

## DUMFRIES AND GALLOWAY COUNCIL

### FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004

#### POLICIES AND PROCEDURES

1. POLICY STATEMENT AND INTRODUCTION
2. SCOPE
3. STATUS
4. RESPONSIBILITIES
5. RELATIONSHIP WITH EXISTING POLICIES AND LEGISLATION
6. GUIDANCE AVAILABLE
7. PUBLICATION SCHEME
8. REQUESTS FOR INFORMATION
9. CHARGES
10. REVIEW PROCEDURES
11. EXEMPTIONS AND EXCEPTIONS
12. CONTRACTORS, SUPPLIERS ETC
13. RECORDS MANAGEMENT
14. DATA PROTECTION AND THE RE-USE OF PUBLIC SECTOR INFORMATION REGULATIONS 2005
15. FURTHER INFORMATION
16. LEGISLATION AND CODES

## **1. POLICY STATEMENT AND INTRODUCTION**

**“Dumfries and Galloway Council supports and is committed to the principles of openness, transparency and accountability embodied in the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004”**

This Policy establishes a framework which underlines this commitment. It provides policy statements to underpin the Council’s guidance and procedures in the areas of Freedom of Information and Environmental Information.

## **2. SCOPE**

This Policy has been established to ensure that Dumfries and Galloway Council meets its obligations under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and the related statutory codes of practice. The Legislation, and therefore this Policy, applies to all recorded information held by the Council and its staff, regardless of format, storage, medium or age. It also applies to any Companies which are, or may be wholly owned by the Council and to information held by other Organisations or individuals on behalf of the Council.

Information “held” by the Council includes not only information created by the Council and its agents, but also information in the Council’s possession which originated from outside Organisations or individuals, such as Regulatory bodies or private companies.

This Policy and the procedures which are set out in this document will ensure Dumfries and Galloway Council conforms to the Act, Regulations and associated codes of practice. The key requirements of which are that;

- Information which is routinely published by the Council is made available in accordance with the Council’s Freedom of Information Publication Scheme.
- Information which is not covered is made available to enquirers on request, within 20 working days, unless a valid exemption or exception or limit applies (exceeding prescribed costs)
- Exemptions under the Act and Exceptions under the Regulations are applied appropriately, and in accordance with the Legislation.
- A fair and efficient internal appeal system is administered.

### **3. STATUS**

The original Policy was written in December 2004 and has now been reviewed as part of a continuous improvement process.

### **4. RESPONSIBILITIES**

The Council has a Corporate responsibility to ensure that it conforms to and implements the Freedom of Information (Scotland) Act and the Environmental Information (Scotland) Regulations. The Council is accountable to the Public and to the Scottish Information Commissioner for its compliance with both the Act and the Regulations.

The Officer with overall responsibility for this Policy is the Chief Information Officer, who has strategic responsibility within the Council for both Freedom of Information and Environmental Information.

The Information Management and Complaints Unit is responsible for the day to day management and compliance with the Act and Regulations. This includes the development of procedures, guidance and standards of good practice; their promulgation to staff through training and outreach; the co-ordination of responses to all information requests and the provision of advice and assistance to Freedom of Information and Environmental issues.

The Information Management and Complaints Unit has responsibility for the decision making in all responses and to report on a monthly basis key performance indicators and targets, to ensure that monthly “disclosure logs” are made publicly available, to provide appropriate information to the Council’s Communications Unit and the political Administration and political groups.

The Information Management and Complaints Unit’s responsibility extends to ensuring that Compliance Review Panels are convened where required and acts as a point of contact for any correspondence from the Office of the Scottish Information Commissioner. The Senior Information Management Officer will also prepare detailed written submissions to any request from the Office of the Scottish Information Commissioner.

All staff must handle information, and requests for information in a way which complies with this Policy, any related procedures, guidance and standards of good practice.

Staff must also ensure they provide the Senior Information Management Officer with all the necessary advice and assistance when requested to do so for the purpose of responding to Freedom of Information or Environmental Information requests. Staff should note that the deliberate concealment, amendment or destruction of information which has been the subject of a Freedom of Information or Environmental Information request, in order to prevent its disclosure, is a criminal offence.

