

Carmarthenshire County Council Freedom of Information Policy



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Freedom of Information Policy

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Part 1

1. Purpose

This Policy sets out the principles which underpin Carmarthenshire County Council's approach to the promotion of open government and reinforces its commitment to openness.

2. Status

This Policy is not a legal document and it does not confer rights or override any legal or statutory provisions which either require or prevent the disclosure of information.

The Policy applies to information held by the Council. Contracts with private companies entered into by the Council include terms relating to the disclosure of information.

Throughout this Policy, references to the Council are references to Carmarthenshire County Council.

3. The Freedom of Information Act 2000

The Policy reflects the key features of the Freedom of Information Act 2000 (the Act), including the categories of exempt information specified within this legislation.

The Council also takes into account to the requirements of the Cabinet Office's Freedom of Information Code of Practice (4th July 2018), which sets out best practice in discharging functions and responsibilities under the Act.

4. Key features of the Freedom of Information Act 2000

The Act provides a general right of access to recorded information held by the Council and places two general duties on the Council:

- To be informed in writing whether we hold information meeting the description set out in a request; and
- To provide the information we hold which relates to the request.

The criteria for when information is legally 'held' by the Council include:

- Information held, that is, in our possession in a recorded form at the time the request is received
- Information stored in off-site servers or cloud storage
- Information held by other organisations and authorities on behalf of the Council, including, for example by contractors

Information that is created after a request is received is not 'held' for the purposes of the Act, nor is information that has been deleted from the Council's systems and file plan and is only held in electronic back up files

The Act also:

- Provides statutory time limits for complying with a request for information
- Requires the Council to provide advice and assistance to people seeking information
- Requires the Council to state the basis for the refusal of a request for information and to provide advice on how to complain in those circumstances

These duties are subject to exemptions which are set out in Appendix 1 and 2.

Whilst some of these exemptions are absolute, others are qualified, which means that the Council must apply what is known as the public interest test before deciding whether to withhold or release the information.

The Council must assess whether in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

In doing so, the Council must make a distinction between what is genuinely in the public interest and what may merely be of interest to the public.

The Act provides that apart from the exemptions referred to above, the Council may also refuse to confirm or deny whether it holds information and/or give access to it where:

- To do so would exceed the cost limit
- A fee is required and has not been paid
- Requests are vexatious or repeated or where substantially similar requests are received from the same person
- The applicant has not provided sufficient detail to identify the information required

The Council is also required to adopt, implement, maintain and regularly review a publication scheme which commits the Council to publish certain classes of information routinely, without the need to make a request to access it. The scheme must specify:

- The classes of information which the Council publishes as part of its normal business activities
- How the information can be obtained
- Whether the information is available free of charge or on payment

5. The Information Commissioner's Office

The Information Commissioner's Office is the independent authority set up to uphold information rights. Its duties include the promotion of the observance of the requirements of the Act, the promotion of good practice and the investigation of complaints about a public authority's failure to comply with the requirements of the Act.

Upon investigating a complaint, the Information Commissioner may compel a public authority to disclose information if it is considered that it was incorrectly withheld.

6. The Environmental Information Regulations 2004

Where recorded information is requested which is defined as 'environmental information', then the request will be dealt with under the Environmental Information Regulations (the Regulations), rather than the Act.

The Regulations provide a general right to access information which falls within the definition of environmental information. This definition encompasses information on:

- The state of the elements of the environment, such as air, atmosphere, water and land, and the interaction between these elements
- Factors affecting or likely to affect these elements, such as emissions, noise, radiation and waste
- Measures and activities that affect or may affect these elements and factors
- Reports on the implementation of environmental legislation
- Cost-benefit and other economic analyses used in the measures and activities referred to above
- The state of human health & safety where this is affected by elements of the environment

There are two key differences between the Regulations and the Act:

- Requests may be made verbally
- The circumstances in which requests can be refused are more limited

The Regulations contain a presumption in favour of disclosure and like the Act, if the Council refuses to provide any information it holds, it is required to state in writing its reasons for doing so, applying one of the exceptions to the duty to disclose information. These exceptions are set out in Appendix 3.

