



## SCRUTINY MANAGEMENT COMMISSION 7 DECEMBER 2004

Report of the Director of Corporate Services

### FREEDOM OF INFORMATION ACT POLICY

#### RECOMMENDATIONS

- 1.1 To consider the draft Freedom of Information Act Policy.
- 1.2 To comment as appropriate and refer any comments to Council Cabinet for consideration before adopting the Policy.

#### SUPPORTING INFORMATION

- 3.1 At its meeting on 19 October 2004 Council Cabinet considered the attached report and draft Freedom of Information Act Policy. It approved the draft Policy and referred it to Scrutiny Management Commission for comment.
- 3.2 FOI is intended to promote a culture of openness and accountability amongst public bodies by providing people with rights of access to information held by bodies and the reasons for decisions taken by those bodies. Under the Act the presumption is that all information held by the Council is accessible unless it is withheld under one of the specified exemptions.
- 3.3 The attached policy statement is intended to provide an overview of the Council's commitment and approach to FOI. A working party comprising officers from each department is currently working on more detailed material to ensure the Council is ready for the introduction of the new information access rights. This material includes guidance material and processes such as those for handling requests, exemptions, fees and appeals.
- 3.4 The version attached to this report has been revised slightly from that considered by Cabinet to take account of Trade Union consultation. Further minor revision may be required to take account of the latest fee proposals from the Department for Constitutional Affairs.

<b>For more information contact:</b>	Andrew Thomas 01332 255451 e-mail <a href="mailto:andrew.thomas@derby.gov.uk">andrew.thomas@derby.gov.uk</a>
<b>Background papers:</b>	None
<b>List of appendices:</b>	Appendix 1 – Implications Appendix 2 – Council Cabinet report 19 October 2004 Appendix 3 – Draft Freedom of Information Act Policy

<b>IMPLICATIONS</b>
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**Financial**

1. None directly arising.

**Legal**

2. The Freedom of Information Act 2000 introduces a statutory right of access to information held by the Council with effect from 1 January 2005. There are a number of exemptions some of which are qualified by a public interest test. Persons dissatisfied with the Council's response will have formal rights of appeal.

**Personnel**

- 3.1 All employees will be required to comply with the policy.
- 3.2 Raising awareness of FOI and what it entails is a major area of work for the officer working party dealing with FOI implementation. This will primarily be through the issue and publication of a range of leaflets, articles and detailed guidance material prior to January 2005. For instance guidance has already been issued to departments on FOI and contracts, leaflets were issued to staff attending the Employee Conference and were attached to November payslips.

**Equalities impact**

4. Applicants can specify the format in which they wish to receive the information and the Council will endeavour to meet such requests. For instance, we may be able to supply it in large print, on audio tape, computer disk or in Braille.

**Corporate objectives and priorities for change**

5. The policy statement does not directly relate to any specific objective or priority. FOI will be an underlying theme through all the Council's working and decision taking processes. It is particularly aimed at ensuring ease of access to information held by the Council and the reasons behind decisions so as to assist with openness and accountability.



**COUNCIL CABINET**  
**19 OCTOBER 2004**

Report of the Director of Corporate Services

## **FREEDOM OF INFORMATION ACT POLICY**

### **RECOMMENDATION**

- 1.1 To approve and adopt the draft Freedom of Information Act Policy attached as Appendix 2 to this report.
- 1.2 To refer the Policy to the Scrutiny Management Commission.

### **REASONS FOR RECOMMENDATION**

2. From 1 January 2005 the Freedom of Information Act 2000 introduces new rights of access to information held by public bodies such as the Council. The attached policy statement outlines the Council's commitment and approach to Freedom of Information, FOI.

### **SUPPORTING INFORMATION**

- 3.5 FOI is intended to promote a culture of openness and accountability amongst public bodies by providing people with rights of access to information held by bodies and the reasons for decisions taken by those bodies. Under the Act the presumption is that all information held by the Council is accessible unless it is withheld under one of the specified exemptions.
- 3.6 The exemptions most relevant to the Council are designed to protect personal information, trade secrets, other commercially sensitive information and information where the Council is subject to a confidentiality obligation. A number of these exemptions are subject to a public interest test where the Council must decide whether the balance of the public interest lies in disclosing or withholding the information.
- 3.7 The Council will have 20 working days to respond to any information request subject to payment of any fee payable. Regulations are being made to regulate the calculation of fees and the maximum payable.