## **5. RELATIONSHIP WITH EXISTING POLICIES AND LEGISLATION**

This Policy has been developed and is implemented within the context of other Council policies and guidelines, national legislation and codes of practice.

## **6. GUIDANCE AVAILABLE**

Guidance on the procedures necessary to comply with this Policy have been developed by the Senior Information Management Officer, with approval by the Chief Information Officer. The guidance and administrative process covers the following areas:

- Overview of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.
- Procedures for receiving and dealing with a request under the above Legislation.
- Procedures for handling appeals and complaints
- Overview of the Publication Scheme.
- Contact telephone and e-mail address for advice and assistance

## **7. PUBLICATION SCHEME**

Dumfries and Galloway Council is required by the Freedom of Information (Scotland) Act 2002 to produce, maintain and make available a Publication Scheme covering the information which the Council routinely publishes or intends to publish. The Publication Scheme is available on the Council's website at [www.dumgal.gov.uk/foi](http://www.dumgal.gov.uk/foi) It describes the classes of information which the Council publishes and details the formats in which publications are available and whether any charges apply. The Scheme has been approved until 2017 when it is due for re-submission to the Office of the Scottish Information Commissioner.

Publication of information via the Publication Scheme produces a number of benefits, such as the reduction in the amount of information which can be subject to requests. To secure these benefits the Council affirms its commitment to the routine publication of as much non-sensitive information about policies, procedures and functions as possible.

## **8. REQUESTS FOR INFORMATION**

Information which is not covered by the Council's Publication Scheme can be requested by individuals under the Act or the Regulations. These both provide the public with the right to be informed whether the information they

have requested is held by the Council and, if so, to have the information communicated to them unless a suitable exemption or exception applies. Requests must be answered as soon as practically possible and in any case within 20 working days, although this period may be extended in some cases where Environmental Information has been requested.

The Council is committed to processing requests for information in accordance with the requirements of the Act and the Regulations. Procedures and systems for dealing with information requests have been developed to promote conformity throughout Council Services.

## **9. CHARGING**

Any request to the Council for information which is not available under the Publication Scheme may be charged based on the following calculations.

Information requests under the Freedom of Information (Scotland) Act 2002:

- There will be no charge for information requests which cost the Council £100 or less to process.
- Where information requests costs between £100 and £600 to provide you may be asked to pay 10% of the cost. That is, if you were to ask for information that cost the Council £600 to provide, you would be asked to pay £50, that calculated on the basis of a waiver of the first £100 and 10% of the remaining £500.
- The Council is not obliged to respond to requests which will cost over £600 to process.
- In calculating any fee, staff time will be calculated at actual cost per staff member hourly salary rate to a maximum of £15 per person per hour.
- The Council does not charge for the time to determine whether it holds the information requested, not for the time it takes to decide whether the information can be disclosed. Charges can be made for locating, retrieving and providing the information requested.
- In the event that the Council decides to impose a fee you will be notified of the charge ( a fees notice) and how it has been calculated. You will have three months from the date of issue of the fees notice in which to decide whether to pay the charge. The information will be provided to you on payment of the charge.
- If you decide not to proceed with the request there will be no charge to you.

Information requests under the Environmental Information (Scotland) Regulations 2004:

- The Council is under a duty to make environmental information available under Regulation 5(1) and it may charge a fee for doing so.
- Charges may include the costs of locating, retrieving and assembling the information, which may include staff time, copying and postage costs.
- In contrast to FOI fees, staff time is not capped at a maximum of £15 per hour but is charged at the actual cost. The lowest grade member(s) of staff available to carry out the task (being of an appropriate grade to be dealing with the information in question and having the requisite skills and knowledge) will be used.
- Fees charged shall not exceed a reasonable amount and in any event shall not exceed the costs to the Council in producing the information requested.
- The Council may refuse to comply with a request which is “manifestly unreasonable”
- The Council will not charge a fee for allowing an applicant to access any public registers or lists of environmental information held by it or examine the information requested at a place which the Council makes available for that purpose.
- The Council will provide the information in an alternative format in line with the provisions of the Disability Discrimination Act 1995.

