemption under the Act applies in relation to any particular part of the contract, the Council will be obliged to disclose that information in response to a request regardless of the terms of any contract. Trade secrets are exempt information as is information which would prejudice the commercial interests of any person, including the Council. This exemption is subject to the public interest test i.e. whether the public interest in maintaining the exemption outweighs the public interest in disclosing it.

The Council will seek during the tendering process to discuss and agree with the contractor a schedule of information which the contractor wishes not to be disclosed. However, even if such a schedule is included, any restrictions on disclosure may subsequently be overridden by obligations under the FOIA. Further, the public interest in releasing information may after a passage of time, be in favour of disclosure.

If a non-public organisation contracts with the Council to provide a service that is a function of the Council then that organisation will be deemed to be part of the Council for the purposes of FOIA and in relation to that service, will be subject to the terms of the FOIA.

15. Refusal of a Request

If the Town Council relies on an exemption to refuse a request for information the applicant will be notified of the appropriate exemption and why it applies. **Appendix 2** sets out the main exemptions likely to apply to information held by the Council. If the reasoning behind the exemption, or the exemption itself, would result in the disclosure of information which would itself be exempt, then the Council may not provide that reason.

If the Council decides that the public interest in maintaining the exemption outweighs the public interests in disclosure, then this will be stated in the refusal letter together with the public interest factors which have been considered and which form a material part of the decision.

If a document contains exempt information, the Council will not refuse access to the whole document unless it is absolutely necessary to do so in order to ensure that exempt information is not disclosed. Where part of a document is exempt, normally only that part of the document containing the exempt information will be withheld.

The Town Council maintains a central record for monitoring purposes of all FOIA requests and will proactively audit decisions to ensure that where information requests are refused, refusals are justified and reasonable.

16. Complaints

The Town Council has an internal complaints procedure. Any person who is unhappy with the way the Council has handled their request for information may use the procedure.



Information Policy 2019

A complaint may be made about the Council's failure to release information in accordance with its Publication Scheme, about requests that have not been properly handled, or where there is dissatisfaction with the outcome of a request.

If, following a complaint, the decision is made to release information, this will be done as soon as possible and notification of intended disclosure, if it is not accompanied by the information requested, will be made at the earliest opportunity.

Details of the complaints procedure can be found on the website at www.andover-tc.gov.uk

Complaints about the way in which information requests are handled should be directed to:

The Town Clerk
Andover Town Council
68B High Street
Andover
Hampshire. SP10 1NG Email: info@andovertc.co.uk

If the decision to refuse disclosure is upheld or the internal complaints procedure is exhausted and the applicant is still dissatisfied, they will be made aware of their right to apply for a review to the Information Commissioner at:

<https://ico.org.uk/make-a-complaint/>

17. Document Information

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Approved by:	Council
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18 Document Control

Date	Version	Description	Sections Affected	Approved by
Feb 2019	1	1 st Draft	All	Policy & Resources Committee

Disclaimer:

A printed version may not be the current version.

A current version may be obtained in the required format from the Town Clerk's Office at Andover Town Council.

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APPENDIX 1

WHAT IS A REQUEST FOR INFORMATION?

The Town Council provides information as part of its day to day functions. The access regimes under Environmental Regulations, Freedom of Information Act, the Data Protection Act and the General Data Protection Regulations are so broad that they cover what the Town Council does routinely.

Where possible, requests for information will be dealt with in the normal course of business. However, it is accepted that some requests will require a more formal approach. This guidance note sets out what the triggers will be for engaging the official process for dealing with requests for information under the above legislation.

The following will **not**, as a general rule engage the formal process:

- If the information is reasonably accessible to the public by such means as it being published on the internet, mentioned in the publication scheme, or readily available for inspection. This may include information leaflets, or published reports or general information on the internet
- Information that is released as part of the Town Council's normal business process; the Council routinely provides information as part of its day to day processes (for example job application forms or information included on agendas). The processes are not intended to replace existing systems that are functioning adequately
- Correspondence that is not a request for information
- Requests that do not include a name and address for correspondence (or an email address).

It is important to recognise, at an early stage, when requests for information should be entered onto the Town Council's system for managing requests. This is to ensure that the Council can comply with the request within the statutory time periods and to enable sufficient monitoring and auditing of the Council's compliance. A central database has been set up to monitor and manage the process of formal requests within the Town Council. The day to day responsibility for maintaining the database will lie with the Data Protection Officer.

All but the most straightforward requests for information should be treated as made under the FOIA/EIR/DPA or GDPR whichever is appropriate.

APPENDIX 2

Whilst the Freedom of Information Act provides for the right of access to information held, it also affords a number of exemptions from this right in order to permit public authorities to withhold some or all of the information requested where a justifiable reason exists.

The exemptions fall into 2 categories:

- Those that are absolute exemptions where the Town Council may withhold the information without considering any public interest arguments and



- Those that are qualified i.e. that, although an exemption may apply to the information, it will nevertheless have to be disclosed unless the public interest in withholding the information is greater than the public interest in releasing it.

In respect of the absolute exemptions, the Town Council does not have to confirm or deny that it holds the information if to do so would in itself provide exempt information.

Absolute Exemptions

The absolute exemptions that are most likely to apply to the Town Council are:

- Information which is reasonably accessible by other means, i.e. through the Council's Publication Scheme or via existing access regimes
- Court records
- Personal information relating to the person making the request. These requests will be dealt with under the DPA and GDPR.
- Personal information about a third party where disclosure of that information would contravene the data protection principles contained in the DPA and GDPR
- Information provided in confidence – this exemption only applies where disclosure would result in an actionable breach of confidence
- Information that is prohibited from disclosure by law

Qualified Exemptions

The qualified exemptions most likely to apply to the Town Council are:

- Information intended for future publication
- Investigations/proceedings conducted by public authorities
- Law enforcement
- Prejudice to the effective conduct of public affairs
- Health & Safety
- Environmental Information
- Personal information relating to a third party – save as mentioned above
- Legal professional privilege
- Commercial Interest

A full list of the exemptions under the Act is available from the Information Commissioner's website at <https://ico.org.uk/>

The Public Interest

The public interest test requires that information should be withheld under exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Further guidance on the application of exemptions and the public interest can be found on the Information Commissioners website.