7. Key principles of the Council's approach to openness

Notwithstanding the requirements of the Act and the Regulations, the Council is committed to the following principles, which are explained in more detail in Part 3:

- Maximising openness in the way it conducts its business
- Presenting information in clear language in line with its language scheme and taking account of different needs
- Making extensive use of the Council's website www.carmarthenshire.gov.uk as a means of publishing information
- Providing prompt and comprehensive responses to requests for information
- Providing a right to request an internal review where a member of the public is not satisfied with the response received
- Providing information free of charge wherever possible and clear advice about charges and when they apply

- Respecting personal privacy, commercial confidentiality, the duty of confidence and all laws governing the release of information

8. Review of the Policy

This Policy will be kept under review to ensure that the Council meets statutory requirements and any codes of practice made under the Act.

Part 2

Requests for information

1. Providing advice and assistance

The Council will as far as is reasonable and possible anyone who has made a request or wishes to make a request with advice and assistance in relation to their requests for information.

Anyone requiring advice in respect of access to information should contact the Information Governance team using the contact details provided on the contents page of this document.

2. Making a request for information

Requests for Information must be in writing and can be made:

- By email
- By using the online form provided on the Council's website
- By post, to the address provided

The Council provides information on how to exercise these options prominently on its website.

The exception to the requirement to make a written request are those that fall under the Environmental Information Regulations, which may be made verbally.

Requests for information must:

- Include an email or postal address to which the reply is to be sent
- Give sufficient detail for officers to identify what information is required – where a request does not contain enough detail for officers to decide what information the applicant wants clarification can be asked for

Where a person is unable to put his or her request in writing, the Council will ensure that appropriate assistance is given to enable a request for information to be made. Depending on the circumstances, this will include:

- Advising them that another person or agency may be able to assist them with the request, or make the request on their behalf
- In exceptional circumstances, taking a note of the requested information, by telephone or in person, and providing the note to the requester for confirmation. In such cases, once verified by the requester and returned to the Council, the note will constitute a written request for information and the statutory time limit for reply will begin once the confirmation is received

3. Providing a prompt and comprehensive response to a request for information

The Council will respond promptly and positively to requests for information.

If we withhold information and/or are unable to provide the information in the form preferred and requested by the applicant we will explain why.

The Council is required to respond to a request for information under the Act or Regulations promptly and in any event, within 20 working days of its receipt. A working day means any day excluding a Saturday, Sunday or any day that is a designated Bank Holiday.

The 20 working day period for response begins:

- The day after a request is received by the Council, or
- The day the Council receives further information which it needs to identify and locate the information requested

Therefore, the date of receipt is not the date the request is passed to the Information Governance team to be processed.

However, where a request is sent by email, if an automated 'out of office' message provides instructions on where to re-direct a message, the request would not be received by the Council until it was re-sent to the alternative contact.

Where the Council is not able to provide the information free of charge and decides to charge a fee, the applicant will have a period of three months to pay from the date a notice requiring payment is sent by the Council. This may arise where a large volume of photocopying is required.

The period between the giving of a notice and the date the fee is received is not included in the 20 working day calculation.

Requests for information received in Welsh will receive a response in Welsh. Where documents are only available in English they will be provided in that form but under cover of a letter or email in Welsh.

In dealing with a request for information, the Council is not required to acquire or create information it does not already hold. If we believe that another public authority may hold the information being sought we will consult with them. In such cases, the identity of the requester will not be shared with the other public authority.

If the other public authority does hold relevant information, the requester will be advised that the Council does not hold the information and be given details of how to contact the relevant authority. The option will also be given, with the requester's permission, of having the request transferred to the authority holding the information.

Information that is already available as part of an existing charged service will be provided through that service.

The Council will not provide information which is already reasonably accessible to the requester and in particular, information made available under the publication scheme.

A requester may express a preference as to how the information is to be supplied. For example a spreadsheet, a paper copy or a summary. Where reasonably practicable, the Council will comply with the stated preference.

Where it is not possible to comply with the requester's preference we will explain why.

Where the information being requested is a dataset and the requester has asked for an electronic copy, we will as far as is reasonably practicable, provide the information in a re-usable form such as an Excel spreadsheet.

Information released to the requester may be re-used under the terms of the Open Government Licence 3.0.

4. Cost limit

The Council may refuse to deal with a request where we estimate that doing so would exceed the 'appropriate limit', more commonly referred to as the 'cost limit'.

The cost limit is based on a flat rate of £25 per hour and for the Council is £450 (18 hours).