## **10. REVIEW PROCEDURES**

An applicant who is not satisfied with the way that the Council has dealt with a request for information, either under the terms of the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004 can require the authority to review its actions and decisions in relation to the request. The Act refers to this as a Requirement for Review.

A requirement for Review must be made no later than 40 working days after;

- The period allowed for responding to the request has expired; or
- If the authority responded after the period allowed (20 working days), the date on which it responded.

The Council may comply with a Requirement for Review made after 40 working day period if it so wishes to do. An authority which receives a Requirement for Review must complete the review, and must inform the applicant in writing of the result, within 20 working days of receiving it.

The Council has procedures for conducting reviews. These procedures are straightforward and impartial and enable the case to be considered afresh and for different decisions to be taken.

Where a Review Panel finds that previously refused information should be disclosed, the information should be provided to the applicant as soon as possible and within the 20 working day period allowed for the Review to be carried out.

Where a Review Panel finds that the Council's FOI procedures have not been properly followed, the Council should apologise to the applicant and take action to prevent this happening again.

In all cases, the Council should inform the applicant that if he/she is not satisfied with the result of the Review they can apply to the Scottish Information Commissioner for a decision on whether the Council complied with the Act, or the Regulations.

## **11. EXEMPTIONS AND EXCEPTIONS**

Although the Council upholds the principle that information should be accessible wherever possible, there are times when it will have to withhold information to protect its legitimate interests and those of other Organisations and individuals. The Council will only refuse to disclose information in response to a request if a valid exemption applies under the Freedom of Information (Scotland) Act 2002 or a suitable exception under the Environmental Information (Scotland) Regulations 2004.

The Council will apply exemptions or exceptions in a way which takes into account the guidance on exemptions issued by the Scottish Information Commissioner.

Where information is withheld under an exemption, applicants will be informed of the relevant exemption and why the Council believes it applies, and will be provided with details of the Council's Review procedures.

## **12. CONTRACTORS, SUPPLIERS ETC**

The Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 cover all information held by the Council, including information provided to the Council by outside organisations such as contractors, suppliers, other authorities, institutions and regulatory bodies. The Council will consult with outside organisations whenever information which they have supplied to the Council is the subject of a request. However, the ultimate legal responsibility for deciding whether or not information should be released under the Act or Regulations rests with the Council.

## **13. RECORDS MANAGEMENT**

Effective management of the Council's information is essential for business efficiency and to ensure compliance with information rights legislation. The Council will develop its records keeping policies, procedures and systems with the goal of conforming to the code of practice, through its Records Management Plan, and in line with the Public Records (Scotland) Act 2011.

**14. DATA PROTECTION AND THE RE-USE OF PUBLIC SECTOR INFORMATION REGULATIONS 2005**

The Data Protection Act 1998 protects information that is held about individuals by public authorities. Individuals can ask for and receive a description of the personal data held about them (subject access request).

Information is exempt from the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) regulations 2004 if it is a request for information from an individual about personal information we hold about them.

Requests for information about other living individuals should be dealt with under the Freedom of Information (Scotland) act 2002, but can be refused on the basis that they breach the principles of the Data Protection Act.

Applicants can request to use public sector information subject to certain conditions, exemptions and charges. Requests must be in writing, state the information required and intended use. The Council has 20 days to respond whether by accepting the request, refusing the request or requesting a charge.

**15. FURTHER INFORMATION**

Questions relating to this policy and the Council's compliance with both the Act and the Regulations should be directed to the Senior Information Management Officer at the following address:

**Senior Information Management Officer  
Council Offices  
English Street  
Dumfries  
DG1 2DD**

Telephone: 030 33 33 3000  
Email: [FOI@dumgal.gov.uk](mailto:FOI@dumgal.gov.uk)

**16. LEGISLATION AND CODES**

This policy has been written taking into account:

- Data Protection Act 1998
- Freedom of Information (Scotland) Act 2002
- Environmental Information (Scotland ) Regulations 2004
- The relevant Codes of Practice
- Disability Discrimination Act 1995
- The Public Records (Scotland) Act 2011

**Version 2.1a**