- 3.8 Persons unhappy with the Council's response to an information request can appeal. The initial appeal will be considered within the Council's own internal appeal process but there will be a right of further appeal to the Information Commissioner.
- 3.9 The Council's Publication Scheme, approved by the Information Commissioner, has been in place since the end of February 2003. It is the intention to review and update this periodically. We are allowed to add items to the Scheme without the need for resubmission to the Information Commissioner. Version 2 has recently been released to include a number of additional items relating to contracts and agreements.
- 3.10 The attached policy statement is intended to provide an overview of the Council's commitment and approach to FOI. A working party comprising officers from each department is currently working on more detailed material to ensure the Council is ready for the introduction of the new information access rights. This material includes guidance material and processes such as those for handling requests, exemptions, fees and appeals.

#### **OTHER OPTIONS CONSIDERED**

4. None.

<b>For more information contact:</b>	Andrew Thomas 01332 255451 e-mail andrew.thomas@derby.gov.uk
<b>Background papers:</b>	None
<b>List of appendices:</b>	Appendix 1 – Implications Appendix 2 – Draft Freedom of Information Act Policy

## IMPLICATIONS

### Financial

1. None directly arising.

### Legal

2. The Freedom of Information Act 2000 introduces a statutory right of access to information held by the Council with effect from 1 January 2005. There are a number of exemptions some of which are qualified by a public interest test. Persons dissatisfied with the Council's response will have formal rights of appeal.

### Personnel

- 3.1 All employees will be required to comply with the policy.
- 3.2 Raising awareness of FOI and what it entails is a major area of work for the officer working party dealing with FOI implementation. This will primarily be through the issue and publication of a range of leaflets, articles and detailed guidance material prior to January 2005. For instance guidance has already been issued to departments on FOI and contracts and leaflets were issued to staff attending the recent Employee Conference.

### Equalities impact

4. Applicants can specify the format in which they wish to receive the information and the Council will endeavour to meet such requests. For instance, we may be able to supply it in large print, on audio tape, computer disk or in Braille.

### Corporate objectives and priorities for change

5. The policy statement does not directly relate to any specific objective or priority. FOI will be an underlying theme through all the Council's working and decision taking processes. It is particularly aimed at ensuring ease of access to information held by the Council and the reasons behind decisions so as to assist with openness and accountability.



## FREEDOM OF INFORMATION ACT POLICY

### DRAFT Version 0.7

Owner	Paul Dransfield, Director of Finance
Author & enquiry point	Tony Walker, IT Security Support Officer
Authoriser	Alison Jones, Data Protection and Information Access Manager
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**Please tell us if you need this in large print, on audio tape, computer disc or in Braille. You can contact the IT Security Team on 01332 256265 or on minicom 01332 258427 or fax 256267**



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## **1. Introduction and scope**

- 1.1 The Freedom of Information Act 2000 - FOI - comes fully into effect on 1 January 2005. The Act is intended to promote a culture of openness and accountability amongst public authorities by providing people with rights of access to all types of recorded information held by them. As a public authority, Derby City Council has a responsibility to comply with the Act.
- 1.2 This document is a policy statement outlining our commitment and approach to FOI. The policy applies to all councillors and employees, including temporary staff, who handle information on behalf of the Council. Managers must make sure that all employees are fully briefed on the implications of this policy.
- 1.3 Separate documents are being produced which will set out procedures and provide guidance for councillors and Council employees to make sure that FOI is managed correctly.
- 1.4 The Council recognises the purpose and intentions behind FOI and will meet its obligations in accordance with those purposes and intentions.

## **2. Responsibility and compliance**

- 2.1 The Director of Corporate Services and Deputy Chief Executive has overall responsibility for FOI at the Council. The Council's Data Protection and Information Access Manager has day-to-day responsibility for management and co-ordination of FOI.
- 2.2 The Freedom of Information Act Policy applies to all employees. If employees knowingly fail to comply with this Policy, or the Freedom of Information Act, the Council may take appropriate action under the Disciplinary Procedure.