However, we can only take into account the following activities when estimating whether responding to a request would exceed this limit. These are:

- Establishing whether the information is held
- Locating and retrieving the information
- Extracting relevant information from the document containing it

The Council cannot take into account other activities such as redaction when calculating the time it would take to deal with a request.

5. Vexatious requests

There is also a provision in the Act which enables the Council to refuse to provide a substantive response to a request if it is deemed vexatious.

Determining whether a request is vexatious may not be entirely straightforward as the Act does not define what makes a request vexatious. However, such requests would include the following:

- An abusive or offensive request that causes an unjustifiable level of distress, or where threats are, or have been made against staff
- Where the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress

In considering whether a request is vexatious, the Council will refer to the Cabinet Office's Code of Practice, guidance and decisions from the Information Commissioner's Office and decisions made by the Information Tribunal.

6. Internal reviews

The Council will provide a requester with a right to an internal review where they are not satisfied with the handling of a request, the response they have received or they disagree with a decision to withhold information.

Where the Council refuses to provide information, including where information is not held, the notification of the decision will include details of how to request an internal review by the Head of Administration & Law.

Requests for internal review are normally accepted within 40 working days of the Council's initial response to a request. The Council is not obliged to accept internal reviews after this time. The initial response should advise the requester of this.

The contact details of the Information Commissioner's Office will also be provided.

Part 3

Explaining the Principles

1. The Council will be as open as possible

The Council will make information available unless there are legal or public interest reasons for not doing so.

Examples where information would not be made public include:

- Where information requested under the Freedom of Information Act falls within one of the categories of exempt information listed in Appendices 1 and 2 and where relevant, the public interest lies in withholding it
- Where an exception under the Environmental Information Regulations applies
- Where a breach of confidentiality would occur
- Where information contained in reports to Council committees are deemed confidential or exempt under Section 100 of the Local Government Act 1972

Meetings of the Council, the Executive Board and committees will take place in public. However, there may be occasions when the public will be excluded when exempt information is being discussed. This will be identified on the agenda.

2. Presentation of business

The Council will present its business in clear language in line with its language scheme. It will aim to produce brief, easy to read documents and will have regard to the needs of differing sectors of the community including people with disabilities.

3. Publication scheme

The Council maintains a publication scheme, which provides a means by which the public can identify key information produced by the Council in the course of its business.

The Council has adopted the model publication scheme approved by the Information Commissioner's Office.

The publication scheme can be found on the Council's website. The Council is committed to maximising the use of its website to publish information, including datasets as required by the Protection of Freedoms Act 2012.

4. Charging for information

The Council aims to make as much information as possible available free of charge and does so in the main by providing responses electronically.

However, where a requester specifies a hard copy as their preferred format for receiving the information and a large amount of photocopying or printing is required a charge will be made.

The standard cost per copy is as follows:

- A4 black & white 10p
- A4 colour 20p
- A3 black & white 20p
- A3 colour 40p
- A2 50p
- A1 £2.00
- A0 £5.00

The Council will not charge for copies costing less than £2.00 in total. All charges are inclusive of VAT.

The Council reserves the right to charge at a higher rate where any statutory right to do so applies, or when documents are provided in the course of legal transactions.

Although uncommon, certain publications may also have a cover price. Where the information is already available in a priced publication the Council will provide details of the publication and where to obtain it.

The Archive Service provides a research service upon request, for which there is an hourly charge to search for and retrieve information held in the Archive. Details of the charge and this service are published on the Council's website.

If your request is likely to incur any charge the Council will advise you of this and allow you to confirm whether you wish to continue with the request before it undertakes any work.

The Council will not charge for the following:

- Any information provided on the Council's website (except where hard copies are required and this requires extensive printing)
- Free leaflets, forms and booklets concerning the services we make available to the public
- Inspection of public registers held at Council offices during normal working hours
- Inspection of information held at all public libraries in Carmarthenshire and by the Archive Service during their normal opening hours

5. Protecting privacy

A large amount of the information that the Council holds is personal data. Such information will not be disclosed under the Act or Environmental Information Regulations where this would breach any of the principles set out in the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR).

Individuals have a separate right to access to personal data about themselves under Article 15 of the UK GDPR. This is often referred to as the right of subject access.

Subject access requests can be made verbally or in writing and contact details for making requests are provided to the public on our website and in privacy notices.