## **3. Requests for information**

- 3.1 FOI is intended to cover all information that is not already subject to information access rights. In a number of areas information is already available under alternative access rights. Two significant examples are:
  - personal information, which is covered by the Data Protection Act 1998
  - information about the environment, which is covered by the Environmental Information Regulations 1992 - soon to be revised.

For further information on these kinds of requests, see item 13 - Further Guidance.

In summary, from 1<sup>st</sup> January 2005, information not otherwise available by other means comes within FOI.

- 3.2 FOI requests must be made in writing. This can include fax and email. There is no requirement for people to mention FOI in their requests or to say why they need the information. If a request is unclear, we will try and clarify what is required.



- 3.3 The Council acknowledges that it has a duty to confirm or deny to the applicant whether the information is held.
- 3.4 If the information can be provided and it is not subject to an exemption, we will provide the information within 20 working days of a request being received. However, if a charge is to be made for information, the time that it takes between the Council sending out a fees notice and the payment being received, is not counted as part of the 20 working days.
- 3.5 Information will be provided in the most appropriate format. However, alternative formats can be requested. We will, however, consider the cost implications of such requests.
- 3.6 We have no obligation to comply with vexatious requests. Vexatious means repeated, unreasonable and nuisance requests.
- 3.7 We will use all reasonable efforts to assist an applicant to obtain the information required.

#### **4. Publication Scheme**

- 4.1 The Council is required to produce and maintain a Publication Scheme. This is now available on the Council's web site and on Derbynet. This is a directory of information and publications that are routinely available. The Publication Scheme outlines:
  - the way we intend to present the information
  - how we intend to publish it
  - whether we intend to make a charge and if so, what the charge is.
- 4.2 Information covered by the Publication Scheme should be obtained in the manner described in the Scheme.
- 4.3 We will review our Publication Scheme from time to time with the intention of increasing the scope and range of information covered by it.

#### **5. Charges**

- 5.1 We provide most information free of charge, particularly that which is available on the Council's web site. Some documents in the Publication Scheme are subject to a charge, usually intended to meet some or all of the cost of publication.
- 5.2 Regulations will allow us to charge for information to be provided following an information request under FOI. Typically, information that has to be prepared or extracted or which incurs copying costs will be charged in accordance with the regulations. We will tell the applicant if a charge is to be made.

- 5.3 The regulations currently state that if the estimated cost to provide information is more than £600, we are not obliged to fulfil the request. The £600 limit may be subject to change.
- 5.4 We have the right to withhold information if the required fee is not paid.

## 6. Exemptions

6.1 Certain information held by the Council is exempt from FOI. There are 24 exemptions. These fall into two categories.

- **Absolute exemptions.** These exemptions are unconditional. Examples of these include information accessible by other means, information provided to the Council in confidence and personal information covered by the Data Protection Act 1998. A full list is given below.

Section 21. Information accessible to applicant by other means.

Section 23. Information supplied by, or relating to, bodies dealing with security matters.

Section 32. Court records, etc.

Section 34. Parliamentary privilege.

Section 40. Personal information.

Section 41. Information provided in confidence.

Section 44. Prohibitions on disclosure.

- **Qualified exemptions.** This category of exemption is subject to a public interest test. In these cases we will look at whether the balance of public interest is weighted in favour of giving the information requested. Where this is found to be the case, the information will be given. Examples of qualified exemptions include commercially sensitive information and information that would prejudice the health and safety of an individual. A full list is given below.

Section 22. Information intended for future publication.

Section 24. National security.

Section 25. Certificates under ss. 23 and 24: supplementary provisions.

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, etc.
- Section 36. Prejudice to effective conduct of public affairs.
- Section 37. Communications with Her Majesty, etc. and honours.
- Section 38. Health and safety.
- Section 39. Environmental information.
- Section 42. Legal professional privilege.
- Section 43. Commercial interests.

6.2 It is our intention to apply exemptions in appropriate circumstances.

6.3 For example, we recognise that some information supplied to us is confidential in nature or commercially sensitive. We will have regard to that in our application of exemptions.