6. Equalities statement

All employees are required to adopt a positive, open and fair approach and ensure the Authority's **Equality and Diversity Policy** is adhered to and applied consistently to all irrespective of race, colour, nationality, ethnic or national origins, disability, religion and belief or non-belief, age, sex, gender reassignment, gender identity and gender expression, sexual orientation, pregnancy or maternity, marital or civil partnership status.

In addition, the Welsh Language Standards ask us to 'ensure that the Welsh language is treated no less favourably than the English language' and this principle should be adopted in the application of this policy.

If you require this document in an alternative format please email informationgovernance@carmarthenshire.gov.uk

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Appendix 1

The Freedom of Information Act - exempt information

Part 2 of the Freedom of Information Act 2000 sets out categories of 'exempt information', that is, information which the Council is not obliged to disclose. Some of the categories have 'absolute exemption' from disclosure. This means that if information falls into one of these categories the Council can automatically refuse to disclose it.

If the information falls into one of the other categories, then the Council has to apply the public interest test.

Absolute exemptions

- **Section 21** – Information that is already reasonably accessible e.g. information covered by the publication scheme
- **Section 23** – Information supplied by, or relating to bodies dealing with security matters
- **Section 32** – Court records
- **Section 34** – Parliamentary privilege
- **Section 36** – Information likely to prejudice the effective conduct of public affairs
- **Section 40** – Personal information. Individuals cannot access personal data about themselves under the Freedom of Information Act as there is a separate right of access under the UK General Data Protection Regulation. Personal data about third parties cannot be released if to do so would breach any of the data protection principles. Where it is considered that the release would breach any of the data protection principles, it is not necessary to apply the public interest test
- **Section 41** – Information provided in confidence
- **Section 44** – Legal prohibitions on disclosure (such as where disclosure would constitute contempt of Court)

Appendix 2

Qualified exemptions

The following exemptions are subject to the public interest test. This means that the information must be released unless the public interest in withholding it is greater than the public interest in releasing it.

- **Section 22** – Information intended for future publication
- **Section 24** – National security
- **Section 26** – Defence
- **Section 27** – International relations
- **Section 28** – Relations within the United Kingdom
- **Section 29** – The economy
- **Section 30** – Investigations and proceedings conducted by public authorities
- **Section 31** – Law enforcement
- **Section 33** – Audit Functions
- **Section 35** – Formulation of government policy
- **Section 37** – Communications with Her Majesty, etc.
- **Section 38** – Health and safety
- **Section 39** – Environmental information, as this can be accessed through the **Environmental Information Regulations**
- **Section 40** – Personal Information. Certain limited parts of this section require the public interest test to be applied
- **Section 42** – Legal professional privilege
- **Section 43** – Information relating to commercial issues

Where the Council considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the Council must inform the applicant of its reasons, unless doing so would mean releasing the exempt information.

Appendix 3

Environmental Information Regulations - exceptions to the duty to disclose information

The following potential exemptions apply:

- **Regulation 12(4)(a)** – the information is not held
- **Regulation 12(4)(b)** – the request is manifestly unreasonable
- **Regulation 12(4)(c)** – the request is formulated in too general a manner to enable it to be responded to
- **Regulation 12(4)(d)** – the request is for information which is still in the course of completion, unfinished documents or incomplete data
- **Regulation 12(4)(e)** – the request involves disclosure of internal communications
- **Regulation 12(5)** – disclosure would adversely affect:
 - (a) International relations, defence, national security or public safety
 - (b) The course of justice, the ability of a person to receive a fair trial or a public authority's ability to conduct an enquiry of a criminal or disciplinary nature
 - (c) Intellectual property rights
 - (d) The confidentiality of proceedings where this is provided by law*
 - (e) The confidentiality of commercial or industrial information where this is provided by law to protect a legitimate economic interest*
 - (f) The interests of the person who provided the information where they provided it voluntarily, there are no other circumstances which would allow the authority to disclose it and the person has not consented to its disclosure*
 - (g) The protection of the environment*

*this cannot be applied where the information concerns emissions.

Where one or more of the above exceptions applies, we then have to consider whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.

- **Regulation 13** – personal information belonging to someone else will be exempt, where, for example, disclosure would breach any of the data protection principles set out in the UK General Data Protection Regulation. This does not require the application of the public interest test.