6.4 We will make clear statements to parties contracting with the Council to make sure they are aware of our obligations to disclose under FOI and we will resist attempts to impose confidentiality obligations on the Council where the information is not confidential in nature.

## **7. If a request is turned down or refused**

7.1 We will always confirm or deny whether or not we hold information requested and we will respond promptly to information requests. We will either provide the information requested or, if it is withheld, explain why it has not been provided, quoting the relevant exemption under the Act. We will only turn down a request or refuse to provide information in the following circumstances. If:

- it falls into one of the exemption categories
- the request is considered vexatious
- the required fee is not paid within three months.

7.2 If a request is refused, the applicant has the right to ask for that decision to be reviewed under the Council's internal appeals procedure.

7.3 If after the internal appeal, the information is still not disclosed, the applicant has the right to ask the Information Commissioner to review the decision.

## **8. Transferring a request to another body**

8.1 If it is found that another public body holds the information requested, we will either transfer the request to that organisation or advise the applicant where that information can be obtained. Any part of the request that relates to the Council will be handled in the normal way.

8.2 We will inform the applicant if all or part of an enquiry has been transferred to another public body.

8.3 In cases where there are reasonable grounds to believe that the applicant would object to a transfer, we will first ask for consent from the applicant.

## 9. Records Management

9.1 We recognise that to successfully meet our obligations under FOI we must have efficient and effective methods of managing and identifying information held by us. In particular we will have regard to the Code of Practice on Records Management issued under section 46 of the Act and the Council's own Document Retention Policy.

9.2 All councillors and employees must make sure that information for which they are responsible is held in an organised and systematic way that will allow it to be identified and retrieved.

## 10. Other relevant policies and procedures

10.1 Freedom of Information Act 2000 Guide (Available December 2004)  
Data Protection Act 1998 Policy  
Data Protection Act 1998 Code of Practice  
Information Security Policy  
Document Retention Policy

## 11. Version Control

11.1 To make sure you are using the current version of this policy you can check on Derbynet in the Document Library under Policy and Strategy / Codes & Protocols. Or you can contact anyone listed in 13 'Further Guidance'.

## 12. Version History

Date Issued	Version	Status	Reason for change
12 August 2004	0.1	Draft	First issue
13 August 2004	0.2	Draft	Plain English
17 August 2004	0.3	Draft	Updates from AT / JC
19 August 2004	0.4	Draft	Large print info updated
22 September 2004	0.5	Draft	Revisions from AT
23 September 2004	0.6	Draft	Exemptions added / Plain English
4 November 2004	0.7	Draft	Trade Unions consultation

### 13. Further guidance

- **Freedom of Information**

Council guidance on FOI for employees, councillors and members of the public is currently being produced. When available, this will appear on the Council's web site [www.derby.gov.uk](http://www.derby.gov.uk) and on Derbynet. If you have any queries you can contact:

Tony Walker	IT Security Support Officer	01332 256265
Alison Jones	Data Protection & Information Access Manager	01332 256262

Email: [foi@derby.gov.uk](mailto:foi@derby.gov.uk)

Further Information on FOI can also be found on the following Government web sites:

Department for Constitutional Affairs: [www.foi.gov.uk](http://www.foi.gov.uk)  
Information Commissioner's Office: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

- **Data Protection Act 1998**

The Council's Data Protection Officer handles requests for information covered by the Data Protection Act 1998. For further information contact Alison Jones on 01332 256262 or email [Alison.jones@derby.gov.uk](mailto:Alison.jones@derby.gov.uk).

- **Environmental Information Regulations 1992**

Various public bodies including Derby City Council hold information covered by the Environmental Information Regulations. For general enquiries relating to information that may be held by the Council please ring 01332 256265 or 01332 256262. For more information on the Environmental Information Regulations you can contact:

The Information Commissioner's Office

Tel: 01625 545 700  
Email: [mail@ico.gsi.gov.uk](mailto:mail@ico.gsi.gov.uk)  
Website: [www.informationcommissioner.gov.uk/](http://www.informationcommissioner.gov.uk/)